EIGHTY-SIXTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1996, through December 31, 1996

Hugh A. Wells, Chairman

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

Jo Anne Sanford, Commissioner

North Carolina Utilities Commission
Office of the Chief Clerk
Mrs. Geneva S. Thigpen
Post Office Box 29510
Raleigh, North Carolina 27626-0510

The Statistical and Analytical Report of the North Carolina Utilities Commission is printed separately from the volume of Orders and Decisions and will be available from the Office of the Chief Clerk of the North Carolina Utilities Commission upon order.

LETTER OF TRANSMITTAL

December 31, 1996

The Governor of North Carolina
Raleigh, North Carolina

Sir:

Pursuant to the provisions of Section 62-17(b) of the General Statutes of North Carolina, providing for the annual publication of the final decisions of the Utilities Commission on and after January 1, 1996, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1996, and ending December 31, 1996.

The additional report provided under G.S. 62-17(a), comprising the statistical and analytical report of the Commission, is printed separately from this volume and will be transmitted immediately upon completion of printing.

Respectfully submitted,

NORTH CAROLINA UTILITIES COMMISSION

Hugh A. Wells, Chairman

Charles H. Hughes, Commissioner

Laurence A. Cobb, Commissioner

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

Jo Anne Sanford, Commissioner

Geneva S. Thigpen, Chief Clerk

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of the
North Carolina Utilities Commission

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DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Tax Reform Act of 1986)	ORDER CONCERNING GROSS-UP FOR TAXES ON CONTRIBUTIONS IN AID OF CONSTRUCTION AND REQUIRING REFUNDS

BY THE COMMISSION: In response to the Tax Reform Act of 1986, the Commission established requirements concerning gross-up for taxes on contributions in aid of construction (CIAC) by water and sewer utilities. Some water and sewer utilities have included references to gross-up in their tariffs. On August 20, 1996, President Clinton signed into law the Small Business Job Protection Act of 1996. Section 1613 of the Act, concerning the tax treatment of CIAC, restores the CIAC provisions that were repealed by the Tax Reform Act of 1986 for regulated public utilities that provide water or sewerage disposal services effective for amounts received after June 12, 1996.

On August 26, 1996, at the Commission's Regular Staff Conference, the Public Staff recommended that the Commission issue an order requiring water and sewer companies to cease collecting gross-up on CIAC received and to refund any gross-up collected on CIAC received after June 12, 1996, with 10% interest. The Public Staff also recommended that tariff references to gross-up be deleted.

After careful review of this matter, the Commission concludes that with the changes in the tax treatment of CIAC, the gross-up requirements established by the Commission in response to the Tax Reform Act of 1986 are no longer necessary for water and sewer companies. The Commission also concludes that any gross-up collected by water and sewer companies on CIAC received after June 12, 1996, should be refunded with 10% interest.

IT IS, THEREFORE, ORDERED, as follows:

1. That all water and sewer companies cease collecting gross-up on collections of CIAC received after June 12, 1996.

2. That all water and sewer companies which have collected gross-up on CIAC received after June 12, 1996, refund any amounts collected to the contributors with 10% interest per annum within 30 days of the date of this order.

3. That all water and sewer companies who have collected gross-up on CIAC received after June 12, 1996, file a notarized report on the refunds made within 60 days of the date of this order. The notarized report should list the amount of gross-up collected on CIAC received after June 12, 1996, the interest on the refund and how it was calculated, and the total amount, including interest, which was refunded.

4. The Public Staff is requested to prepare and submit to the Commission revised tariffs, which shall be deemed filed pursuant to G.S. 62-138(a), deleting references to gross-up for water and sewer companies.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. M-100, SUB 124
DOCKET NO. E-100, SUB 64A
DOCKET NO. E-100, SUB 71

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. M-100, SUB 124

In the Matter of)
Investigation of Incentive Programs)
Covered by G.S. 62-140(c))
)
DOCKET NO. E-100, SUB 64A)
In the Matter of)
Request by Duke Power Company for) ORDER ON
Approval of a Food Service Program) RECONSIDERATION
)
DOCKET NO. E-100, SUB 71)
In the Matter of)
Investigation of the Effect of Electric)
IRP and DSM Programs on the Competition)
Between Electric Utilities and Natural)
Gas Utilities)

BY THE COMMISSION: On October 24, 1995, the Commission issued its Order Adopting Guidelines in Docket Nos. E-100, Sub 64A and Sub 71. The purposes of the proceedings in these dockets were to consider approval of Duke's proposed Food Service Program and to consider the effect of electric Integrated Resource Planning (IRP) and Demand Side Management (DSM) programs on the competition between electric and natural gas utilities. On that same date, in a separate but companion docket, the Commission also issued its Order Adopting Rule R1-38 in Docket No. M-100, Sub 124. The purpose of this proceeding was to determine what types of electric and natural gas incentive programs must be submitted for Commission approval under G.S. 62-140 (c).

On November 20, 1995, the Public Staff filed a Motion for Reconsideration requesting the Commission to reconsider five areas or issues in the Orders cited immediately above. On November 22, 1995, the Commission issued an Order Requesting Responses to the Public Staff's Motion.

On November 28, 1995, the Southern Environmental Law Center (SELC) filed a Motion for Additional Reconsideration of the Order Adopting Guidelines requesting the Commission to reconsider an additional issue in its Order in Docket Nos. E-100, Sub 64A and Sub 71. On December 1, 1995, the Commission issued an Order Requesting Responses to the SELC's Motion.

The following parties filed responses as requested in the Commission's Order Requesting Responses: Carolina Power & Light Company (CP&L), the Carolina Utility Customers Association (CUCA), Duke Power Company (Duke), North Carolina Natural Gas Company (NCNG), North Carolina Power Company (NC Power), Piedmont Natural Gas Company (Piedmont), the Public Staff, and the SELC.

In its Motion for Reconsideration, the Public Staff identifies five areas or issues where the Public Staff perceives the Orders either leave small gaps in the regulatory framework or appear inconsistent. For each issue, the Public Staff's Motion suggests specific language changes which it requests the Commission to adopt in order to clarify how the Orders are to be applied. SELC's Motion for Additional Reconsideration identifies one additional issue which it requests the Commission to reconsider and also suggests specific language for the Commission to adopt in order to clarify the issue it has raised.

Generally, the filed responses indicate substantial agreement by the Public Staff and SELC with respect to the changes requested by each party's Motion. CUCA generally agreed with the issues raised for reconsideration, but frequently suggested language which differed from the language offered by the Public Staff and SELC. All of the utilities which filed responses, namely CP&L, Duke, NCNG, NC Power, and Piedmont, requested the Commission to deny the Motions for Reconsideration or reject the proposed changes. Most of these parties did not specifically address each issue raised by the Public Staff and SELC, but instead, opposed reconsideration on procedural grounds, i.e., all parties had ample opportunity through numerous filings and the hearing to express their views which were considered by the Commission in reaching its decision.

In the remainder of this Order on Reconsideration, the Commission will present each issue raised for reconsideration, a summary of the responses of the parties with respect to each issue, and the Commission's decision.

Issue No 1

The Public Staff requests the Commission to replace the word "secure" with the word "retain" in Commission Rule R1-38(c)1.

Subsection (c)1 of the Rule deals with the scope of G.S. 62-140(c) in terms of the programs that must be approved, who funds them, and who offers them. In the sentence relevant to the Public Staff's Motion, the Rule reads:

> A Public Utility shall file for approval all Programs to offer Consideration which are administered, promoted, or funded by the Public Utility's subsidiaries, affiliates and/or unregulated divisions or businesses where the Public Utility has control over the entity offering or is involved in the Program and an intent or effect of the Program is to adopt, secure, or increase the use of the Public Utility's public utility services. (underline added)

The Public Staff's Proposed Rule R1-38 (which the Commission directed the parties to comment on in the Order dated December 9, 1995) contained the word "retain." As discussed on page 7 of the Order Adopting Rule R1-38, NCNG, Piedmont and the electric utilities objected to the word "retain" as contrary to the statute. The statute says, in part, "...to secure the installation or adoption of the use of such public utility service" and they proposed to change "retain" to "secure." The Commission made this change.

In its Motion for Reconsideration, the Public Staff gave two reasons why it had requested reconsideration on this issue. First, the Public Staff opined that the Commission Rule in general was very expansive in its scope, yet use of the word "secure" in subsection (c)1 exempts a significant number of possible incentive programs from Commission jurisdiction. As an example, the Public Staff contended that if a natural gas or electric utility offered rebates or low interest loans on new heating systems in new homes, such programs clearly must be submitted for Commission approval. However, a program offering those very same incentives to existing customers to prevent existing customers from switching to a competitor's heating system is not subject to the Commission's Rule. Further, the Public Staff contended a utility could even give a new heating system to an existing customer who agreed not to switch to a rival utility's service, and the Commission's Rule would not allow the Commission to review the program. Second, while acknowledging that the word "secure" comes from G.S. 62-140(c), the Public Staff contended that this word can be ambiguous in the absence of the rest of the statute. However, because of the later requirement of the statute that an incentive be offered "to all persons within the same classification using or applying for such public utility service" (underline added), the Public Staff believes the statute clearly covers programs designed to retain customers.

The SELC and CUCA agreed with the Public Staff that Rule R1-38(c) should apply to incentive programs designed to secure the continued use of a utility service by existing customers as well as to programs to new customers. CUCA suggested that the Commission could address this issue by announcing that the use of the word "secure", rather than the word "retain", in the Rule was not intended to exempt utility programs intended to retain the patronage of existing customers and that all such programs are covered by Commission Rule R1-38(c)1.

Each of the utilities which filed responses opposed changing Rule R1-38 as requested by the Public Staff. NCNG and Piedmont again opposed the word "retain" because the word "secure" is contained in G.S. 62-140(c), which Rule R1-38 is intended to implement. NCNG also stated that "the statute does not address retention of service that does not increase load." CP&L, also noting that "secure" is the word used by the General Assembly in G.S. 62-140(c), believes that the Commission's use of the language approved by the General Assembly is appropriate and should not

be altered through the adoption of the Rule. In its comments, Duke also cited the language of the statute as supportive of Rule R1-38. Duke believed no ambiguity existed in the Rule.

The Commission concludes that one definition of the word "secure" is "to free from risk of loss." Consistent with this definition, Commission Rule R1-38(c)1 applies to incentive programs designed to secure the continued usage of a utility's service by existing customers as well as the initial use of that service by new customers. Commission Rule R1-38(c)1 was not intended to exempt utility incentive programs intended to retain the patronage of existing utility customers and all such programs are covered by the provisions of Rule R1-38(c)1. Given this interpretation of the Rule as now written, there is no need to change the word "secure" to "retain" as requested by the Public Staff.

Issue No 2

The Public Staff requests the Commission to adopt the following three changes in the Order Adopting Guidelines and Guideline No. 1 in order to clarify that approval of a program pursuant to Rule R1-38 does not imply approval for rate recovery:

(1) Finding of Fact No. 8 - Insert the word "proposed" between the words "are" and "to" so that the underlined phrase reads "but are proposed to be paid for by ratepayers"

(2) Finding of Fact No. 13 - Strike the words "for its ratepayers" from the end of the sentence. According to the Public Staff, this change makes the Finding of Fact consistent with Guideline No. 1, and removes any implication of ratemaking treatment from the Finding of Fact.

(3) Guideline No. 1 - Add a new subsection (f) to read:

> Approval of a program pursuant to Rule R1-38 does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings in accordance with established criteria in those cases.

SELC supported these changes. CUCA also supported these changes with one important exception. CUCA did not believe that the words "for its ratepayers" should be removed from Finding of Fact No. 13. Instead, CUCA believed that the words "for its ratepayers" should be added to Guideline No. 1. CUCA stated that the entire purpose of the Rule and the Guidelines is to ensure that the proposed incentive program is cost effective from a ratepayer perspective.

No other party filing responses specifically addressed this particular issue. However, CP&L responded that a number of changes requested by the Public Staff were made on the basis that the Order as written implies that Commission approval of a utility program also includes approval for ratemaking. CP&L stated this assertion is incorrect and the Public Staff's proposed changes should be rejected.

The Commission did not intend to indicate in its Order Adopting Guidelines or in the Guidelines themselves that approval of a program pursuant to Rule R1-38 constitutes approval of program costs for ratemaking purposes. In order to clarify this intent, the Commission amends Finding of Fact No. 8 as follows:

> Electric or gas DSM programs that do not involve incentives but are proposed to be paid for by ratepayers should be evaluated in general rate cases or similar proceedings, as appropriate, in accordance with criteria typically used by the Commission in such cases.

In addition, in order to further clarify this intent, the Commission adds a new subsection (f) to Guideline No. 1 as stated below:

> Approval of a program pursuant to Rule R1-38 does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings.

Finally, the Commission amends Guideline No. 1 by adding the phrase "for its ratepayers" to the end of Guideline No. 1 for the reasons stated by CUCA in its response.

Issue No. 3

The Public Staff requests that the phrase "may not be recoverable" in Guideline 2.(a) be changed to read "shall not be recoverable." In conjunction with that change, the Public Staff also requests that the first sentence of Guideline 2.(b) be replaced with the following sentence:

> If the presumption that a program is promotional is successfully rebutted, rate recovery of the cost of the incentive shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers.

The Public Staff requested these changes to Guideline No. 2 because it believes the language is unclear and unfairly leans in the direction of guaranteeing utilities the right to recover the costs of programs involving the payment of incentives to third parties. According to the Public Staff, to the extent that the guidelines address ratemaking issues at all, they should: (1) narrowly focus on the issue of whether a program is promotional, and (2) protect the ratepayer against guaranteed approval of rate recovery outside of a general rate case.

With respect to the requested language change in Guideline 2.(a), the Public Staff acknowledges that the phrase "unless the Commission finds good cause to do so" gives the Commission an appropriate amount of flexibility to deal with the rate recovery issue of program costs. However, the Public Staff contends that the phrase "may not be recoverable" weakens the sentence to the point where there would be little or no meaning to a finding by the Commission in a Rule R1-38 proceeding that a program was promotional. Therefore, the Public Staff requests that the word "may" be

changed to "shall." With respect to the Public Staff's requested language change in Guideline 2.(b), the Public Staff contends that use of the phrase "shall be recoverable" effectively guarantees the utility some level of rate recovery of program costs, with no flexibility for the Commission to order otherwise. The Public Staff advocates that its language substitution in Guideline 2.(b) would narrowly focus the ratemaking implications of the Commission's findings in a Rule R1-38 proceeding and would preserve flexibility for the Commission to disallow rate recovery of costs of non-promotional programs on other grounds, such as imprudency.

CUCA and SELC requested the Commission to modify Guidelines 2.(a) and 2.(b) as suggested by the Public Staff.

Piedmont strongly opposes the Public Staff's suggested change to Guideline 2.(a) for the reasons discussed in Piedmont's prior filings in this proceeding -- that a ban on recovery of promotional expenses is unlawful. The change proposed by the Public Staff creates a presumption that promotional expenses are not recoverable. According to Piedmont, such a presumption is unlawful, is not supported by any evidence and is merely a reflection of the unsupported and subjective desire of the Public Staff to skew future proceedings related to recovery of promotional expenses in their favor. Piedmont stated that the Commission specifically adopted the current language, in part, to address Piedmont's concerns and that the Public Staff has identified no new evidence or other considerations that would justify a different result now. For these reasons, Piedmont urges the Commission to reject the Public Staff's proposed change to paragraph 2.(a) of the Commission Guidelines.

CP&L responded that the Public Staff's proposed change to Guideline 2.(a), whereby the word "may" would change to "shall," is inconsistent with the very reason the Public Staff is seeking these changes. CP&L argues that although the Public Staff is allegedly requesting these changes to ensure no ratemaking decisions are being made in the Guidelines, changing the word "may" to "shall" will reduce the Commission's flexibility and will decide that such costs cannot be recovered in rates. CP&L believes the Commission Order is clear that the reasonableness of all costs associated with incentive programs will be determined in a proceeding in which the utility is seeking rates to recover such costs. It asserts that the language of Guideline 2.(b) which includes the phrase "to the extent found just and reasonable" obviously contemplates a Commission proceeding in which the Commission investigates the reasonableness of a program's expenses prior to a utility being allowed rate recovery of such costs.

In response to these requested changes, the Commission concludes that the proposed change to Guideline No. 2.(a) should be rejected. Guideline 2.(a) gives the Commission an appropriate amount of flexibility to deal with the ratemaking issue of program costs. However, on reconsideration the Commission finds it appropriate to revise Guideline 2.(b) as follows:

> If the presumption that a program is promotional is successfully rebutted, the cost of the incentive may be recoverable from the ratepayers. The cost shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers. The amount of any recovery shall not exceed

> the difference between the cost of installing equipment and/or constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.

Guideline 2.(b) as revised, and stated above, improves the consistency and balance between Guidelines 2.(a) and Guidelines 2.(b) because the word "may" appears in both Guidelines with respect to the recovery of incentives. Revised Guideline 2.(b) also narrows the grounds on which rate recovery of program costs can be challenged in future rate cases.

Issue No. 4

The Public Staff requests the Commission to state the following:

> The ratemaking treatment of promotional, but otherwise cost-effective, programs including direct payment to owners or customers shall be determined in a general rate case or similar proceeding.

Guideline No. 2 includes a description of the possible ratemaking implications for promotional programs which include incentives paid to a third party. However, the Public Staff is concerned that the Order Adopting Guidelines and the Guidelines appear to be silent on the ratemaking implications of a finding that a program that pays incentives directly to customers is promotional, although otherwise cost-effective. The Public Staff states that these types of programs were a significant part of this proceeding and cites three of Duke Power Company's programs as examples. For these reasons, the Public Staff suggests that the language cited above be included, presumably in the Guidelines.

CUCA agrees with the Public Staff that such programs involving payment of incentives directly to customers were a significant part of this proceeding and that the Public Staff's concern with respect to this issue is well-founded. CUCA, however, recommended that a better solution would be to remove all references to payments to "third parties" from Guideline No. 2. According to CUCA, this solution would effectively make Guideline No. 2 applicable to all utility programs which may "affect the decision to install or adopt natural gas service or electric service in the residential or commercial market." CUCA supported its recommendation by noting that G.S. 62- 140(c) makes no distinction between programs involving incentive payments to end-users and those involving payments to third parties. Thus, CUCA feels the policies adopted in this proceeding should apply equally to both types of programs.

With respect to this issue, the Commission agrees with CUCA that Guideline No. 2 should be revised to eliminate all references to third parties since G.S. 62-140(c) makes no distinction between programs involving incentive payments to end-users and those involving payments to third parties. Therefore, Guideline No. 2 as amended shall state:

> If a program involves an incentive per Rule R1-38 and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.

Issue No 5

The Public Staff requests the Commission to delete the underlined words in the following statement:

> The Commission finds that incentives to developers to build all-electric homes or to promote the use of natural gas advance the goals of energy efficiency and help reduce peak demand by promoting efficient utilization of energy through the use of end user equipment which exceeds federal and state efficiency standards and through the more efficient year round use of utility equipment

(Emphasis added.)

The danger the Public Staff sees in the language of this Order is that if it is unconditionally accepted that promoting year-round sales advances the goals of energy efficiency, such unconditional acceptance may automatically result in determinations that sales-promoting programs are inherently not "promotional" pursuant to Rule R1-38. Those Rule R1-38 findings would then influence the ratemaking process, perhaps leading the Commission to conclude that sales-promoting expenditures found not to be "promotional" in Rule R1-38 proceedings cannot be disallowed in whole or in part for ratemaking purposes, even if, for example, they largely benefit the stockholders. The Public Staff believes that the costs and benefits of incentives that increase sales should be evaluated differently than those that increase appliance efficiency. According to the Public Staff, the Public Staff has at times recommended, and the Commission has at times ordered, denial of rate recovery of expenditures intended to increase sales. The Public Staff believes it may be appropriate for the Commission to continue to deny certain sales-promoting expenditures in the future for various reasons, including that those expenditures largely benefit the stockholders.

SELC agrees with the Public Staff that the costs and benefits of sales programs should be evaluated differently than those designed to increase efficiency. According to SELC, programs mandating exclusive use of a certain fuel source do not necessarily advance the goals of energy efficiency and, in fact, often are contrary to these goals. SELC recommended that the Public Staff's recommended deletion should be adopted to retain the Commission's flexibility to examine promotional expenditures in rate proceedings.

CUCA believes the Public Staff's concern about this language is not well-founded. CUCA favors the implementation of programs which improve load factors unless such programs would force an electric utility to add baseload generating facilities or force the LDCs to add interstate pipeline capacity. CUCA also disagrees with the Public Staff's concern that such programs will "largely

benefit the stockholders." According to CUCA, the recoverable costs of such programs should be offset by the increased revenues and this result should tend to place downward pressure on rates.

CP&L states that the Public Staff wants this language deleted because it could possibly be construed as guaranteeing utilities' recovery of all costs associated with all electric, high efficiency home programs. CP&L contends that past Commission practice, Chapter 62 of the North Carolina General Statutes, and language in the Commission Order clearly does not contemplate such a result and it would be unreasonable to delete Finding of Fact No. 11 which is absolutely true in an effort to correct a problem that does not exist.

NC Power disagrees that the subject language can be read as a predetermination of ratemaking treatment for incentives to build highly efficient all electric homes or to install high efficiency gas equipment. The Commission's February 24, 1994 Order in these dockets requested that participating utilities address how the offering of incentives to build all electric homes or to promote the use of natural gas promotes energy efficiency. NC Power asserts that within this context, Finding of Fact No. 11 is simply a statement of fact and the Public Staff's concerns with regard to the predetermination of ratemaking treatment is based on an overly expansive reading of the Order.

The Commission will not amend Finding of Fact No. 11 in the Order Adopting Guidelines by deleting the phrase "and through the more efficient, year round use of utility equipment." As explained herein, the issue of ratemaking treatment for incentives will be decided in general rate cases or similar proceedings. The Commission is of the opinion, however, that Finding of Fact No. 11 should be clarified by inserting the words "and system" between the words "energy" and "efficiency" so as to include system efficiency programs such as load factor improving programs. Therefore, Finding of Fact No. 11 as revised shall read:

> Incentives to developers to build all-electric homes or to promote the use of natural gas advance the goals of energy and system efficiency and help reduce peak demand by promoting efficient utilization of energy through the use of end user equipment which exceeds federal and state efficiency standards and through the more efficient, year-round use of utility equipment.

Issue No. 6

The SELC requests that the Commission should add a preliminary section or a concluding paragraph number 8 to the Guidelines which would state:

> These guidelines are intended to address certain competitive aspects of electric and natural gas incentive programs. They do not contain an exclusive list of the criteria the Commission will consider in deciding whether a DSM program is in the public interest.

SELC requests that this language be added to the Guidelines because in its opinion the Order is unclear as to whether the Guidelines set forth all or part of the substantive considerations the

Commission will review in determining whether to approve an incentive program. SELC opines that this is a significant issue which the Commission should clarify. As an example to justify its concern in this regard, SELC cites a statement made by Duke Power in its request for approval of a research and demonstration pilot project on residential geothermal heat pump systems. In its request, Duke stated, "The Commission's Order in Docket Nos. E-100, Sub 64A and 71 decided the substantive issues regarding what a utility must demonstrate in order to obtain Commission approval of a program involving incentives subject to G.S. 62-140(c)." SELC contends this statement suggests that the guidelines contain an exclusive list of what a utility must show to secure program approval, and that the Commission will approve any program which meets these guidelines. However, SELC believes that the Commission did not intend for the Guidelines to be read so broadly. As an example, SELC cites language on page 7 of the Order that states the Guidelines are "to govern certain aspects of the disputes between the electric utilities and the natural gas utilities in this proceeding." According to SELC, the Commission's statutory obligations require it to look at the impact of proposed incentive programs on targeted customers and on the environment, among other things.

The Public Staff concurs with SELC's Motion. The Public Staff does not believe the Commission meant its new rule and guidelines adopted in this docket to list the only issues it could consider. Such an interpretation could mean that the Commission had precluded itself from looking at an important and unanticipated issue in a future rate case. In order to maintain the Commission's flexibility to regulate fairly, the Public Staff requests that the Order be modified as advocated by SELC.

CUCA agrees with SELC that the Guidelines do not delineate the only issues which the Commission will consider in evaluating the appropriateness of incentive programs. However, CUCA does not believe that non-exclusivity of the Order or Guidelines permit relitigation on the basis of considerations which the SELC unsuccessfully urged upon the Commission in this proceeding. Thus, CUCA suggests that the Commission resolve the question raised in the SELC's Motion by adding a paragraph number 8 which reads:

> Nothing in these Guidelines precludes any party to a proceeding convened for the purpose of evaluating a specific incentive program from raising any issue which is not inconsistent with the Order Adopting Guidelines entered by the Commission in Docket No. E-100, Subs 64A and 71; G.S. 62-140(c); or these Guidelines.

Duke Power states in its response that SELC's suggested addendum to the Order is unnecessary and appears to be an attempt by SELC to secure an avenue in future proceedings to reargue its position on utility DSM. According to Duke, to the extent that issues are raised in the future which were not contemplated in this docket, the Commission has discretion to consider such issues as they arise.

NC Power asserted that SELC's request to modify the Guidelines based on a statement by Duke in its filing for approval of a geothermal heat pump pilot, is more appropriately the subject of Duke's application for approval of the pilot. To proceed otherwise would subject the Commission to endless

proceedings to amend its Rules or previous orders following virtually any interpretation or clarification as to the scope or meaning of its Rules or orders.

CP&L responds that SELC's proposed change is unnecessary and may actually create, rather than eliminate, ambiguity in the Guidelines. CP&L believes the overriding principle of the Guidelines is contained in Guideline No. 1, which states that in order to obtain Commission approval of a proposed program the sponsoring utility must demonstrate that the program is cost-effective. The rest of the Guidelines are directed towards competition between electric utilities and gas utilities. In CP&L's opinion, SELC's proposal implies that there are additional criteria beyond those included in a demonstration that a program is cost-effective and the other elements of the Guidelines that must be addressed and this is not true. CP&L states that the concept of "cost-effectiveness" is sufficiently flexible to encompass all of the relevant factors that the Commission should consider in approving a program.

With respect to this issue, the Commission notes that the first sentence on page 25 of the Order Adopting Guidelines reads "The Commission concludes that it should adopt guidelines herein to govern certain aspects of the disputes between the electric utilities and natural gas utilities in this proceeding." Therefore, the Commission concludes it is simply unnecessary to modify the Order Adopting Guidelines as requested in the SELC Motion. Further, any party may raise an issue in the future which was not raised in this proceeding and the Commission has discretion to consider such issues as they arise.

IT IS, THEREFORE, ORDERED, as follows:

1. That upon reconsideration, the Revised Guidelines for Resolution of Issues Regarding Incentive Programs, attached hereto as Appendix A, are hereby adopted as an appropriate resolution of certain issues regarding incentive programs.

2. That any existing incentive programs which are within the scope of Commission Rule R1-38 as clarified, but have not previously been filed pursuant to Ordering Paragraph No. 2 in the Commission's Order Adopting Rule R1-38 dated October 24, 1995, shall be filed for Commission approval pursuant to the provisions of Commission Rule R1-38 and such filings shall be made within thirty (30) days from the date of this Order.

3. That this docket shall remain open for twenty-four (24) months from October 24, 1995, and that the parties to this proceeding shall file a report or comments in this docket twenty-four (24) months from October 24, 1995 that recommends eliminating, amending, or extending the Revised Guidelines adopted herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Chairman Wells and Commissioner Sanford did not participate in this decision.

Appendix A

REVISED GUIDELINES FOR RESOLUTION OF ISSUES REGARDING INCENTIVE PROGRAMS

1. To obtain Commission approval of a residential or commercial program involving incentives per Rule R1-38, the sponsoring utility must demonstrate that the program is cost effective for its ratepayers.

(a) Maximum incentive payments to any party must be capable of being determined from an examination of the applicable program.

(b) Existing approved programs are grandfathered. However, utilities shall file a listing of existing approved programs subject to these guidelines, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all within 60 days after approval of these guidelines.

(c) Utilities shall file a description of any new program or of a change in an existing program, including applicable tariff sheets, and amount and type of incentives involved in each program or procedure for calculating such incentives in each program, all at least 30 days prior to changing or introducing the program.

(d) The matter of the relative efficiency of electricity versus natural gas under various scenarios (space heating alone, space heating plus A/C, etc.) cannot now be resolved. A better approach at this time would be to determine the acceptability of incentive programs herein based on the energy efficiency of electricity alone or of natural gas alone, as applicable.

(e) The criteria for determining whether or not to approve an electric program pursuant to G.S. § 62-140(c) should <u>not</u> include consideration of the impact of an electric program on the sales of natural gas, or vice versa.

(f) Approval of a program pursuant Commission Rule R1-38 does not constitute approval of rate recovery of the costs of the program. The appropriateness of rate recovery shall be evaluated in general rate cases or similar proceedings.

2. If a program involves an incentive per Rule R1-38 and the incentive affects the decision to install or adopt natural gas service or electric service in the residential or commercial market, there shall be a rebuttable presumption that the program is promotional in nature.

(a) If the presumption that a program is promotional is <u>not</u> successfully rebutted, the cost of the incentive may <u>not</u> be recoverable from the ratepayers unless the Commission finds good cause to do so.

(b) If the presumption that a program is promotional is successfully rebutted, the cost of the incentive may be recoverable from the ratepayers. The cost shall not be disallowed in a future proceeding on the grounds that the program is primarily designed to compete with other energy suppliers. The amount of any recovery shall not exceed the difference between the cost of installing equipment and/or constructing a dwelling to current state/federal energy efficiency standards and the more stringent energy efficiency requirements of the program, to the extent found just and reasonable by the Commission.

(c) The presumption that a program is promotional may generally be rebutted at the time it is filed for approval by demonstrating that the incentive will encourage construction of dwellings and installation of appliances that are more energy efficient than required by state and/or federal building codes and appliance standards, subject to Commission approval.

3. If a program involves an incentive paid to a third party builder (residential or commercial), the builder shall be advised by the sponsoring utility that the builder may receive the incentive on a per structure basis without having to agree to: (a) a minimum number or percentage of all-gas or all-electric structures to be built in a given subdivision development or in total; or (b) the type of any given structure (gas or electric) to be built in a given subdivision development.

(a) Electric and gas utilities may continue to promote and pay incentives for all-electric and all-gas structures respectively, provided such programs are approved by the Commission.

(b) A builder shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

(c) A builder receiving incentives shall not be required to advertise that the builder is exclusively an all-gas or all-electric builder for either a particular subdivision or in general.

4. The promotional literature for any program offering energy-efficiency mortgage discounts shall explain that the structures financed under the program need not be all-electric or all-gas.

5. Duke's proposed Food Service Program shall be modified to include a definition of qualifying equipment and of conventional equipment, and is subject to approval in accordance with guideline number 1 above.

(a) The nature or amount of incentive contained in each program encouraging the installation of commercial appliances (electric or gas) that use the sponsoring utility's energy product, such as Duke's Food Service Program, shall be unaffected by the availability or use of alternate fuels in the applicable customer's facility.

(b) Commercial clients (builders, customers, etc.) who are offered incentives for installation of appliances shall be advised by the sponsoring utility of the availability of natural gas or electric alternatives, as appropriate.

6. Rates, rate design issues, and terms and conditions of service approved by the Commission are not subject to these guidelines.

7. Pending applications involving incentive programs are subject to these guidelines.

DOCKET NO. E-100, SUB 75

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation of Least Cost	)	ORDER ADOPTING LEAST
Integrated Resource Planning	)	COST INTEGRATED
in North Carolina - 1995	)	RESOURCE PLANS

HEARD IN: Buncombe County Courthouse, Asheville, North Carolina, September 19, 1995; Charlotte-Mecklenburg Government Center, Charlotte, North Carolina, September 20, 1995; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, October 9, 1995.

BEFORE: Commissioners Allyson K. Duncan (Presiding), Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt, Judy Hunt, and Jo Anne Sanford

APPEARANCES:

For Carolina Power & Light Company:

Len S. Anthony, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

Robert W. Kaylor, Attorney at Law, Bode, Call & Green, Post Office Box 6338, Raleigh, North Carolina 27628-6338

For Duke Power Company:

Jeffrey M. Trepel, Associate General Counsel, and Mary Lynne Grigg, Senior Attorney, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242-0001

For North Carolina Power:

James S. Copenhaver, Senior Regulatory Counsel, North Carolina Power, Post Office Box 26666, Richmond, Virginia 23261

Frank A. Schiller, Attorney at Law, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For Nantahala Power and Light Company:

Edward S. Finley, Jr., Attorney at Law, Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For North Carolina Electric Membership Corporation:

Thomas K. Austin, Associate General Counsel, North Carolina Electric Membership Corporation, Post Office Box 27306, Raleigh, North Carolina 27611

Joseph W. Eason and Louis S. Watson, Jr., Attorneys at Law, Moore and Van Allen, Post Office Box 26507, Raleigh, North Carolina 27611

For North Carolina Natural Gas:

Jeffrey N. Surles, Attorney at Law, McCoy, Weaver, Wiggins, Cleveland & Raper, Post Office Box 2129, Fayetteville, North Carolina 28302-2129

For Piedmont Natural Gas Company:

Jerry W. Amos, Attorney at Law, Amos and Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For Public Service Company of North Carolina:

J. Paul Douglas, Corporate Counsel, Public Service Company of North Carolina, Post Office Box 1398, Gastonia, North Carolina 28053-1398

Wade Hargrove, Attorney at Law, Tharrington, Smith & Hargrove, Post Office Box 1151, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

For the Using and Consuming Public:

A.W. Turner, Jr. and Gisele L. Rankin, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For Fayetteville Public Works Commission:

Marland C. Reid, Attorney at Law, Reid, Lewis, Deese & Nance, Post Office Box 1358, Fayetteville, North Carolina 28302

For North Carolina Eastern Municipal Power Agency and North Carolina Municipal Power Agency No. 1:

Nancy Benson Essex, Attorney at Law, Poyner & Spruill, Post Office Box 10096, Raleigh, North Carolina 27605-0096

For Carolina Industrial Group for Fair Utility Rates I and II:

Ralph McDonald and Carson Carmichael, III, Attorneys at Law, Bailey & Dixon, Post Office Box 1351, Raleigh, North Carolina 27602-1351

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For Southern Environmental Law Center and Conservation Council of North Carolina:

Oliver A. Pollard, III, and Jeffrey M. Gleason, Attorneys at Law, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902

Derb S. Carter, Jr., Attorney at Law, 137 E. Franklin Street, Suite 404, Chapel Hill, North Carolina 27514

For Center for Energy and Economic Development:

Randy Eminger, Attorney at Law, Center for Energy & Economic Development, Suite 340, 6900 I-40 West, Amarillo, Texas 79106

E. Lawrence Dairs, Attorney at Law, Womble, Carlyle, Sandridge & Rice, Post Office Box 831, Raleigh, North Carolina 27601

Peter Glaser, Attorney at Law, Doherty, Rumble and Butler, Suite 1100, 1401 New York Avenue, Washington, D.C. 20005

BY THE COMMISSION: Least Cost Integrated Resource Planning (IRP) is intended to identify those electric resource options which can be obtained for the total least cost to ratepayers consistent with adequate, reliable service. Integrated Resource Planning is also a strategy which considers conservation, load management, and other demand-side options along with new utility-owned generating plants, nonutility generation and other supply side options in providing cost-effective high quality electric service.

NCUC Rules R8-56 through R8-61 define an overall framework within which the Least Cost Integrated Resource Planning (IRP) process will take place in North Carolina. Analysis of the long-

range needs for future electric generating capacity pursuant to G.S. 62-110.1 is included in the rules as a part of the least cost Integrated Resource Planning process.

The General Statutes of North Carolina require that the Commission analyze the probable growth in the use of electricity and the long-range need for future generating capacity for North Carolina. G.S. 62-110.1 provides, in part, as follows:

> "(c) The Commission shall develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix, and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the benefit of the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction. In developing such analysis, the Commission shall confer and consult with the public utilities in North Carolina, the utilities commissions or comparable agencies of neighboring states, the Federal Power Commission, the Southern Growth Policies Board, and other agencies having relevant information and may participate as it deems useful in any joint boards investigating generating plant sites or the probable need for future generating facilities. In addition to such reports as public utilities may be required by statute or rule of the Commission to file with the Commission, any such utility in North Carolina may submit to the Commission its proposals as to the future needs for electricity to serve the people of the State or the area served by such utility, and insofar as practicable, each such utility and the Attorney General may attend or be represented at any formal conference conducted by the Commission in developing a plan for the future requirements of electricity for North Carolina or this region. In the course of making that analysis and developing the plan, the Commission shall conduct one or more public hearings. Each year, the Commission shall submit to the Governor and to the appropriate committees of the General Assembly a report of its analysis and plan, the progress to date in carrying out such plan and the program of the Commission for the ensuing year in connection with such plan."

The General Statutes of North Carolina also require that planning to meet the long-range needs for future generating capacity shall include demand-side options, incentive mechanisms and least cost considerations. G.S. 62-2 provides, in part, that it is declared to be the policy of the State of North Carolina:

> "(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills."

On June 29, 1993, the Commission issued its most recent Order Adopting Least Cost Integrated Resource Plans in Docket No. E-100, Sub 64, in which it found that the least cost Integrated Resource Plans by the electric utilities met the requirements of NCUC Rules R8-56 through R8-61.

On October 29, 1993, the Commission issued its Order Amending Rules in Docket No. E-100, Sub 65, in which it added a sentence to NCUC Rule R8-56 (b) which reads: "As of October 29, 1993, these rules are applicable to the North Carolina Electric Membership Corporation."

On December 19, 1994, the Commission issued an Order in Docket No. E-100, Sub 75, scheduling hearings to consider, analyze, and investigate the current Least Cost Integrated Resource Plans (IRPs) developed by Carolina Power & Light Company (CP&L), Duke Power Company (Duke), North Carolina Power (NC Power), Nantahala Power and Light Company (Nantahala), and North Carolina Electric Membership Corporation (NCEMC) pursuant to the Commission's rules. The Order required the utilities and NCEMC to file their least cost IRPs and supporting testimony and exhibits in conformity with Commission Rules R8-56 through R8-61 by April 7, 1995. The Order also required the Public Staff and other intervenors to file their reports, comments, testimony, and exhibits by September 8, 1995. Persons desiring to intervene in the proceeding as formal parties of record were required to petition the Commission by September 8, 1995, and to file any expert testimony and exhibits by that date. The December 19, 1994, Order scheduled the proceeding for public hearing in Raleigh beginning on October 10, 1995, and also established a series of public hearings to be held in Asheville, Charlotte, Edenton, and Raleigh for the purpose of taking non-expert public witness testimony.

The following parties requested and were allowed to intervene and participate in the proceeding: Carolina Utility Customers Association (CUCA); Fayetteville Public Works Commission (FPWC); Carolina Industrial Group for Fair Utility Rates I and II (CIGFUR); Southern Environmental Law Center (SELC); Conservation Council of North Carolina (CCNC); North Carolina Eastern Municipal Power Agency (NCEMPA); North Carolina Municipal Power Agency No. 1 (NCMPA-1); North Carolina Natural Gas Corporation (NCNG); Public Service Company of North Carolina (PSNC); Piedmont Natural Gas Company (Piedmont); and Center for Energy and Economic Development (CEED). The Public Staff and Attorney General also filed notices of intervention.

On January 16, 1995, the Commission issued its Order Granting Extension of Time in which it revised the filing date for the 1995 least cost Integrated Resource Plans and supporting testimony and exhibits herein from April 7, 1995, to April 28, 1995.

On April 11, 1995, the Commission issued its Order Requesting Comments in which it requested that comments and/or suggested revisions to a Proposed Utility Evaluation Guidelines and Reporting Requirements for Unsolicited IPP Proposals contained in the Order be included as a part of the testimony and exhibits filed herein.

On or about April 28, 1995, the utilities and NCEMC filed their current least cost Integrated Resource Plans (IRPs) and supporting testimony and exhibits. Carolina Power & Light Company (CP&L) filed the testimony and exhibits of: B. Mitchell Williams, Manager - Demand Side Management and Retail Pricing for CP&L; John L. Harris, Manager - Forecasting and Revenue Requirements for CP&L; and Verne B. Ingersoll, II, Manager - System Planning for CP&L.

Duke Power Company (Duke) filed the testimony and exhibits of: William F. Reinke, Vice President - System Planning and Operating for Duke; and Donald H. Denton, Jr., Senior Vice President and Chief Planning Officer for Duke.

North Carolina Power (NC Power) filed the testimony and exhibits of: Thomas A. Hyman, Jr., Vice President - Southern Division for NC Power; Allen P. Mitchem, Principal Economist - Energy Efficiency Planning Department for NC Power; Ripley C. Newcomb, Director - Market Analysis and Planning for NC Power; David F. Koogler, Regulatory Specialist - Rate Department for NC Power; and Glenn B. Ross, Manager - Planning for NC Power.

Nantahala Power & Light Company (Nantahala) filed the testimony and exhibits of Kenneth C. Stonebreaker, Vice President - Finance and Treasurer for Nantahala.

North Carolina Electric Membership Corporation (NCEMC) filed the testimony and exhibits of Gary D. Tripps, Vice President - Power Supply for NCEMC.

On May 16, 1995, CP&L, Duke, and NC Power filed a motion herein asking the Commission to establish new procedures for filing of testimony and exhibits in this proceeding. Following responses from several intervenors, the Commission issued its Order On Motion To Expedite Procedures on June 9, 1995, in which the parties were required to file lists of specific and detailed exceptions to the plans and testimonies of the utilities. The lists were to be filed by August 1, 1995, and the testimony and cross-examination at the public hearings was to be limited to the exceptions contained on the lists.

On or about May 30, 1995, supplemental testimony was filed by CP&L, Duke, NC Power, Nantahala, and NCEMC addressing the Proposed Guidelines et al described in the Order of April 11, 1995, herein.

On July 25, 1995, Duke filed a new long-term forecast and supporting exhibits pursuant to NCUC Rule R8-60, with the comment that the new 1995 forecast is similar to the 1994 forecast. Duke's current least cost IRP filed on April 28, 1995, is based on its 1994 forecast.

On August 1, 1995, comments were filed by the Public Staff, Public Service Company of North Carolina, SELC/CCNC, CUCA, CIGFUR, and CEED addressing the least cost IRPs filed by the utilities and NCEMC.

On August 8, 1995, CP&L, Duke, NC Power, and NCEMC filed a joint motion asking the Commission to strike certain issues from consideration herein. Following responses from several intervenors, the Commission issued its Order On Motion To Strike Certain Issues on August 24, 1995, in which the motion to strike the issues identified by the intervenor gas utilities was denied. However, the Order granted the motion to strike certain issues identified by CUCA and CIGFUR relating to retail wheeling, appropriate levels of avoided cost rates, and dispersed energy facilities by third parties. The Commission noted in its Order that the issues stricken herein were the subject of inquiry in other dockets before the Commission, and that re-visiting such issues herein would be premature or redundant.

On August 23, 1995, the Public Staff filed a Motion To Cancel Edenton Hearing in which it asserted that no one had expressed an interest in testifying at the Edenton hearing. On August 25, 1995, the Commission issued its Order Canceling Edenton Hearing.

On August 25, 1995, CP&L, Duke, and NC Power filed a Joint Motion To Revise The 1995 Integrated Resource Plan Procedure herein which would call for written intervenor comment on prefiled testimony of the utilities, followed by reply comments by any party, and followed by rebuttal comments from the utilities. At that point, the Commission would review the record to determine whether an evidentiary hearing is necessary. After responses to the motion were received from various intervenors, the Commission Chairman concluded that the joint motion should be allowed. The Chairman's Order On Joint Motion To Revise Procedures was issued September 8, 1995, specifying: (1) that, except as provided in the order, intervenor testimony should be filed as previously scheduled; (2) that the Public Staff and SELC were allowed an extension of time in which to file testimony; (3) that the public hearing scheduled for October 10, 1995, was continued; (4) that the electric utilities and any intervenors not filing testimony should file comments on the prefiled testimony by October 10, 1995; (5) that any party may file reply comments by October 21, 1995; (6) that the electric utilities may file rebuttal comments by October 31, 1995; (7) that the Commission would then review the record and issue a further order dealing with the matter of an evidentiary hearing; and (8) that the night hearings for receipt of public witness testimony should be held as currently scheduled. The Order noted that the revised procedures were not viewed as eliminating or avoiding a hearing in this docket, but were a means of identifying and refining issues so that any evidentiary hearing subsequently held will be more clearly focused and could be more efficiently managed.

On September 8, 1995, Piedmont Natural Gas Company (Piedmont) filed the testimony and exhibits of Ranelle Q. Warfield, Director - Marketing for Piedmont.

On September 12, 1995, the Public Staff filed the testimony and exhibits of: Don Reading, Vice President of Ben Johnson Associates; Michael C. Maness, Supervisor - Electric Accounting for the Public Staff; and W. Michael Warwick, Program Manager for Battelle Pacific Northwest Laboratories.

On September 22, 1995, the Southern Environmental Law Center and Conservation Council of North Carolina (SELC/CCNC) filed the testimony and exhibits of Paul A. Centolella, Senior Economist - Science Applications International Corporation.

On or about October 10, 1995, through October 23, 1995, comments and/or reply comments were filed by various parties addressing the testimony, exhibits and comments previously filed herein. On October 30, 1995, the Chairman's Order Revising Comments Schedule was issued specifying that the intervening parties herein should file another round of comments by November 7, 1995, addressing the reply comments of the electric utilities filed on or about October 31, 1995; and that the electric utilities should file a final round of rebuttal comments by November 14, 1995.

Public witnesses who testified in this proceeding were as follows:

Asheville - Kitty Boniske, Robert Eidus, Bruce Johnson, Rodney Sutton, David Blanchard-Reid, Janet Hoyle, Greg Olsen, Barbara Merrill, Gary Gumz, Carol Bradley, Lou Zeller, Gary Miller, Claudine Cremer, and Judy Williamson

Charlotte - James A. Johnson, Denise Lee, Clarence Beaver, Mark Helms, Mike Beaver, Kenneth Van Hoy, Greb Baer, and Dale Brentrup

Raleigh - Louis Gerics, Ben Gravely, Michael Nicklas, Richard Harkrader, Tom Sabel, Lewis Pitts, Jeff Reilich, Jim Warren, Brian Morton, Fred Stewart, Carl Rupert, Bob Calhoun, Henry Hammond, Giles Blunden, Lori Everhart, John Miller, Elizabeth Cullington, and Geraldine Bowen

The various public witnesses were predominantly representing environmental interests, such as the Asheville League of Women Voters, North Carolina Solar Energy Association, Madison County Environmental Alliance, Sierra Club, Blue Ridge Environmental Defense League, Anson County Citizens Against Chemical Toxins in Underground Storage, Clean Water Fund of North Carolina, and The Audubon Society. Some witnesses were representing conservation and energy efficiency interests such as Citizens Action, Habitat for Humanity and professional consultants; and some were representing energy and/or environment related fields of study in academia.

For the most part, the witnesses advocated greater energy efficiency and greater emphasis on protecting the environment. Many criticized the IRPs prepared by the utilities for not having more programs to promote energy conservation or efficiency, and for planning to build future fossil fueled generating plants instead of greater reliance on solar energy and other alternative resources. There was also considerable criticism of the Rate Impact Measure (RIM) test for determining the cost effectiveness of various demand-side programs; and there was significant opposition to nuclear power.

In addition to the foregoing, there were other motions, filings and orders not specifically mentioned which are matters of public record. Based on the testimony and evidence contained in the utilities' and intervenors' respective filings, the comments and reply comments by the parties, and the Commission's record of this proceeding, the Commission now makes the following:

FINDINGS OF FACT AND CONCLUSIONS

1. CP&L, Duke, NC Power, and Nantahala are duly organized as public utilities operating under the laws of the State of North Carolina and are subject to the jurisdiction of the North Carolina Utilities Commission. The utilities are engaged in the business of developing, generating, transmitting, distributing, and selling power to the public throughout the State of North Carolina. CP&L has its principal offices and place of business in Raleigh, North Carolina. Duke has its principal offices and place of business in Charlotte, North Carolina. NC Power has its principal offices and place of business in Richmond, Virginia. Nantahala has its principal offices and place of business in Franklin, North Carolina.

2. The two largest electric utilities in North Carolina are Duke and CP&L, which together generate approximately 95% of the electricity consumed in the State. Virginia Electric and Power company (operating in North Carolina as NC Power) generates most of the remaining 5%. Approximately two-thirds of the utility business of both Duke and CP&L is located in North Carolina, with the remainder located in South Carolina. The main portion of the utility business of Virginia Electric and Power company is located in Virginia, while less than 5% of its utility business is located in North Carolina.

Nantahala Power and Light Company is the fourth largest electric utility in North Carolina and generates some of its own energy requirements utilizing hydroelectric facilities. Nantahala is a wholly-owned subsidiary of Duke. There are several smaller electric utilities regulated by the Utilities Commission, but none of them generate their own energy requirements.

3. The North Carolina Utilities Commission generally does not regulate municipally-owned electric utilities or electric membership cooperatives. However, the Commission does have jurisdiction over licensing of new electric generating plants operated by municipalities and electric cooperatives. The Commission's current rules require appropriate participation by the North Carolina Electric Membership Corporation (NCEMC) in the least cost Integrated Resource Planning process. NCEMC acquires electric generating capacity for its participating membership cooperatives primarily by means of wholesale purchases from the regulated electric utilities, but it also supplies some of that capacity from its own generating facilities. NCEMC has its principal offices and place of business in Raleigh, North Carolina.

4. The differences of opinion between the parties regarding the accuracy of the forecasts for the NCEMC load, the effect of individual EMC autonomy on the DSM programs of NECMC, and the degree of detail in the analysis of individual programs do not appear to be issues crucial to the success of the current IRPs. The issues do not appear to warrant an adversarial hearing in the IRP docket.

5. The issue of deferral accounting for DSM programs was raised in two recent dockets (E-100, Sub 71 and E-100, Sub 75A - Duke), and was developed in those dockets sufficiently for the Commission to resolve the similar issue raised herein without further hearing.

6. The continuing need for energy efficiency programs, the degree of utility reliance on the RIM test, the effects of utility strategic sales programs, the consideration of environmental impacts, and the degree of compliance with the stipulations in previous IRP proceedings are issues that do not necessarily require a decision in this generic IRP proceeding, and they do not warrant an adversarial hearing herein.

7. The three-year review of the IRPs is intended to ensure that each utility is generally including all of the considerations in its planning as required by Commission rules; that each utility is generally utilizing state-of-the-art techniques for its forecasting and planning activities; and that each utility has developed a reasonable analysis of its long-range needs for expansion of generating capacity. Such an approach would not seek to resolve every difference of opinion between parties as to who is "right" and who is "wrong" (particularly regarding forecasting).

8. Evaluations of individual DSM programs, certificates to construct new electric generation or transmission facilities, and individual purchased power contracts should be addressed in separate dockets from the generic IRP proceeding.

9. Inclusion of individual elements in an IRP, such as electric generation or transmission facility, or an individual purchased power contract, does not constitute approval of such individual elements even if the overall IRP itself is approved.

10. The IRP process should not be revised in this docket.

11. The current IRPs should be approved as filed.

12. The compound annual growth rates currently forecast by CP&L for 1995 to 2009 are:

Summer Peak	-	2.1%
Winter Peak	-	2.1%
Energy	-	2.0%

13. The compound annual growth rates currently forecast by Duke for 1995 to 2009 (from July 1995 update forecast) are:

Summer Peak	-	2.2%
Winter Peak	-	2.0%
Energy	-	1.9%

14. The compound annual growth rates currently forecast by NC Power for 1995 to 2009 are:

Summer Peak	-	2.2%
Winter Peak	-	2.2%
Energy	-	2.3%

15. The compound annual growth rates currently forecast by Nantahala for 1995 to 2009 are:

Summer Peak	-	2.5%
Winter Peak	-	2.4%
Energy	-	2.7%

16. The Stipulations between the Public Staff and Duke regarding limitations on Duke's cost deferral of DSM programs should be approved. Cost recovery associated with such deferral will be determined in a future rate proceeding.

17. The intervenors' request to discontinue cost deferral of DSM programs herein should be denied. The issue of cost recovery of DSM programs by CP&L, Duke, and NC Power, including cost recovery associated with the stipulations approved herein for Duke, should be addressed by the hearing panels in future rate proceedings as appropriate.

18. The Proposed Utility Evaluation Guidelines and Reporting Requirements for Unsolicited Independent Power Producer Proposals should be rejected altogether in favor of continued reliance on Rule R8-58(e) as written.

DISCUSSION OF FINDINGS OF FACT AND CONCLUSIONS NOS. 1 THROUGH 3

These findings and conclusions are for background information and are not in controversy. They are based on the Commission's files.

DISCUSSION OF FINDINGS OF FACT AND CONCLUSIONS NOS. 4 THROUGH 6

The current IRPs and supporting testimony were filed herein by CP&L, Duke, NC Power, Nantahala, and NCEMC on or about April 28, 1995, and a list of exceptions to the plans and testimony of the utilities was filed by the Public Staff, Public Service, SELC/CCNC, CUCA, CIGFUR, and CEED on August 1, 1995.

The Commission's Order of September 8, 1995, herein continued the hearing previously scheduled to begin on October 10, 1995, and stated that after various testimony and comments were filed by the parties, the Commission would review the record and issue a further order dealing with the matter of an evidentiary hearing.

Subsequently, testimony was filed by the Public Staff, Piedmont, and SELC/CCNC on or about September 22; reply comments were filed by NCEMC, Piedmont, Public Service, CUCA, and CIGFUR on or about October 11; further comments were filed by CP&L, Duke, NC Power, the

Public Staff, Piedmont, SELC/CCNC, CEED, and CUCA on or before November 7; and final rebuttal comments were filed by CP&L, Duke, NC Power, and NCEMC on November 14.

The following discussion is based on the testimony, exhibits and comments filed by the parties regarding the need for further evidentiary hearings herein.

Public Staff Issues for Hearing

The Public Staff requested an evidentiary hearing on four issues: (1) the accuracy of the energy and peak forecasts for the NCEMC load; (2) the effect of individual Electric Membership Cooperative (EMC) autonomy on the Demand-Side Management (DSM) programs of NCEMC; (3) the "lack of detail" in Duke's analysis of its high efficiency chiller programs and in all of the utilities' heat pump, duct sealing, and thermal energy storage programs; and (4) the appropriateness of DSM deferral accounts in the future.

First, the Public Staff cited the difference between NCEMC's load forecasts for EMCs in CP&L's service area and CP&L's forecasts for that same load, and said that a hearing is necessary to determine the accuracy of the forecasts.

CP&L and NCEMC responded that they had discussed their forecasts at length; that the forecasts are reasonably similar when a correct comparison is made; that a correct comparison should use a common 1996 base year rather than the different base years actually used by the two parties; that a correct comparison should also use a common treatment for 200 MW of baseload responsibility to be assumed by Appalachian Electric Power Company (AEPCO) in 1996; and that ongoing discussions are needed to resolve the issue rather than litigation. Duke and NC Power pointed out that the Public Staff's prefiled testimony concludes that the current IRPs are adequate and provide a satisfactory basis for most planning decisions over the next three years.

Second, the Public Staff contended that an evidentiary hearing is needed to explore the reliability of NCEMC's DSM programs. It said such reliability could be affected by the ability of individual EMCs to adopt, reject, or override an NCEMC program.

NCEMC responded that its IRP includes only those DSM programs that are in the best interests of the individual EMCs, and that that would insure continued support and participation by local EMCs. It said all 27 member EMCs have a significant financial stake in the load management system, and each EMC would continue to bear its share of the cost of the system even if it chose not to participate.

Third, the Public Staff contended that an evidentiary hearing was needed to explore the details of various DSM programs included in the IRPs, and cited Duke's former high efficiency chiller program as a particular example.

CP&L, Duke, and NC Power responded in general that the "lack of detail" in certain DSM programs was not an appropriate basis for litigation in this proceeding because all of the programs were previously approved by the Commission. They contended that the focus of this proceeding

should be on the reasonableness of the IRPs and the resource options included therein. They said if the Public Staff had concerns with any of the specific programs, they could challenge them individually in formal or informal proceedings.

Fourth, the Public Staff contended that an evidentiary hearing is needed to determine how to deal with DSM deferral accounts, whether future deferrals are appropriate, and the level of current and projected balances in Duke's account. SELC supported the Public Staffs concerns.

Duke responded that it has entered into a stipulation with the Public Staff in which Duke agrees to limit deferral accounting to certain specific programs and to limit the amount of potential recovery of program costs from the ratepayers.

SELC/CCNC Issues for Hearing

SELC/CCNC contended that most of the issues on its previous list of exceptions to the IRPs of the utilities are still appropriately the subject of an evidentiary hearing, and that such a hearing would be useful to help resolve the issues. The issues it cited are: (1) the future of IRP; (2) the continuing need for energy efficiency programs; (3) utility reliance on the RIM test; (4) the inappropriateness of utility strategic sales; (5) consideration of environmental impacts; (6) compliance with stipulations in previous IRP proceedings: and (7) the inappropriateness of continued deferral accounting for DSM programs.

First, SELC/CCNC supported streamlining the IRP process in light of increasing competition, but cautioned that such streamlining should not eliminate opportunities for adequate public review, nor should it eliminate the need to examine all demand-side and supply-side options on an equal footing. SELC/CCNC suggested that the Commission seek comments on the future of IRP after the conclusion of its review of the current IRPs.

Second, SELC/CCNC contended that the utilities should aggressively pursue energy efficiency options; and that they should address market barriers to energy efficiency, such as the time required for a customer to recover the higher up-front costs of efficiency measures through savings on his electric bill.

Third, SELC/CCNC contended that if the utilities are permitted to rely primarily on the Rate Impact Measure (RIM) test to evaluate energy efficiency programs, demand-side and supply-side measures would not be considered on an equal footing. SELC/CCNC opposed reliance on the RIM test.

CP&L responded that the RIM test should be the primary economic criteria for determining the cost-effectiveness of DSM options; that use of the RIM test will not result in abandonment of DSM; and that CP&L continues to have conservation programs as well as load reduction programs that pass the RIM test, including its various all-electric home programs.

Fourth, SELC/CCNC contended that strategic sales programs increase the need for new capacity, and that each new generating plant has adverse environmental impacts.

CP&L responded that the choice between emphasis on DSM programs or strategic sales programs is better understood when an electric system's need for capacity is considered; and that strategic sales programs are more appropriate in today's environment when additional base load capacity is not needed. CP&L said additional conservation programs would not be cost-effective at this time.

Fifth, SELC/CCNC contended that an evidentiary hearing is needed in order for the Commission to adequately assess the environmental consequences of the IRPs and that sufficient steps are being taken to minimize these consequences.

Sixth, SELC/CCNC also contended that the utilities have failed to fully comply with the stipulations approved as a part of the previous IRP proceeding, and cited in particular those stipulations intended to remedy the lack of energy efficiency programs.

CP&L responded that the stipulations in previous IRP proceedings do not contain firm numbers; that it is not feasible to "prove" whether such stipulations were or were not met; and that the successes or failures of past stipulations have no bearing on the current IRP.

Duke and NC Power responded that the prefiled testimony and the reply comments contain all the evidence needed to address the issues raised by SELC/CCNC.

Seventh, SELC/CCNC shared the Public Staff's concerns about DSM deferral accounts.

Conclusions Regarding Public Staff Issues (1) through (3):

The Commission is of the opinion that evaluations of individual DSM programs, such as high efficiency chiller programs, heat pump programs, duct sealing programs, etc. should continue to be held in separate dockets, such as the E-100, Sub 75A docket or other dockets. The generic investigation of IRPs is voluminous enough without including a discussion of the details of numerous individual programs. Consideration of individual programs in separate dockets would be consistent with consideration of certificates to construct individual generating plants or transmission lines in separate dockets.

The Commission is also of the opinion that the three-year review of the IRPs is intended to ensure that each utility is generally including all of the considerations in its planning as required by the Commission's rules; that each utility is generally utilizing state-of-the-art techniques for its forecasting and planning activities; and that each utility has developed a reasonable analysis of its long-range needs for expansion of generation capacity. Such an approach would not seek to resolve every difference of opinion between parties as to who is "right" and who is "wrong" (particularly regarding forecasting).

The Commission concludes that the differences of opinion regarding the accuracy of the forecasts for the NCEMC load, the effect of individual EMC autonomy on the DSM programs of NCEMC, and the degree of detail in the analysis of individual programs do not appear to be issues

crucial to the immediate success of the current IRPs. The issues do not appear to warrant an adversarial hearing in the IRP docket.

Conclusions Regarding SELC Issues (1) through (5):

The Commission is of the opinion that issues such as use of the RIM test, the sometimes conflicting goals of energy efficiency versus strategic sales, and consideration of environmental impacts could best be handled in the context of evaluating specific programs in those instances where decisions are required. As noted earlier, evaluation of individual program details unduly complicates the generic IRP proceeding and should be handled in separate dockets.

The generic IRP proceeding would probably be an appropriate forum for a party to advocate that the Commission place greater or lesser emphasis on things like the RIM test, strategic sales, energy efficiency, environmental impacts, etc. when considering future applications for approval of individual programs. However, such advocacy would not necessarily require a decision, or a commitment, or even a response by the Commission in the IRP docket; and in the context of the IRP docket, it probably does not warrant an adversarial hearing.

Conclusions Regarding Public Staff Issue (4) and SELC/CCNC Issues (6) and (7):

The Public Staff has raised the issue of deferral accounting for DSM programs in two recent dockets (E-100, Sub 71, and E-100, Sub 75A - Duke). Although the issue was developed in those dockets by means of written comments and reply comments, the Commission is of the opinion that it has sufficient material to resolve the similar issue raised herein without further hearing.

The stipulations between the Public Staff and the utilities in the last IRP proceeding were attached to the Order Adopting Least Cost Integrated Resource Plans, issued June 29, 1993, in Docket No. E-100, Sub 64. They are quite voluminous. In the current proceeding, the Public Staff testimony contends that each IRP fails to comply fully with one or more stipulations; that insistence on full compliance with each and every stipulation places too much weight on individual elements of the IRPs and not enough on the IRP process and on the IRP results; and that the changing utility environment has altered the relative importance of various elements of the IRPs. The Commission is of the opinion that full compliance with previous stipulations does not appear to be crucial to the immediate success of the current IRPs, since the Public Staff consultant concludes that the IRPs are adequate for most planning decisions over the next three years. The issue does not appear to warrant an adversarial hearing.

DISCUSSION OF FINDINGS OF FACT AND CONCLUSIONS NOS. 7 THROUGH 11

Public Staff Issues:

The Public Staff filed a list of 10 issues it believed require a decision in this proceeding. It requested an evidentiary hearing on four of the issues: (1) the accuracy of the energy and peak forecasts for the NCEMC load; (2) the effect of individual EMC autonomy on the DSM programs

of NCEMC; (3) the "lack of detail" in Duke's analysis of its high efficiency chiller programs and in all of the utilities' heat pump, duct sealing, and thermal energy storage programs; and (4) the appropriateness of DSM deferral accounts in the future.

The Public Staff listed six issues it believed could be decided herein without an evidentiary hearing: (5) consideration in the load forecasts of changing market structure, marketing plans, and national/regional markets; (6) Nantahala's position regarding DSM programs; (7) lack of provisions for continuation of DSM in a more competitive environment; (8) new reserve margin analysis; (9) development of a competitive wholesale generation market; and (10) changes in the IRP process.

The Public Staff recommended that issues (5), (7), and (8) be addressed by requiring the utilities to discuss them in detail in their 1996 Short Term Action Plans. The Public Staff elaborated that such discussion should not simply consist of a statement that the issues are being considered, but should explain how the issues are currently being handled, how the utilities plan to do so in the future, and how the utilities are investigating possible changes in the way they are currently operating to deal with the issues.

The Public Staff recommended that issue (6) be decided herein based on the current record. It recommended that issue (9) be addressed by requesting further comments in this docket or by establishing a separate docket to consider the issue.

Reply Comments to Public Staff Issues:

CP&L pointed out that the Public Staff recommended that the IRPs be accepted for purposes of this biennial review. The Public Staff reported that the forecasts submitted by the utilities are reasonable.

Duke opposed a detailed discussion of issues (5), (7), and (8) in the Short Term Action Plans because such discussion might reveal proprietary methods or criteria being used by the utility to evaluate such issues, to the detriment of the utility's competitive position. Duke suggested that informal discussions between the utilities and the Public Staff would be a better approach, and would allow the utility to recommend ways for the Commission to meet its regulatory obligations while allowing the utilities to protect sensitive, competitive information.

Duke also opposed a separate docket to address issue (9), and contended that the Commission should not require the use of competitive bidding for all capacity additions.

NC Power did not oppose discussion of issues (5), (7), and (8) in its next Short Term Action Plan. NC Power recommended that issue (9) be addressed within the scope of the pending retail generation competition Docket No. E-100, Sub 77.

NCEMC opposed consideration of issue (9) in a separate docket, commenting that such discussion of the issue cannot be productive until the FERC resolves its attempts to achieve a wholly competitive wholesale market over the next several years. NCEMC suggested that the best course of action at this time is to determine whether management of a particular utility has adequately

identified and evaluated the range of alternative resources at the time decisions become necessary, and has retained sufficient flexibility in its planning process to adapt to changed conditions as they occur.

Nantahala did not file comments regarding Public Staff issue (6).

Conclusions Regarding Public Staff Issues:

The Commission noted elsewhere herein regarding whether or not an adversarial hearing was needed that the accuracy of the NCEMC load forecasts, and the effects of individual EMC autonomy on the DSM programs of NCEMC do not appear to be issues crucial to the success of the current IRPs. The same observation could be made here regarding Public Staff issues (5) through (10). The Commission also noted elsewhere herein that evaluations of individual DSM programs should continue to be held in separate dockets, such as the E-100, Sub 75A docket or other dockets. The Commission also agrees with NC Power that Docket No. E-100, Sub 77 would be a more appropriate forum for discussion of Public Staff issue (9).

The Commission concludes that Public Staff issues (1) through (3) and (5) through (10) do not require a decision herein, and can be simply considerations that the Commission takes note of in reaching a conclusion regarding the adequacy of the overall IRPs. The Commission will discuss DSM deferral accounts separately herein.

Other Intervenors' Issues:

SELC/CCNC contended that most of the issues on its previous list of exceptions to the IRPs should be subject to evidentiary hearings, and it cited the following issues: (1) the future of IRP; (2) the continuing need for energy efficiency programs; (3) utility reliance on the RIM test; (4) the inappropriateness of utility strategic sales; (5) consideration of environmental impacts; (6) compliance with stipulations in previous IRP proceedings; and (7) the inappropriateness of continued deferral accounting for DSM programs.

CUCA suggested Commission consideration of a number of issues as follows:

(1) Allow utilities to screen DSM programs using the RIM test exclusively;

(2) Allow customers who do not desire to pay costs associated with DSM programs to "opt out" of such programs;

(3) Disallow cost recovery from ratepayers of DSM programs intended as strategic sales programs;

(4) Implement "coincident peak" cost allocation and rate design for retail industrial customers;

(5) Implement "real-time pricing" for retail industrial customers on a permanent basis.

CIGFUR suggested Commission consideration of a number of issues as follows:

(1) Require that DSM programs pass the RIM test;

(2) Resolve the inconsistency between approval of economic development rates and self-generation deferral rates that offer discounts for increased load while charging ratepayers (through DSM deferred accounts) for DSM measures designed to reduce load;

(3) Allow customers to obtain power from alternative sources and require delivery of such power over the utilities lines;

(4) Allow wheeling of power from customer-owned generation sites to customer-owned retail sites across utility lines;

(5) Require utilities to offer more options of interruptible power; and

(6) Require utilities to explore alternative arrangements, such as the utility acting as agent and purchasing power for the customer, instead of building additional generation capacity.

Public Service Company recommended that all new or revised programs approved in the IRP proceeding should be charged to shareholders instead of to ratepayers, and it cited the Memorandum of Understating in Docket No. E-100, Sub 71.

Piedmont Natural Gas expressed concerns about several of Duke's individual programs, such as its Max Value Home Builder Program and its Nonresidential High Efficiency Heat Pump Development Program.

The Center for Energy and Economic Development (CEED) opposed any calls for greater engagement in social or environmental regulation as a part of the IRP. It also opposed any calls to "tax" the utility system to fund social programs. CEEDs comments and prefiled testimony were in specific rebuttal to the prefiled testimony of SELC/CCNC.

Conclusions Regarding Other Intervenor Issues:

The Commission noted elsewhere herein regarding whether or not an evidentiary hearing was needed that SELC/CCNC issues (1) through (7) probably do not warrant an adversarial hearing herein. The Commission also concluded herein that similar issues raised by the Public Staff do not require a decision in the IRP docket, and that they can be simply considerations that the Commission takes note of in reaching a conclusion regarding the adequacy of the overall IRP. The same conclusions should be made here regarding the intervenors' issues described above. Furthermore, issues regarding gas-electric competition, such as electric incentive programs, have already been

addressed appropriately in other dockets and do not require a response herein. Issues regarding cost allocation, rate design, etc. also do not require a response herein; this docket is not an appropriate forum for those subjects. Finally, the issue regarding DSM deferred accounts is discussed separately herein.

Should The Existing IRP Process Be Revised?

CUCA contended that increasing competition required that the IRP process be revised. It said the current process is based on the premise that utilities have an "obligation to serve" their assigned territories, and that regulatory oversight designed to assure that such obligations are met is a classic exercise in government central planning which is fundamentally inconsistent with the operation of a competitive market. CUCA recommended that the Commission should limit the scope of decisions made in generic IRP proceedings to the minimum required by applicable statutes.

CUCA contended that neither G.S. 62-2(3a) nor G.S. 62-110.1(c) mandates the use of the current IRP procedures. It said that G.S. 62-2(3a) requires the Commission to do no more than order electric utilities to include DSM in the planning process and to fix rates, plan to meet future load, and otherwise operate in a least cost manner. CUCA said that the Commission could appropriately put the burden upon parties who believe that a particular utility is acting inconsistently with G.S. 62-2(3a) to challenge the utility's plans in a more narrowly focused complaint proceeding or in the context of a rate case.

CUCA also contended that G.S. 62-110.1(c) requires the Commission to do no more than develop, publicize and keep current an analysis of the utilities' forecasts and plans, and to report them to the Governor and the General Assembly.

The Public Staff contended that the current IRP process is not responsive to the planning issues that utilities and regulators currently face. It recommended that the Commission should: (1) adopt an annual planning process in order to keep up with the fast pace of change in the industry; (2) reduce the IRP filing burden; (3) use the IRP process to focus on ends rather than means; (4) reduce formal public involvement and increase customer feedback through market mechanisms; (5) experiment with more energy service choices, including more DSM options; (6) broaden the focus of the IRP process to include monitoring changes within the industry; and (7) increase regulatory involvement in a utility's planning process rather than just the decision process, in order to let managers know what to expect from the regulators early on. The Public Staff recommended that another round of written comments be requested by the Commission on this issue.

CP&L responded that there is no need to change the IRP process or impose additional rules or regulatory burdens on the IRP process. It pointed out that the purpose of regulation was to emulate the forces of a competitive market, and that if actual competitive forces increase, regulatory burdens should decrease. CP&L contended that it is inconsistent and illogical to impose additional requirements on the electric industry in response to a more competitive environment.

NC Power contended that CUCA's basis for seeking revised IRP procedures was flawed because it was premised on the existence of an open market place instead of a continuing obligation

to serve, contrary to today's reality. NC Power suggested that a future dialogue between the utilities and the Public Staff could result in specific proposals to the Commission regarding revision of the IRP process where warranted. Duke also suggested another round of written comments on this issue.

Conclusions Regarding IRP Revisions:

The Commission is of the opinion that it should not seek to revise the IRP process in this docket. The Commission previously shifted from a 2 year review cycle (of the IRPs) to a 3 year cycle in order to reduce the burden on the utilities and the regulators. Now, the Public Staff proposes to shift to an annual review cycle, and to increase regulatory involvement earlier in the planning process while at the same time it seeks ways to reduce the IRP filing burden, to broaden the focus of the IRP process, and to focus on the ends rather than the means. This seems inconsistent.

The Commission feels that it would be premature to revise the IRP process in anticipation of competition that is just beginning to unfold, but it will continue to monitor developments in this area.

Should the Current IRPs be approved?

The current IRPs were filed by the utilities and NCEMC on or about April 28, 1995. Subsequently, evaluations and comments were filed by the intervenors on August 1, 1995, through November 7, 1995. Only one party, SELC/CCNC, recommended that the IRPs be rejected. Other parties offered critiques for future improvements to the IRPs or recommended changes in certain individual elements of the IRPs.

CP&L contended that SELC/CCNC espouses an IRP that requires utilities to encourage customers to utilize all energy resources, not just electricity resources, in a manner that SELC/CCNC believes is in the best interest of society. CP&L contended that the IRP should achieve the least cost electric rates consistent with safe and reliable electric service.

Duke also pointed out that only SELC/CCNC recommended rejection of the IRPs, and contended that its own IRP meets all of the requirements of the Commission's rules. NC Power commented on numerous deficiencies it contended the SELC/CCNC evaluation contains, such as assumptions about the future structure of the electric utility industry and about the applicability of certain conservation/energy efficiency measures in other parts of the country to North Carolina. Nantahala noted in its original testimony that Duke's IRP includes Nantahala's total load and generation.

The Public Staff report concluded that overall, the forecasts submitted by the utilities are reasonable; that they are derived from accepted methodologies; and that they should be accepted for purposes of this biennial review. The report also addressed some "relatively minor technical problems" with the forecasts.

The Public Staff report also concluded that the current IRPs are adequate and provide a satisfactory basis for most planning decisions over the next three years. However, the report added

the caveat that while NCEMC's IRP is adequate for some planning purposes, it does not support NCEMC's decision to build generation during that time period.

The Public Staff report notes that NCEMC's power resources are primarily purchased power contracts; that NCEMC seeks to acquire new generating resources to replace current high-cost purchased power contracts; that the success of the NCEMC IRP depends on the success of installing displacement generating capacity cheaper than it can purchase power in the marketplace; and that even if the NCEMC plan produces the least cost option for NCEMC, it may result in surplus generation for its supplier utilities.

SELC/CCNC contended that the IRPs do not include reasonable commitments to conservation programs; that the RIM test was misused to screen out or limit conservation measures in the IRPs; and that the IRP proceeding should address the extent to which utilities have an obligation to serve their customers' interests even when doing so may not directly benefit their competitive position as suppliers of electric services.

CEED contended that the Commission should resist calls to "tax" the utility systems in order to fund social programs, and it should resist calls to engage in environmental regulation.

CP&L proposes to increase its supply-side capacity from 11,209 Mw to 15,139 Mw in 2009, resulting in reserve margins ranging from 14.7% in 1997 to 19.6% in 2008. All capacity additions are undesignated, except for the 224 Mw Darlington CTs in 1997 and the 1200 Mw Wayne County CTs in 1998-99. The plan projects no increase in hydro or nuclear generations, and no increase in baseload generation until 2008.

Duke proposes to increase its supply-side capacity from 17,991 Mw in 1995 to as much as 24,572 Mw in 2009, resulting in reserve margins ranging from 16.6% in 1997 to 13.1% in 2007. All capacity additions are undesignated, except for the 1200 Mw Lincoln County CTs in 1995-96. Duke proposes to meet the remaining 5100 Mw of base load or peaking capacity by assessing the overall market and identifying the most cost-effective way to acquire the needed resources, which suggests that demand-side resources or outside purchases could also be utilized for these needs.

NC Power proposes to increase its supply-side capacity from 17,402 Mw in 1995 to 22,394 Mw in 2009, resulting in reserve margins ranging form 28.9% in 1998 to 33.4% in 2008. 3600 Mws of the increase are proposed to be met by additional CTs during 1999-2005, and 1600 Mws by coal-fired steam during 2006-9.

Nantahala does not expect to increase its supply-side capacity during the next 15 years. Nantahala generates 83 Mw of its own capacity needs and purchases its remaining requirements from Duke. Its total capacity needs are projected to increase from 242 Mw in 1995 to 339 Mw in 2009.

NCEMC purchases more than 200 Mw capacity from CP&L, Duke, and NC Power. However, NCEMC proposes to add 330 Mw capacity in approximately year 2000 with its Davidson County combined cycle plant. NCEMC also owns 644 Mw of Duke's Catawba Nuclear Station.

Conclusions Regarding IRP Approval:

As pointed out earlier herein, the Commission is of the opinion that the IRP review is intended to ensure that each utility is generally including all of the considerations in its planning as required by the Commission's rules; that each utility is generally utilizing state-of-the-art techniques for its forecasting and planning activities; and that each utility has developed a reasonable analysis of its long-range needs for expansion of generation capacity. Such an approach would not seek to resolve every difference of opinion between parties as to who is "right" and who is "wrong" (particularly regarding forecasting).

As also pointed out earlier herein, the Commission is of the opinion that evaluations of individual DSM programs, certificates to construct new generating plants or transmission lines, and individual purchased power contracts should be handled in separate dockets from the IRP proceeding. In this manner, any evidentiary hearing on individual elements of an IRP will be more clearly focused and can be more efficiently managed in separate dockets. Consistent with this view, it should also be emphasized that inclusion of a DSM program, proposed new generating station, proposed new transmission line or purchased power contract in the IRP does not constitute approval of such individual elements even if the IRP itself is approved.

The Commission concludes that the current IRPs should be approved. The Public Staff objection to the NCEMC IRP seems to be based on the assumption that the IRPs of NCEMC and its suppliers (primarily Duke and CP&L) should together result in the best collective result for the State, as opposed to the notion that each IRP seeks the best results for its own sponsor. Since the NCEMC IRP seeks to increase its own generating capacity in order to enable it to purchase less from its current suppliers, the Public Staff considers this a weakening of the collective IRPs. The Commission disagrees.

DISCUSSION OF FINDINGS OF FACT AND CONCLUSIONS NOS. 12 THROUGH 15

The Public Staff review of the forecasting models utilized by the utilities determined that their primary reliance on econometric methods for their IRPs was satisfactory. The review indicated that the underlying cause of load growth in North Carolina and Virginia appears to be economic growth and development that attracts new utility customers; and that such economic growth is more readily identified and represented by econometric models. The review cited improvements made by the utilities in treatment of energy efficiency and the relationship between peak and energy forecasting models.

The Public Staff review indicated that the end-use approach to forecasting models has value, and it noted that the major utilities use such models in parallel with their econometric models for the most part. However, the review raised concerns about whether or not it would be cost beneficial for Nantahala or NCEMC to incorporate more end-use modeling into their forecasting methods.

The compound annual growth rates currently forecast by CP&L for the 15-year period 1995-2009 are 2.1%, 2.1%, and 2.0% for the summer peak, winter peak , and annual energy respectively. The forecasts include the effects of conservation and load management reductions. CP&L points out

that although the percentage growth rate projections are lower than prior projections, the projected annual Mw increases in load remain fairly consistent with prior projections.

The compound annual growth rates currently forecast by Duke for the 15-year period 1995-2009 are 2.2%, 2.0%, and 1.9% for the summer peak, winter peak, and annual energy respectively. The forecast is based on Duke's 1995 forecast filed with the Commission in July 1995, and is similar to the 1994 forecast on which Duke's current IRP is based.

The compound annual growth rates currently forecast by NC Power for the 15-year period 1995-2009 are 2.2%, 2.2%, and 2.3% for the summer peak, winter peak, and annual energy respectively. The forecasts include the effect of demand-side program reductions. NC Power points out that demand-side resources are expected to reduce projected loads much less than assumed in the past because of adoption of the Loss of Load Hours (LOLH) methodology used to evaluate such resources now, combined with a significant drop in the construction cost of competing supply-side resources (i.e., combustion turbines).

The compound annual growth rates currently forecast by Nantahala for the 15-year period 1995-2009 are 2.5%, 2.4%, and 2.7% for the summer peak, winter peak, and annual energy respectively. Nantahala's total load requirements are also included in the forecasts of its parent corporation and primary supplier, Duke.

The compound annual growth rates currently forecast by NCEMC for the 15-year period 1995-2009 are 3.2%, each for peaks and energy. The forecasts are actually broken down into separate forecasts for the CP&L, Duke, and NC Power supply areas respectively, and include demand-side management reductions.

DISCUSSION OF FINDINGS OF FACT AND CONCLUSIONS NOS. 16 AND 17

Background:

G.S. 62-2 provides, in part, that it is declared to be the policy of the State of North Carolina:

> "(3a) To assure that resources necessary to meet future growth through the provision of adequate, reliable utility service include use of the entire spectrum of demand-side options, including but not limited to conservation, load management and efficiency programs, as additional sources of energy supply and/or energy demand reductions. To that end, to require energy planning and fixing of rates in a manner to result in the least cost mix of generation and demand-reduction measures which is achievable, including consideration of appropriate rewards to utilities for efficiency and conservation which decrease utility bills."

The Commission's Order Adopting Least Cost Integrated Resource Plans issued May 17, 1990, in Docket No. E-100, Sub 58, required each utility to file proposed plans for timely recovery of costs associated with implementation of its approved IRP. The Order cited Public Staff testimony that

recovery of lost revenues resulting from operation of cost-effective energy efficiency programs and from aggressive pursuit of DSM should be considered. The Order noted that the desire that utilities be rewarded for implementation of IRP arose from the perceived need to make the utility indifferent between the selection of a demand-side option and a supply-side option. The Commission concluded in the Order that deferral accounting should be initiated for the purpose of accumulating and deferring costs associated with the implementation of IRP.

The Commission's Order Adopting Least Cost Integrated Resource Plans, issued June 29, 1993, in Docket No. E-100, Sub 64, approved stipulations entered into between the Public Staff and the utilities that included a deferral accounting mechanism for DSM cost recovery. The mechanism included three elements: (1) recovery of costs associated with operating DSM programs; (2) recovery of lost revenues associated with operating energy efficiency programs; and (3) a reward or incentive for exemplary DSM accomplishments. The Order cited the Public Staff's admonition that the third element should be allowed exclusively as a "jump start" to encourage more active consideration of DSM and should be discontinued as soon as practicable. The Order declined to adopt the Public Staff's "jump start" position, but noted that parties may address the continued need for the reward mechanism in future proceedings.

Public Staff Proposal:

In Docket No. E-100, Sub 75, the current proceeding, the Public Staff contends that deferral accounting of DSM costs should be discontinued. It said that CP&L had not implemented deferral accounting; that Duke had incurred deferral of $40 million DSM costs; and that NC Power had incurred deferral of $175,000 DSM costs. Duke's $40 million includes $3 million of DSM reward (i.e., the third element); NC Power has not recorded a DSM reward amount.

The Public Staff contended that the deferral accounts were intended to spur initial development of DSM; that the need to spur initial development has passed; and that increasing use of the RIM test to evaluate DSM programs results in programs that do not need an incentive (i.e., they are now assumed to be cost-effective in their own right). It contended that if Duke is allowed to continue to defer costs, the balance could exceed $140 million by the year 2005.

SELC/CCNC and CUCA also oppose continuation of the deferral accounts on the grounds that utilities do not need an incentive to engage in truly cost-effective activities.

Duke responded on November 14, 1995, that it had reached a stipulation agreement with the Public Staff in which it would limit deferral accounting to certain specific programs and limit the amount of potential recovery. Duke stipulated with the Public Staff that Duke may continue to defer DSM costs subject to the following conditions:

(a) Duke's deferrals will include only the programs for: Interruptible Service, A/C Load Control, Standby Generation, Chillers (1996 only), Water Heater Load Control, and 1996 Incentive payments recently approved for various programs.

(b) Dukes' deferral will be priced at .04657 cents per kWh until its next general rate case.

(c) Duke will limit its requested recovery of deferred DSM costs in its next rate case to $75 million, including interest.

(d) Duke will cease accruing the DSM bonus or reward element as of December 31, 1995.

(e) The Public Staff may still investigate other DSM issues relating to the deferral account and make recommendations to the Commission as warranted.

The Public Staff's stipulation with Duke does not address its recommendation to discontinue deferral accounting for NC Power and CP&L. However, CP&L and NC Power do not have deferral accounts containing DSM reward amounts (i.e., the third element).

Conclusions:

The Commission concludes that the stipulations between the Public Staff and Duke regarding limitations on Duke's cost deferral of DSM programs should be approved.

The Commission also concludes that the intervenors' request to discontinue cost deferral of DSM programs herein should be denied. The issue of cost recovery of DSM programs by CP&L, Duke, and NC Power, including cost recovery associated with the stipulations approved herein for Duke, should be addressed by the hearing panels in future rate proceedings as appropriate.

DISCUSSION OF FINDING OF FACT AND CONCLUSION NO. 18

Background:

On June 29, 1993, the Commission issued its Order Adopting Least Cost Integrated Resource Plans in Docket No. E-100, Sub 64, which required, in part, that CP&L, Duke, NC Power, and Nantahala file comments and/or suggested revisions regarding the Proposed Guidelines for Evaluation of Unsolicited NUG Proposals as described in that Order. Comments and reply comments were filed, but the issues were not resolved at the time Docket No. E-100, Sub 75, was opened in December 19, 1994.

On April 11, 1995, the Commission issued its Order Requesting Comments in Docket No. E-100, Sub 75, which required CP&L, Duke, NC Power, Nantahala, and NCEMC to file comments and/or suggested revisions regarding the Proposed Utility Evaluation Guidelines and Reporting Requirements for Unsolicited IPP Proposals as described in the Order. The guidelines proposed in the Order of April 11, 1995, were based on the guidelines proposed in the Order of Jun 29, 1993, and they also incorporated elements from the comments filed in Docket No. E-100, Sub 64, regarding the proposed guidelines.

Comments were received in response to the Order of April 11, 1995, from CP&L, Duke, NC Power, Nantahala, and NCEMC. The Public Staff did not offer further comments, nor did any other party.

Summary of Comments:

CP&L restated its earlier opposition to any guidelines at all. The Company said it shared the concern of the Commission that each IPP proposal be evaluated in good faith, and it contended that the current IRP rules and complaint procedures are more than adequate to achieve that goal. CP&L pointed out that since the beginning of the 1988 IRP proceedings, the Commission has received only one formal complaint regarding the evaluation process.

Duke generally agreed with the proposed guidelines but suggested a few revisions, as follows:

(1) Add new language to the second sentence in the Applicability section so that the sentence reads: "They are not applicable to purchases made from Qualifying Facilities under the Public Utility Regulatory Policies Act (PURPA) which meet the availability criteria for standard rates and contracts as approved by the Commission; or to short term emergency or economy purchases; or to extensions of existing contracts outside of the competitive bidding process (provided that such extensions are consistent with the utility's LCIRP)."

(2) Add new language to the last sentence in the Applicability section so that the sentence reads: "A utility with an established [delete "approved active"] competitive bidding program should be free to refuse offers of capacity that are received outside of its competitive bidding process, except for offers from Qualifying Facilities under PURPA which meet the availability criteria for standard rates and contracts as established by the Commission. An established competitive bidding program is one that has been developed and which the utility has publicly indicated its plans to use for at least part of its upcoming uncommitted capacity needs."

(3) Substitute the acronym "EWG" for the acronym "NUG" under Reporting Requirements

NC Power generally agreed with the proposed guidelines but suggested a few revisions, as follows:

(1) Clarify whether NC Power's existing bidding process would be considered "approved" pursuant to the last sentence of the Applicability section.

(2) Clarify that a utility's inability to refuse "offers from QFs under PURPA" pursuant to the last sentence of the Applicability section refers only to those QFs who subscribe to the standard avoided cost rates.

Nantahala generally agreed with the proposed guidelines but suggested a revision to the second sentence of the Applicability section similar to that suggested by Duke.

NCEMC commented that any guidelines the Commission adopts should not apply at all to a utility which has an established policy of using competitive bidding to select new supply sources. It also suggested several revisions to the proposed guidelines, as follows:

(1) Delete the words "approved active" from the last sentence of the Applicability section.

(2) Delete all but general information about unsolicited proposals that are rejected.

Conclusions:

Rule R8-58(e) is a part of the Commission's rules governing the IRP process, and it requires that:

> Each utility shall assess on an ongoing basis the potential benefits of reasonably available purchased power resources. The assessments shall include costs, benefits, risks, uncertainties, and reliability where appropriate. The utility shall discuss its overall assessment of its purchased power resources, including but not limited to purchases from cogenerators, small power producers, independent power producers and other utilities, and provide details of the methods and assumptions used in the assessment of those purchased power resources having a significant impact on its least cost integrated resource plan. (emphasis added)

The crux of the concern regarding interpretation of Rule R8-58(e) is interpretation of the phrases underlined above. At one extreme, a utility may consider a rejected proposal to not be "reasonably available" or to not have "a significant impact" simply because the proposal was rejected, and conclude that the rule does not require it to discuss a rejected proposal any further or to explain why the proposal was rejected. At the other extreme, a rejected "proposer" might conclude that the rule requires the utility to discuss in detail why its proposal was rejected, in the process revealing to the "proposer" certain proprietary criteria the utility may be utilizing in evaluating such proposals.

The Commission notes that the reason given by the Public Staff in Docket No. E-100, Sub 64, for seeking the proposed guidelines was to better define Rule R8-58(e) in order to head off numerous complaints that the Public Staff anticipated would be filed regarding utility compliance with the rule. However, since the "guidelines" issue was raised in 1992, no complaints have been filed; and only one complaint has been filed since adoption of Rule R8-58(e) in 1988.

The Commission concludes that the proposed guidelines should be rejected altogether in favor of continued reliance on Rule R8-58(e) as it is written.

IT IS, THEREFORE, ORDERED as follows:

1. That the findings and conclusions of this Order are hereby adopted as a part of the Commission's current analysis and plan for the expansion of facilities to meet the future requirements for electricity in North Carolina pursuant to G.S. 62-110(c).

2. That the Integrated Resource Plans filed by CP&L, Duke, NC Power, Nantahala, and NCEMC in this proceeding are hereby approved as being in compliance with the requirements of Commission Rules R8-56 through 61.

3. That the joint stipulations entered into by Duke and the Public Staff regarding limitations on cost deferral of DSM programs is hereby approved, subject to appropriate review of such cost deferral by any party in a future rate proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of February 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. SP-100, SUB 7

In the Matter of Request for a Declaratory Ruling by National Spinning Company, Inc. and Wayne S. Leary, d/b/a Leary's Consultative Services	)	ORDER DENYING PETITION FOR DECLARATORY RULING

HEARD: Monday, December 18, 1995, at 3:40 p.m., Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Lawrence A. Cobb, Presiding; and Commissioners Charles H. Hughes, Allyson K. Duncan, Ralph A. Hunt, Judy Hunt and Jo Anne Sanford

APPEARANCES:

For National Spinning Company, Inc., and Wayne S. Leary d/b/a Leary's Consultative Services:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For Carolina Power & Light Company:

Len S. Anthony, Associate General Counsel, Post Office Box 1551, Raleigh, North Carolina 27602-1551

For North Carolina Natural Gas Corporation:

Jeffrey N. Surles, McCoy, Weaver, Wiggins, Cleveland & Raper, Post Office Box 2129, Fayetteville, North Carolina 28302

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, Public Staff - N.C. Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On October 26, 1995, Wayne S. Leary d/b/a Leary's Consultative Services (Leary) and National Spinning Company, Inc. (National Spinning) filed a Petition for Declaratory Ruling (Leary and National Spinning are sometimes referred to jointly as Petitioners) asking the Commission to declare that the construction and operation of a proposed electric and steam generating facility at National Spinning's plant near Washington, N.C. would not render Leary or National Spinning a public utility as defined in G.S. 62-3(23)a1 or 62-3(23)b or subject them to the certification requirements of G.S. 62-110.1.

Carolina Power & Light (CP&L) filed a Petition to Intervene in the proceeding on October 26, 1995 and on November 1, 1995, the Commission granted CP&L's Petition. CP&L filed its Response to Petition for Declaratory Ruling on November 3, 1995.

On November 3, 1995, North Carolina Natural Gas (NCNG) filed a Petition to Intervene in the proceeding and on November 7, 1995, the Commission granted NCNG's Petition.

On November 22, 1995, Leary and National Spinning filed a Response to CP&L's Response to Petition for Declaratory Ruling and NCNG's Petition to Intervene. On November 27, 1995, the Public Staff filed its Response to the Petition for Declaratory Ruling filed by Leary and National Spinning. On November 29,1995, CP&L filed a Supplement to its Response to Petition for Declaratory Ruling. Leary and National Spinning filed a Reply to the Response of the Public Staff on December 4, 1995.

The Commission scheduled and heard oral argument on December 18, 1995. The Commission issued a Notice of Decision denying the Petition for Declaratory Ruling on December 22, 1995. The Notice stated that the Commission would issue an order setting forth its reasoning later.

On March 4, 1996, National Spinning and Leary filed a Motion to Hold Proceedings in Abeyance, which CP&L responded to on March 7.

On the basis of the oral argument and the parties' filings herein, the following facts appear to be undisputed:

FINDINGS OF FACT

1. National Spinning is a corporation duly organized under the laws of New York. National Spinning is duly authorized to do business in North Carolina, and it has a principal place of

business in Washington, North Carolina. National Spinning is involved in the manufacture and processing of textile-related products.

2. Leary is a citizen and resident of North Carolina who has an office in New Bern, North Carolina. Leary is involved in the energy business, including the conversion of residual wood, biomass residues, and industrial waste to steam for industrial process purposes.

3. CP&L is a corporation duly organized under the laws of North Carolina with a principal place of business in Raleigh, North Carolina. CP&L is engaged in the business of generating, transmitting, and selling electric power to the public in North Carolina, and it is a public utility subject to the jurisdiction of this Commission.

4. NCNG is a corporation duly organized under the laws of North Carolina with a principal place of business in Fayetteville, North Carolina. NCNG is primarily engaged in the business of purchasing, transporting, distributing, and selling natural gas, and it is a public utility subject to this Commission's jurisdiction.

5. National Spinning operates facilities for the spinning and dyeing of yarn in Washington, North Carolina. National Spinning consumes electricity purchased from CP&L and natural gas purchased from NCNG at its Washington facilities. According to the Petition, National Spinning currently consumes approximately 58,000,000 to 60,000,000 kilowatt hours of electricity annually, and it paid CP&L approximately $3,100,000 for electricity in 1994.

6. As part of its efforts to reduce costs at its Washington facilities, National Spinning examined a number of different energy savings options. National Spinning reached an understanding with Leary for the construction, operation, and maintenance of certain facilities intended to reduce the cost of electric power and steam at the Washington facilities.

7. The proposed facilities and activities that are the subject of this proceeding are as follows: The proposed facilities would be constructed for Leary, acting as agent and contractor for National Spinning. The ownership and operation of the proposed facilities would be divided between National Spinning and Leary according to their agreement. National Spinning would own a gasifier, utilize it to gasify wood waste, and sell the resulting gas to Leary. The gas produced in the gasifier would be delivered to a high pressure boiler by means of induction fans; no pipes or other similar facilities would be utilized to transmit the gas from the gasifier to the boiler. Leary would own and operate the high pressure boiler, where the gas which Leary purchased from National Spinning would be used to generate high pressure steam which would be sold to National Spinning. The steam which National Spinning purchased from Leary would be passed through a steam turbine and other electric generating facilities. National Spinning would own these electric generating facilities and the electricity generated in them would be used in National Spinning's Washington spinning and dyeing facilities and for operation of the proposed facilities. After passing through the electric generating facilities, the steam would be utilized in National Spinning's manufacturing processes and for heating National Spinning's manufacturing facilities. The gasifier and electric generating facilities, although owned by National Spinning, would be operated by Leary under an agreement with National

Spinning. Pursuant to the agreement, Leary would receive a competitive charge for steam as compensation for services provided.

8. The proposed electric generating facilities would be capable of generating up to seven megawatts. The electricity generated will displace much of National Spinning's purchases from CP&L though National Spinning states that it intends to continue purchasing a portion of its requirements from CP&L under applicable rate schedules. National Spinning intends to sell any excess power generated at the proposed facility to CP&L under any available "avoided cost" rate or under negotiated rates. National Spinning recognizes that the sale of any excess power to a "third party" other than CP&L would require Commission approval.

9. The Petitioners hoped to take advantage of a federal tax credit known as a Section 29 tax credit. They believed that the operation of the proposed facilities would make a Section 29 tax credit available to National Spinning. Eligibility for the tax credit required the production of a combustible gas derived from biomass and the sale of this gas to an "unrelated" party. The provisions of the Section 29 tax credit also required Petitioners to sign a contract for the proposed facilities before January 1, 1996. They therefore requested an expedited ruling from the Commission, and the Commission issued its Notice of Decision in order to accommodate that request. The availability of the Section 29 tax credit has now expired.

DISCUSSION AND CONCLUSIONS

First, the Commission will consider Petitioners' motion to hold this proceeding in abeyance. They note that the Section 29 tax credit has now expired, that they did not sign a contract for the project in light of the Commission's Notice of Decision, and that they have no intention of proceeding with the proposed project unless Congress revives the tax credit. They argue that this proceeding is therefore moot. CP&L responds that the Commission has made its decision but that Petitioners, having lost, now want a chance to relitigate the same issue at some time in the future. The Commission agrees with CP&L that the motion should be denied. This is not a case in which the controversy has been rendered moot before decision. This is more analogous to a court making an oral ruling and then issuing a written order later. The Commission's decision was made before there was any claim of mootness, and the Commission is now simply writing up that decision to explain its reasoning. The Commission denies the motion to hold this proceeding in abeyance and now turns to the reasons for denying the declaratory ruling.

Petitioners ask the Commission to declare that the proposed activities would not render either of them a public utility subject to the Commission's jurisdiction. G.S. 62-3(23)a1 defines the term "public utility" as a person owning or operating, in North Carolina, equipment or facilities for producing, generating, transmitting, delivering or furnishing electricity, piped gas, steam or any other like agency for the production of light, heat, or power to or for the public for compensation. The standard for determining whether any given enterprise is a public utility within the meaning of G.S. 62-3(23)a1 was established by the North Carolina Supreme Court in State ex rel. Utilities Commission v. Simpson, 295 N.C. 519, 246 S.E.2d 753 (1978). In this case, the Court granted the Commission considerable flexibility in determining the meaning of the phrase "to or for the public." The Simpson opinion states

> [W]hether any given enterprise is a public utility does not depend on some abstract, formalistic definition of "public" to be thereafter universally applied. What is the "public" in any given case depends rather on the regulatory circumstances of that case. Some of these circumstances are (1) nature of the industry sought to be regulated; (2) type of market served by the industry; (3) the kind of competition that naturally inheres in that market; and (4) effect of non-regulation or exemption from regulation of one or more persons engaged in the industry. The meaning of "public" must in the final analysis be such as will, in the context of the regulatory circumstances . . . accomplish "the legislature's purpose and comport with its public policy."

295 N.C. at 524, 246 S.E.2d at 756-57 (citations omitted). G.S. 62-2 declares it to be the policy of the State to promote the inherent advantages of regulated public utilities, to promote adequate reliable and economic utility service, and to foster continued service of public utilities on a well-planned and coordinated basis. It is well-established that the public policy basis of the requirement for a certificate of public convenience and necessity to engage in public utility activities is the General Assembly's adoption of the policy that nothing else appearing, the public is better served by a regulated monopoly than by competing suppliers of the service. State ex rel. Utilities Commission v. Carolina Telephone & Telegraph Company, 267 N.C. 257, 148 S.E.2d 100 (1966). As to the electric industry, this policy is additionally expressed in the Territorial Assignment Act of 1965. Because CP&L has the right under these statutes to provide electric service to the area where National Spinning is located, a declaration that the proposed activities would render either Petitioner an electric utility would effectively prohibit the proposal.

The facility proposed by the Petitioners would be constructed adjacent to National Spinning's plant. The facility would be entirely integrated. It would include a gasifier that would produce a combustible gas from wood chips. This gas would be fed into a boiler through the use of an induction fan and the gas would be burned to produce steam. The steam would be passed through a turbine generator to produce electricity. National Spinning would have legal title to the gasifier and the turbine generator. Leary would own the boiler and would operate the entire facility. One reason for the division of ownership of the equipment is to make the facility eligible for certain tax credits. It is undisputed that the proposed arrangement involves facilities and equipment for producing, generating, transmitting, delivering, and furnishing steam and electricity. Thus, issues are presented as to whether either Petitioner would become a steam utility or an electric utility by virtue of the proposed activities.

In its petition to intervene, NCNG raised the additional issue of whether National Spinning would become a natural gas utility by virtue of its sale of gas to Leary. Petitioners argues that there would be no natural gas utility since there would be no sale of "piped gas." The gas would be transferred essentially within the same chamber in which it was produced by means of an induction fan. At the oral argument, NCNG stated that "the statutes do not regulate the burning of wood chips for gas purposes in one container" and that its concerns had been answered. We conclude that the proposed activities would not render National Spinning a natural gas utility. The more difficult issue is whether either Petitioner would become subject to regulation as an steam utility or an electric utility.

Among other arguments, Petitioners contend that, due to the manner in which the ownership and operation of the proposed facilities would be structured, the generation of electricity would be the

"functional equivalent" of self-generation of electricity, which is exempted from public utility status. The definition of public utility in G.S. 62- 3(23)a1 provides that the term "public utility" shall not include a person who constructs or operates an electric generating facility, the primary purpose of which is for such person's own use. Similarly, G.S. 62-110.1(g) states that a person who is constructing an electric generating facility primarily for that person's own use is not required to first obtain a certificate of public convenience and necessity from the Commission.

The Commission concludes that the proposed activities cannot be considered self-generation by National Spinning. In this case, the boiler is an essential and integral part of the electric generating equipment, and this boiler is owned by Leary. Further, the exception in G.S. 62-3(23)a1 speaks in terms of persons who "construct or operate" a generating facility, and in this case both construction and operation are the responsibility of Leary, who is separate from and independent of National Spinning. Petitioners argue that National Spinning should qualify for the exception since Leary is acting as its agent in constructing and operating the facility, but that would require a broad construction of the exception. Such a construction would, as argued by the Public Staff, "eat the rule." Generally speaking, a strict or narrow construction is applied to statutory exceptions and any doubt must be resolved against the person asserting the exception. 73 AmJur 2d, Statutes 313. The exceptions in G.S. 62-3(23)a1 and 62-110.1(g) envision a customer who acquires electric generating equipment and uses it to generate his own electricity. That is not what is proposed here. The proposed activities and transactions cannot be considered to be self-generation by National Spinning. During the course of the oral argument, National Spinning stated that using its own employees to operate the proposed gasifier and turbine "could be subject to reconsideration" in the event that Leary's operation of the electric generating facilities was deemed sufficient, standing alone, to declare the proposed facilities a public utility. The Commission must rule on the basis of the proposal presented, and we will not negotiate with Petitioners as to our jurisdiction.

Since the proposed activities do not fall within the self-generation exception, the Commission must examine the regulatory circumstances, as provided in the Simpson case, to determine whether these activities should be considered "to or for the public," either in the context of the steam transaction between Leary and National Spinning or in the context of the generation of electricity. Petitioners urge us to perform separate analyses as to steam and electricity, but in this case it is difficult to distinguish between the two activities. The boiler where the steam is created and the turbine where electricity is generated are integral parts of the same facility. No clear lines separate the two functions. The point at which National Spinning will take "delivery" of the steam from Leary will occur in a high pressure line connecting the boiler and the turbine. Further, G.S. 62-110.1(a), which requires a certificate from the Commission to construct "any steam, water or other facility for the generation of electricity" recognizes that the device that provides the energy to spin the generator (whether a waterwheel, a boiler like this one, or a nuclear steam plant) and the turbine are really one unit. Utility regulation must be based on practical realities. Any attempt to claim that Leary is "only" selling steam to National Spinning is unfounded.

Furthermore, assuming arguendo that Leary would only be selling steam, the Commission has suggested in previous declaratory rulings that it will not allow a "steam utility" to sell steam for use in generating electricity. The first ruling was the Natural Power Declaratory Ruling of December 22, 1988, in Docket No. SP-100, Sub 1. In the course of ruling that Natural Power would not be a public utility by virtue of its sale of steam to an industrial customer, the Commission noted that steam is not

a common utility function and has not been traditionally regulated by the Commission and that the steam at issue would be used in industrial processes and would not be used to generate electricity. Two rulings more directly on point are the Westmoreland-LG&E Partners Declaratory Ruling, 83 NCUC 350 (1993), and the Carolina Energy Declaratory Ruling, 84 NCUC 148 (1994), which was clarified by an Amended Order issued on March 20, 1995, in Docket No. SP-100, Sub 3. In the Westmoreland-LG&E Partners ruling, the Commission held that the re-issuance of the certificate to Westmoreland-LG&E Partners would be conditioned upon the requirement that the contract with the steam host and any future contracts with other industrial customers must provide that the purchased steam could be used only for purposes other than producing electricity. The Commission specifically noted that if the steam being sold to the industries were used to generate electricity, Westmoreland-LG&E might be considered a utility, in which case it would not be certificated because its customers would be able to bypass the certificated electric utility, which has a monopoly franchise for the area. In the Carolina Energy ruling, the Commission declared that Carolina Energy's proposed activities did not render it a public utility on the basis of several factors, one of which was that the steam that Carolina Energy would sell to Dupont would not be used to generate electricity. Carolina Energy subsequently requested clarification about this factor. Because of the physical characteristics of DuPont's manufacturing plant, the steam from Carolina Energy's proposed boiler and the steam from Dupont's own boilers would flow through a common header before being utilized as process steam and for the generation of electricity. Because DuPont's process steam needs significantly exceeded Carolina Energy's maximum steam output, Carolina Energy requested, and the Commission ruled, that its steam be deemed for process use only, without requiring physical separation. Still, the Commission reiterated its concern about third-party steam being used to displace a regulated electric utility's load. Because of the slight risk that Dupont's process needs could decline sufficiently for Carolina Energy's steam to be used by DuPont to produce electricity, the Commission required that it be notified if such an event occurred. These rulings recognize a fundamental distinction between producing process steam, which the Commission has not regulated, and providing steam for electric generation, which the Commission has reserved the right to regulate as a public utility function. This distinction is entirely proper under the Simpson analysis, which requires the Commission to consider the regulatory circumstances on a case by case basis. Again, the Commission cannot ignore practical realities, and we would be doing just that if we tried to analyze a steam transaction such as the one proposed herein without regard to how the steam will be used.

Applying the Simpson analysis to the present proposal, the Commission concludes that, given the nature of the electric industry in North Carolina, the importance of large industrial customers to that industry, the competition for such customers, and the effect on the industry that the requested declaratory ruling might have, the Commission cannot declare that no regulated utility would result from the proposed activities. National Spinning is an important customer of CP&L. It consumes approximately 60,000,000 kilowatt hours of electricity a year, and it paid CP&L about $3,100,000 for electricity in 1994. Such large industries are very desirable customers for the regulated utilities. They generally have high load factors, and the regulated electric utilities' generation plant has been planned and built to serve them reliably. Independent power producers are very interested in these customers. If the Commission were to allow Petitioners to perform the activities proposed herein, other suppliers and customers will inevitably seek similar arrangements. We cannot say that the expiration of the Section 29 tax credit will either discourage other similar arrangements (Petitioners themselves say that their proposal is viable without the tax credit) or necessarily distinguish other arrangements from this one. New, unregulated electric suppliers could "cherry pick" the electric utilities' best customers,

leaving them with significant stranded investment. The rates that must be charged to the remaining residential, commercial and smaller industrial customers, who are not in a position to install turbine generators and purchase generation steam, would be impacted. The ultimate result could be a windfall for a relatively small number of large industries, at the expense of other customers. Thus, the declaratory ruling requested by Petitioners could have significant consequences. Such a ruling could undermine the territorial assignment statutes and could result in the inequitable shifting of costs to smaller customers. Petitioners call this the "slippery slope" argument and urge us not to make a decision on the basis of what "you may fear somebody else may do." But the "effect of non-regulation or exemption from regulation" is a factor clearly identified in the Simpson case, and it is for the Commission to decide the weight to give the various factors in Simpson. Further, the Supreme Court itself relied upon just such an argument in Simpson to hold that a provider of two-way radio service should be regulated as a public utility. The Supreme Court wrote, "[U]nregulated radio services might focus on classes which are easier and more profitable to serve. The result would be to leave burdensome, less profitable service on the regulated portion resulting inevitably in higher prices for the service." 295 N.C. at 525.

IT IS THEREFORE, ORDERED that the Petition for Declaratory Ruling filed in this docket on October 26, 1995 should be, and the same hereby is, denied for the reasons hereinabove stated.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of April, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt dissents.

Commissioner Judy Hunt, dissenting:

I dissent from the decision to deny the Petitioners' motion to hold these proceedings in abeyance. I believe that there is no need for the Commission to issue the present Order since the Petitioners no longer intend to proceed with their proposal. This proceeding has therefore been rendered moot, and there is simply no need for the Commission to issue the present Order, which may set an unnecessary precedent for the future. The Majority reasons that the earlier Notice of Decision was in fact the Commission's "decision" and that it was made before these proceedings became moot. I disagree since the parties could not appeal from the *Notice of Decision*. The *Notice of Decision* was not supported by a written Order; thus Commissioners did not at that time have an opportunity to consider the written reasoning of the Order and then express their views by joining in the Order, concurring, or dissenting.

Commissioner Judy Hunt

DOCKET NO. G-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Commission Proceeding to Implement G. S. 62-36A(b1),	)	FINAL ORDER
Which Directs the Utilities Commission to Issue Certificates	)	ASSIGNING
of Public Convenience and Necessity for Natural Gas Service	)	FRANCHISES
for All Areas of the State to Which Certificates Have Not	)	AND ISSUING
Been Issued	)	CERTIFICATES

BY THE COMMISSION: On June 12, 1995, the North Carolina General Assembly enacted Chapter 216 of the 1995 Session Laws. This legislation amends G.S. 62-36A by adding new subsection (b1). G.S. 62-36A(b1) provides as follows:

> The Commission shall issue a certificate of public convenience and necessity in accordance with the provisions of Article 6 of this Chapter for natural gas service for all areas of the State for which certificates have not been issued. Issuance of certificates shall be completed by January 1, 1997, and shall be made after a hearing process in which any person capable of providing natural gas service to an area of the State for which no certificate has been issued or for which no application has been made by July 1, 1995, may apply to the Commission to be considered for the issuance of a certificate under the provisions of this subsection. In issuing a certificate for any unfranchised area of the State, the Commission shall consider the timeliness with which each applicant could begin providing adequate, reliable, and economical service to that area, as well as any other criteria the Commission finds to be relevant, and the Commission may issue a certificate covering less than the total area applied for by an applicant. If the Commission issues a certificate covering less than the total area applied for by the applicant, the applicant may refuse the certificate. In the event that the Commission receives no applications for issuance of a certificate for service to a particular area of the State, or in the event a certificate for service to a particular area is not awarded for any reason, the Commission shall issue a certificate for that area to a person or persons to whom a certificate has already been issued.

The Commission issued an Order Instituting Certificate Proceedings on August 23, 1995, opening the present docket to implement G.S. 62-36A(b1). The Order set a date of January 1, 1996, for persons to file applications for certificates of public convenience and necessity to provide natural gas service to unfranchised areas of the State.

The Commission received two applications pursuant to that Order. On December 29, 1995, North Carolina Gas Service filed an application in Docket No. G-3, Sub 191 for a ruling that its present franchise includes all of Stokes County or, alternatively, for a certificate for all of Stokes County not already franchised to it. On that same date, Piedmont Natural Gas Company, Inc., filed an application in Docket No. G-9, Sub 372 for a certificate to serve the southwestern corner of Stokes County, or for a ruling that its present certificate allows it to extend service into southwestern

Stokes County. Those dockets were consolidated for hearing by Commission Order of February 26, 1996, and hearings were held on May 9, 1996, and June 11, 1996. The Commission will issue a decision in those dockets soon.

On May 14, 1996, the Commission issued its Order Making Preliminary Assignments of Franchises in this docket. By that Order, the Commission made preliminary assignments of all unfranchised areas of the State except the unfranchised part of Stokes County and provided for any local distribution company (LDC) wishing to do so to file protests and comments within 60 days as to the preliminary assignments. No comments were filed by any LDC.

The Commission now finds good cause to issue the present order making final assignments of all unfranchised areas of the State except the unfranchised part of Stokes County and issuing certificates of public convenience and necessity. Since no protests or comments were filed and since the Commission finds no good cause on its own motion to reassess its preliminary findings of fact and assignments, the findings of fact and assignments of franchises in this order are consistent with the preliminary findings and assignments in the Commission's May 14, 1996 Order.

FINDINGS AND CONCLUSIONS

1. North Carolina Natural Gas Corporation (NCNG) was first issued a certificate of public convenience and necessity to provide natural gas service in North Carolina in 1955. Pursuant to that certificate and subsequent orders of the Commission, NCNG has been franchised to provide natural gas service county-wide in 41 counties (Union, Stanly, Anson, Richmond, Scotland, Hoke, Harnett, Cumberland, Robeson, Bladen, Columbus, Brunswick, New Hanover, Pender, Sampson, Johnston, Wayne, Duplin, Lenoir, Jones, Onslow, Carteret, Pamlico, Craven, Pitt, Greene, Wilson, Nash, Edgecombe, Martin, Beaufort, Hyde, Washington, Bertie, Halifax, Northampton, Hertford, Gates, Chowan, Perquimanns, and Pasquotank) and to provide service in most of 2 other counties (Montgomery and Moore).

2. Public Service Company of North Carolina, Inc. (PSNC), was first issued a certificate to provide natural gas service in North Carolina in 1951. Pursuant to that certificate and subsequent orders of the Commission, PSNC has been franchised to provide natural gas service county-wide in 21 counties of the State (Haywood, Transylvania, Buncombe, Henderson, Polk, Rutherford, McDowell, Cleveland, Iredell, Cabarrus, Caswell, Orange, Chatham, Lee, Wake, Durham, Person, Granville, Franklin, Vance, and Warren) and in parts of five other counties (Alexander, Gaston, Mecklenburg, Rowan, and Alamance).

3. Piedmont Natural Gas Company, Inc. (Piedmont), was first issued a certificate to provide natural gas service in North Carolina in 1951, and pursuant to that certificate and subsequent orders of the Commission, Piedmont has been franchised to provide service county-wide in 9 counties (Burke, Caldwell, Catawba, Lincoln, Davie, Forsyth, Davidson, Guilford, and Randolph) and in parts of five other counties shared with PSNC (Alexander, Gaston, Mecklenburg, Rowan, and Alamance).

4. North Carolina Gas Service, a Division of NUI Corporation (NC Gas) first filed for Commission approval to provide natural gas service in North Carolina in 1950. In 1958, the

Commission issued an order designating all of Rockingham County and Sauratown and Beaver Island Townships in Stokes County as the service area of NC Gas.

5. Frontier Utilities of North Carolina, Inc. (Frontier), was issued a certificate of public convenience and necessity on January 30, 1996, to provide natural gas service county-wide in Watauga, Wilkes, Yadkin and Surry Counties.

6. The presently unfranchised areas of the State which are the subject of this proceeding are (1) the far western counties of Cherokee, Graham, Swain, Jackson, Macon and Clay; (2) the western counties of Madison, Yancey, Mitchell and Avery; (3) the northwestern counties of Ashe and Alleghany; (4) most of Stokes County; (5) the northeastern counties of Camden, Currituck, Dare and Tyrrell; and (6) parts of Montgomery and Moore Counties. All of Stokes County not assigned to NC Gas is unfranchised. The northern parts of Montgomery and Moore Counties above a line running from the Davidson-Randolph-Montgomery County line along Highway 109 to Troy and then easterly along Highway 27 to the Moore-Harnett County line (see the Service Area Description filed by NCNG on August 5, 1960, in Docket No. G-21, Sub 18) are unfranchised.

7. Two applications have been filed for certificates to provide natural gas service in Stokes County, one for all of the presently unfranchised part of Stokes County filed by NC Gas in Docket No. G-3, Sub 191 and one for the southwestern corner of Stokes County filed by Piedmont in Docket No. G-9, Sub 372. The Commission will issue a decision in those dockets soon. The present Order deals with the remaining unfranchised areas identified above.

8. PSNC presently has existing facilities in Haywood and Transylvania Counties nearest to the far western counties of Cherokee, Graham, Swain, Jackson, Macon and Clay. These far western counties (taken as a whole) are contiguous to the franchised territory of PSNC. PSNC's franchised territory in the area includes extensive existing facilities and utility corridors and access to the Transco interstate pipeline. The far western counties are separated from the franchised areas and existing facilities of all other LDCs by considerable distances. The far western counties of Cherokee, Graham, Swain, Jackson, Macon and Clay should be assigned to PSNC based on the factors considered herein, and a certificate of public convenience and necessity should be issued.

9. PSNC presently has existing facilities nearest to Madison County. Madison County is contiguous to Buncombe County, and PSNC already has facilities and provides service in northern Buncombe County near the Madison County line. Madison County should be assigned to PSNC based on its proximity to the existing franchised territory and facilities of PSNC in Buncombe County, and a certificate of public convenience and necessity should be issued.

10. Piedmont presently has existing facilities closest to Avery County. Avery County is contiguous to Piedmont's franchised territory in Caldwell and Burke Counties, and Piedmont has existing facilities and corridors in those counties. Although there is unoccupied territory in western Caldwell and Burke Counties, Piedmont's existing facilities and corridors in those counties are closer to Avery County than those of any other LDC. Further, considering its size and resources, Piedmont is being assigned fewer of the unfranchised counties than other LDCs. Avery County should be assigned to Piedmont, and a certificate of public convenience and necessity should be issued.

11. Yancey and Mitchell Counties are contiguous to the franchised area of PSNC. The existing facilities of PSNC and Piedmont are about equidistant to Mitchell County. PSNC has existing facilities closer to Yancey County. The Commission stated in the August 23, 1995 Order that it had preliminarily decided to assign unfranchised areas for which no applications were filed based on the proximity of existing facilities; however, upon further consideration, the Commission has concluded that Yancey and Mitchell Counties should be assigned to Piedmont. The Commission has already assigned considerable unfranchised territory to PSNC. Piedmont has been assigned only one new county other than these. Piedmont has an established expansion fund with a present balance of over $16 million. Piedmont is therefore in a better position than PSNC to extend service to Yancey and Mitchell Counties. Yancey and Mitchell Counties should be assigned to Piedmont, and a certificate of public convenience and necessity should be issued.

12. Ashe and Alleghany are contiguous to Frontier's franchised territory. Although Frontier has no existing facilities, it has plans to construct extensive facilities in its service area, and the Commission has granted Frontier a certificate to construct these facilities. Once constructed, these facilities will be closer to Ashe and Alleghany Counties than the facilities of any other LDC. It would not be logical to assign Ashe and Alleghany Counties to the LDC with the closest existing facilities since these counties are separated from the franchised territories and existing facilities of all other LDCs by considerable distances and by the franchised territory of Frontier. Ashe and Alleghany Counties should be assigned to Frontier, and a certificate of public convenience and necessity should be issued.

13. NCNG presently has existing facilities closest to the northeastern counties of Camden, Currituck, Dare and Tyrrell. These counties (as a whole) are contiguous to NCNG's existing franchised territory. These northeastern counties are separated from the franchised areas and existing facilities of all other LDCs by great distances. Although NCNG has no facilities in its presently franchised counties contiguous to these northeastern counties, its existing facilities are closer than the existing facilities of any other LDC; and it appears that its existing utility corridors in the eastern part of the State could logically be used to extend service to these counties. Camden, Currituck, Dare and Tyrrell Counties should be assigned to NCNG, and a certificate of public convenience and necessity should be issued.

14. NCNG's present franchise includes most of Montgomery and Moore Counties. NCNG provides service in these counties and in Stanly County, which is contiguous to Montgomery. The unfranchised parts of Montgomery and Moore Counties should be assigned to NCNG, and a certificate of public convenience and necessity should be issued.

DISCUSSION

In the May 14, 1996 Order issued in this docket, the Commission concluded that the most expeditious way to proceed was to assign the unfranchised areas preliminarily on the basis of factors within the Commission's knowledge. The Commission made preliminary findings of fact and assignments. These preliminary assignments were subject to any LDC's opportunity to protest and to show reasons for assigning an area preliminarily assigned to the protesting LDC to another LDC instead or assigning an area preliminarily assigned to another LDC to the protesting LDC. The

Commission allowed 60 days for such protests, but no protests or comments were filed by any LDC. The Commission therefore finds good cause to issue the present order making final findings of fact and assignments of franchises and issuing certificates of public convenience and necessity, all consistent with the preliminary order of May 14, 1996. The Commission will repeat the discussion of its decisions from the May 14, 1996 Order.

Findings 1-7 are based on the records of the Commission. These findings establish the unfranchised areas of the State which are the subject of this proceeding. The unfranchised part of Stokes County will be addressed in the context of Docket Nos. G-3, Sub 191 and G-9, Sub 372. The present Order is being issued pursuant to the directive of the General Assembly that the Commission assign areas for which the Commission receives no application for a certificate to one of the natural gas utilities already certified in the State.

Both the arrangement of the LDCs' present franchised territories and the location of existing facilities point to PSNC as the logical assignee for the six far western counties of Cherokee, Graham, Swain, Jackson, Macon and Clay. These counties (taken as a whole) are contiguous to the western service district of PSNC's franchised territory, and PSNC's existing facilities are closer than those of any other LDC. These counties are separated from the territories and facilities of all other LDCs by considerable distances. Although the Commission does not know the capacity of PSNC's existing facilities to support an extension of service, PSNC has extensive facilities in its western service district, access to the Transco interstate pipeline and utility corridors part of the way between the Transco pipeline and these counties. These counties are assigned to PSNC, and a certificate of public convenience and necessity to that effect is attached hereto as Appendix A.

Madison County is contiguous to the existing franchised territory of PSNC and closest to the facilities of PSNC. PSNC has facilities in northern Buncombe County near the Madison County line. Although the Commission does not know the capacity of these facilities to support an extension of service, they appear to provide a logical corridor for the extension of service into Madison County. Madison County is assigned to PSNC, and a certificate of public convenience and necessity to that effect is attached hereto as Appendix A.

The arrangement of franchised territories does not point to any one LDC as the logical assignee for Avery County. Avery County borders the franchised territories of PSNC, Piedmont and Frontier. The closest existing facilities are those of Piedmont, although the Commission recognizes that there is considerable unoccupied territory in western Caldwell and Burke Counties beyond the points at which Piedmont's existing facilities end. The Commission does not know the capacity of these facilities to support an extension of service, but they appear to provide a point of departure for the extension of service toward Avery County. A further consideration here is that the assignments of unfranchised territories required by G.S. 62-36A(b1) be spread among the existing LDCs. The Commission assigns Avery County to Piedmont, and a certificate of public convenience and necessity to that effect is attached hereto as Appendix B.

Yancey and Mitchell Counties are contiguous to the existing franchised territory of PSNC. Although they do not border the existing franchised territory of Piedmont, Mitchell County borders Avery, which has been assigned to Piedmont. PSNC has existing facilities closer to Yancey County

than those of any other LDC. The existing facilities of PSNC and Piedmont are about equidistant to Mitchell County. The primary considerations influencing the Commission to assign Yancey and Mitchell Counties to Piedmont are the resources available to assist in expansion to these counties and the sharing of the unfranchised areas among the LDCs. PSNC has already been assigned considerable unfranchised territory by this Order while Piedmont has been assigned little new territory. The Commission recently established an expansion fund for Piedmont with a balance of over $16 million. That is far more than the balance available in PSNC's expansion fund after the amount committed to PSNC's McDowell County project is subtracted. If expansion into Yancey, Mitchell and Avery Counties is economically infeasible, the large balance of Piedmont's expansion fund should put Piedmont in a better position to make that expansion. If expansion into these three counties is economically feasible, Piedmont may still be better able to make that expansion because of the other unfranchised territory already assigned to PSNC. The Commission assigns Yancey and Mitchell Counties to Piedmont, and a certificate of public convenience and necessity to that effect is attached hereto as Appendix B.

The Commission assigns Ashe and Alleghany Counties to Frontier. The primary consideration of the Commission is the arrangement of the presently franchised territories. Ashe and Alleghany Counties are contiguous to the existing franchised territory of Frontier and are separated from the franchised territories and existing facilities of all other LDCs by Frontier's territory and by considerable distances. Although Frontier has no existing facilities in its territory (having just been assigned its territory in January of this year and having had that assignment appealed), Frontier has plans to construct extensive facilities in its franchised territory, and once constructed, these facilities will be the closest existing facilities to Ashe and Alleghany Counties. A certificate of public convenience and necessity assigning Ashe and Alleghany Counties to Frontier is attached hereto as Appendix C.

Camden, Currituck, Dare, and Tyrrell Counties (as a whole) are contiguous to the existing franchised territory of NCNG, and they are separated from the franchised territories and existing facilities of all other LDCs by the territory of NCNG and by considerable distances. Although NCNG has no existing facilities in its presently-franchised counties contiguous to these four counties, it nonetheless has existing facilities in other counties that are closer to these four counties than the existing facilities of any other LDC. NCNG has access to segments of the Transco and Columbia interstate pipelines in northeastern North Carolina and existing corridors in the eastern part of the State that could logically be used to extend service toward these four counties. These four counties are assigned to NCNG, and a certificate of public convenience and necessity to that effect is attached hereto as Appendix D.

Finally, the Commission assigns all of the unfranchised parts of Montgomery and Moore Counties to NCNG. The arrangement of the existing franchised territories -- in this case, the assignment of the remaining parts of these counties to NCNG -- makes for the logical assignment of the rest of Montgomery and Moore Counties to NCNG. NCNG already has existing facilities in these counties and provides service in these counties. A certificate of public convenience and necessity is attached as Appendix D.

It is the intent of this Order to assign all of the presently unfranchised areas of the State except the unfranchised part of Stokes County for natural gas service. This docket shall remain open pending the assignment of the unfranchised part of Stokes County pursuant to G.S. 62-36A(b1) in either the pending certificate dockets or in the present docket.

IT IS, THEREFORE, ORDERED as follows:

1. That the unfranchised areas of the State are assigned for natural gas service as hereinabove provided and certificates of public convenience and necessity to that effect are attached hereto as Appendices A through D and

2. That this docket shall remain open pending the assignment of the unfranchised part of Stokes County.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of August 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide natural gas utility service

in

Cherokee, Graham, Swain, Jackson, Macon, Clay and Madison Counties, North Carolina

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of August 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

PIEDMONT NATURAL GAS COMPANY, INC.

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide natural gas utility service

in

Avery, Yancey and Mitchell Counties, North Carolina

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of August 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX C

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

FRONTIER UTILITIES OF NORTH CAROLINA, INC.

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide natural gas utility service

in

Ashe and Allegheny Counties, North Carolina

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of August 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX D

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

NORTH CAROLINA NATURAL GAS CORPORATION

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide natural gas utility service

in

Camden, Currituck, Dare and Tyrrell Counties and all of the previously unfranchised parts of Montgomery and Moore Counties, North Carolina

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 16th day of August 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Commission Proceeding to Implement G. S. 62-36A(b1),	)	ORDER MAKING
Which Directs the Utilities Commission to Issue Certificates	)	CONTINGENT
of Public Convenience and Necessity for Natural Gas Service	)	ASSIGNMENT
for All Areas of the State to Which Certificates Have Not	)	REGARDING
Been Issued	)	STOKES COUNTY

BY THE COMMISSION: On June 12, 1995, the North Carolina General Assembly enacted Chapter 216 of the 1995 Session Laws. This legislation generally requires the Commission to issue franchises for natural gas service for all areas of the State which have not previously been franchised by January 1, 1997. G.S. 62-36A(b1). The Commission opened this docket to implement G.S. 62-36A(b1).

On August 16, 1996, the Commission issued its Final Order in this docket assigning all of the unfranchised areas of the State except the unfranchised part of Stokes County. With respect to Stokes County, the Commission found that in 1958 it had designated Sauratown and Beaver Island Townships in Stokes County as part of the service area of NC Gas and that all of Stokes County not so assigned to NC Gas was unfranchised. The Order went on to find that two certificate applications had been filed as to Stokes County -- one for all of the presently unfranchised part of Stokes County filed by NC Gas in Docket No. G-3, Sub 191 and one for the southwest corner of Stokes County filed by Piedmont in Docket No. G-9, Sub 372 (hereinafter referred to as the certificate dockets). The Commission provided that the present docket would remain open pending the assignment of the unfranchised part of Stokes County pursuant to G.S. 62-36A(b1) in either the present docket or the certificate dockets.

The Commission issued an order on October 25, 1996, in the certificate dockets (hereinafter referred to as the October 25 Order) granting a certificate to Piedmont for the southwest corner of Stokes County and denying the application of NC Gas. The order left that portion of Stokes County not assigned to either NC Gas in 1958 or to Piedmont on October 25 unfranchised. The Commission provided that comments be filed in this docket regarding the assignment of the remaining unfranchised portion of Stokes County and that an assignment of that area for natural gas service be made after receiving the comments.

Comments were filed in this docket by NC Gas, Piedmont, and the Public Staff. NC Gas commented that the Commission should reconsider its October 25 Order and assign all of Stokes County to NC Gas. In its comments, NC Gas quoted from testimony at the hearing on the certificate dockets where an NC Gas witness was asked whether the assignment of King (in the southwest corner of the County) to Piedmont and the remainder of Stokes County to NC Gas would be an acceptable arrangement and he answered, "No." The witness went on to explain, "King is by far the largest population center in Stokes County....Given these demographics, if the city of King were

excluded from any additional territory granted to NC Gas, there would be no other population centers that would justify the expansion of our transmission facilities or the provision of a new distribution system anywhere in Stokes County in the near future." In its comments, Piedmont stated that if the Commission determines that the remainder of Stokes County should be assigned to Piedmont, Piedmont would accept the certificate. The Public Staff commented that assignment to NC Gas would probably best serve the public interest since NC Gas now has no unserved counties in its territory, but that if assignment to Piedmont is okay with both NC Gas and Piedmont, the Public Staff would not oppose such an assignment.

Soon after the comments were filed in this docket, NC Gas filed a motion in the certificate dockets asking the Commission to reconsider the October 25 Order. NC Gas stated in its motion for reconsideration that without the southwest corner of Stokes County that has been assigned to Piedmont, it cannot pay to expand service to the rest of the County even with the expansion funds available to it. The Commission has issued an order in the certificate dockets scheduling an oral argument on the motion for reconsideration. Even though that oral argument is being scheduled on an expedited basis, it is not certain that the Commission will be able to resolve the issue of reconsideration before January 1, 1997, the date by which G.S. 62-36A(b1) requires the Commission to complete assignment of all unfranchised areas of the State. In order to fulfill the Commission's obligation under G.S. 62-36A(b1), the Commission finds good cause to issue the present order making an assignment of that portion of Stokes County not assigned to either NC Gas in 1958 or Piedmont by the October 25 Order in the certificate dockets.

On the basis of the comments filed herein and matters within the knowledge of the Commission, the Commission finds good cause to assign the remaining unfranchised portion of Stokes County to Piedmont, on a contingent basis, for the following reasons. The assignment might logically be made to either NC Gas or Piedmont. NC Gas was assigned the southeast corner of the County in 1958, and Piedmont was recently assigned the southwest corner of the County. NC Gas has existing facilities in Stokes County; Piedmont has existing facilities in Forsyth County to the south and plans to extend those facilities into Stokes County in the near future. The largest population center in the presently unserved part of Stokes County is the community of King, which is in that corner of the County recently assigned to Piedmont. NC Gas has stated that without King it cannot afford to extend service to the rest of Stokes County even with the expansion funds available to it. NC Gas has presented testimony to the effect that it is not acceptable for Piedmont to get King and NC Gas to get the remainder of the County. Even though this testimony was given in the context of the certificate dockets before the October 25 Order was issued, the testimony was repeated in NC Gas's recent comments in this docket on how the remainder of the County should be assigned. NC Gas gives no indication in its comments that it wants the remaining unfranchised portion of Stokes County unless the October 25 Order is reconsidered and it is given King, too. Its comments indicate just the opposite. Based on the comments, the Commission believes that it is fair and in the best interest of the County to assign the remaining unfranchised portion of the County to the company that is assigned the community of King. Therefore, the remaining unfranchised portion of Stokes County will be assigned to Piedmont, but this assignment is contingent on the October 25 Order withstanding both the pending motion for reconsideration and any appeal that may be taken as to that Order in the certificate dockets. Should the assignment of the southwest corner of the County to Piedmont contained in the October 25 Order be reversed, either on reconsideration by the Commission or by

an appellate court decision, the Commission will reconsider the assignment that is the subject of this order.

IT IS, THEREFORE, ORDERED that the remaining unfranchised portion of Stokes County not assigned to either NC Gas in 1958 or Piedmont by the October 25 Order in the certificate dockets should be assigned to Piedmont, contingent on the October 25 Order withstanding both the pending motion for reconsideration and any appeal that may be taken as to that Order, and a certificate of public convenience and necessity to that effect is attached hereto as Appendix E.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of December, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX E

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-100, SUB 69

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

PIEDMONT NATURAL GAS COMPANY, INC.

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide natural gas utility service

in

all of the previously unfranchised parts of Stokes County, North Carolina

subject to any orders, rules, regulations, and conditions now or hereafter lawfully made by the North Carolina Utilities Commission and specifically contingent on the Order Granting Certificate to Piedmont Natural Gas Company, Inc. issued by the Commission on October 25, 1996, in Docket Nos. G-3, Sub 191 and G-9, Sub 372 withstanding both the motion for reconsideration filed in those dockets on December 2, 1996, and any appeal that may be taken as to the Order in those dockets.

ISSUED BY ORDER OF THE COMMISSION.

This the 12th day of December 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-100, SUB 70

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Rulemaking Proceeding to Implement 1995 Amendment to G.S. § 62-36A(b), Which Directs the Utilities Commission to Provide That Each Natural Gas Public Utility Shall Expand Service to All Areas of Its Franchise Territory Within Three Years or Forfeit Its Exclusive Franchise Rights	)	ORDER AMENDING RULES AND ADOPTING NEW RULE

BY THE COMMISSION: G.S. § 62-36A deals with natural gas planning, and G.S. § 62-36A(b) directs the Commission to adopt rules to implement the statute. On June 15, 1995, the North Carolina General Assembly amended G.S. § 62-36A(b) to add the following:

> These rules shall provide for expansion of service by each franchised natural gas local distribution company to all areas of its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, and shall provide that any local distribution company that the Commission determines is not providing adequate service to at least some portion of each county within its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, shall forfeit its exclusive franchise rights to that portion of its territory not being served.

The Commission instituted the present proceeding to adopt new rules to comply with the 1995 amendment to G.S. § 62-36A(b) and to consider whether any current rules should be revised. North Carolina Natural Gas Corporation (NCNG), Piedmont Natural Gas Company, Inc. (Piedmont), Public Service Company of North Carolina, Inc. (Public Service), North Carolina Gas Service, a Division of Pennsylvania and Southern Gas Company (NC Gas), Frontier Utilities of North Carolina, Inc. (Frontier), the Public Staff, and the Attorney General (AG) were designated as parties. The Carolina Utility Customers Association, Inc. (CUCA) was allowed to intervene. Comments and reply comments were filed on or about November 13, 1995, and January 19, 1996, respectively.

A fairly broad consensus was reached as to the proposed rule and rule changes set forth by NCNG in its reply comments of January 19, 1996. This proposal was supported not only by NCNG, but also by Piedmont, Public Service, NC Gas, the AG and CUCA. For convenience of discussion, this proposal will be referred to hereinafter as the LDCs' proposal.. The Public Staff took issue with some provisions of the LDCs' proposal. The Commission will not attempt to discuss all comments filed or all the ways in which the parties' positions evolved. For example, CUCA raised several constitutional issues which it believes the Commission will have to confront later, but not now. For purposes of our decisionmaking, the LDCs' proposal and the major issues raised by the Public Staff will be discussed.

First, the LDCs recommend that three present rules of the Commission be amended. Rules R6-60, R6-61, and R6-62 deal with some of the rights that attach to an LDC's franchise. It is proposed that the rules be amended to provide that these rights only attach where the LDC has exclusive franchise rights. As explained by the AG, these rule changes "are intended to clarify that an LDC gives up any territorial advantage over others interested in serving an area if it forfeits exclusive franchise rights to that area." For example, present Rule R6-60 generally provides that one LDC shall not operate in territory occupied by another LDC and that an LDC will be presumed to occupy the territory assigned to it except under certain circumstances. This rule would be amended to provide that an LDC that has forfeited its exclusive franchise rights to a territory will not be presumed to occupy that territory. Present Rule R6-61 requires an LDC to get Commission approval before constructing a pipeline (1) outside its assigned territory or (2) to a new community within its territory. This rule would be amended to require approval before constructing a pipeline (1) outside territory where the LDC has exclusive rights or (2) to a new community within territory where the LDC has exclusive rights. Finally, present Rule R6-62 provides that where one LDC's pipeline crosses a second LDC's territory, the second LDC has the right to serve local customers off the first LDC's pipeline. This rule would be amended to provide that it only applies where the second LDC has exclusive rights to the territory. No party objected to any of these changes, and the Commission finds good cause to order that present Rules R6-60, R6-61, and R6-62 be amended as shown on Appendix A attached hereto.

A new rule, designated Rule R6-63, is proposed to implement the forfeiture provisions of the 1995 amendment. The LDCs propose that the new rule be titled "Extension of Service Into Unserved Territory"; the Public Staff proposes that it be titled "Forfeiture of Exclusive Franchise Rights." The Public Staff's title seems more appropriate to the provisions of the rule, and the Commission adopts the Public Staff's title.

Subsection (a) of the new Rule R6-63 states the purpose of the rule, and subsection (b) restates the basic provisions of the statute. The first major issue raised by the Public Staff deals with subsection (c), which deals with the review procedures that the Commission will employ to decide on forfeiture. Under the LDCs' version of subsection (c), an LDC would file a report on the applicable date (i.e., for present franchise territory, July 1, 1998, and for newly assigned territory, three years after it is awarded). This report would include certain information as set forth in the LDCs' proposal. On the basis of the report, and any hearing or comments that the Commission may allow, the Commission would issue an order determining whether adequate service is being provided to a portion of each of the LDC's counties and, if not, ordering that exclusive franchise rights to unserved counties be forfeited pending further order of the Commission. The Public Staff proposes that subsection (c) be rewritten to provide that the Commission initiate a review proceeding 120 days before the applicable date, that the LDCs and other parties file "lists of the counties they believe to be in contention," and that the Commission hold a hearing and then issue an order close to the applicable date determining the counties where forfeiture applies.

The Commission agrees with some aspects of the Public Staff's proposal. The Commission agrees that the Commission should initiate the review proceedings. The Commission also agrees with the Public Staff that all parties should be allowed to participate fully in the review proceedings and should be allowed to propose counties for forfeiture of exclusive franchise rights. The LDCs'

proposal is premised on the presence of some transmission facilities or distribution system in service in a county being enough to protect the county from forfeiture. The Public Staff is not prepared to accept this proposition at the outset. The Public Staff proposes that each party be allowed to file a list of counties where forfeiture should be considered. The Commission agrees with the Public Staff on this procedural point. The Commission is not now deciding whether or not the mere presence of an in-service line somewhere in a county is enough to avoid forfeiture; we are simply deciding that any party should be allowed to raise the issue in a specific case. Based on the evidence and the specific facts of each situation, the Commission will decide whether forfeiture should be ordered. The Commission disagrees with one aspect of the Public Staff's proposal. The Public Staff proposes that the Commission commence the review proceeding before the applicable date. Since the issue is how service exists on the applicable date, the Commission believes that it is appropriate to wait until that date to commence review. The Commission has rewritten subsection (c), and the new version set out in Appendix A is adopted.

The 1995 amendment provides for forfeiture if an LDC "is not providing adequate service to at least some portion on each county within its franchise territory..." Subsection (d) defines "adequate service." Under the LDCs' proposal "adequate service" would be shown by an LDC's "placing into service a natural gas transmission pipeline or distribution system in at least some portion of the previously unserved county." As discussed above, the Commission has decided that this issue will be litigated in specific cases if raised.

The LDCs' proposed subsection (d) goes on to provide that an LDC would not have to actually be serving a county to avoid forfeiture. Under the definition of "adequate service," if an LDC is working on providing service to a portion of a county as of the applicable date, it should get a two-year grace period before forfeiture is ordered. The Public Staff agrees that there should be a grace period. Otherwise, an LDC might not even start on a project that cannot be completed by the forfeiture deadline, or an LDC might rush into a poorly designed project just to protect its claim on a county. The Commission agrees that some provision should be made for a grace period. To do otherwise might actually discourage extensions of service under some circumstances. The issue becomes what an LDC must show to be entitled to the grace period.

Under the LDCs' proposal, any of the following would qualify for the grace period:

> (ii) The initiation by the natural gas utility of a substantial amount of design process/services for the construction of natural gas facilities in the county such as preparation of engineering design for pipe size and capacity parameters, rectifier facilities, route location, materials specifications, construction specifications and engineer drawings sufficient to illustrate pipeline or distribution facilities to be built; or
>
> (iii) The acquisition by the natural gas utility of rights-of-way for the construction and operation of natural gas facilities in the county; or
>
> (iv) Construction work in progress by the natural gas utility on natural gas facilities in the county; or

(v) The filing with the Commission of an application by a natural gas utility for the use of expansion funds for the construction of natural gas facilities in the county.

The LDC would also have to provide a schedule indicating that construction of gas facilities will be completed within two years. At the end of the grace period, if the facilities are not in service or "substantially completed," a show cause will be initiated by the Commission to determine if forfeiture should be ordered. The Public Staff proposes that more be required of an LDC before the grace period is allowed. Under the Public Staff's proposed version of subsection (d), the LDC would have to show the following to get the two-year grace period:

(i) The natural gas utility has completed a substantial amount of design process/service for the construction of natural gas facilities into at least some portion of an unserved (or barely served) county, such as the preparation of engineering design for pipe size and capacity parameter, rectifier facilities, route location, materials specifications, construction specifications and drawings by an engineer sufficient to indicate the facilities to be built and has begun to acquire rights-of-way for the construction and operation of those facilities; or

(ii) the natural gas utility filed by January 1, 1998, an application that complies with the Commission's applicable orders and rules for use of expansion funds for the construction of facilities into at least some portion of an unserved (or barely served) county; and

(iii) it appears likely that the construction of the facilities described in either (i) or (ii) above will be completed and service will be provided within two years of July 1, 1998, (or three years from the date a franchise was granted, if later).

The major differences can be summarized. The Public Staff wants completion of a substantial amount of design work and commencement of right-of-way acquisition, not just the initiation of substantial design work or right-of-way acquisition. The Public Staff leaves out the provision on construction work in progress as unnecessary: by the time an LDC starts construction, it should have already done its design work and should qualify under that provision. If an LDC is relying on an application to use its expansion fund to serve a county in order to avoid forfeiture, the Public Staff wants the application filed six months before the deadline, not just by the deadline. Finally, the Public Staff includes references to "barely served" counties. Again, the Commission agrees with some of the Public Staff's proposals. The Commission agrees that a substantial amount of design work should be completed before a grace period is allowed. To allow a grace period on the basis of just the initiation of substantial design work would make it too easy for an LDC to avoid forfeiture. However, the Commission would not link this design work to the acquisition of rights-of-way since some projects may employ existing public highway rights-of-way. The Commission agrees that any application for use of an expansion fund cited to avoid forfeiture should be filed well before the applicable date since the application will take some time to process. In all cases, it must appear likely

that construction of the facilities will be completed within the two-year grace period. The Commission will not include the reference to "barely served" counties in this subsection as proposed by the Public Staff. The reference to "barely served" counties may create unnecessary confusion, and we do not believe that a general definition should be attempted. We have already provided that any party may raise an issue as to whether the extent of service in a specific county is sufficient to avoid forfeiture. Given that decision, there is no need to provide for "barely served" counties in subsection (d). The matter will be decided on an individual, case-specific basis. The Commission adopts subsection (d) with the changes discussed above.

IT IS, THEREFORE, ORDERED as follows:

1. That present Commission Rules R6-60, R6-61, and R6-62 should be, and hereby is, amended as shown on Appendix A attached hereto and

2. That new Commission Rule R6-63 as set forth on Appendix A attached hereto should be, and hereby is, adopted.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

Commissioner Duncan did not participate.

APPENDIX A

AMENDED COMMISSION RULES R6-60, R6-61, AND R6-62
(With Amendments Underlined)

R6-60. Extension of facilities into contiguous occupied territory.

No natural gas utility shall construct or operate natural gas facilities in territory occupied by and receiving similar service from another natural gas utility except upon written notice to the Commission and to the company occupying and serving the territory, opportunity for public hearing, and written approval by the Commission. Territory which has been assigned to a natural gas utility by the Commission shall be presumed occupied by it and receiving similar service from it, subject to a finding by the Commission that the authorized natural gas utility has waived or disclaimed its right to serve, or that it is not feasible for the authorized company to serve, or that service by the authorized company would be less feasible than for the applicant, or that existing service by the authorized company is inadequate or inferior and that the authorized company reasonably will not or cannot

render adequate service or that the natural gas utility has forfeited its exclusive franchise rights pursuant to a finding and order of the Commission issued under Rule R6-63.

Rule R6-61. Construction of pipeline facilities.

No natural gas utility under the jurisdiction of the Commission shall construct or operate a natural gas pipeline facility outside its designated territory to which the utility has exclusive franchise rights or to be connected to an interstate pipeline, including looping of present facilities, from an interstate supplier without having first applied in writing to, and obtained the written approval of the Commission. Such application shall clearly show that the construction proposed is economically and financially feasible, and will not be wastefully duplicative of existing or proposed construction by any other supplier of natural gas in the State, will not constitute an unfair burden upon applicant's customers in the State, and is in the public interest generally.

If the proposed pipeline facility is within a company's designated territory to which the company has exclusive franchise rights and is to a community for initial service, the natural gas facility shall notify the Commission in writing before entering upon construction or operation of the facility.

Rule R6-62. Service from facilities in another gas utility's territory.

Where a natural gas pipeline constructed, owned, or operated by a natural gas utility subject to jurisdiction of the Commission traverses territory or area designated by the Commission as the authorized territory or service area to which another natural gas utility regulated by the Commission has exclusive franchise rights, and either of said companies finds it necessary or desirable to furnish natural gas for domestic, commercial, industrial, or farm use within an area adjacent to said pipeline and within the boundaries of the territory traversed by the pipeline, the owner of the pipeline shall install the meters, regulators, and taps necessary to furnish the service and shall deliver the natural gas to the company in whose territory or area the pipeline is located at rates and under regulations from time to time filed with and approved by the Commission, and the gas utility having authority to serve in the designated area shall have the opportunity to sell and to service said domestic, commercial, industrial, or farm customers.

NEW COMMISSION RULE R6-63

Rule R6-63. Forfeiture of Exclusive Franchise Rights

(a) Purpose. – The purpose of this Rule is to implement the portion of G.S. §62-36A(b) which provides for expansion of service by each franchised natural gas local distribution company to all areas of its franchise territory within three years, and

which further provides that any local distribution company that the Commission determines is not providing adequate service to at least some portion of each county within its franchise territory by July 1, 1998 or within three years of the time the franchise territory is awarded, whichever is later, shall forfeit its exclusive franchise rights to that portion of its territory not being served.

(b) Forfeiture For Failure To Provide Service. -- Each natural gas utility shall provide for the expansion of natural gas service to at least some portion of each county within its certificated service territory, as established by the Commission, on or before the following date: (i) July 1, 1998 for certificated service territories existing on July 1, 1995, or (ii) three years after the date a certificate of public convenience and necessity is awarded for newly certificated service territories, or the natural gas utility shall be subject to forfeiture of its exclusive franchise rights to each such unserved county located within its service territory upon a finding by the Commission that the natural gas utility is not providing adequate service to at least some portion of that county on the applicable date set forth above.

(c) Review Proceedings. -- The Commission will initiate a review proceeding for each natural gas utility subject to its jurisdiction following the applicable date set forth in subsection (b)(i) or (ii) above to determine whether the utility is providing adequate service to at least some portion of each county within its franchise territory. The Commission will require the utility to file testimony, and the testimony shall include the following:

(i) A list of counties in the certificated service territory in which the natural gas utility has no transmission facilities or distribution system in service on such date;

(ii) A description of any immediate plans the natural gas utility has to serve a portion of any of the unserved counties listed;

(iii) A description of right-of-way acquisition, natural gas system design work being undertaken, or natural gas system construction work in progress by the natural gas utility on such date in any of the unserved counties listed;

(iv) Citation by case caption and docket number of any pending application before the Commission for the use of expansion funds for the construction of natural gas facilities in any of the listed unserved counties and a description of the current status of any such expansion fund project to the extent a Commission order approving the project has been issued; and

(v) Any other information the natural gas utility may wish the Commission to consider relating to its efforts to provide service to the unserved counties listed.

The Commission will allow for interventions by interested persons and will allow all intervenors to participate fully in the review proceedings. The Commission will allow the Public Staff and other intervenors to file testimony, in which they may propose that counties other than those listed by the utility be considered for forfeiture and provide support for their proposal. The Commission will schedule a hearing and will provide for public notice thereof to be given throughout the franchise territory of the utility. Following the hearing, the Commission shall issue an order in which it will determine whether the natural gas utility is providing adequate service to at least some portion of each county within its franchise territory and if the Commission finds that the utility is not providing adequate service to at least some portion of any such county, the Commission will order that the natural gas utility forfeit its exclusive franchise rights to each such county.

(d) Adequate Service. – The Commission will determine whether adequate service is being provided to at least some portion of each county in a natural gas utility's franchise territory based on the review proceedings provided in subsection (c) above. The requirement that adequate service must be provided by the applicable date set forth in subsection (b)(i) or (ii) above may be deemed to have been met for a given county even though the natural gas utility has not actually begun providing service if the following conditions are met:

(i) the natural gas utility has completed a substantial amount of design process/service for the construction of natural gas facilities into at least some portion of the county, such as the preparation of engineering design for pipe size and capacity parameter, rectifier facilities, route location, materials specifications, construction specifications and drawings by an engineer sufficient to indicate the facilities to be built; or

(ii) the natural gas utility has begun to acquire rights-of-way for the construction and operation of natural gas facilities in the county; or

(iii) by at least six months before the applicable date set forth in subsection (b)(i) or (ii) above, the natural gas utility filed an application that complies with the Commission's applicable orders and rules for use of expansion funds for the construction of facilities into at least some portion of the county; and

(iv) it appears likely that the construction of the facilities will be completed and service will be provided within two years of the applicable date set forth in subsection (b)(i) or (ii) above.

If the natural gas utility meets the above conditions, it will be given two years from the applicable date set forth in subsection (b)(i) or (ii) above to complete construction of its proposed project and begin providing service. If construction of the facilities included in the proposed project are not substantially completed at the end of the two-year period, the Commission shall issue an order requiring the utility to show cause why the Commission should not find that the requirements of G.S. § 62-36A(b) and of this Rule have not been met and why the Commission should not issue an order declaring the natural gas utility to have forfeited its exclusive franchise rights to such county in which the proposed facilities are not completed and in service.

DOCKET NO. G-100, SUB 71

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of Commission Rule	)	ORDER REVISING RULE
R6-15 -- Adjustment of Bills	)	

BY THE COMMISSION: On May 7, 1996, the Commission, acting on a petition filed by the Public Staff on April 23, 1996, issued an Order in this docket initiating a rulemaking proceeding to revise Commission Rule R6-15, which deals with local distribution companies (LDCs) adjusting bills for incorrect natural gas meter readings. The Public Staff proposed to revise some of the provisions of the Rule dealing with fast meters and nonregistering meters and to add a new provision to the Rule dealing with slow meters.

The Commission's Order designated North Carolina Natural Gas Corporation (NCNG); Piedmont Natural Gas Company, Inc. (Piedmont); Public Service Company of North Carolina, Inc (PSNC); North Carolina Gas Service, a Division of NUI Corporation (NCGas); Frontier Utilities of North Carolina, Inc; the Public Staff; and the Attorney General as parties to the proceeding and provided for comments and reply comments.

Comments were filed by NCNG, Piedmont, PSNC, and NCGas on June 7, 1996. Reply comments were filed by the Public Staff on June 21, 1996. The Public Staff agreed to several changes proposed by the LDCs. The agreed upon changes include the following:

- Rule R6-15 will be applicable to residential and small commercial customers, but not large commercial and industrial customers. Large commercial and industrial customers will deal with the LDC on a case-by-case basis as meter problems arise.
- The Rule will give customers the option of paying undercharges in equal payments over time if the undercharge exceeds $25.00.
- The threshold for making adjustments for both fast and slow meters will be $5.00.

• The existing language relating to when the date of meter error "can be definitely determined" will be changed to when the date can be "reasonably determined."

• The Rule will not apply where meter malfunction is the result of tampering by a customer.

• The phrase "or facilities charge" will be inserted in the provision that no part of the minimum bill will be subject to refund.

Two areas of disagreement remained between the Public Staff and the LDCs.

The first major disagreement is over the Public Staff's proposal that the LDCs be permitted to collect undercharges (in cases of slow meters) for a period of only one year past while the LDCs would be required to refund overcharges (in cases of fast meters) for a period of the past three years. If the date when the meter first failed cannot be determined, the billing adjustment will be limited to one year past, but if the date can be determined, the Public Staff would cut off backbilling at one year while requiring refunds for up to three years. The LDCs want to backbill for up to three years if the error has been in effect that long. They object to treating undercharges and overcharges disparately.

The LDCs generally contend that a slow meter is just as difficult to detect as a fast meter and that neither the customer nor the LDC should be given preferential treatment. They argue that limiting their recovery of undercharges to one year is shorter than the statute of limitations and would give some customers a windfall, contrary to the statute against unreasonable discrimination. The Public Staff gives several reasons for recommending a shorter period for backbilling undercharges than for refunding overcharges. First, it is the LDCs, not the customers, that have responsibility to read the meters and to test them. The LDCs can reduce their potential liability for fast meters by increasing the frequency of their testing. LDCs may become complacent about the accuracy of meters if they can backbill for an extended period of time. Second, it is the LDCs, not the customers, who have the expertise in measuring gas consumption. Third, backbilling may come as a shock to customers. Finally, the Public Staff notes that Commission Rule R8-44, the electric equivalent of Rule R6-15, provides that an electric utility may backbill undercharges for up to 150 days, but must refund overcharges for up to 12 months.

The Commission agrees with the Public Staff that the LDCs' responsibility for maintaining accurate meters provides good cause for making a distinction between the period for backbilling undercharges and the period for refunding overcharges. Such a distinction is made in Rule R8-44 dealing with electric utilities. Further, Commission Rule R7-25 dealing with billing adjustments for water utilities provides for an additional period of refunds if the water meter has not been tested as often as prescribed. The Commission will adopt the periods of backbilling and refunding proposed by the Public Staff.

The second major difference between the Public Staff and the LDCs concerns meters that are not registering at all. The Public Staff recommends that the LDCs be limited in collecting on non-registering meters to a maximum of six months. NCGas and Piedmont request 12 or 18 months; NCNG proposed that it be allowed to collect for 3 years past.

NCGas and Piedmont state that they may not be able to discover a nonregistering meter during months when heat-only customers are using no gas. They say that the period should be long enough to include a winter heating season. The Public Staff says that there are actually very few

customers who remain active on the system but experience significant periods of no usage. The Public Staff argues that heat-only customers still use gas from September to May. The Commission believes that the experience of heat-only customers may vary more than suggested by the Public Staff and that it is reasonable for the backbilling period for nonregistering meters to cover an entire year. The Commission believes that 12 months is a reasonable middle ground between the six months proposed by the Public Staff and the 18 months or 3 years proposed by some LDCs.

IT IS, THEREFORE, ORDERED that revised Commission Rule R6-15, as attached to this Order as Appendix A, should be, and hereby is, adopted as of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Appendix A

Rule R6-15. Adjustment of Bills due to Inaccurate Meters for Residential and Small Commercial Customers.

Bills which are incorrect due to meter errors where the meters in question have not been tampered with by the customer are to be adjusted as follows:

(1) Meter Accuracy. – Whenever a meter in service is tested and found to be accurate within 2%, there shall be no adjustment to the customer's bill.

(2) Billing Adjustments. – Billing adjustments due to fast or slow meters shall be calculated on the basis that the meter should be 100% accurate. The actual accuracy shall be the accuracy determined by averaging the results at the check and open rated flow.

(a) Fast Meters. – Whenever a meter in service is tested and found to have overregistered more than 2%, the utility shall adjust the customer's bill for the excess amount paid as determined below, except that the utility need not adjust the customer's bill if the excess amount paid is less than $5.00.

(i) If the time at which the error first developed or occurred can reasonably be determined, the estimated amount of overcharge is to be based on the actual period of the overcharge but not to exceed a maximum of three (3) years from the discovery of the error.

(ii) If the time at which the error first developed or occurred cannot reasonably be determined, the estimated amount of overcharge is to be based on the most recent twelve (12) month period from the discovery of the overcharge.

(iii) No part of the minimum bill or facilities charge shall be refunded.

(iv) The utility shall not be required to make refunds to more than the last two customers who purchased gas through a fast meter as defined in the rule.

(b) Slow Meters. – Whenever a meter in service is tested and found to have underregistered more than 2%, the utility shall adjust the customer's bill for the

deficient amount due as determined below except that the utility need not adjust the customer's bill if the deficient amount due is less than $5.00.

(i) Regardless of whether the time at which the error first developed can or cannot reasonably be determined, the estimated amount of undercharge may not exceed one (1) year.

(ii) When billing for the underregistered usage and the undercharge exceeds $25.00, the utility shall allow the customer the option of paying the undercharge in equal payments, without any penalty or interest charges, for a period of time equal to the period during which the meter underregistered, up to a maximum of one (1) year.

(c) Nonregistering Meters. – Whenever a meter is found to be stopped, the utility may estimate and bill the customer the proper charge for the unregistered service by reference to the customer's consumption during similar normal periods or by such method as the Commission may authorize or direct.

(i) The utility may backbill the customer from the point in time the meter stopped, up to a maximum of twelve (12) months.

(ii) When billing for the nonregistered usage, the utility shall allow the customer the option of paying the undercharge in equal payments, without any penalty or interest charges, for a period not to exceed the customer's next six (6) billing periods.

DOCKET NO. T-100, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of Commission Rule R2-37 - Commodity Description of Household Goods	))	ORDER AMENDING RULE R2-37

BY THE COMMISSION: On January 1, 1995, Federal legislation became effective which preempted the intrastate regulation of prices, routes, and services for the transportation of all property except household goods and except the transportation of passengers. The legislation specifically stated that the preemption "does not apply to the transportation of household goods, as defined in section 10102 of this title." At that time, the Federal and State definitions of household goods were essentially the same. Commission Rule R2-37 defines household goods as "...personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods. This does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants."

On December 29, 1995, Federal legislation entitled the "ICC Termination Act of 1995" was enacted. This legislation redefined the Federal definition of household goods as follows: "The term 'household goods', as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is - (A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling, or (B) arranged and paid for by another party."

The Federal definition now regulates the transportation of household items from a factory or store when these items are purchased by the householder with intent to use in his or her dwelling. Prior to the Federal preemption, the Commission classified these commodities as Group 15, retail store delivery service. Because of the preemption, however, commodities transported under Group 15 became exempt from regulation. With the new Federal definition, these commodities are once again regulated. Therefore, motor carriers holding Group 15 authority prior to the Federal preemption should be grandfathered in with existing household goods carriers to allow restricted transportation of only that property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling.

Upon consideration of the foregoing, the Commission is of the opinion that Rule R2-37 should be amended as set forth in Appendix A attached hereto to comply with the redefined Federal definition of household goods contained in the ICC Termination Act of 1995 and that all motor carriers previously granted Group 15 authority should be grandfathered in as set forth herein.

IT IS, THEREFORE, ORDERED:

1. That Commission Rule R2-37 be, and the same is hereby, amended as set forth in Appendix A attached hereto to comply with the redefined Federal definition of household goods contained in the ICC Termination Act of 1995.

2. That all motor carriers holding authority from this Commission to transport Group 15, retail store delivery service, prior to the Federal preemptive legislation which became effective January 1, 1995, be grandfathered in with existing household goods motor carriers upon receipt of an affidavit from the motor carrier advising that it is currently transporting retail store delivery goods. These motor carriers of retail store delivery goods will be granted restricted authority to only transport property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling.

3. That a copy of this Order shall be published in the Commission's Truck Calendar of Hearings, and the Chief Clerk shall also mail or provide a copy of this Order to motor carriers holding household goods authority from this Commission and all motor carriers holding Group 15, retail store delivery service, authority prior to January 1, 1995.

4. That this Order shall become effective twenty (20) days from the date of this Order unless significant comments are received from parties affected by this Order and the Commission delays the effective date of this Order to allow time to review the comments.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of July, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R2-37. Commodity description.

Group 18. Household Goods. - The term 'household goods', as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is - (A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling, or (B) arranged and paid for by another party.

DOCKET NO. T-100, SUB 38

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Revision of Commission Rule R2-37 - Commodity Description of Household Goods	))	ORDER AMENDING RULE R2-37

BY THE COMMISSION: On January 1, 1995, Federal legislation became effective which preempted the intrastate regulation of prices, routes, and services for the transportation of all property except household goods and except the transportation of passengers. The legislation specifically stated that the preemption "does not apply to the transportation of household goods, as defined in section 10102 of this title." At that time, the Federal and State definitions of household goods were essentially the same. Commission Rule R2-37 defines household goods as "...personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; furniture, fixtures, equipment and the property of stores, offices, museums, institutions, hospitals, or other establishments when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require specialized handling and equipment usually employed in moving household goods. This does not include materials used in the manufacture of furniture and the manufactured products hauled to or from such manufacturing plants."

On December 29, 1995, Federal legislation entitled the "ICC Termination Act of 1995" was enacted. This legislation redefined the Federal definition of household goods as follows: "The term 'household goods', as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is - (A) arranged and paid for by the householder, including transportation of property from a factory or store when the property is purchased by the householder with intent to use in his or her dwelling, or (B) arranged and paid for by another party."

The Federal definition now regulates the transportation of household items from a factory or store when these items are purchased by the householder with intent to use in his or her dwelling. Prior to the Federal preemption, the Commission classified these commodities as Group 15, retail store delivery service. Because of the preemption, however, commodities transported under Group 15 became exempt from regulation. With the new Federal definition, these commodities are once again regulated.

On July 26, 1996, an Order was issued in this docket amending the definition of household goods in Rule R2-37 to comply with the new Federal definition. The Order was mailed to all certificated carriers of household goods as well as those carriers holding retail store delivery service authority prior to the January 1995 Federal preemption. The Order provided that upon receipt of an affidavit from the preempted carriers advising that they are currently transporting retail store delivery goods, they would be grandfathered in with existing household goods carriers and be granted restricted authority to only transport property from a factory or store purchased by a householder with intent to use in his or her dwelling. The Order was to become effective within 20 days unless significant comments were received. On August 16, 1996, comments were filed on behalf of the North Carolina Movers' Association proposing

that the definition of household goods include two categories; one for the transportation of individual personal effects and property moved to and from dwellings and one for retail store delivery goods purchased by a householder for use in his or her dwelling. On August 22, 1996, comments were also filed by M. M. Smith Storage Warehouse, Inc., proposing the same two categories of household goods as suggested by the North Carolina Movers' Association. The reasons set forth for the two separate categories is to alleviate any confusion as to the intent of an applicant desiring to transport household goods. The majority of certificated household goods movers do not have an interest in the transportation of retail store delivery goods and would not protest these applications.

Upon consideration of the foregoing, the Commission is of the opinion that Rule R2-37 should be amended as set forth in Appendix A attached hereto to comply with the redefined Federal definition of household goods contained in the ICC Termination Act of 1995 and that all motor carriers previously granted Group 15 authority should be grandfathered in as set forth herein.

IT IS, THEREFORE, ORDERED:

1. That Commission Rule R2-37 be, and the same is hereby, amended as set forth in Appendix A attached hereto to comply with the redefined Federal definition of household goods contained in the ICC Termination Act of 1995.

2. That all motor carriers holding authority from this Commission to transport Group 15, retail store delivery service, prior to the Federal preemptive legislation which became effective January 1, 1995, and submitting an affidavit in response to the Commission's Order dated July 26, 1996, advising that it is currently transporting retail store delivery goods, be granted Group 18-B, household goods retail delivery, as defined in Appendix A attached hereto.

3. That a copy of this Order shall be published in the Commission's Truck Calendar of Hearings, and the Chief Clerk shall also mail or provide a copy of this Order to all motor carriers holding household goods authority from this Commission and all motor carriers granted Group 18-B, household goods retail delivery, described in Ordering Paragraph 2 above.

4. That, prior to commencing operations under the Group 18-B authority granted herein, all motor carriers shall file with the North Carolina Division of Motor Vehicles, Motor Carrier Regulatory Unit, evidence of the required liability and cargo insurance, list of equipment, designation of process agent, and shall also file with the North Carolina Utilities Commission, Transportation Rates Division, Public Staff, a tariff of rates and charges and otherwise comply with the rules and regulations of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of September, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R2-37. Commodity description.

Group 18-A. Household Goods. - The term 'household goods', as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is arranged and paid for by the householder or another party.

Group 18-B. Household Goods Retail Delivery. - The term 'household goods retail delivery', as used in connection with transportation, means property or goods from a factory or store purchased by a householder with intent to use in his or her dwelling and the transportation is arranged and paid for by the householder or another party.

DOCKET NO. R-71, SUB 214
DOCKET NO. R-100, SUB 3

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. R-71, Sub 214	)	
	)	
In the Matter of	)	
Mavis B. Kornegay, Post Office Box 433, Pine Level, North Carolina 27568-0433 and Ross W. Lampe, President, Guy C. Lee Manufacturing Company, Post Office Box 1457, Smithfield, North Carolina 27577,	)	
Complainants	)	
v.	)	
	)	
CSX Transportation, Inc., formally Seaboard Railroad, 500 Water Street, Jacksonville, Florida 32202,	)	ORDER CANCELING HEARING, DISMISSING COMPLAINT AND CLOSING DOCKETS
	)	
Respondent	)	
	)	
and	)	
	)	
Docket No. R-100, Sub 3	)	
	)	
In the Matter of	)	
The ICC Termination Act of 1995 and Its Effect on the North Carolina Utilities Commission's Jurisdiction in Complaint Cases Involving Private Crossing Disputes	)	

BY THE COMMISSION: On October 3, 1995, the North Carolina Utilities Commission (NCUC or Commission) issued an Order Serving Complaint in Docket R-71, Sub 214. A Motion For Extension of Time to Respond was filed by the Respondent with the Chief Clerk of the Commission on October 18, 1995. An Order Granting Extension of Time for the Respondent to file its Answer was issued by the Commission on October 19, 1995. On December 28, 1995, the Complainant, through counsel, filed an Amended Complaint. The Commission issued an Order Serving Amended Complaint on January 2, 1996. On February 1, 1996, an Order Serving Answer to the Amended Complaint And Renewed Motion To Dismiss was mailed by the Commission.

By letter dated February 6, 1996, from R. Lyle Key, Jr., Assistant General Counsel for CSX Transportation, Inc. and delivered to Chairman Hugh A. Wells on February 19, 1996, the Commission was informed of Federal legislation entitled the ICC Termination Act of 1995 ("the Act"). The Act placed

exclusive jurisdiction over services and facilities of rail carriers in addition to pre-existing jurisdiction over rates, classification, rules, practices and routes in a newly-created, ***Surface Transportation Board***, which replaced the ICC. On March 22, 1996, the Respondent in the Kornegay case, by and through its attorney, filed a Memorandum of Additional Authority in support of its Motion to Dismiss for Lack of Subject Matter Jurisdiction citing the Act itself.

The first order scheduling hearing in the Kornegay case was issued by the Commission on December 14 , 1995, setting the hearing for Tuesday, February 27, 1996. On February 26, 1996, the Hearing Examiner issued an Order canceling the Tuesday, February 27, 1996 hearing and rescheduled a Hearing on the Complaint for Tuesday, April 30, 1996. On March 21, 1996, an Order Canceling Hearing on Complaint Scheduled For Tuesday, April 30, 1996, and Continuing the Hearing Indefinitely was issued in, Docket No. R-71, Sub 214, until such time as the Commission had ruled on the jurisdiction issue. In an effort to assist all interested parties in establishing time guidelines, an order was issued by the Hearing Examiner on May 30, 1996, rescheduling a Hearing on the Complaint in, Docket No. R-71, Sub 214, for Wednesday, August 7, 1996.

Because of the letter to the Chairman and the Federal legislation, the Chairman deemed it appropriate to convene a generic proceeding for the purpose of investigating the effect of the Act on the Commission's jurisdiction in complaint cases involving private crossing disputes. Thus, Docket R-100, Sub 3 was created.

On February 29, 1996, an order was issued in Docket No. R-100, Sub 3, requesting comments on the Act granting thirty (30) days for initial comments and fifteen (15) days for any reply comments. As parties to the proceedings in Docket No. R-4, Sub 174, the Complainant and Respondent, procedurally, were not required to file a petition to intervene in Docket No. R-100, Sub 3. Other interested persons were allowed to petition to intervene at the time they filed their comments.

Although a number of comments and replies were received from the parties, various railroad companies and other interested persons during the period for initial comments and replies, no comments were received from the Public Staff or the Attorney General.

On May 3,1996, the Chairman issued an Order Requesting Comments From The Public Staff and Attorney General. The comments were to address: (1) whether jurisdiction of the North Carolina Utilities Commission to hear complaint cases involving private crossing disputes has been preempted by the ICC Termination Act of 1995, specifically subsections 10501 (b)(1) and (b)(2) of the Act addressing jurisdiction; and (2) if the Act does not, in fact, preempt the Commission's jurisdiction in private crossing complaint cases, then what specific statute(s) and/or case law is the basis for the Commission's jurisdiction in complaint cases involving private crossing disputes and indicate the express language and/or rationale which leads to such a conclusion.

The Comments were received in the office of the Commission's Chief Clerk on June 24, 1996. On July 3, 1996, the Respondent, CSX Transportation, Inc., filed a Reply to the comments of the Attorney General and Public Staff.

ANALYSIS

The Public Staff concluded that private crossings over rails were a matter of safety which falls under the jurisdiction of the ***Federal Railroad Administration*** ("FRA") and not the ***Surface Transportation Board*** ("STB"). The FRA has not chosen to exercise its jurisdiction in this area, therefore, state regulation of private crossings has not been preempted. In response to the second issue, the Public Staff concluded that the Commission only has such powers as are granted it by statute and that no statute gives the Commission jurisdiction over railroad grade crossings. In conclusion, the Public Staff asserted that although the Commission's jurisdiction is not preempted by the Act, the Commission nevertheless has no jurisdiction over the subject matter.

The Response of the Attorney General inferred that although the intent of Congress may have been to preempt all state jurisdiction over railroads, the Act as enacted allows states to maintain jurisdiction over "rail matters that involve police power and concerns about public health and safety, concerns to which railroad crossings are clearly pertinent." Moreover, the Attorney General stated that the FRA currently carries out the Railroad Safety Act which it contends does not preempt jurisdiction over rail crossings.

Thus, the Public Staff and the Attorney General were in agreement that the Act does not preempt the state's jurisdiction over private crossings. However, the Attorney General adopted a position contrary to the Public Staff when it addressed the issue of jurisdiction on behalf of the Commission in re private crossings. Notwithstanding the effect of the Act, the Attorney General concluded, the North Carolina Department of Transportation (NCDOT) has jurisdiction over crossings on the state highway system, municipalities have jurisdiction over crossings within municipal boundaries, and jurisdiction over private crossings not over state or city roads has traditionally been considered to belong to the Commission. The Attorney General argues that the Commission's jurisdiction to regulate private rail crossings falls under the Commission's police power to regulate hazardous rail conditions. Basically, the Attorney General's assertion of jurisdiction by the Commission over private crossings is grounded in safety concerns by the Commission.

Finally, on June 21, 1996, the General Assembly of North Carolina ratified House Bill 1172 entitled "An Act To Transfer The Rail Safety Section From The Utilities Commission To The Department of Transportation And To Direct The Secretary of Transportation To Study The Need For Continuation of The Rail Safety Inspection Program." The Bill amends N.C.G.S. 62-41 and deletes the term railroad from the statute. Effectively, this law takes the power to regulate the safety of railroads from the Commission and vests it in NCDOT. As a result of the ratification of the Bill, which became effective 1 July 1996, the Commission no longer has jurisdiction over private rail crossings based on safety.

CONCLUSION

The Commission, therefore, finds the ICC Termination ACT of 1995 does ***not*** preempt the state's jurisdiction over cases involving private rail crossings, however, the Commission ***is*** preempted from asserting jurisdiction in complaint cases involving private crossings as a result of House Bill 1172.

The Commission finds good cause to: (1) cancel the hearing in Docket No. R-71, Sub 214, scheduled for Wednesday, August 7, 1996, at 9:30 a.m., Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina ; (2) dismiss the complaint in Docket No. R-71, Sub 214; and (3) close Docket Nos. R-71, Sub 214 and R-100, Sub 3.

IT IS, THEREFORE, ORDERED as follows :

1. That the hearing in Docket No. R-71, Sub 214, scheduled for Wednesday, August 7, 1996, at 9:30 a.m., Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina be, and the same is hereby, canceled.

2. That the complaint in Docket No. R-71, Sub 214 be, and the same is hereby, dismissed.

3. That Docket Nos. R-71, Sub 214 and R-100, Sub 3 be, and the same are hereby, closed.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of July , 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation to Consider Whether Competitive Long Distance Telephone Service Should be Allowed in North Carolina and What Rules and Regulations Should be Applicable to Such Competition if Authorized	))))	ORDER CONCERNING REDUCED REGULATION FOR SWITCHLESS RESELLERS

BY THE COMMISSION: On October 23, 1995, the Public Staff filed a Petition for Changes in the Regulation of Switchless Long Distance Resellers. The Public Staff noted that G.S. 62-110(b) authorizes the Commission to issue certificates to interexchange carriers (IXCs) but also authorizes the Commission to regulate IXCs "in accordance with the public interest."

a. Background of Petition

As background to its petition, the Public Staff noted that in its February 22, 1985, Order in Docket No. P-100, Sub 72, concerning long distance competition, the Commission had set out the initial requirements for IXCs seeking certification as follows:

a. Fitness;
b. Financial stability;
c. Technical ability to offer the proposed service;
d. The nature of the proposed service to be offered;
e. A clear definition of the geographical area and routes to be initially served;
f. Tariffs reflecting services to be offered, including rates and regulations applicable to each service;
g. Minimal rate justification to the extent necessary to establish that the proposed rates are competitive;
h. A plan detailing the applicant's proposed methodology for determining the monthly quantity of intrastate (interLATA and intraLATA) access minutes on its system in North Carolina;
i. A nonresale applicant shall file its proposed plan for determining the unauthorized intraLATA conversation minutes occurring on its facilities each month;
j. A plan detailing the applicant's proposed accounting methodology and necessary allocation procedures required to provide to the Commission the North Carolina intrastate jurisdictional financial operating results of the company;

k. A statement that the applicant agrees to abide by all applicable rules and regulations of the Commission and the findings, conclusions, terms, and conditions set forth in pertinent Commission orders; and

l. The application shall be verified and sponsored by an appropriate officer or representative of the applicant who is familiar with the information set forth herein.

The Commission further concluded in that Order that applicants for interLATA long distance service would not be required to offer documentation to establish that the proposed service will be required to serve the public interest effectively and adequately, because the Commission had already found and concluded that authorization of interLATA long distance competition is in the public interest.

b. Later Modifications in Requirements for IXCs

The Public Staff stated that the requirement that an applicant provide a plan to determine the unauthorized intraLATA conversation minutes occurring on its facilities was intended to ensure that applicants could pay compensation to the local exchange companies (LECs) for the completion of unauthorized intraLATA calls. In subsequent orders, the Commission authorized competition for intraLATA long distance service, first through the resale of LEC facilities and eventually through the use of a long distance company's own facilities. The requirement that compensation be paid to the LECs for unauthorized intraLATA conversation minutes was eliminated effective July 1, 1994. Thus, the need for determining the unauthorized intraLATA conversation minutes occurring on an applicant's facilities each month was eliminated by subsequent Commission orders.

In its December 9, 1993, Order in this docket, the Commission eliminated financial reporting requirements for all IXCs except those relating directly to the payment and reconciliation of the regulatory fees as provided for in G.S. 62-302 and administered under NCUC Rule R15-1. The effect of this Order on the certification process was to eliminate the need for an applicant to be able to determine its North Carolina intrastate jurisdictional financial operating results. However, the Order did not eliminate the need for an applicant to be able to determine its North Carolina intrastate jurisdictional operating revenues.

c. Switchless Resellers

1. Generally

A Recommended Order was issued on October 4, 1990, in Docket No. P-203 granting a certificate of public convenience and necessity to Precision Data International, Inc., d/b/a PACECOM. This Recommended Order, which became final and effective on October 24, 1990, was the first certificate to an IXC categorized as a switchless reseller. Since then, most of the IXCs granted certificates have been switchless resellers. As of the date of the Public Staff's petition, there were approximately 73 switchless resellers certified to provide intrastate long distance service in North Carolina.

The Public Staff stated that switchless resellers are IXCs which own no switching or transmission facilities at all. They provide service to end users by purchasing a tariffed service offering from an underlying IXC. The underlying IXC, in turn, provides all of the switching and transmission functions as a part of its provision of the service offering. Examples of these switchless resellers are those who utilize

the Software Defined Network (SDN) or Distributed Network Services (DNS) offerings of AT&T Communications.

Another characteristic of switchless resellers is that they need very little technical experience concerning the actual operation of a telecommunications network. Instead, switchless resellers rely on the abilities of the underlying IXC to provision and operate the network. Switchless resellers essentially take orders for long distance service and coordinate the billing of service to end users. In some cases, the switchless reseller itself bills for service to the end user; in other cases, it relies on a third party to bill for service on its behalf.

The manner in which switchless resellers operate limits their ability to ascertain the quantity of intrastate (interLATA and intraLATA) access minutes occurring on their systems in North Carolina. Indeed, to be able to provide this information, most switchless resellers would first have to obtain the information from their underlying IXC, who already provides the information to the LECs. In addition, there is no need for this information since very few switchless resellers purchase switched access from the LECs. As a result, switchless resellers typically request a waiver of the requirement to file a plan for determining the intrastate access minutes occurring on their systems. The Public Staff does not oppose such requests, and waivers are routinely allowed.

In a few instances, switchless reseller applicants have indicated that they will purchase originating switched access from the LECs to send calls to their underlying IXC for routing and termination. These switchless resellers purchase Feature Group D switched access from the LECs. There is no need for IXCs purchasing Feature Group D access to demonstrate an ability to ascertain the jurisdiction of the access minutes, because the LECs have this capability.

2. Proposed Exemptions

The Public Staff pointed out that switchless resellers have been considered a distinct class of IXC by the Commission. Because of their characteristics, the Public Staff believes that exempting switchless resellers from certain statutory requirements and Commission rules currently applicable to IXCs will not harm the public interest. The Public Staff therefore recommended that switchless resellers be exempt from the following statutes and rules:

G.S. 62-130 - Commission to make rates for public utilities
G.S. 62-131 - Rates must be just and reasonable and service efficient
G.S. 62-132 - Rates established under this chapter deemed just and reasonable; remedy for collection of unjust or unreasonable rates
G.S. 62-134 - Change of rates; notice; suspension and investigation
G.S. 62-135 - Temporary rates under bond
G.S. 62-136 - Investigation of existing rates; changing unreasonable rates; certain refunds to be distributed to customers
G.S. 62-137 - Scope of rate case
G.S. 62-138 - Utilities to file rates, service regulations and service contracts with Commission; publications; certain telephone service prohibited

G.S. 62-139 - Rates varying from schedule prohibited; refunding overcharges; penalty
G.S. 62-142 - Contracts as to rates
G.S. 62-143 - Schedule of rates to be evidence
G.S. 62-153 - Contracts of public utilities with certain companies for services
G.S. 62-160 - 179 - Securities regulations
Rule R9-1 - Safety rules and regulations
Rule R9-4 - Filing of telephone and telegraph tariffs and maps

The Public Staff's proposal to exempt switchless resellers from the above statutory requirements and Commission rules primarily affects two areas of regulation to which switchless resellers are now subject: tariff filing requirements and securities regulation.

Under the Public Staff's recommendation, switchless resellers would no longer file tariffs reflecting their rates and charges. The Public Staff noted that, in most cases, the rates of switchless resellers are equal to or less than AT&T's basic long distance rates. The rates of switchless resellers offering flat per-minute usage rates typically match the undiscounted flat rates for the service being provided by the underlying IXCs. Additionally, the Public Staff has received few complaints regarding the rates being charged by switchless resellers. Under these circumstances, the public interest does not require regulation of securities issued and obligations and liabilities assumed by switchless resellers.

3. Continuing Requirements

However, the Public Staff stated that exemption from tariff filing requirements should not be construed as permitting switchless resellers to provide service in an unreasonably discriminatory manner, which is prohibited by G.S. 62-140. Nor should an exemption from filing tariffs exempt switchless resellers from complying with the Commission's rules and regulations concerning deposit requirements. The Public Staff thus agreed that switchless resellers should continue to be required to provide service in a manner that is not unreasonably discriminatory and to abide by the Commission's rules in Chapter 12 concerning deposit requirements and billing practices. Switchless resellers should also be required to give their customers notice of rate increases and reductions in service through bill inserts or separate mailings.

Exemption from securities regulation would not eliminate the need to obtain Commission approval for mergers or certificate transfers involving switchless resellers. A switchless reseller should still be required to obtain Commission approval prior to selling part or all of its customer base.

4. Streamlined Certification

In addition to exempting switchless resellers from certain statutory requirements and Commission rules, the Public Staff maintained that the certification process can be streamlined for switchless resellers without adversely affecting the public interest. Attached to the Public Staff's petition as Appendix A was a proposed certification form for use by switchless resellers when applying for a certificate of public convenience and necessity.

With the certification form properly filled out, the Public Staff pointed out that a public hearing will be unnecessary unless requested by a party to the proceeding. As is currently done with Customer Owned Coin Operated Telephone (COCOT) certificate applications, the Public Staff will simply inform the Commission when the application has been perfected and a certificate can then be issued to the switchless reseller.

Instances in which the Public Staff believes a hearing might be necessary include cases where the Public Staff has reason to believe that the switchless reseller may intend to operate as an Alternative Operator Service (AOS) provider, has operated in violation of a statute or Commission rule, or where the Public Staff and the switchless reseller cannot agree on whether the requirements set forth in the application have been met. However, the Public Staff expects that public hearings will be requested on only a small percentage of total applications.

The Public Staff also recommended that switchless resellers submitting applications should be exempt from NCUC Rule R1-5(d), which requires that pleadings filed on behalf of a corporation be filed by a member of the Bar of the State of North Carolina. However, public hearings on switchless reseller applications would still have to be conducted in accordance with G.S. 84-4 and G.S. 84-4.1 concerning the practice of law before the Commission.

The proposed certification application form for switchless resellers includes statutory references and Commission requirements that are applicable to their operations. This information should enable switchless resellers to better understand their obligations when operating in North Carolina. In addition, the form clearly spells out the information needed to ascertain whether the switchless reseller applicant has met the requirements in G.S. 62-110(b). The form also requires information which will enable the Commission and Public Staff to contact the company should any questions or complaints arise.

d. October 24, 1995, Order

On October 24, 1995, the Commission issued an Order Instituting Investigation and Requesting Comments on the petition of the Public Staff. The following parties submitted initial and/or reply comments on the subject of reduced regulation for switchless resellers: Automated Communications, Inc., d/b/a AC America, Inc. (ACI); AT&T Communications of the Southern States, Inc. (AT&T); Time Warner Communications of North Carolina, L.P. (Time Warner); The Telecommunications Resellers Association (TRA); Business Telecom, Inc. (BTI); and the Public Staff.

e. Comments

ACI concurred with the Public Staff's proposal for reduced regulation and streamlined certification for switchless resellers. ACI suggested that switchless resellers should not be required to advise customers of rate reductions.

Time Warner supported the Public Staff petition.

TRA was generally supportive of the Public Staff proposal with some modifications:

1. Streamlined regulation should apply to "hybrid" providers–those who are both switchless reseller and facilities-based or switch based–so long as the hybrid is providing service in North Carolina solely as a switchless reseller.

2. Switchless resellers should be permitted to file information tariffs or price lists on a voluntary basis.

3. The application form should clarify the applicability of the Commission's penalty policy enunciated in Docket No. P-100, Sub 72, on April 14, 1993.

f. Reply Comments

The Public Staff summarized the comments of parties. With respect to ACI's suggestion concerning customer notices, the Public Staff said that its proposal does not include rate reductions but refers to reductions in service. A reduction in service occurs when a service is discontinued or its availability reduced. The Public Staff concurred with TRA's suggestion regarding "hybrid" resellers that the way the reseller provides intrastate service in North Carolina should be determinative of whether it is a switchless reseller. However, the Public Staff disagreed with TRA's views regarding optional tariffs or price lists. Since the rates would not be subject to regulation, tariff filings would simply be an unnecessary burden to the Public Staff and Commission. Finally, the Public Staff stated that its proposal did not contemplate any change in policy concerning the Commission's April 14, 1993, Order in this docket regarding penalties.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission concludes that the Public Staff's proposal for reduced regulation of switchless resellers as set out in its October 23, 1995, petition and as clarified in its December 15, 1995, reply comments should be adopted.

The Commission finds that the public interest would in no way be harmed–indeed, would be served–if the Commission eliminated a number of regulatory requirements from switchless resellers as set out below and promulgated a streamlined procedure for certification.[1] However, it should be noted that switchless resellers will still be subject to various regulations, including, but not limited to:

1. Payment of the regulatory fee
2. Commission prior approval of mergers and transfers

[1]As a point of clarification concerning so-called "hybrid" providers–those who are both switchless and facilities-based or switched-based–the Commission concludes that such hybrids should be considered switchless for North Carolina purposes as long as they are providing service in North Carolina solely as switchless resellers.

3. Prohibition against unreasonable discrimination
4. Deposit requirements
5. Regulation of billing practices
6. Customer notice of rate increases and reductions in service by way of bill inserts or separate mailing at least 14 days prior to the effective date of the increase or service reduction or discontinuance of service
7. The Commission's penalty policy enunciated in Docket No. P-100, Sub 72, on April 14, 1993.

Thus, switchless resellers will be subject to reduced regulation but will not be deregulated.

IT IS, THEREFORE, ORDERED as follows:

1. That switchless resellers of intrastate interexchange telecommunications services in North Carolina be exempt from the following statutes and rules:

a. G.S. 62-130
b. G.S. 62-131
c. G.S. 62-132
d. G.S. 62-134
e. G.S. 62-135
f. G.S. 62-136
g. G.S. 62-137
h. G.S. 62-138
i. G.S. 62-139
j. G.S. 62-142
k. G.S. 62-143
l. G.S. 62-153
m. G.S. 62-160 through 62-179
n. Rule R9-1
o. Rule R9-4

2. That persons desiring to provide intrastate interexchange telecommunications services in North Carolina as switchless resellers shall complete and submit the application set out herein as Appendix A, together with required exhibits.

3. That the tariffs both effective and pending of certified switchless resellers providing intrastate interexchange telecommunications services be deemed to be withdrawn.

4. That the following hearings be canceled: Budget Call Long Distance, Inc., Docket No. P-483, GTE Telecommunications Services, Inc., Docket No. P-431, January 24, 1996; MTC Telemanagement Corporation, Docket No. P-488, January 31, 1996; and LDC Telecommunications, Inc., Docket No. P-470, February 1, 1996. Such applicants shall amend their applications by submitting such information, including the affidavit, as may be required by the application set out in Appendix A to the extent they have

not already done so and by withdrawing such filings as are no longer necessary. No additional filing fee shall be required.

5. That other persons with applications pending to provide intrastate interexchange telecommunications services as switchless resellers in North Carolina amend their applications by submitting such information, including the affidavit, as may be required by the application set out herein in Appendix A to the extent they have not already done so and by withdrawing such filings as are no longer necessary. No additional filing fee shall be required.

6. That the certificate of public convenience and necessity authorizing the provision of intrastate interexchange telecommunications services as switchless resellers in North Carolina be in the form set out in Appendix B.

7. That the Chief Clerk send a copy of this Order to all persons with applications pending to provide intrastate interexchange telecommunications services. Applicants which are switchless resellers may utilize Appendix A as an application form.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of January 1996.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Geneva S. Thigpen, Chief Clerk

(For a copy of Appendices A & B see Official Copy of Order in Chief Clerk's Office.)

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Investigation to Consider Whether Competitive Long Distance Telephone Service Should Be Allowed in North Carolina and What Rules and Regulations Should Be Applicable to Such Competition if Authorized	)))))	ORDER CONCERNING PENALTIES FOR AGGRAVATING CIRCUMSTANCES AND REFUNDS

BY THE COMMISSION: On April 14, 1993, and May 26, 1993, the Commission adopted a penalties policy for illegal intrastate operations by interexchange carries (IXCs). This policy provides for a penalty of $3,000 for the first month and $2,000 for each additional month, with an additional amount up to $10,000 upon a showing of aggravating circumstances. In cases where the total intrastate revenues

collected by the IXC are less than the penalty it would otherwise incur, the IXC can elect to pay a penalty equivalent to the total intrastate revenues for the relevant time period.

On March 21, 1996, the Public Staff filed a motion concerning penalties which proposed guidelines for assessing the aggravating circumstances portion of a penalty assessed against switchless resellers in cases involving falsification of information in applications. This would be in addition to the regular penalty. The guidelines are as follows:

Level 1: $1,000
Service was provided to less than 10 customers or locations, and/or for less than three months, and/or for revenues less than $1,000.

Level 2: $2,500
Service was provided to less than 50 customers or locations, and/or for less than six months, and/or for revenues less than $5,000.

Level 3: $5,000
Service was provided to less than 100 customers or locations, and/or for less than 12 months, and/or for revenues less than $10,000.

Level 4: $10,000
Service was provided to more than 100 customers or locations, and/or for more than 12 months, and/or for revenues more than $10,000.

In support of its proposal, the Public Staff noted that it has received nearly 48 applications from switchless resellers since the Commission's January 10, 1996, Order reducing regulation and streamlining procedure. Three applicants state that they have provided intrastate service and 45 state that they have not. However, on the basis of information obtained, the Public Staff believes that 12 applicants who state they have not been providing intrastate service have in fact been doing so. The Public Staff argued that such a falsification constitutes an aggravating circumstance warranting a further penalty.

The Public Staff stated that, unless otherwise directed, it intends to use these ranges in its recommendations regarding switchless reseller applications until the Commission rules on the motion. The Public Staff requested that the Commission accept these recommendations on an interim basis and adopt them permanently after notice and comment.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission finds the Public Staff's proposal to be a reasonable approach to the problem setting out a predictable standard regarding falsification of information in applications by switchless resellers, the Public Staff, and the Commission alike. The processing of switchless reseller applications generally benefits from a regularized procedure.

The Commission further concludes that it can and should adopt the Public Staff's recommended guidelines immediately without further comment. These standards simply represent a refinement of the already existing standard (up to $10,000 for aggravating circumstances) adopted after notice and comment and its adoption here is discretionary with the Commission.

Finally, the Commission takes this opportunity to clarify an aspect of its April 14, 1993, and May 26, 1993, Orders in this docket. The Commission cannot by rule or order repeal G.S. 62-139(a) authorizing refunds. Although the Commission has adopted a penalties requirement as a matter of policy and will continue to maintain this as a general policy, this should not be construed as preventing the Public Staff or the Commission on its own motion from seeking refunds for end-users in appropriate circumstances.

IT IS, THEREFORE, ORDERED as follows:

1. That the policy proposed by the Public Staff in its March 21, 1996, motion in this docket concerning the penalties for aggravating circumstances with respect to the falsification of information in applications by switchless resellers be adopted.

2. That the penalties policy in the Commission's April 14, 1993, and May 26, 1993, Orders be clarified to acknowledge the option of refunds in appropriate circumstances as set out above.

ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
BTI Proposal for Amendment of Commission Rule R12-9(d)	))	ORDER AMENDING RULE R12-9(d)

BY THE COMMISSION: On October 11, 1995, Business Telecom, Inc. (BTI), filed a Petition for Rule Amendment to Rule R12-9(d). BTI noted that Rule R12-9(d) currently limits the amount of finance charges a utility may impose on delinquent payments to 1% per month. BTI argued that this limit should be raised to 1 1/2% per month for certified long distance carriers with respect to non-residential accounts. BTI argued, among other points, that a 1 1/2% per month finance charge is commonly applied by nonutilities, that the interexchange market is highly competitive and thus distinguishable from other classes of utilities, and that the current 1% limit puts companies such as BTI at a competitive disadvantage concerning timely collections.

Rule R12-9(d) currently reads as follows:

> (d) Finance Charges. -- No interest, finance, or service charge for the extension of credit shall be imposed upon the consumer or creditor if the account is paid within twenty-five (25) days from the billing date. No utility shall apply a late payment, interest, or finance charge to the balance in arrears at the rate of more than 1% per month. The bill shall clearly state the interest rate. All utilities applying an interest, finance or service charge must file tariff provisions to that effect and must apply said finance charge on a uniform basis, applicable to all customers and all classes of service.

I. October 24, 1995, Order

On October 24, 1995, the Commission issued an Order Instituting Investigation and Requesting Comments on the petition of BTI. The following parties submitted initial and/or reply comments: Automated Communications, Inc., d/b/a AC America, Inc. (ACI); AT&T Communications of the Southern States, Inc. (AT&T); Time Warner Communications of North Carolina, L.P. (Time Warner); the Telecommunications Resellers Association (TRA); Business Telecom, Inc. (BTI); the Attorney General; and the Public Staff.

II. Comments

ACI concurred with BTI's proposed amendment to Rule R12-(d).

Time Warner also supported BTI's petition.

AT&T spoke only to the BTI proposal and supported it. However, AT&T suggested that the increased finance charge be applicable to residential, as well as non-residential, customers.

The Public Staff likewise addressed only the BTI proposal, recommending that it be denied on the grounds that it is contrary to the intent of the rule and is otherwise unjustified. Reviewing the history of Docket No. M-100, Sub 39, in which this rule was adopted in 1972, the Public Staff argued that the purpose of the rule was to provide uniform billing procedures by all public utilities and BTI had neither sufficiently distinguished long distance companies from other utilities nor presented quantifiable evidence of the harm it is purported to be suffering from the current rate nor how its proposed increase will solve its problems. The Public Staff rejected analogies to finance charge rates allowed in G.S. 24-14 and G.S. 53-176, arguing out that the charge in Rule R12-9(d) is a rate as defined by G.S. 62-3(24), not interest. The Public Staff maintained that the existing 1% late payment charge is a sufficient inducement for utility customers to promptly pay their bills.

TRA concurred with BTI's recommendation regarding Rule R12-9(d) and suggested the Commission may wish to extend the reduced regulatory approach proposed for switchless resellers to all non-dominant interexchange carriers.

III. Reply Comments

The Public Staff noted that the other commenters supported BTI's proposal. The Public Staff was concerned that approval of BTI's proposal would create inconsistencies as between different utilities by permitting different late fees.

BTI argued that such factors as greater usage and incidence of late charges for non-residential customers constitute reasonable grounds under G.S. 62-140 to distinguish the late payment charge as between residential and non-residential customers. BTI also reviewed aspects of the 1972 Order noting that the Order dealt with a full range of business practices and that docket indicated concern that residential customers were being charged more in late fees than non-residential customers. BTI argued that the evidence and common sense suggest that a disparity in favor of residential customers is justified and reasonable. BTI also reiterated that long distance companies are in a distinctly competitive environment as opposed to electric, gas and even local telephone service and can thus be treated differently. BTI suggested that, given a 35% rate of late payment in BTI's non-residential customers, 1% has not proven to be a sufficient inducement. Many states do not even impose a limit on late charges. BTI suggested that an oral argument be scheduled on its petition.

On January 5, 1996, the Attorney General filed a motion to file comments out of time, which was granted. The Attorney General concurred with the Public Staff's reasoning and made two additional points: first, that the accounts for which BTI seeks to increase the late payment fee are not credit accounts, but accounts due and payable on the billing date, for which the long distance company can terminate service for nonpayment; and, second, that the R12-9(d) charge is intended to cover the cost of the late payment. For this purpose, a 1% charge per month is more than sufficient.

IV. Oral Argument

On April 1, 1996, an oral argument was held on BTI's petition. Representatives of BTI, AT&T, Time Warner, the Public Staff and the Attorney General were present.

The gist of BTI's argument at the hearing was that a large percentage of its customers--approximately 35%--pay late, with about 2% being terminated and that a further incentive in the form of an increased late payment charge is needed to induce more prompt payment. BTI argued that its request did not constitute unreasonable discrimination because the long distance market is highly competitive and there are well-founded distinctions between the treatment of residential and non-residential customers. BTI noted that its average non-residential bill exceeds the average residential bill by a factor of thirteen. Under questioning, BTI stated that it bills and collects itself for most accounts, including all commercial accounts, and does not therefore rely on local exchange company billing.

The Public Staff was skeptical of BTI's argument that an increase in the late payment charge would have a material effect on inducing more customers to pay promptly and contended that BTI had presented no evidence that its administrative costs had increased such that an increase in the fee was warranted. BTI's request should be viewed more as an income generator for BTI rather than an inducement for customers to pay. As an historical matter, the Public Staff noted that the rule had been in place for over twenty years and, even during periods of high inflation, no utility had requested an increase.

The Attorney General emphasized that the charge was the in the nature of a penalty and was not as such related to an extension of credit. The Attorney General suggested that BTI may wish to consider giving customers a benefit for paying on time or early rather than a penalty for not doing so.

Late-filed exhibits by BTI indicated that 11 states do not regulate late payment charges, 32 states allow charges of 1.5% or more, and only 5 states, including North Carolina, allow charges equal to or less than 1%.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that Rule R12-9(d) should be amended to allow the imposition of a 1 1/2% per month charge by certified long distance carriers only to non-residential end-users and only if such carriers do not bill end-users through a local exchange carrier.

The Commission has been persuaded that the higher charge is in this instance justified. However, because many interexchange carriers still bill through local exchange carriers, they possess considerable coercive power over late payers, since local telephone service can be cut off for failure to pay long distance charges. It is thus reasonable to allow only these interexchange carriers not billing those non-residential customers through a local exchange carrier to charge the higher rate.

In addition to the proviso concerning utilities not billing through local exchange carriers, Rule R12-9(d) has also been technically amended to reflect the fact that not all interexchange carriers are required to file tariffs.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R12-9(d) be amended effective as of the date of this Order to read as follows:

> "(d) Finance charges. – No interest, finance, or service charge for the extension of credit shall be imposed upon the consumer or creditor if the account is paid within twenty-five (25) days from the billing date. No utility shall apply a late payment, interest, or finance charge to the balance in arrears at the rate of more than 1% per month; provided, however, that a certified intrastate interexchange carrier may apply a rate of 1 1/2% per month to non-residential accounts if such carrier does not bill such end users through a local exchange carrier. The bill shall clearly state the interest rate. All utilities which are required to file tariffs and which apply an interest, finance, or service charge must file tariff provisions to that effect. All utilities must apply the appropriate interest, finance, or service charge on a uniform basis."

2. That interexchange carriers which are required to file tariffs and which desire to charge the 1 1/2% per month authorized under the amended Rule R12-9(d) file appropriate tariffs.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of May 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Chairman Hugh A. Wells and Commissioner Ralph A. Hunt did not participate in this decision.

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation of Pay Telephones with Modified Keypads and Other Issues Involving COCOT Service	)	ORDER REQUESTING REPLY COMMENTS AND MODIFYING PROPOSED RULE R13-4(a)(6)

BY THE CHAIRMAN: On March 12, 1996, the Commission issued an Order in this docket initiating a rulemaking and promulgating interim rules. The Order sought comments by no later than April 19, 1996, on the following issues: pay telephones with unlettered keypads; the imposition of charges for access to repair and refund service; the use of PTAS line billing names and addresses which differ from the certificate name and address; the new toll-free 888 prefix; the posting of presubscribed interexchange carriers; and the routing of 0- calls to an interexchange carrier.

On April 19, 1996, the Public Staff filed comments in the above docket containing a proposed a correction to Rule R13-4(a)(6), concerning the posting of presubscribed interexchange carriers. The Public Staff stated that, pursuant to discussion with the North Carolina Payphone Association and BellSouth Telecommunications, Inc., and to tests that it had independently conducted from several payphones, it believed that COCOTs in general treat the 00+ calls referenced in item 5 (concerning posting of presubscribed interexchange carriers) of the Public Staff's petition as though they were 00- calls. After receiving the two leading zeroes, local exchange company end offices route 00+ calls to the presubscribed interexchange carrier, disregarding any succeeding digits. These succeeding digits were also not passed on to the presubscribed carrier in the Public Staff tests, although some COCOTs may have this capability.

The Public Staff therefore requested that the Commission substitute the new proposed rule below for the current and proposed Rule R13-4(a)(6) as they appeared in the Public Staff's March 5, 1996, petition:

> Current Rule R13-4(a)(6): "The name of the presubscribed interexchange carrier(s), or, in non-equal access areas, the name of the carrier to which 0+ and 00+ calls will be routed."

Proposed Rule R13-4(a)(6) from Public Staff March 5, 1996, Petition: "The name of the carrier to which 0+ and 00+ calls will be routed."

New Proposed Rule R13-4(a)(6) from Public Staff April 19, 1996, Comments: "The name of the carrier to which 0+, 00-, and 00+ calls will be routed."

The Chairman concludes that good cause exists to request Reply Comments from interested parties by no later than May 16, 1996, and to allow the substitution of the new proposed Rule R13-4(a)(6) from the Public Staff's April 19, 1996 Comments as a basis for comments thereon by no later than May 16, 1996.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation of Pay Telephones With Modified Keypads and Other Issues Involving COCOT Service	)))	ORDER AMENDING RULE R13

BY THE COMMISSION: On March 5, 1996, the Public Staff filed a Petition for Rulemaking and Interim Order in this docket. In support of its petition, the Public Staff identified several concerns that it has about COCOT service, together with proposed rule changes. The concerns expressed by the Public Staff are as follows:

1. Pay telephones with unlettered keypads.
2. Imposition of charges for access to repair and refund service.
3. Use of PTAS line billing names and addresses which differ from the certificate name and address.
4. The new toll-free "888" prefix.
5. Posting of presubscribed interexchange carriers.
6. Routing 0- calls to an interexchange carrier.

In addition to requesting a rulemaking, the Public Staff further requested that the Commission issue an Order in the interim which would (1) prohibit all local exchange companies (LECs) and COCOT providers from operating pay telephones that lack letters on their touchtone keys and (2) require that

PTAS instruments handle 1-888 calls in the same way as 1-800 calls, with the exception that required postings at COCOTs need not be changed until final rules are adopted in this docket. The Public Staff argued that these measures were necessary to immediately protect the public interest and to prevent LECs and COCOT providers from investing in and installing equipment which may subsequently have to be removed by order of the Commission.

On March 12, 1996, the Commission issued an Order Initiating Rulemaking and Promulgating Interim Rules. In order to expedite the conclusion of this proceeding, the Commission further concluded that the rule amendments proposed by the Public Staff should be enacted, unless substantial protests are received and good cause is shown. Lastly, the Commission concluded that the rules proposed by the Public Staff with respect to touchtone pads and 1-888 calls should be promulgated as interim rules and the requirements with respect to touchtone pads should apply to LECs as well.

The interim rules were as follows:

1. A new Rule R13-5(t) to read:

"All COCOT keypads must be of standard twelve-key touchtone design. Each numerical key must be clearly and permanently labeled with both the numeral and its standard associated combination of upper case letters."

2. Rule R13-6(d) to be rewritten to read:

"Shall be arranged or programmed to allow only 0+ collect calls for local, intraLATA toll, and interLATA toll calls and to block all other calls including, but not limited to, local direct calls, credit card calls, third number calls, 1+ sent-paid calls, 0+ sent-paid calls, 0- sent-paid calls, 0- calls, 800 calls, 888 calls, 900 calls, 976 calls, 950 calls, 911 calls, and 10xxx calls. Provided, however, that if specifically requested by the administration of the confinement facility, 1+ toll and seven-digit local calling may be permitted if the local exchange company or the telephone instrument can block additional digit dialing after the initial call set-up."

3. Rule R13-9(g) to be rewritten to read:

"800 and 888 Calls. The end user of a PTAS instrument may not be charged more than 25 cents for the carriage and completion of an 800 call or an 888 call."

On April 19, 1996, the Commission, pursuant to a Public Staff filing, allowed substitution of the proposed Rule R13-4(a)(6) as follows:

New Proposed Rule R13-4(a)(6):

"The name of the carrier to which 0+, 00- and 00+ calls will be routed."

The following interested parties submitted comments or reply comments: Bright Technologies, Inc. (Bright); MCI Telecommunications Corporation (MCI); Carolina Telephone and Telegraph Company (Carolina); the North Carolina Payphone Association (NCPA); and AT&T Communications of the Southern States, Inc. (AT&T).

COMMENTS

Bright, a manufacturer and seller of COCOTs, opposed the proposed rule to require lettered keypads. Among other points, Bright asserted that, at least as to a braille keypad it manufactures, "[b]ecause of the necessary position of braille numbers, no letters appear on the keys." Furthermore, a lettered keypad requirement "would constitute nothing more than state action" primarily to enhance the marketing efforts of AT&T and MCI and to encourage dial-around traffic at COCOTs. Bright suggested that a rule requiring lettered keypads would in effect "make the braille keypad unlawful," while conferring no counterbalancing benefit. Neither the Federal Communications Commission (FCC) nor any other state has enacted a similar rule regarding lettered keypads.

Finally, Bright alleged that the Commission failed to provide notice to payphone providers and manufacturers [the Commission did in fact send a copy of the March 12, 1996, Order to all COCOT certificate holders] and characterized the Commission's interim rule as a type of temporary injunction, issued ex parte and with no showing or allegation of irreparable harm. Bright maintained that the Commission should immediately lift its ban on unlettered keypads or, in the alternative, narrow the moratorium to the installation of any new unlettered keypads.

MCI supported the lettered keypad requirement and suggested that unlettered keypads are a preferential and discriminatory practice by COCOTs. Dial-around compensation is currently being paid by interexchange carriers and the Telecommunications Act of 1996 (TA96) provides for per-call compensation. MCI also endorsed the refund and repair access requirement; but, as to the proposed rule regarding the provision of COCOT certificates by COCOTs to LECs before establishment of service, MCI criticized the implicit assumption that subscription to PTAS lines must be a LEC monopoly. MCI also mentioned that a more efficient means of aggregating traffic in confinement facilities might be through T-1 facilities, rather than PTAS lines. MCI favored the proposal that 888 prefixes should be recognized at payphones as well as the proposal regarding the name of the carrier to which 0+ and 00+ calls will be routed. MCI also was in favor of the proposal requiring access to the serving LEC by dialing "0."

Carolina agreed with each of the rule amendments proposed by the Public Staff. Carolina further emphasized its view that the routing of 0- calls to the LEC operator is in the public interest and is consistent with the North American numbering plan which requires 0- calls to go to the LEC operator and 00- calls to go to the presubscribed IXC operator where available.

AT&T supported the Public Staff's proposal to require lettered keypads. As to the Public Staff's proposal that the COCOT provider be required to furnish copies of revised certificates to LECs concurrent with any request to change its billing address or name, AT&T argued that this is unnecessary. As to 888 calls, the Commission should defer any action until the FCC has finished addressing the appropriate form of compensation for 800 and 888 calls. AT&T also disagreed with the Public Staff's view that 0- calls should be routed to the LEC.

The NCPA supported the Public Staff's proposal regarding lettered keypads, along with the Public Staff's proposal to require PTAS instruments to allow end users access to COCOT refund and repair services at no charge. However, the NCPA did not support the Public Staff's proposal regarding the submission of a revised COCOT certificate upon request by a COCOT to change its billing name or address. Instead, the NCPA proposed the following as achieving the same end not as disruptively:

> NCPA Proposed Rule R13-2(d): "Every provider is responsible for ensuring that the mailing address for all local exchange company bills for lines installed pursuant to a COCOT certificate is the same as the address shown on the certificate. Within ten (10) days of any change in the provider's name or address, the provider must request a revision of its COCOT certificate by filing an appropriate application with the Commission."

As to the posting of presubscribed IXCs, the NCPA was generally supportive of the change but suggested a grace period:

> Proposed Rule R13-4(a)(6): "The name of the carrier to which 0+ and 00+ calls will be routed. In the event that a provider changes the carrier to which 0+ and 00+ calls will be routed, the provider shall post the name of the new carrier within a reasonable period of time after the change is made, which time shall not exceed 30 days in most cases."

As for the routing of 0- calls to LECs, the NCPA was generally supportive, but, in light of TA96, suggested that the Commission should order all LECs to provide compensation plans to COCOTs or hold the matter in abeyance pending implementation of FCC rules pursuant to TA96, Sec. 271.

REPLY COMMENTS

The Public Staff noted that Bright is the only entity opposing the lettered keypad requirement. The Public Staff suggested that, as evidenced by advertisements in Public Communications Magazine and Phone +, Bright is motivated more by the opportunity to increase COCOT providers' profits than by concern for the visually impaired. Furthermore, there is no inherent reason why letters cannot be added to numbered braille keys.

Concerning the imposition of charges for access to repair and refund service, the Public Staff noted that there was no opposition and urged adoption of its proposed rule change.

As to PTAS billing names and addresses differing from the certificate name and address, the Public Staff noted the concerns of MCI, AT&T, and the NCPA. While the Public Staff emphasized the importance of a direct linkage between the LEC PTAS line and the certificated provider subscribing to that line, the Public Staff was willing to substitute a name consistency requirement for an address consistency requirement. Accordingly, in lieu of the originally proposed Rule R13-3(e), the Public Staff suggested Rule R13-3(d) be modified to read:

> "Every provider is responsible for ensuring that the name which appears on the COCOT certificate also appears on all local exchange company bills for lines installed

pursuant to that certificate. The provider is responsible for ensuring that the information which appears on its certificate is kept current."

As to the toll-free 888 prefix requirement, the Public Staff noted the opposition of AT&T pending resolution of compensation issues for 800 and 888 calls. The Public Staff argued, however, that this approach would leave COCOT providers in the dark about their obligations to provide 888 service and that AT&T's viewpoint should therefore be rejected.

With respect to the posting of presubscribed interexchange carriers, the Public Staff noted the logistical issues raised by the NCPA. The Public Staff does not oppose a 30-day grace period for posting, but 30 days should be the maximum time to effectuate any necessary posting. The Public Staff recommended that its original proposed Rule R13-4(a)(6) be modified as follows:

> "The name of the carrier to which 0+, 00-, and 00+ calls will be routed. In the event that a provider changes the carrier to which 0+, 00-, or 00+ calls will be routed, the name of the new carrier must be posted within 30 days."

Lastly, as to the routing of 0- calls to make clear that 0- calls must go directly to a LEC operator, the Public Staff noted the concerns of MCI, the NCPA and AT&T, but urged that public safety concerns and consistencies with industry standards should be paramount in deciding where 0- calls should be routed. Such considerations would lead to the adoption of the Public Staff's proposed Rule R13-5(i). This should not be delayed to accommodate the COCOT providers' desire for compensation.

In summary, the Public Staff has proposed the following rule changes as modified in its reply comments.

1. Lettered keypads.

   Proposed Rule R13-5(t): "All COCOT keypads must be of standard twelve-key touchtone design. Each numerical key must be clearly and permanently labeled with both the numeral and its standard associated combination of upper case letters."

2. Charges for access to repair or refund service.

   Proposed Rule R13-5(u): "All PTAS instruments must allow end users to access COCOT refund and repair service at no charge."

3. Address consistency.

   Proposed Rule R13-3(d): "Every provider is responsible for ensuring that the name which appears on the COCOT certificate also appears on all local exchange company bills for lines installed pursuant to that certificate. The provider is responsible for ensuring that the information which appears on its certificate is kept current."

4. 888 calls.

> *Proposed Rule R13-4(a)(5)*: "A prominent display of the coin access charge, if any, which will be imposed for completion of a 0+ or 10xxx0+ local or long distance call and for an 800 or 888 call."
>
> *Proposed Rule R13-6(d)*: "Shall be arranged or programmed to allow only 0+ collect calls for local, intraLATA toll, and interLATA toll calls and to block all other calls including, but not limited to, local direct calls, credit card calls, third number calls, 1+ sent-paid calls, 0+sent-paid calls, 0- sent-paid calls, 0- calls, 800 calls, 888 calls, 900 calls, 976 calls, 950 calls, 911 calls, and 10xxx calls. Provided, however, that if specifically requested by the administration of a confinement facility, 1+ toll and seven-digit local dialing may be permitted if the local exchange company or the telephone instrument can block additional digit dialing after initial call set-up."
>
> *Proposed Rule R13-9(g)*: "800 and 888 Calls. The end user of a PTAS instrument may not be charged more than 25 cents for the carriage and completion of an 800 call or an 888 call."

5. Posting of presubscribed IXCs.

> *Proposed Rule R13-4(a)(6)*: "The name of the carrier to which 0+, 00-, and 00+ calls will be routed. In the event that a provider changes the carrier to which 0+, 00-, or 00+ calls will be routed, the name of the new carrier must be posted within 30 days."

6. Routing of 0- calls.

> *Proposed Rule R13-5(i)*: All PTAS instruments must allow the end user to access the serving local exchange company operator by dialing "0." All PTAS instruments must allow completion of 0- local and 0- long distance calls billed to a credit card, a third number, or the called number (collect) at no charge to the end user."

The NCPA reiterated its concern regarding new pay station postings when IXC changes are made. The NCPA also was concerned that the Public Staff's proposed rule extended beyond the posting of interexchange carriers to carriers generally. The NCPA proposed that Rule R13-4(a)(6) be rewritten as follows:

> *NCPA's Proposed Rule R13-4(a)(6)*: "The name of the interexchange carrier to which 0+, 00- and 00+ calls will be routed. In the event that a provider changes the interexchange carrier to which 0+, 00-, and 00+ calls will be routed, the provider shall post the name of the new carrier within a reasonable period of time after the change is made, which time shall not exceed 30 days in most cases."

The NCPA also urged that the same posting requirement be imposed on LECs.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that it should adopt the rule changes proposed by the Public Staff in its May 16, 1996, reply comments and that the requirement for lettered keypads apply to LECs as well as COCOTs. The Public Staff's May 16, 1996, recommendations reflect certain modifications to the rule changes originally proposed by the Public Staff in light of the comments from parties and further reflection.

1. Pay telephones with unlettered keypads. The Commission concurs with the Public Staff on this subject that there is no public benefit to be gained by allowing letterless payphones to operate in this state. There is no inherent impediment to adding letters to numbered keys; the keypads of many ATM machines contain numerals, letters and braille impressions. The objections raised by Bright are without merit.

2. No charges for access to repair or refund service. There were no objections to this proposal.

3. Use of PTAS billing names and addresses differing from the certificate name and address. These revisions relate to "housekeeping" matters so that the serving LEC and, by extension, the Commission and Public Staff can keep proper track of COCOTs. The Commission concurs with the Public Staff that there needs to be a direct linkage between the LEC PTAS line record and the certificated provider subscribing to that line. The modified proposal of the Public Staff concerning Rule R13-3(d) will provide a name consistency, but will not prevent a LEC from sending PTAS bills to an address different from the certificate address. The proposals of the Public Staff are reasonable solutions to the existing problems and concerns.

4. The new toll-free "888" prefix. The Commission concurs with the Public Staff on this issue and believes that nothing is to be gained by deferring action on this requirement.

5. Posting of presubscribed interexchange carriers. The Commission concurs with the Public Staff's modified proposal which allows a 30-day grace period for the posting of the relevant presubscribed interexchange carrier. This should accommodate the logistical concerns expressed by the NCPA. The Commission also supports the broader term "carrier" because not all 0+, 00-, and 00+ calls are now or will be in the future routed to IXCs.

6. Routing of 0- calls. The Commission concurs with the Public Staff's proposal on this issue. The Public Staff has identified delays and blockages of access to emergency services that may occur if emergency 0- calls were routed to IXCs rather than serving LECs and has convincingly argued that changes to this rule should not be deferred until the FCC issues rules relating to compensation.

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R13 be amended as set out in Appendix A attached to this Order.

2. That all LECs be prohibited from operating pay telephones with unlettered keypads and that all LECs treat 1-888 calls in the same way as 1-800 calls are treated.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R13-5 is amended to add new subsections (t) and (u) to read:

> "*(t)* All COCOT keypads must be of standard twelve-key touchtone design. Each numerical key must be clearly and permanently labeled with both the numeral and its standard associated combination of upper case letters."
>
> "*(u)* All PTAS instruments must allow end users to access COCOT refund and repair service at no charge."

Rule R13-3(d) and (e) are amended as follows:

> "*(d)* Every provider is responsible for ensuring that the name which appears on the COCOT certificate also appears on all local exchange company bills for lines installed pursuant to that certificate. The provider is responsible for ensuring that the information which appears on its certificate is kept current."

Rule R13-4(a)(5) is amended as follows:

> "*(5)* A prominent display of the coin access charge, if any, which will be imposed for completion of a 0+ or 10xxx0+ local or long distance call and for an 800 or 888 call."

Rule R13-6(d) is amended as follows:

> "*(d)* Shall be arranged or programmed to allow only 0+ collect calls for local, intraLATA toll, and interLATA toll calls and to block all other calls including, but not limited to, local direct calls, credit card calls, third number calls, 1+ sent-paid calls, 0+ sent-paid calls, 0- sent-paid calls, 0- calls, 800 calls, 888 calls, 900 calls, 976 calls, 950 calls, 911 calls, and 10xxx calls. Provided, however, that if specifically requested by the administration of a confinement facility, 1+ toll and seven-digit local dialing may be permitted if the local exchange company or the telephone instrument can block additional digit dialing after initial call set-up."

Rule R13-9(g) is amended as follows:

> *"(g)* 800 and 888 Calls. The end user of a PTAS instrument may not be charged more than 25 cents for the carriage and completion of an 800 call or an 888 call."

Rule R13-4(a)(6) is amended as follows:

> *"(6)* The name of the carrier to which 0+, 00-, and 00+ calls will be routed. In the event that a provider changes the carrier to which 0+, 00-, or 00+ calls will be routed, the name of the new carrier must be posted within 30 days."

Rule R13-5(i) is amended as follows:

> *"(i)* All PTAS instruments must allow the end user to access the serving local exchange company operator by dialing '0.' All PTAS instruments must allow completion of 0- local and 0- long distance calls billed to a credit card, a third number, or the called number (collect) at no charge to the end user."

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation of Pay Telephones With Modified Keypads and Other Issues Involving COCOT Service	)	ERRATA ORDER

BY THE CHAIRMAN: On July 2, 1996, an Order Amending Rule R13 was issued in this docket. In Appendix A it was stated, among other things, as follows: "Rule R13-3(d) and (e) are amended as follows:" This was an error. This clause should read: "Rule R13-3(d) is amended as follows:" In other words, only Rule R13-3(d) has been amended as indicated, but Rule R13-3(e) remains the same as it is.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of July 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	ORDER SETTING OUT REGULATORY
Local Exchange and Local	)	STRUCTURE FOR COMPETING
Exchange Access Telecommunications	)	LOCAL PROVIDERS AND
Competition	)	PROMULGATING RULES

BY THE COMMISSION: On July 19, 1995, the Commission issued an Order Promulgating Interim Rules, Requesting Comments, and Scheduling Universal Service Hearing. The Commission concluded that it should:

1. Promulgate Rule R17-1 (Definitions); Rule R17-2 (Requirements and Limitations Regarding Certificate of Competing Local Providers (CLPs)); Rule R17-3 (Universal Service Requirements); Rule R17-4 (Interconnection); and R17-5 (Number Portability and Number Assignment) as interim rules and request comments from parties on same. These rules were attached to the Order as Appendix B. Commenting parties desiring to propose amendments and additions to these rules were requested to set out their proposed language in the appropriate rule form.

2. Request comments on:

   a. The appropriate regulatory structure for CLPs.
   b. Resale of local service.

3. Request the parties to provide a list of issues related to interconnection.

4. Schedule a hearing on universal service issues for early 1996.

With respect to the appropriate regulatory structure for CLPs, the parties were requested to address the issues set out below:

1. Whether CLPs should be subject to price regulation or some other form of regulation.
2. Whether depreciation rates should be approved.
3. Whether securities of CLPs should be regulated.
4. Whether CLPs should seek approval for affiliated transactions or transfer of certificates.
5. Whether CLPs should be required to file annual reports, construction budgets or other financial information.
6. The appropriate accounting standards for CLPs--Uniform System of Accounts (USOA) or Generally Accepted Accounting Principles (GAAP).
7. Appropriate procedures for filing or changing tariffs.
8. Appropriate service standards, which shall also include standards for customer deposits, establishment of credit, disconnection of service, etc.
9. Customer complaint procedures.

With respect to interconnection issues, the Commission requested that parties file a list of issues relating to interconnection which are appropriate and necessary for interconnection negotiations. The Commission stated that this list should include and define the general unbundled components of the local network that local competitors will need in order to offer local services (e.g., subscriber loops, line side ports, signaling links, signal transfer points, service control points and dedicated channel network access connections). This list should also include any other appropriate issues which relate to interconnection which can or should be resolved within the context of interconnection negotiations (e.g., number portability, directory assistance/directories). To avoid a multiplication of filings, the Commission suggested one party may make a single filing representing the consensus of its industry (e.g., LECs or CLPs), if such consensus has been achieved.

With respect to resale of local service, the Commission requested parties to respond to the following questions:

1. Should LECs be required to make their local services available for resale? If so, should the resale be limited to business services (e.g., PBX trunks or Centrex service)?

2. If local service were offered for resale, how should the rates be determined (discounted rate by LEC, etc.)?

3. Is the resale of local service essential for CLPs to be able to provide local service? Should resale of local service be part of the interconnection negotiations?

4. If residential local service is permitted to be resold to a CLP, should that service be limited to CLPs' residential customers?

5. Should CLPs be required to make their local services available for resale?

6. What, if any, differences should there be in treatment of resale of DRP/DAPs (as considered in the hearing held on May 2, 1995, in Docket Nos. P-100, Sub 126 and Sub 65) and resale of local service?

With respect to universal service issues, the Commission scheduled a hearing for February 14, 1996. This has been rescheduled to June 25, 1996.

The following parties filed comments and/or reply comments: The Alliance of North Carolina Independent Telephone Companies (Alliance); the Telecommunications Resellers Association (TRA); the Carolina Utility Customers Association, Inc. (CUCA); the Attorney General, the Public Staff; AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and WorldCom, Inc., d/b/a LDDS WorldCom (WorldCom) filing jointly and to be known herein collectively as AT&T; ICG Access Services, Inc. (ICG); Carolina Telephone and Telegraph Company (Carolina), and Central Telephone Company (Central), to be known herein collectively as Carolina; GTE South Corporation (GTE); BellSouth Telecommunications, Inc. (BellSouth); Business Telecom, Inc., d/b/a FiberSouth, Inc. (BTI); Time Warner Communications of North Carolina (Time Warner); Sprint

Communications Company (Sprint), the North Carolina Payphone Association (NCPA); and the North Carolina Cable Telecommunications Association (NCCTA).

On October 26, 1995, AT&T, MCI, Time Warner, and WorldCom filed a Joint Request for public hearing "on the standards, classifications, regulations, practices, and service" to be considered in this docket. The joint petition argued that G.S. 62-43 requires notice and hearing prior to fixing such standards and that it would be in the public interest to hold such a hearing in order to have a "complete and thorough exposition and examination of all viewpoints." On November 15, 1995, BellSouth filed a response in opposition to the Joint Request, arguing that G.S. 62-43 as a whole addresses the imposition of technical standards. BellSouth also cited Section 4 of HB 161 which, it said, specifically authorized rulemaking but did not include the language "upon notice and following hearing." HB 161 also contemplates that interconnection issues are to be negotiated between the parties in the first instance. Carolina filed a statement opposing the Joint Request on November 20, 1995. The Commission issued an Order which denied the Joint Request on November 30, 1995, noting, among other points, the plethora of hearings that the Commission will hold on local competition related subjects.

I. APPROPRIATE REGULATORY STRUCTURE FOR CLPS

A. INITIAL COMMENTS

1. Public Staff

The **Public Staff** favored only minimal regulatory requirements be imposed on CLPs and it concluded that G.S. 62-2 and G.S. 62-110(f1) grant ample authority and flexibility to the Commission to fashion a suitable regulatory structure for CLPs. The Public Staff proposed that CLPs be exempted from the following specific statutes and rules:

1. G.S. 62-130 - Commission to make rates for public utilities;
2. G.S. 62-131 - Rates and service;
3. G.S. 62-132 - Establishing rates;
4. G.S. 62-133 - Rate base/rate of return regulation;
5. G.S. 62-134 - Change of rates;
6. G.S. 62-135 - Temporary rates under bond;
7. G.S. 62-136 - Investigation of rates;
8. G.S. 62-137 - Scope of rate case;
9. G.S. 62-138 - Rate filings;
10. G.S. 62-139 - Rates varying from schedule prohibited;
11. G.S. 62-142 - Contracts as to rates between utilities;
12. G.S. 62-143 - Schedule of rates;
13. G.S. 62-153 - Contracts with affiliates;
14. G.S. 62 - Article 8 - Securities regulation;
15. Rule R1-16 - Pledging assets, issuing securities, assuming obligations;
16. Rule R1-17 - Filing of increased rates; application for authority to adjust rates;
17. Rule R1-32 - Filing of annual reports by public utilities;
18. Rule R9-2 - Uniform system of accounts;

19. Rule R9-3 - Annual filing of construction plans and objectives;
20. Rule R9-4 - Filing of telephone and telegraph tariffs and maps;
21. Rule R9-5 - 911 Emergency telephone number system;
22. Rule R9-6 - Link-Up Carolina connection fee subsidy program;
23. Rule R9-8 - Service objectives;
24. Rule R9-9 - Financial and operating reporting requirements; and
25. Depreciation rate filings and prescription of depreciation rates.

The Public Staff did, however, favor certain requirements to apply to CLPs as outlined in their proposed rule amendments. These include Rule R12-1 through Rule R12-9 (Customer Deposits for Utility Services; Disconnecting of Service), the utilization by CLPs of GAAP, and monthly reports on number of access lines.

The Public Staff also raised the issues of payphone service (also known as COCOTs) and shared tenant service (STS) using CLP facilities and public payphone service offered by CLPs. With respect to the former, the Public Staff recommended that CLPs not be allowed to offer local exchange lines for use by COCOTs or STS providers until after a rulemaking proceeding has been conducted to appropriately modify Rules R13, R14, and R14A. Any certificate granted to a CLP before this time should state that provision of local exchange service to COCOTs and STSs is contingent upon such modification. As to payphone service offered by a CLP, the Public Staff recommended that CLPs should be allowed to operate a payphone service and that the Commission's Rule R13 should apply to this offering with the exception that a certified CLP would not be required to apply for a special certificate under Rule R13.

2. LECs

The Alliance argued for regulatory symmetry as between LECs and CLPs. Accordingly, CLPs should be allowed the flexibility to choose price or alternative regulation, but any decision to lessen or exempt a CLP from a regulatory requirement should be extended to LECs. An area that should be examined generically is whether revisions in reporting obligations are appropriate. CLPs should be expected to meet the same service standards and comply with the same complaint procedures as LECs.

GTE also argued for regulatory symmetry as between CLPs and LECs. This means that CLPs should have the same pricing and tariff requirements as LECs and the same freedoms. Thus, CLPs should not be required to obtain approval for depreciation rates, securities transactions, or affiliated agreements. Nor should CLPs have to file annual reports, construction budgets or other financial information, provided LECs are afforded the same treatment. CLPs should be subject to minimum service standards and the Commission should retain complaint jurisdiction. However, GTE maintained that CLPs and LECs should be permitted to differentiate their product offering based on service quality, but non-discretionary customer policies, such as customer deposits, establishment of credit, and disconnection of service may need to be governed by universally applied rules.

BellSouth, by contrast, was willing that there should at least initially be regulatory asymmetry as between LECs and CLPs. BellSouth suggested that CLPs should not be subject to rate of return regulation but rather to a "reduced form" of regulation–to which LECs would move as competition develops. Accordingly, CLPs should be able to set their own depreciation rates and the Commission

should not regulate their securities, although the Commission should approve changes in ownership or certificate transfers. Elaborate reporting requirements are unnecessary, and CLPs should be able to elect appropriate accounting standards. While the Commission should require tariffs from CLPs for informational and complaint purposes, the Commission should not require cost information. As for service standards, the Commission should apply only minimum requirements, but should retain its complaint procedures.

3. CLPs

BTI did not directly address the issue of regulatory structure for CLPs in comments, but its draft of the proposed rules indicates the CLPs should be expected to comply with such service standards as appear in their tariffs.

Time Warner argued that it is unnecessary for the Commission to regulate the services or prices of CLPs. It is therefore unnecessary for the Commission to regulate depreciation rates or rule on transactions with affiliates. CLPs should utilize GAAP and should be required only to make those reports that are necessary for the regulatory fee and such information as may be needed by the Commission for its report to the General Assembly. Time Warner also argued that CLPs should not be required to file tariffs or price lists inasmuch as CLPs' pricing is constrained by those of the incumbent LEC. If pricing information is required, it should be in the form of price lists, which are less onerous and expensive than tariffs. Such prices should be presumptively valid and effective on the same day as filed. Further, the Commission should forbear imposing service standards on CLPs since market forces will tend to ensure quality. Current complaint procedures are appropriate.

ICG argued that it is inappropriate to regulate CLPs in the same way as incumbent LECs. However, all carriers should be subject to Commission oversight regarding quality of service and customer complaints. CLP rates should not be subject to review, although information price lists may be beneficial.

4. IXCs

The **TRA** stated that minimum service standards, tariff filings and customer complaint procedures are appropriate for CLPs as long as the LEC is willing to provide timely, non-discriminatory network support and repair and maintenance with respect to resold services. However, CLP pricing, depreciation rates, securities, annual reporting and the USOA regulation should not be required. It is appropriate for the Commission to regulate incumbent LECs as dominant carriers until effective competition as emerged.

AT&T stressed the dominance of incumbent LECs and recommended rules that are minimal but will protect consumers. Accordingly, as in other states, the Commission should eschew earnings or price regulation for CLPs. Similarly, the Commission should not review depreciation rates, regulate CLP securities, or review affiliated transactions. However, the Commission should continue to review certificates transfers. CLPs should only be required to file its annual stockholder report with the Commission but no other reports, and GAAP should be acceptable. AT&T favored the requirement that CLPs file and maintain a current price list setting forth current prices, customer connection charges, billing and paying arrangements, levels of service quality to which the CLP commits, and a description of the local exchange area served with respect to basic local exchange and exchange access service only. Information

other than basic local exchange or exchange access service may be filed. It should be submitted at least one day prior to its effective date. Further, no uniform service standards should be required of CLPs since customers will have choice and may be willing to trade off quality for a lower price. Current complaint procedures should apply.

Sprint argued that CLPs should not be subject to price or other regulation because they do not control essential facilities and they lack market power. Similarly, the Commission should not regulate interconnection rates charged by CLPs. Sprint supported the Commission's complaint jurisdiction and favored tariffs and service standards for CLPs for the time being, although these should be amended or waived later. Sprint did not favor regulation of depreciation rates, CLP securities, or extensive reporting requirements. GAAP are appropriate for CLPs, as are current regulations of affiliated transactions and certificate transfers.

5. Other

CUCA argued that CLPs should generally be subject to the relaxed regulatory requirements imposed on LECs but doubted the Commission's authority to narrow the scope of regulation under G.S. 62-2 or G.S. 62-133.3 without conducting further proceedings. As a matter of policy, CLPs should not be subject to rate regulation or price control, nor should the Commission exert regulatory control over depreciation rates. With respect to securities, CUCA suggested that CLPs may be exempt from Commission regulation under State ex rel. Utilities Commission v. Southern Bell Telephone and Telegraph Company, 22 NC App. 714 (1974), aff'd 288 NC 201 (1975). In any event, exertion of Commission jurisdiction would not fulfill appropriate regulatory ends--such as maintaining a utility's viability or protecting ratepayers from excessive rates--within the context of a competitive market. Concerning approval of affiliate transactions and transfers, CUCA suggested that the Commission must regulate under G.S. 62-153 in the absence of deregulation under G.S. 62-133.3 and G.S. 62-2 but not in a heavy-handed way. However, the Commission should retain control over the approval of the transfers of certificates from one CLP to another. With respect to reporting requirements, CUCA suggested that CLPs should only be required to file information necessary for the regulatory fee under G.S. 62-302. The Commission should not require CLPs to follow the USOA; GAAP standards are adequate. With respect to tariffs, CUCA argued that, pending further deregulation in the future, tariff filings should be required, but changes should take effect immediately upon filing. Concerning appropriate service standards, CUCA argued that CLPs should be obliged to meet the same standards as LECs. Similarly, current procedures for handling consumer complaints should be retained.

The **Attorney General's** comments focused on traditional consumer concerns such as conditions of service and rules for connection and disconnection. The Attorney General proposed service rules governing such matters as establishment of credit, case deposits, reestablishment of service by the provider of last resort, deposit refunds, discontinuance of service for nonpayments, minimum billing procedures, change of local service telephone providers, advertisement of rates and services, and directories. Those rules would apparently be applicable to both CLPs and LECs. In addition, the Commission should retain complaint jurisdiction over CLPs.

B. REPLY COMMENTS

1. Public Staff

The **Public Staff** made no reply comments on this subject.

2. LECs

The Alliance reiterated its support for what it called "regulatory parity" and decried any other approach as conferring competitive advantages on CLPs and creating economic incentives for CLPs to serve selected segments of the market. The Alliance even suggested that a case could be made for more extensive regulation of CLPs than LECs because, being new, CLPs present a greater risk of being unable to provide adequate and reliable service.

GTE also reiterated its support for regulatory parity. Many potential CLPs are actually parts of well-financed media conglomerates who are not without market power themselves. Symmetric regulation is the only justifiable option.

BellSouth criticized the Attorney General's proposed service standards as unnecessary in view of the extensive nature of current rules. Certainly, nothing in HB 161 indicates that new rules of this nature are necessary. BellSouth reiterated its basic agreement with the Public Staff that strict regulation of CLPs is unnecessary and that the Commission should impose only minimal regulatory requirements.

3. CLPs

ICG stressed that CLPs should not be subject to any form of regulation beyond the minimum required for consumer protection. CLPs lack market power, bottleneck facilities, or market share; therefore, symmetrical regulation is inappropriate. ICG also noted that the FCC has already granted many potential CLPs the right to maintain their books according to GAAP.

Time Warner reiterated its views in favor of minimal regulation of CLPs, noting that even BellSouth has been generally supportive of this approach. Time Warner specifically agreed with the Public Staff's proposed Rule R17-6(d) which would require CLPs, upon Public Staff or Commission request, to submit information concerning services, geographic service areas and rates.

4. IXCs

Sprint reiterated that it is neither appropriate nor in the public interest to regulate CLPs to the same degree as incumbent LECs, which continue to possess substantially more market power than CLPs.

AT&T noted that the comments filed by the parties indicate the need for minimal regulation of CLPs. The purpose of regulation has historically been as a substitute for competition in a monopoly environment. The Commission should encourage local competition by not imposing barriers to market entry, such as earnings-based regulation. As competition develops, the Commission can justify regulating LECs less stringently. As of today, however, LECs provide over 99% of local exchange and exchange

access service. AT&T noted that many of the Attorney General's proposals were similar to existing Commission rules but criticized certain departures, such as extending the time when an account becomes past due or delinquent from 15 days after billing date to 18 "business" days. AT&T also took issue with Attorney General proposals that would require publication of rates in all advertising material and would prohibit rate changes with less than 30 days' notice. The former would be overly burdensome and the latter would be inconsistent with HB 161 and even with current IXC procedures.

5. Other

The **Attorney General** reiterated its support for service standards for CLPs paralleling those for LECs and retention of complaint jurisdiction by the Commission. The Attorney General also suggested that CLPs be required to make notice filings of tariffs or price list changes well in advance of those changes.

The **NCPA** recommended that the Commission amend its rules to allow CLPs to offer local exchange lines for use by COCOTs as soon as possible, so that CLPs will be able to provide payphone interconnection upon certification. The NCPA did not object to the Public Staff's suggestion that CLPs offering payphone service do so under Rule R13.

The **NCCTA** maintained that the Commission should regulate neither the services nor the prices of CLPs but should regulate LECs until effective competition is underway. Commission policies should encourage facilities-based competition rather than resale.

CUCA noted that most parties agreed that there is no policy justification for significant regulatory control over the rates and services of CLPs. By contrast, LECs still retain significant market power and will continue to do so for the foreseeable future. CUCA argued that G.S. 62-2 provides ample authority to the Commission to regulate CLPs appropriately and need not, as a matter of law or policy, extend certain exemptions from regulation of CLPs to LECs as well.

II. INTERIM RULES R17-1 and R17-2: DEFINITIONS AND CLP CERTIFICATION

A. INITIAL COMMENTS

1. The Public Staff

In addition to proposing clarifying language to several definitions in R17-1, the **Public Staff** proposed modification of the interim rules to reflect the certification and operating requirements which they recommended as appropriate for the regulation of CLPs. These include:

a) eliminating the service standards set out in Rule R9-8;

b) eliminating the requirement to file "maps in sufficient detail to designate with particularity the actual geographic area" and changing to "A statement of the particular geographic areas proposed to be served;"

c) eliminating requirement to file tariffs;

d) eliminating condition to certification to provide support for universal services;

e) making quality of service provided by CLPs subject to Commission evaluation and corrective action on a complaint basis;

f) requiring monthly report reflecting number of local access lines subscribed to at end of preceding month by business and residence customers in each respective geographic area and not requiring other operating statistics except upon specific request of Commission or Public Staff;

g) requiring CLPs to be subject to the provisions of G.S. 62-157 with regard to telecommunications relay service;

h) requiring CLPs to be subject to the provisions of Chapter 62A of the General Statutes, the Public Safety Telephone Act, applicable to service suppliers;

i) adding certain consumer protection clauses relating to billing, customer notice problems arising from billing of certain calls, and offerings of public payphone service by a CLP; and

j) adding requirement that CLPs are responsible for payment of the regulatory fee in accordance with G.S. 62-302 and Commission Rule R15.

2. LECs

Alliance proposed a clarifying amendment to "Basic Local Exchange Service" to reflect the fact that while touchtone service is generally available to customers, certain customers may retain rotary service. The Alliance further stated that the definition does not address how the rates for such services are set.

The Alliance further proposed that the requirement placed upon CLPs to offer emergency services also should include the obligation for these providers to collect the funds necessary to support the emergency services specified by the respective authority. The Alliance stated that this concept is inherent within the financial showing contained in proposed Rule R17-2(b)(6). However, if clarification is made, the Alliance does not believe that any rule revision is necessary.

The **Alliance** proposed that the Commission's existing tariff rules should be applicable to a CLP's service offerings, that access to services for hearing and speech impaired should also be a requirement contained in proposed Rule R17-2(f)(l), and that Proposed Rule R17-2(f)(8) requires amendment to clarify when number portability is required to be offered.

BellSouth concurred with the proposed Interim Rules with two exceptions: First, subsection R17-2(f)(8) should be modified to comply with the underlying statute, which requires number portability where "technically and economically reasonable." Second, subsection R17-2(f)(l) should read "and services for the hearing and speech impaired."

With the exception of a proposed revision to Rule R17-4(a) concerning unbundling of services, **Carolina** found the proposed Interim Rules reasonable and acceptable.

GTE proposed adding "or LEC" to "Local Exchange Area," revisions to "Number Portability" to include allowing customers to retain their geographic or non-geographic telephone number when they change l) geographical location, 2) service provider, or 3) class or grade of service.

3. CLPs

BTI largely endorsed the Commission's certification requirements.

Time Warner recommended changes in Rule R17-1 (Definitions) in order to add specificity; included a definition for "Bona Fide Request"; recommended striking "local" in definition of Local Exchange Access Service; added definition for three types of number portability; included definition for "Price List"; removed filing of tariffs requirement from CLPs and indicated it believed the statute gives the Commission the authority to exempt CLPs from filing price lists; strikes "part of which may be subsidized through a universal service fund" from definition of Universal Service because such language goes beyond a definition and into rulemaking. In Rule R17-2 (Certification Requirements), Time Warner recommended elimination of Rule R17-2(b)(10) regarding filing tariffs.

4. IXCs

AT&T stated it felt that "basic local exchange service" should be defined in a way that would not mandate a subsidy for services that do not require it, yet ensure that basic services receive necessary subsidies; believes it inappropriate to include service to business customers (other than single-line business customers, to the extent it can be shown that the service is priced below cost) in this definition and proposed inclusion of services or capabilities that are furnished to consumers today as part of their basic service.

AT&T further proposed:

a) changing the requirement to reasonably meet the service standards set out in Rule R9-8 to "the CLP's Standard Operating Procedures;"

b) changing "tariff" to "price list" of proposed local exchange and exchange access services to be provided;

c) adding "including a white page listing" to conform to change in definition of basic local exchange service;

d) including "using all available access codes, including l+ and 0+;

e) changing compliance with "Commission basic services standards" to "the CLP's Standard Operating Procedures;" and

f) adding section to include "access to relay services."

ICG did not offer direct changes to the Interim Rule but did state that CLP rates should not be subject to Commission review nor should CLPs have to file cost studies. However, the filing of informational price lists of CLPs may be beneficial to consumers.

Sprint proposed a definition for "Bona Fide Request," and an amended definition of "Number Portability."

5. Others

CUCA stated that although it reserves the right to comment upon any amendments to the Commission's proposed rules suggested by any other party, it does not, at this time, object to any specific provision of the proposed rules

The **Attorney General** suggested that specific consumer safeguards such as the "Telecommunications Consumers' Bill of Rights," recently proposed by the Staff of the Colorado Public Service Commission be put in place from the outset.

B. REPLY COMMENTS

1. The Public Staff

The **Public Staff** identified several provisions in the Rules which it thinks need additional clarification or revisions. These include some minor definitional amendments.

2. LECs

Alliance: No specific reply comments to Rules R17-1 and R17-2.

BellSouth, in response to the Initial Comments of the Attorney General, stated that it is currently subject to extensive rules and/or tariff provisions relating to customer deposits, disconnection of service, establishment of credit, and other service standards. Because nothing in the new legislation or orders of this Commission suggests that these provisions are inadequate or beneficial to protect consumer interests, BellSouth does not believe that any new or different service standards should be adopted or implemented with regard to its operations. Because competition should ensure that the market will control service quality, the need for Commission oversight should decrease over time. To the extent that particular problems arise during the phase-in of competition, the Commission can address such issues as necessary but it would be inappropriate for the Commission to adopt broad rules governing what will soon become a very competitive local exchange market.

BellSouth stated, in response to the Public Staff's Initial Comments, that it is in agreement with the Public Staff"s view that strict regulation of CLPs is unnecessary, and also agrees that the Commission should only impose minimal regulatory requirements on CLPs.

Carolina had no specific reply comments to Rules R17-1 and R17-2.

GTE had no specific reply comments to Rules R17-1 and R17-2.

3. CLPs

BTI had no specific reply comments to Rules R17-1 and R17-2.

Time Warner had no specific reply comments to Rules R17-1 and R17-2.

4. IXCs

AT&T proposed definitions for: "Basic Network Function"("BNF"), "Cross Subsidy," "Interconnection," "Long Distance Service," "Universal Service Provider," and "Unbundle," and proposed revisions in the definitions of "Local Exchange Access Service," "Local Exchange Area," and "Number Portability."

ICG had no specific reply comments to Rules R17-1 and R17-2.

Sprint reiterated its suggested amendments as proposed in its Initial Comments.

5. Others

Attorney General had no specific comments to Rules R17-1 and R17-2.

CUCA did not find most of the various attempts to add precision to the draft interim rules or to incorporate language from the relevant statutory provisions objectionable; however, CUCA did object to the use of the interim rules to complete the adoption of particular substantive positions concerning the various issues raised by the introduction of local exchange competition, most of which should be decided only against the background of an adequately developed factual record. The Commission should establish a procedural framework for the certification of competing local providers.

NCCTA had no specific reply comments to Rules R17-1 and R17-2.

NCPA had no specific reply comments to Rules R17-1 and R17-2.

III. INTERIM RULE R17-3: UNIVERSAL SERVICE REQUIREMENTS

A. INITIAL COMMENTS

1. The Public Staff

Public Staff proposed clarifying language in Rule R17-3.

2. LECs

Alliance stated that the Commission must examine two distinct elements of Universal Service: (1) Lifeline programs for economically disadvantaged customers and (2) a LEC-targeted fund to ensure deployment of necessary telecommunications infrastructure. In addition, any infrastructure costs resulting from the provision of universal service not recoverable elsewhere should be paid to the existing LEC from a competitively neutral universal service fund contributed to by all telecommunications providers within North Carolina. The Alliance offered clarifying language in Rule R17-3(c) regarding the term "subsidy." The Alliance believes this term is misleading in as that these are not subsidies but Commission-approved rate design mechanisms that assure reasonable cost recovery in recognition of the LECs' positions within their respective service area as the carriers of last resort. The Alliance submitted the following list of questions which it believes provided an appropriate framework for discussing how the fund should be established and administered:

1. Need for and type(s) of state Universal Service Fund (USF)?
2. Who should administer the USF?
3. Funding of USF?
    a. Who contributes?
    b. On what basis should those contributions be assessed?
4. Eligibility for USF cost recovery?
    a. Demonstrations of eligibility?
    b. Payment mechanism?

BellSouth concurred with Commission Rule R17-3 and submitted the following list of universal service issues, on behalf of the LEC industry, which it felt should be considered. in the Universal Service hearing:

1. Definition of universal service.
2. Definition of carrier of last resort.
3. Method of funding.
4. Who are contributors and what should contributions be based upon?
5. Should funding requirements be based upon:
    a) end user needs - Lifeline?
    b) high cost areas?
    c) embedded cost?
6. Method of calculating universal service requirements.
7. Assignment of Carrier Of Last Resort (COLR) responsibility.
    - Provision for changing.
8. Where will offsets occur in order to ensure revenue neutral implementation?
9. Recipients of the universal service fund:
    - Upon what geographic areas should funding be based?
    - How should competition be factored in?
10. Who should administer the funding mechanism?
11. What should happen to the funding mechanism over time?

Carolina found the Universal Service Rule reasonable and acceptable.

GTE proposed language to make universal service fund competitively neutral and to be supported by all telecommunications service providers serving customers in North Carolina; funding and designation of an independent universal service fund administrator; language regarding other CLPs holding certificates and serving the same geographical areas, but without carrier-of-last-resort support from the Universal Service Fund or the associated obligation to serve GTE also submitted a list of universal service issues which it felt should be considered, as follows:

1. What are the goals of universal service?
2. Are there potential dualities of federal and state universal service legislation and/or regulation?
3. Is an explicit universal service fund needed to maintain or promote universal service, address existing implicit support structures?
4. What services constitute a "basic service definition" or bundle?"
5. How or when should this definition be reviewed for the inclusion of new or expanded services?
6. What constitutes basic service affordability criteria?
7. Should universal service funding requirements apply equally to all intrastate telecommunications providers?
8. How can universal service promote local exchange competition?
9. What support characteristics and distinctions exist within and between urban and rural exchanges?
10. What are a carrier of last resort's (COLR) certification (fitness, test), service requirements and obligations?
11. What is a COLR's market entry and exit options?
12. Should there be a single or multiple COLRs?
13. Define and determine:
    a) Fund Administration:
        who administers
        how should funding be based and assessed
        who receives funding (customers, carriers)
        how is funding actually collected and disbursed.
    b) Funding eligibility criteria for:
        COLR
        low income support
        embedded investment recovery
        administrative cost

3. CLPs

BTI did not propose any changes or offer any comment to the Rule R17-3.

Time Warner stated that universal service should include the provision of basic telecommunications service for low income customers and high cost areas. It should not be defined so

broadly as to permit inflated subsidies to local providers. Universal service should include: residential dial tone, touch tone, reasonable amount of local service, access to emergency services such as 911 or E911, where available; access to locally available interexchange companies; directory assistance; operator service; relay service; and an alphabetical directory listing. In establishing Universal Service Funding (USF) funding, the Commission should use traditional universal service sources of funds. No additional subsidies should be provided except for financial support for lifeline services and financial support for high cost exchanges.

4. IXCs

AT&T stated that the current method of funding any universal service subsidy is inconsistent with the goal of effective competition. The flow of universal service subsidy funds has been, and continues to be, entirely internal to the incumbent monopoly local telephone company, and it is not possible to track the transfer of revenues generated by these direct charges and above-cost rates to the subsidization of basic service(s). The Commission should establish an interim mechanism that can be triggered to allow a new universal service subsidy to flow to a qualifying LEC. Further, such a mechanism should be in place when CLPs begin offering service in North Carolina, if the need arises.

AT&T proposed an interim universal service plan and listed the items a LEC would have to demonstrate to obtain (additional) funding under the proposed interim plan which included a cost study performed on a total service, long-run incremental cost (TSLRIC) basis.

ICG had no specific comments relating to Rule R17-3.

Sprint had no specific comments relating to Rule R17-3.

TRA stated that explicit subsidies must be specifically identified rather than be embedded in service pricing. Should subsidies be required, such subsidies should be based upon need, either by the showing of a subscriber's limited income, or on high service costs. All telecommunications providers should contribute in a competitively neutral manner based on revenues net of payments to intermediaries. Only basic residential service should be subsidized and then limited to single party local service with touch tone dialing, presubscription, 911 and operator service access. All CLPs should be able to draw upon universal service funding when eligible. Administration of the fund must be conducted by a neutral administrator.

5. Others

Attorney General had no specific comments relating to Rule R17-3.

CUCA did not object to any specific provision of the proposed rules promulgated by the Commission at this time.

B. REPLY COMMENTS

1. Public Staff

Public Staff had no specific reply comments relating to Rule R17-3.

2. LECs

Alliance stated that all telecommunications providers who originate calls in North Carolina should be required to contribute to the USF. Parties advancing their individualized proposals may readvance them during the scheduled hearings but no consideration should be given to these proposals at this time as they are clearly outside of the Commission's Interim Proposed Rule R17-3 outlined in the Order.

BellSouth stated it will submit its proposals to preserve universal service in the universal service proceeding in June, 1996. The Commission should not prejudge any of the issues to be presented in that docket by adopting or endorsing any particular cost methodology or funding mechanism in this proceeding. BellSouth strongly opposes the use of the TSLRIC costing methodology as a means to quantify the cost of universal service.

Carolina stated it would be inappropriate for the Commission to consider comments and responses directed at universal service issues, or to make any decisions impacting those issues prior to the June 1996, hearings on universal service issues.

GTE stated that changes must be made to current funding methodologies in order to achieve the goals of Universal Service. GTE disagrees with AT&T and MCI that the universal support base should be based on TSLRIC because such arguments fail to acknowledge the historical portion of the universal service subsidy problem. GTE will provide the full context of its Universal Service position during the scheduled hearing concerning universal service issues.

3. CLPs

BTI had no specific reply comments relating to Rule R17-3.

Time Warner had no specific reply comments relating to Rule R17-3.

4. IXCs

AT&T submitted a list of issues to be considered for both an interim Universal Service Plan and for a permanent Universal Service Plan.

In response to specific comments filed by parties, AT&T submitted:

1. It agrees with most of the issues BellSouth has set forth in its list of Universal Service issues. However, BellSouth's eighth issue, "Where will offsets occur in order to ensure neutral implementation?" should be rejected because it assumes that the implementation of an interim or permanent universal service

plan should be revenue neutral. AT&T believes that a new universal service mechanism should be completely de-linked and divorced from the existing LEC revenue requirements.

2. It is not clear from GTE's list of issues whether GTE intends these issues to be an interim service plan or a permanent plan.

3. The statement by Carolina that "Universal Service funding is a critical component of any policy allowing resale of local service because the Companies' cost of providing flat-rate residential service is greater than the present retail rate for such service" highlights the necessity of requiring incumbent LECs to perform TSLRIC studies. AT&T does not agree with this comment and believes that the vast majority of flat-rate residential service costs considerably less to provide than its present retail rate.

4. AT&T agrees with the Alliance that continuing to ensure that the LifeLine program and other programs designed to assist economically disadvantaged consumers are important and should be continued. The universal service plan to be adopted should not be linked to LEC revenue requirements.

5. AT&T disagrees with Time Warner's comment that "Universal service fund support for high-cost areas should not be available to incumbent LECs which are no longer subject to rate of return regulation." Time Warner offers no convincing reason to bar LECs operating under price regulation from petitioning for and receiving a direct subsidy from the interim universal service fund.

ICG had no specific reply comments relating to Rule R17-3.

Sprint had no specific reply comments relating to Rule R17-3.

5. Others

Attorney General stated, in response to various parties' comments, that some or all universal service funds be targeted to low income customers, the Attorney General believes that the people in North Carolina and the nation itself are better off--both socially and economically--if all citizens have access to basic local exchange telephone service. Attempts to remove universal service funding from portions of the network undermine the value of the network as an integrated whole and cease to be universal service.

CUCA stated it believes that the Commission should simply adopt this proposed interim rule and postpone consideration of a permanent universal service mechanism until the evidentiary hearing scheduled for June 25, 1996. CUCA does not believe that any permanent universal service mechanism adopted by the Commission should favor any particular local service provider, that it should be competitively-neutral and that it should rely upon the provision of a specific dollar subsidy for low-income telecommunications subscribers and telecommunications subscribers located in high-cost areas.

NCPA had no specific reply comments relating to Rule R17-3.

NCCTA had no specific reply comments relating to Rule R17-3.

IV. INTERIM RULE R17-4; AND INTERIM RULE R17-5; INTERCONNECTION/NUMBER PORTABILITY AND NUMBER ASSIGNMENT

A. INITIAL COMMENTS

1. The Public Staff

Public Staff offered no specific comments but eliminated R17-4(f) from its marked-up Rule: "Unbundled functional elements of a LEC's network that are made available throughout interconnection agreements should also be made available on an individual tariffed basis."

2. LECs

Alliance stated that local interconnection should be accomplished through negotiations between a certificated LEC and a certificated CLP that are subject only to broad policy guidelines. The Commission should not attempt to anticipate and address specific issues that may arise in these negotiations. HB 161 only provides for "reasonable" unbundling of "essential facilities" in a manner that is "technically and economically feasible." These essential limitations imposed by HB 161 should be included in any interconnection rule and should be applicable to both certificated LECs and certificated CLPs. The cost of unbundling should be recovered under traditional cost causation principles in the context of the local interconnection negotiations.

Concerning number portability and number assignment: The Alliance stated that any decision with respect to number portability should be consistent with national standards. This matter should be addressed in a separate proceeding due to the myriad of technical and public policy issues associated with number portability.

BellSouth noted that proposed interim Rule R17-4 does not require that a CLP requesting interconnection should be certificated, nor does it address specifically local interconnection. The rule is silent as to the party who should bear the costs of local interconnection. With respect to unbundling, the proposed Interim Rule does not specify that unbundling shall be reasonable and involve "essential facilities where technologically and economically feasible" as set forth in G.S. 62-110(f1).

Concerning number portability and number assignment, BellSouth stated that in a competitive marketplace, only service provider portability is necessary to permit subscribers to change from one competitor to another. Number portability should be restricted to where "technically and economically feasible" consistent with G.S. 62-110(f1) Commission should undertake a detailed inquiry into number portability issues, including an evidentiary hearing, if required, to develop the facts necessary to support a rule. "True" number portability is not currently technologically feasible. BellSouth supports the use of interim arrangements such as Remote Call Forwarding, flexible direct Inward Dialing trunk Service, or variants thereof, until a long-term solution can be developed and implemented. Number reservation must be consistent with national guidelines.

BellSouth, on behalf of the industry, submitted the following list of interconnection issues it considers appropriate and necessary for interconnection negotiations:

1. Compensation Rate Structure
2. Technical Standards
3. Compensation Level
4. Tariffs and Contracts
5. Comparison of Calling Scope - LEC vs. New Entrant
6. Unbundling
7. Mutual Compensation
8. Number Portability
9. Number Administration
10. Directory Assistance
11. White Pages
12. 800 Database/Signaling (SS7)
13. Emergency Services (911)
14. Poles and Conduit
15. Collocation
16. Multiple IXC Connectivity

BellSouth submitted the following general unbundled components of the local network as those that CLPs need in order to offer local services:

1. Number Portability
2. Centralized Message Distribution Service (CMDS)
3. Collocation
4. Access to Directory Assistance (DA)
5. Access to Emergency Services (911)
6. Access to 800 Database
7. Access to Operator Services
8. White Page Listings and Directories
9. Signaling
10. Access to Numbers
11. Line Identification Database Service (LIDB)
12. Loops and Ports
13. Access to Poles, Ducts and Conduits

Carolina agrees with the Commission Rule R17-4 except that unbundling should be limited to situations where technically, economically and administratively feasible. Carolina reserves the right, if necessary, to later suggest additional issues to be added to the list of interconnection issues.

Carolina had no specific comments concerning number portability and number assignment.

GTE proposed clarifying language to Rule R17-4 in subsections (a)-(e); added language regarding costing in (f), proposed language regarding the terms and conditions of access to E911, 611, 411, and operator services in (g).

Concerning number portability and number assignment, GTE proposed expanded language to suggest that end-users should have the ability to retain the same telephone number regardless of chosen LEC or CLP; long-term number portability solution should be implemented in a manner consistent with national industry standards; and interim number portability should be based on direct embedded costs of the service provider, plus a reasonable contribution.

3. CLPs

BTI stated that interconnection must provide that CLPs are seamlessly integrated into the public switched network. Their proposal, like the Commission's, relies on negotiations between the parties to establish physical and financial interconnection arrangements, but establishes a mutual traffic exchange, or bill and keep, terminating access compensation mechanism as a fallback if the parties cannot reach a mutually acceptable solution.

As to number portability and number assignment BTI proposed mandated interim number portability at no charge to CLPs. BTI also proposed changes which addressed a number of additional co-carrier arrangements and rules.

Time Warner submitted the following interconnection elements:

1. Number portability and the inclusion of the CLP's NXX code(s);
2. 911 and E911 network and database interconnection;
3. Access to LEC databases such as 800, Line Information Data Base;
4. Access to directory assistance service and directory listings, at no charge;
5. Access to telecommunications relay service;
6. Establishment of a means by which a CLP's customers can access operator services;
7. CCS interconnection including transmission of privacy indicator;
8. Access to all signaling protocols and all elements of signaling protocols;
9. Non-discriminatory handling of mass announcement/and audiotext calls;
10. Cooperative engineering, operations and billing practices and procedures; and
11. Cooperative, timely and efficient maintenance and repair practices and procedures.

Incumbent LECs and CLPs must agree on the appropriate interconnection rates and the physical arrangements necessary for interconnection. Should such negotiations be unsuccessful, the Commission should impose a "bill and keep" arrangement between the CLPs and the LECs.

Concerning number portability and number assignment Time Warner added specificity and struck language that it believed gives the LECs too much control and flexibility.

4. IXCs

AT&T stated that interconnection for the exchange of local traffic involves two sets of issues: 1) how the networks of two competing local exchange providers will be linked together physically so that traffic originating on one network but destined for a subscriber of the other network can be passed to the other network; and 2) how the originating network operator will "pay" for the terminating function on the

other network. Mutual traffic exchange, or payment in kind for the termination of local traffic, should be established as the compensation mechanism. If traffic becomes imbalanced between a LEC and a CLP, the Commission should approve reciprocal rates to compensate the party with the high number of terminations. Any such rate should be set using TSLRIC cost methodology.

The Commission must require unbundling of incumbent local exchange company networks into discrete basic network functions (BNFs). The four steps necessary for unbundling are: a) each function must be separately identified; b) each separately identified BNF must be determined using a TSLRIC methodology; c) monopoly BNFs must be separately priced and tariffed, based upon their underlying TSLRIC costs; and d) all users must be treated equally in the pricing and offering of monopoly BNFs.

Concerning number portability and number assignment, AT&T suggested that Remote Call Forward and Direct Inward Dialing should be provided by LECs to CLPs as interim number portability solutions. Rates should be set at TSLRIC of providing the service. MCI's "carrier portability code" (CPC) is ideal as the first step in implementing true number portability with AT&T's "location routing number" (LRN) the most appropriate as the permanent true number portability solution. True local number portability should be considered on a state or regional basis, and should not be held in abeyance awaiting a national solution.

ICG stated that basic interconnection issues which must be resolved before effective competition include: a) number portability, b) unbundling of LEC services, and mutual compensation for interchange of local traffic. The Commission should adopt a "bill and keep" compensation plan, where neither carrier pays the other to terminate traffic. If the Commission feels that direct compensation is appropriate, it should adopt an interim bill and keep plan (for 1-2 years) until actual data on traffic is available. If the Commission does eventually adopt a direct compensation plan, the rates for interconnection should be on a flat-rate basis, rather than being based on minutes of use.

ICG had no specific comments on number portability and number assignment.

Sprint argued that CLPs should be interconnected with LECs in a manner that gives them seamless integration into and use of local telephone company signaling and interoffice networks in a manner equivalent to that of the incumbent LEC. Mutual compensation for call termination should be set at a level that encourages the development and interconnection while covering the associated costs. Basic network functions should be provided in a uniform manner and conform to quality and interoperability standards. The components of the incumbent LEC's services should be unbundled. The physical components of the LEC's network that should be unbundled include, but are not limited to: loops, end office ports, local switching, tandem switching, tandem ports, interoffice transport, access to SS7 network, Signal Transfer Points and 911/E911 hub and operator services. As software becomes more significant, CLPs must have access to certain data bases maintained by the incumbent LEC, including directory assistance, SS7/Service Control Point Ports, line information database, 800, and advanced intelligent network and number/routing databases. CLPs must have equal access to inside wire drops in multiple dwelling units and office buildings.

The CLPs must also have access to certain administrative systems operated by the incumbent LECs, including order processing systems, billing systems, circuit provisioning systems, maintenance/repair

systems, and customer service systems. In addition, collocation should reflect two characteristics: collocation at aggregation points and either physical or virtual. Language should be added to "definitions" to include all three types of number portability.

TRA stated that requisite interconnection requirements include non-discriminatory and cost-based equal access to conduits and rights of way, an unbundling of basic network functions including local loops, switching, transport and signaling, and full interconnection to local network facilities. Access to basic subscriber information from the incumbent LECs on a non-discriminatory basis will also be necessary to enable successful subscriber provisioning. Network interconnection should be made available through well-defined standardized interfaces for both new and existing network functions, which should conform to nationwide standards. Incumbent LECs should be required to impute the cost of their own network interconnection including actual service cost and TSLRIC of all other components used to provide the service when offering their own services at retail.

TRA had no specific comments on number portability and number assignment.

5. Others

Attorney General had no specific comments.

CUCA stated that the Commission should require that each separate service typically provided by LECs should be unbundled, separately priced, and made available on a comparable basis to both competing local providers and end-users.

CUCA had no specific comments on number portability and number assignment.

B. REPLY COMMENTS

1. Public Staff

Public Staff renewed its previous recommendation that the Commission designate resale of local service as part of the interconnection negotiations between CLPs and LECs. To the extent that issues concerning the interrelated matters of interconnection and resale cannot be resolved through negotiation, an interested party could petition the Commission to address a specific request. The Public Staff proposed additional language changes: it recommended that "interconnection" be changed to "local" interconnection, added "where technically and economically feasible" in R17-4(a); changed "any interconnecting party" to "a CLP or LEC"; added "bona fide written" before interconnection request; and added a new R17-4(f) as follows: "A copy of the bona fide written request of a CLP or a LEC shall be filed with the Chief Clerk of the Commission on the day the request is sent to the party from whom interconnection is being requested, and the 90-day negotiation period shall begin on that day" in marked-up rule.

The **Public Staff** proposed technical changes to Rule R17-5 concerning number portability.

2. LECs

Alliance stated that the new entrants' attempts to have the Commission direct interconnection requests and negotiations in their favor prior to negotiations taking place are without basis under HB 161. There is no sound legal or logical basis for the new entrants' suggestions on unbundling. The new entrants' proposal that cost recovery be based on TSLRIC would not permit the LECs to recover all of the costs of unbundling from the CLPs. Any rules adopted by the Commission on interconnection requirements, unbundling of LEC services and resale of local services should ensure that obligations to provide facilities and component services are bilateral in nature. The Commission must allow rate rebalancing before the implementation of interconnection, unbundling and resale such that rates for those services are based on the fully embedded costs, including lost contribution.

Concerning number portability, the Alliance stated the new entrants have failed to demonstrate that their number portability architectures are "technically and economically reasonable," as required by HB 161. The new entrants' attempt to use TSLRIC and "shared costs" would place the burden for the recovery of the costs of number portability on the remaining LEC ratepayers.

BellSouth noted that several parties have submitted detailed proposals for rules concerning interconnection that would preempt negotiations and result in the Commission prejudging the outcome of negotiations in favor of one party or another. It is unrealistic to believe that all of the myriad issues underlying interconnection, resale and the preservation of universal service can be decided in the context of this initial rulemaking proceeding. The Commission should continue to follow the requirements of the statute, and take actions that allow the parties to meet and negotiate interconnection, unbundling and resale issues, as envisioned by the proposed Interim Rule. It is likely that agreement can be reached on many issues, and the issues that cannot be agreed upon should be more clearly defined for Commission action as a result of the negotiation process. Resale can be considered as an part of the interconnection negotiations. BellSouth supports Carolina's suggested change to modify the requirement to provide unbundled service elements to require that such unbundling be technically, economically and administratively feasible. The Commission should not order the unbundling of elements prior to allowing the negotiation process an opportunity to succeed. Access to poles, ducts and conduits should be part of the negotiation process.

As to number portability, BellSouth argued that the Commission should undertake a more detailed inquiry into number portability issues before ordering the implementation of any temporary solution which may or may not be consistent with the long-term solution that will be implemented.

Carolina argued that requiring the LECs to unbundle their local networks into thirty-four basic network functions and associated rate elements, as AT&T proposed, would be exceedingly complex and costly, and would result in network inefficiency. Furthermore, unbundling to such a degree is not necessary for competition, and in fact could work against competition by generating unnecessary administrative costs which should properly be passed on the CLPs as the cost causer. The Commission should set uniform standards for unbundling, limited to the local exchange access line and switching port facilities, and such unbundling should be technically, economically, and administratively feasible to the LEC providing the service.

As to number portability, the Commission should reject MCI's "carrier portability code" arrangement solution. All parties should focus on developing a satisfactory *permanent* solution, rather than diverting time, effort and resources towards an interim solution that offers only marginal improvement over currently available remote call forwarding.

GTE did not agree with AT&T's suggestion that "bill and keep" or "mutual traffic exchange" is appropriate in a competitive environment. Unbundling of network components should be negotiated where sufficient demand exists for such components. The Commission may want to establish certain guidelines which will facilitate the negotiation process related to unbundling because of the different positions taken by some of the parties in their comments. Mandatory unbundling should be restricted to essential facilities defined as those facilities not available from any other source.

As to number portability and number assignment, GTE noted that MCI's "carrier portability code" system has not been endorsed any state as an interim or long-term solution. Interim solutions are available with respect to number portability until a long-term national policy can be developed.

3. CLPs

BTI stated that BellSouth's approach to interconnection in its comments makes it incumbent on the Commission to adopt comprehensive rules that address all of the necessary co-carrier arrangements that must exist between CLPs and LECs in order for a competitive local exchange market in North Carolina to become a reality. Even though BTI agrees that negotiations between the parties should be relied on in the first instance to establish physical and financial interconnection arrangements, it is extremely important that the parameters of those negotiations be explicitly set forth in the Commission's rules. Fallback positions should be expressly provided in the rules in the event that negotiations are unsuccessful. While BTI's and BellSouth's interconnection issues lists include many of the same elements, BTI, unlike BellSouth, stresses that the elements listed are interim unbundled components that can be implemented immediately, and that additional unbundling is necessary to permit the development of effective local exchange competition. BTI proposed that a proceeding be held by the Commission to address additional unbundling, and that in the interim, additional unbundling must be made available by the LEC on request.

As to number portability, BTI insisted that interim number portability must be mandated, at no charge to CLPs, using an interim arrangement to be determined by the CLP. In response to BellSouth's comments that number portability should be required only where "technically and economically feasible," on the ground that such a limitation complies with the underlying statute, BTI stated that the statute actually states that the Commission is to adopt rules that provide for the "transfer of telephone numbers between providers" in a manner that is technically and economically reasonable." The clear intent of the statute is that number portability is to be provided at the outset. BellSouth's proposed rules on number portability must not be adopted because local number portability is essential to allow customers to take advantage of competitive local exchange services. The Commission must emphasize in this proceeding and in the language of the rules adopted in this docket, that local number portability is a critical goal that must be achieved and that specific rules must be adopted to require immediate interim portability and the development of permanent portability at the earliest possible date.

Time Warner argued that it will be necessary for the Commission to resolve three core interconnection issues before true competition can develop: (l) appropriate compensation; (2) interim

service provider number portability; and (3) unbundling of incumbent LECs' services. The Commission should adopt rules now to specify "bill and keep" as the appropriate interconnection billing procedures. The Commission must also address the unbundling of incumbent LECs services into discrete basic network functions. Although it is essential for LECs to unbundle their services, it would be neither necessary nor appropriate to require CLPs to do so as the LECs have "bottleneck" facilities whose services and facilities are essential to the development of competition and that is not the case for CLPs.

Concerning number portability, Time Warner agreed that, of the three types of number portability (service provider, geographic and service), service provider number portability is essential. This issue is critically important and must be addressed in this proceeding. To initiate a separate hearing, as suggested in some of the LECs' comments, would only serve to delay the introduction of competition and the pricing and service benefits that competition will offer residential and business telephone users throughout North Carolina. While permanent service provider number portability will not be available for several years, local competition in North Carolina should not be put on hold until a permanent solution is found. The industry agrees that two interim methods or derivative of both are available immediately--Remote Call Forwarding and Flexible Direct Inward Dialing, and, if implemented, would allow competition to begin now. The implementation of interim service provider number portability should be resolved by LECs and CLPs as part of their interconnection negotiations, and in the absence of agreement, the Commission should intervene. The Commission should establish an appropriate rate for interim service provider number portability if negotiations between LECs and CLPs prove futile. The LECs should be required to provide these services to CLPs at cost.

4. IXCs

AT&T agreed with using BellSouth's list of interconnection issues, excluding number portability and number assignment, as a framework within which to discuss interconnection issues. There is no legitimate reason for requiring the LECs to negotiate with only those CLPs that have already obtained a certificate, as proposed by BellSouth. The Commission should reject the definition of "bona fide request," as proposed by several parties, including BellSouth, The Alliance, and Sprint, as it would limit who can initiate interconnection negotiations with the incumbent LECs. If the Commission considers BellSouth's proposed language in Rule 17-4(a) "when technically and economically feasible", it should not adopt the rule as proposed and should strike the work "when" and the subsequent qualifier as it is proposed by BellSouth because use of the word "when" is not a part of the statutory language and makes the rule unnecessarily vague. The statute does not require "economically and technically feasible interconnection," as proposed by GTE. The statute clearly contemplates a period of negotiation and a petition process for resolving the issue of the appropriate compensation mechanism for local interconnection. The language offered by GTE could be construed to foreclose "mutual traffic exchange" as an option for the parties to consider when negotiating an interconnection mechanism. The statute does not limit the parties' or the Commission's options in this manner. It is unnecessary to promulgate a rule that may be construed as limiting, at the outset, the options of the negotiating parties Time Warner's proposed rule "R17-4 Interconnection" as an acceptable alternative for the Commission's consideration with the change that the appropriate relationship between LECs and CLPs is that of co-carriers. It is improper to refer to the interconnection of CLP and LEC networks as "subtending." Proposed requirements to provide nondiscriminatory, prompt, efficient and seamless interconnection should be extended to apply to CLPs.

AT&T does not disagree with the proposed changes submitted by BellSouth, the Alliance, and Carolina that recognized the language in the statute - that unbundling shall be reasonable and involve essential facilities where technologically and economically feasible. AT&T agreed with Sprint's position that a LEC's services should be unbundled so that a CLP is not forced to purchase services that it does not want. AT&T continues to believe that the more appropriate position is for the Commission to adopt more definitive requirements for the unbundling of the LEC network. The Commission should recognize that a greater degree of unbundling is warranted, and specify such in the regulations it adopts.

At a minimum, the Commission should adopt the list of unbundled component set forth by BellSouth, with the following modifications:

(a) CLPs shall be permitted to interconnect with all unbundled Basic Network Functions (BNF) at any technically feasible point within the LEC's network at cost-based, nondiscriminatory, and tariffed rates.

(b) Within 120 days of the effective date of these rules, each LEC with more than 200,000 access lines in the State of North Carolina shall provide to the Commission and to all interested persons a tariff for the offering of, at a minimum, the following BNFs:

1. Network Exchange Access
   a. Exchange line
   b. Loop concentration

2. Local Switching
   a. End office switching
   b. Tandem switching

3. Local Transport
   a. Common transport
   b. Dedicated transport

4. Auxiliary and Signaling
   a. Centralized Message Distribution Service
   b. Access to Directory Assistance
   c. Access to Emergency Services
   d. Access to 800 Database
   e. Access to Operator Services
   f. White Page listings and directories
   g. Access to numbers
   h. Line Identification Database Service
   i. Signaling

This tariff shall be accompanied by an affirmation that all required BNFs can and shall be provided within 90 days of a bona fide, written request for such BNF and/or interconnection. The tariff shall also be accompanied by cost support demonstrating that the proposed rate for each BNF and interconnection is no greater than the TSLRIC of the BNF or interconnection. The access, use and interconnection of all

BNFs shall be on terms and conditions identical to those the LEC provides itself and its affiliates for the provision of local exchange, exchange access, intraLATA toll and other LEC services.

Concerning number portability, AT&T restated its belief that number portability and number assignment are issues that should be considered by the Commission separately from interconnection issues. AT&T urges the Commission to schedule, conduct and decide on any hearing to consider number portability, and other local competition issues in an expeditious manner.

ICG had no specific reply comments on either Rule R17-4 or R17-5.

Sprint had no comments concerning interconnection issues as listed by the commentors. Sprint would reiterate its own comments that interconnection of local telephone networks at reasonable rates is necessary if there is to be local telephone competition. Customers must be able to seamlessly place and receive calls that originate and terminate on different carriers' networks.

Sprint had no specific reply comments on number portability.

5. Others

Attorney General noted that there is partial overlap between the CLP lists and the LEC lists as presented by BellSouth. The most appropriate way to handle the differences among the parties on these points is for the Commission to order all parties to work together to negotiate a list of essential unbundled elements of the local network and to agree on the issues that are important to all. The Commission could thus be presented with a list of issues upon which all parties can agree and a list of issues upon which none or only some parties can agree. The Commission could make a better informed decision on what should be the unbundled elements of the network and what are the important interconnection issues.

The Attorney General had no specific reply comments on number portability.

CUCA did not believe that the Commission should attempt to delineate in advance the nature of the "unbundled" interconnection services which should be provided in any particular instance or the price which should be charged for the "unbundled" interconnection services provided in that instance. The Commission should promulgate a rule similar to that proposed in the July 19, 1995, Order; await any request for the resolution of issues which the parties have been unable to resolve through the negotiation process; conduct an evidentiary hearing in response to any request for Commission regulation of such disputes; and decide the relevant interconnection issues based upon the evidence introduced at that hearing. The Commission should require the LECs to offer all interconnection services requested by CLPs on an "unbundled" basis or prove by a preponderance of the evidence that the provision of a specific requested interconnection service is infeasible for either economic or technical reasons.

CUCA had no specific reply comments on number portability.

NCCTA stated that an acceptable resolution of core interconnection issues such as service number portability, unbundling of existing LEC services, and interconnection rates should not be deferred and

thereby permitted to delay the start of competition. The Commission should be prepared to intervene quickly if private negotiations between LECs and CLPs prove to be unsuccessful.

The NCCTA suggested that interim service number portability is economically and technologically feasible and should be implemented immediately.

NCPA had no specific reply comments relating to either Rule R17-4 or R17-5.

V. RESALE OF LOCAL SERVICE

A. COMMENTS

1. Should LECs be required to make their local services available for resale? If so, should the resale be limited to business services (e.g., PBX trunks or Centrex service)?

1. The Public Staff

Public Staff recommended that the Commission designate resale of local service as part of the interconnection negotiations between CLPs and LECs. To the extent that issues concerning the interrelated matters of interconnection and resale cannot be resolved through negotiation, an interested party could petition the Commission to address a specific request.

2. LECs

Alliance suggested that, subject to appropriate pricing guidelines and policing mechanisms, the resale of existing LECs' local exchange services could be permitted by certificated CLPs. Without protections, the Commission may find itself creating incentives for market entry that are not based on economically sound business practices, but rather artificial incentives to target select customers. The Commission must first permit rate restructuring and have universal service mechanisms in place.

BellSouth stated that the Commission should not require the resale of local services because it does not lead to innovation or enhanced technical offerings but is merely the repackaging of services offered by an incumbent LEC. If the Commission determines that resale is in the public interest, resale should be limited to usage-based services at the existing tariffed rates. Other carriers should not be permitted to "joint market" or "package" local exchange services with interLATA services. New services should be exempt from resale unless the LEC decides to make them available. BellSouth agreed with Carolina that, to the extent resale is allowed, it should include strict class of service restrictions. That is, a reseller should not be allowed to buy residential service and resell it to a business end user.

Carolina stated that LECs should be required to make local services available for resale. The impact of any resale policy must be considered and addressed in the Commission's upcoming universal service proceeding. The appropriate universal service funding must ensure that facilities-based LECs recover the economic cost of providing any service that is being resold.

GTE argued that neither LECs nor CLPs should be required to make local services available for resale. All services of all providers which are priced above long-run incremental costs should generally be available for resale at tariffed rates. Minimal restrictions are appropriate for services priced below costs and/or services that are structured such as flat-rated.

3. CLPs

BTI stated that all LECs should make all retail services available for resale with all resale restrictions currently imposed by LEC tariffs or elsewhere, removed effective January 1, 1996.

Time Warner argued that incumbent LECs should be required to make all telecommunications service offerings, both residential and business, available for resale upon a bona fide request by a CLP. The Commission should not establish or mandate a price discount for the resale of the services unless the CLP can show the LEC's costs to be materially less than they would have been in the absence of a resale of the service. Initial market entry by non-facilities based CLPs should be provided by the elimination of the continuous property requirement of shared use.

4. IXCs

AT&T suggested that LECs should be required to make all retail services available and no restrictions should be placed on the resale. LECs should develop additional class of wholesale service to facilitate access into local exchange market by CLPs. Pricing for long-term wholesale rates should be TSLRIC rates, with interim rates set at a 30% discount from current retail rates.

ICG argued that CLPs must be allowed to purchase and resell all LEC services. Without resale, a new entrant would have to build a duplicate network in order to provide the same services as provided by the incumbent LEC. The inability to resell the services of the incumbent carrier would deny the options and other benefits of competition to most consumers.

Sprint maintained that LECs should be required to make their local services available for resale. Resale should not be limited to business services. Services and functions should be provided without any restrictions on resale and sharing provided that resale is of the same class of service.

TRA argued that unrestricted basic local service resale must be offered at economically feasible rates. All resale restrictions must be removed.

5. Other

Attorney General stated that experience in other jurisdictions indicates that the kinds of services that are resold and the rates for resale are extremely important in the transition to competition. Before the Commission considers how to set rates for resale of local service and before it looks at universal service issues, it must first evaluate the cost of each component of local service.

CUCA argued that resale of local service will facilitate the development of a workable competitive local exchange market by facilitating market entry by new service providers and providing customers with the benefits of competition. Resale of local services should not be limited to business services.

2. If local service were offered for resale, how should the rates be determined (discounted rate by LEC, etc.)?

1. The Public Staff

Public Staff had no comment, except that - resale should be designated as part of interconnection negotiations between CLPs and LECs.

2. LECs

Alliance stated that the pricing of "resold" local exchange service should be governed by four principles:

a. The Commission must reconcile any local "resale" policy with present rate design policies, e.g., recovery of toll and access charges.

b. The Commission should require the certificated CLP to bear the costs of the services they are purchasing.

c. The Commission must recognize that an existing LEC's customer mix may be such that a disproportionately small percentage of the customers generate a disproportionally large volume of the usage that generates the contribution.

d. The Commission's policies must prevent "cream skimming."

Local resale should be based on embedded costs, not existing rates. The Commission should be sensitive to the need for policing of resale arrangements. Resale of local exchange services should be permitted only by certificated CLPs. LECs should have audit authority to confirm proper use of resold services.

BellSouth argued that no service currently priced below its cost should be resold. If local services that are priced above cost are offered for resale, rates should be tariffs rates. Discounts should be based on cost savings resulting from resale.

Carolina stated that resale services should not be set below the LEC's present retail rate when that rate does not cover the LEC's cost of providing the service. LEC's should not be required to resale services that are priced below cost at a discounted rate.

GTE argued that resale rates should be based on the costs of the service itself, set in accordance with expected demand, and include a component which will recover a market sustainable level of contribution to cover common overheads and margin.

3. CLPs

BTI argued that wholesale rates should be the current tariffed retail rates reduced by 30% to reflect the LEC's avoidable retail costs and further reduced to reflect deficiencies in the grade of service offered local telecommunications providers.

Time Warner suggested that resale should be priced at LECs' existing tariff rates in absence of justification for cost reduction. Market will control rates after facilities based competition is established. The Commission should discourage resale of LEC services that would impair or delay construction of facilities by CLPs.

4. IXCs

AT&T stated that rates should reflect the combined cost of providing the local exchange and exchange access services and should be cost-based, with any contribution assessment addressed as a separate issue. As an interim measure, wholesale rates should be the current tariffed retail rates reduced by 30% to reflect the LEC's avoidable retail costs. Prices for wholesale services, including resold retail services and access services, should be set at TSLRIC-based rates.

ICG had no specific comments.

Sprint argued that prices for unbundled resold services should be set at levels which do not exceed economic cost-based levels. Resale at deeply discounted rates will encourage repackaging of existing services and discourage development of new integrated offerings.

TRA stated that resale must be offered at economically feasible rates, and be structurally consistent with retail pricing for the service, e.g., if the service is sold at retail on a flat-rate basis, it must be resold on a flat-rated basis.

5. Other

Attorney General had no specific comments.

CUCA argued that resale rates should probably be lower than end-user rates The LEC incurs lower costs to provide service to a reseller as a result of economies of scale, including lower billing and customer record-keeping services. Rates should be subject to negotiation between the LEC and the reseller; if parties are unable to reach agreement, Commission should determine the rates utilizing traditional regulatory principles.

3. Is the resale of local service essential for CLPs to be able to provide local service? Should resale of local service be part of the interconnection negotiations?

1. The Public Staff

Public Staff argued that resale should be designated as part of the interconnection negotiations.

2. LECs

Alliance stated that existing tariffed rates are inappropriate. If question relates to reselling of unbundled network functions, resale of local exchange services may be appropriate for interconnection negotiations. The Commission should establish general policies governing whether and how local resale should be permitted.

BellSouth argued that resale of local exchange service is not essential for a CLP to offer local service. Unbundled network components coupled with available tariff offerings will permit CLPs to provide local exchange service. If the Commission should decide to require resale, or if an incumbent LEC chooses to permit resale, issues regarding further unbundling should be addressed in negotiations.

Carolina stated that, although resale of local service is not essential for CLPs to provide local service, a reasonable policy allowing resale of local service would facilitate development of a competitive market. There should be no requirement that LEC facilities be constructed for the specific purpose of resale. If tariffs are the basis for resale of local service, there would be no need for resale to be an issue in interconnection negotiations.

GTE maintained that resale of local service is not essential for CLPs to be able to provide local service. Resale of local service should not be part of the interconnection negotiations.

3. CLPs

BTI had no specific comments.

Time Warner argued that resale of local services is essential for local competition and should be part of interconnection negotiations with reliance upon Commission intervention, if the parties are unable to reach agreement.

4. IXCs

AT&T stated that development of a wholesale local service product is essential for true competition to flourish in the local market. Commission should require the LECs to develop a wholesale service using the pricing guidelines mentioned in its response to #2.

ICG argued that CLPs must be allowed to purchase and resell any and all LEC services.

Sprint said it is essential that resale be authorized to preclude the LECs from predatory pricing to drive CLPs out of the market. There appears to be no basis or justification to include resale of local service as part of the interconnection negotiations.

TRA argued that economically feasible unrestricted basic local service resale is a crucial component in supporting development of meaningful local competition.

5. Other

Attorney General stated that long distance market has shown that resale is necessary to implement the change to a more competitive market price.

CUCA maintained that resale of local exchange services is in the public interest and necessary to the development of a workable competitive local exchange market. The terms, conditions, and pricing of resale service should be determined by negotiation first and the Commission should only become involved to the extent negotiations prove unsuccessful.

4. If residential local service is permitted to be resold to a CLP, should that service be limited to CLPs' residential customers?

1. The Public Staff

Public Staff had no comment, except that - resale should be designated as part of interconnection negotiations between CLPs and LECs.

2. LECs

Alliance supported such limitation.

BellSouth stated that resale of residential service to business customers should not be allowed. It would be inappropriate to require resale of residence local service until such time as that service is priced above cost.

Carolina supported such limitation.

GTE supported such limitation.

3. CLPs

BTI had no specific comments.

Time Warner said that it would appear logical to restrict local residence service to the CLP's residence customers. However, in practice, would be difficult and costly to police, both for the LEC and the CLP.

4. IXCs

AT&T argued that all services should be available for unrestricted resale.

ICG had no specific comments.

Sprint maintained that all telecommunications services and functions should be provided without any restrictions on resale and sharing, provided that resale is of the same class of service.

TRA argued that no limitation should be placed on which subscribers or type of subscribers should be able to benefit from local service resale if the Commission intends to allow market-based competition to develop.

5. Other

Attorney General had no specific comments.

CUCA stated that resale should not be limited by specific end-user categories.

5. Should CLPs be required to make their local services available for resale?

1. The Public Staff

Public Staff had no comment, except - resale should be designated as part of interconnection negotiations between CLPs and LECs.

2. LECs

Alliance supported such requirement.

BellSouth stated that no entities should be required to make their local services available for resale but if the Commission requires resale, then resale should apply to all local service providers under the same terms and conditions.

Carolina supported such requirement.

GTE argued that if the Commission requires the LECs to resell local services, the CLPs should also be required to resell these same services.

3. CLPs

BTI supported requiring all local telecommunications service providers shall make all retail services available for resale.

Time Warner stated that resale of CLP services is not necessary for local exchange competition. CLPs should be "allowed," rather than "required" to offer services for resale. Once market is fully competitive, resale may be appropriate.

4. IXCs

AT&T supported such requirement.

ICG argued that CLPs must be allowed to purchase and resell all LEC services.

Sprint stated that until such time as CLPs have market power and facilities in place, it would be premature and anticompetitive to require CLPs to make their local services available for resale.

TRA supported such requirement.

5. Other

Attorney General had no specific comments.

CUCA argued that the Commission should not exempt CLPs from any resale requirement.

6. What, if any, differences should there be in treatment of resale of DRP/DAPs (as considered in the hearing held on May 2, 1995, in Docket Nos. P-100, Sub 126 and Sub 65) and resale of local services?

1. The Public Staff

Public Staff had no comment, except that - resale should be designated as part of interconnection negotiations between CLPs and LECs.

2. LECs

Alliance stated that due to the differences in DRP/DAP service offerings as compared to traditional flat rate local service, the resale of DRP/DAPs should be considered separately from the resale of local service.

BellSouth was not opposed to the traditional resale of the usage portion of DRP/DAPs, provided that all additional costs incurred as a result of resale are covered by the carrier.

Carolina argued that resale of DRP/DAP service offerings at retail rates to the same customer class should be allowed. However, once resale is authorized the present imputation requirements must be eliminated.

GTE stated that neither resale of local service nor resale of DAP/DRP services should be required at this time. Resale of DRP/DAP services should not be allowed until GTE is allowed to enter the interLATA market.

3. CLPs

BTI had no specific comments.

Time Warner maintained that area calling plans are simply pricing options of basic local exchange service. The same issues raised above would apply to the resale of DRP/DAPs.

4. IXCs

AT&T argued there should be no difference.

ICG had no specific comments.

Sprint argued there should be no difference. DRP/DAPs are nothing more than expanded local calling areas and should be accorded the same treatment as local service.

5. Other

Attorney General had no specific comments.

CUCA argued there should be no difference. Full resale of DRP/DAP service should be required.

B. REPLY COMMENTS

1. The Public Staff

Public Staff renewed its previous recommendation that the Commission designate resale of local service as part of the interconnection negotiations between CLPs and LECs.

2. LECs

Alliance stated that the proposals of the new entrants to impose radical restructuring on LECs in connection with resale of local service and to require significant across-the-board discounting from non-cost based tariff rates should be rejected because they are motivated by factors which have nothing to do with the public interest of the citizens of North Carolina; do not recognize the necessity to incorporate actual fully embedded costs as part of the resale pricing equation, would create artificial incentives for competitive entry and improperly allocate the costs for those incentives to LEC rate payers, and go well beyond any reasonable interpretation of the legislative intent behind HB 161. Resold services should be restricted to the use for which they were originally designated.

BellSouth stated it does not believe that the Commission should require resale of local services at this time. Unbundled network components that, when combined with offerings already available in approved tariffs, will allow CLPs to provide local exchange service utilizing functions and features that have been designed and priced for a resale environment. If the Commission decides to allow resale prior

to finalizing the universal service fund and prior to BellSouth obtaining interLATA relief, then it should be limited to usage-based services at existing tariffed rates. In addition, resale should be limited to business services only, since residential basic local service has long been priced below its cost. Other carriers should not be allowed to joint market or package local exchange services with interLATA services.

Carolina had no comments.

GTE said guidelines should not be established that assure the profitability of the new entrant. Resale prices should cover the costs of the resold service as well as provide a contribution to the overhead costs of the firm. If resale is allowed, user restrictions should be placed upon the resold products to ensure that a reseller is not using residential one-party service to compete for business services.

3. CLPs

BTI stated that it is critical that the regulations adopted make clear that the resale of local exchange services is expressly permitted. All LEC retail services should be available for resale, all restrictions on resale in LEC tariffs or elsewhere should be eliminated, and LEC resale rates should be regulated. BTI and FiberSouth's proposed rules on resale are fully supported by the extensive showing in the AT&T/MCI Joint Comments as well as by the comments of Time Warner and TRA. BellSouth presents no compelling reasons to the contrary. None of BellSouth's proposed restrictions on resale have merit, and all must be rejected. BTI and FiberSouth agree with the rules proposed in the AT&T/MCI Joint Comments. It is important that the regulations adopted by the Commission, at the outset, are able to prevent the LECs from discriminating in favor of their own retail local services. The Commission must encourage a thriving resale market that will hasten the delivery of efficient and economical competitive services in North Carolina.

Time Warner stated that, if resale is mandated, LEC services should be set at the LEC's tariffed rates. By deeply discounting the rates, the Commission would encourage the development of non-facilities-based carriers and create a disincentive for new entrants to construct competitive facilities. To the extent it may be more cost effective for a CLP to provide local service by reselling a LEC's existing services, CLPs will have no incentive to build and will not build new competitive networks. Real competition and real consumer choices in services, providers and prices will develop only if the Commission encourages the development of robust, facilities-based competition.

4. IXCs

AT&T argued that the Commission must impose regulations to ensure that commercially viable resale works. It will be necessary for the Commission to intervene to ensure the operational support systems for resale are in place and are working efficiently. Providing electronic interfaces and operational support systems will be essential in ensuring efficient resale.

Total network resale provides for new entrant's purchase of every local service at cost based rates, including access services. Customers have received local service at allegedly low prices because of the other revenue streams and should not be deprived of their traditional, regulatory-set, social prices for local services.

ICG stated that, without resale, a CLP could not compete until it virtually duplicated the LEC network. Resale allows competitors to generate revenue which can be used for innovation and capital investment and prevents unnecessary duplication of facilities. The Commission should not arbitrarily limit resale to usage-sensitive rates as suggested by BellSouth, nor should it allow LECs to impose usage-sensitive rates on services which do not have usage-sensitive costs.

Sprint stated that, contrary to the assertions of BellSouth, resale of local services should be permitted and is essential for a CLP to offer local service. Local competition will not occur without resale provisions. BellSouth's comments that carriers should not be permitted to joint market local exchange services with interLATA services until such time as BellSouth is permitted to enter the interLATA market is advancing BellSouth's own unsupported agenda without regard to the public interest and the consumer. The comments of CUCA have accurately and succinctly stated the proper position for the Commission to take on the issue of resale.

5. Others

Attorney General argued that the Commission must require resale if there is to be development of competitive local telephone service for all classes of telephone customers across the state. The Commission should initiate an inquiry into costs in this docket, or in the price regulation dockets of the individual LECs as they are filed, in the universal service portion or in a new proceeding. Until the reasonable cost of building loops or building central office switching ability, the rates for resale of services could alternately encourage wasteful duplication or allow an economically inefficient provider to build new additions to the network. Limiting resold services to the customer class of the underlying LEC service is essential at this stage, particularly if costs of resold services are unknown and the LECs continue to assert that certain flat-rated services are priced below cost.

CUCA maintained that the Commission should require the resale of both incumbent LEC and CLP services. The absence of such a resale requirement will limit the options available to local service subscribers and risk reconcentration of the telecommunications market in the hands of a few facilities-based carriers. The adoption of a resale requirement is the only way to ensure the development of genuine local competition which benefits all customers, since the construction of the facilities necessary to permit facilities-based local competition will necessarily be slowed by the costs of such facilities and the necessity for facilities-based carriers to refrain from making uneconomic investments. The Commission should reject the argument that residential local exchange service is presently priced below cost and resale of such service should not be required. The adoption of more realistic local service pricing policies coupled with the development of a competitively-neutral universal service mechanism should eliminate the basis for this objection to local service resale. The Commission should not adopt the limitation that existing customer class restrictions by prohibiting the resale of residential services to business customers. CUCA continues to believe that, at least in the short term, resale rates should be based on existing LEC tariff rates, discounted to reflect any cost savings due to aggregation. CUCA also believes that the Commission should not attempt to develop resale rates and should police resale rates by requiring a discussion in the interconnection negotiations required by G.S. 62-110(f1) contingent on the understanding that the Commission will resolve any dispute between the parties which cannot be resolved. The Commission should simply adopt a broad resale requirement conditioned on the understanding that specific pricing decisions will be made on a case-by-case basis.

NCCTA stated that the Commission's policies should encourage the development of facilities-based competition rather than simply the reselling of existing services.

VI. MISCELLANEOUS

A. INITIAL COMMENTS

AT&T also suggested and proposed language for certain other items not addressed in the Interim Rule:

a) Equal Access to Conduits, Pole Attachments, Rights-Of-Way, and Other Pathways
b) Interoperability and Technical Standards
c) IntraLATA Dialing Parity

B. REPLY COMMENTS

In reply comments, **BellSouth** stated the issue of intraLATA dialing parity is clearly beyond the scope of this proceeding. As far as access to poles, ducts and conduits, this category should be included in the negotiation process.

Whereupon the Commission reaches the following:

FINDINGS AND CONCLUSIONS

After careful consideration of the filings in this docket, the Commission finds and concludes the following:

A. APPROPRIATE REGULATORY STRUCTURE FOR CLPS

1. Generally

In its July 19, 1995, Order in this docket, the Commission noted that HB 161 does not directly speak to the regime of regulation that ought to apply to CLPs. However, the Commission further noted that rate base/rate of return regulation under G.S. 62-133 would "seem impracticable with respect to CLPs--which are, after all, competing local providers." The Commission also suggested that provisions of G.S. 62-2 and G.S. 62-110(f1), when read together, seem to confer adequate flexibility on the Commission to determine the appropriate kind and degree of regulation of CLPs. G.S. 62-110(f1) authorizes the Commission to "adopt rules it finds necessary. . .to carry out the provision of this subsection in a manner consistent with the public interest. . . ." G.S. 62-2 allows deregulation of all or parts of a telecommunications public utility "after notice to affected parties and hearing" upon a finding that the service or business of the public utility is competitive and such action is in the public interest.

Generally speaking, the comments on appropriate regulatory structure fell into three major categories. The first was the minimal regulation category, as exemplified by the Public Staff and the CLPs. These commentors favored no price regulation and argued that CLPs should not be required to file tariffs.

Those commentors also argued that the Commission should not impose service standards. The second category was qualified-minimal regulation. BellSouth fell into this category. BellSouth favored non-regulation as to most issues mentioned but also maintained that tariffs should be required from CLPs, although supporting data for these tariffs should not be required. The third category, composed mostly of the other LECs, favored symmetrical regulation--i.e., that LECs with price plans and CLPs should be subject to essentially the same regulation. Thus, CLPs would have to adopt price plans, file tariffs and otherwise operate under the same regulatory constraints as LECs. There was broad agreement among all parties that the Commission should retain complaint jurisdiction over CLPs as well as jurisdiction over CLP certificate transfers but should only require minimal reporting from CLPs, notably information necessary for the regulatory fee.

CUCA suggested in its initial comments that the Commission needs further proceedings to satisfy due process requirements in determining the appropriate regulatory regime for CLPs. The Commission disagrees noting the Commission's November 30, 1995, Order denying the Joint Request by AT&T and others for evidentiary hearings. This proceeding itself constitutes a hearing within the meaning of that term and that a decision rendered pursuant to the comments in this docket will have been made "after notice to the affected parties and hearing."

The Commission concludes that the record contains an adequate basis for finding that the services to be offered by CLPs are essentially competitive in nature and that it is in the public interest that CLPs be exempted from a number of specific statutes and rules.

An examination of the comments on these issues revealed consensus as to a number of specific items. A major question was whether CLPs should be subject to some form of price regulation. The rationale for not regulating the prices of CLPs was identified by the Public Staff in its comments:

> CLPs will not be monopoly service providers with exclusive service areas as was the case with local exchange service providers. Telephone customers will have the choice of receiving service from one or more CLPs as well as the incumbent LEC. Since the customer is not captive to the CLP, the types of rate and service regulation which were necessary in a monopoly telephone environment will not be needed. (Public Staff comments, October 4, 1995, p. 1).

In addition, it should be noted that the LEC rates will in practical terms tend to be the cap over which an aspiring CLP cannot charge, unless it offers some added value, such as better quality of service, that will justify a higher price in the marketplace.

Several parties, including the Public Staff, suggested that CLPs should not be subject to external service standards but only to such service standards as they set for themselves. The argument was that competition will ensure that CLPs will meet or exceed service standards, and there is thus no necessity for the Commission to set the service standards. The Commission admits that there is some force to this argument. However, the Commission is persuaded that, at this early stage in the competitive process, it would be preferable to set a technical floor regarding service standards below which a CLP is expected not to fall. Further, the Commission does not view the requirements of Rule R9-8 to be particularly onerous

or difficult to meet. The Commission, therefore, concludes that CLPs should be required to meet the service standards set out in Rule R9-8.

Finally, the Commission must decide whether tariffs or price lists should be required of CLPs or whether CLPs should be relieved of such requirements, as recommended by the Public Staff and the CLPs.

The Commission concludes that it should not require tariffs from CLPs. The Commission concludes that, because of the burden and expense of preparing and filing tariffs, it should not require tariffs from CLPs. A strong argument can be made, however, that the Commission should have on record a list of the services relating to basic local exchange service and the prices of these services, at least during the initial phases of this important transition to competition. This can be done by requiring price lists, which are less costly to prepare and maintain than tariffs. The provisions of G.S. 62-110(f1) vest considerable discretion in the Commission regarding tariffs or price lists even to the extent of allowing such a requirement to be waived. These provisions require that CLPs "until otherwise determined by the Commission, file and maintain with the Commission a complete list of the local exchange and local exchange access services to be provided and the prices charged for those services...." (emphasis added) Further, price list information may be useful for reporting purposes.

In requiring price lists, the Commission further concludes that a CLP's price list filing or revision of it should be presumptively valid and become effective on the same day as it is filed in order to provide consumers the immediate benefits of the CLP's competitive prices and services. A CLP may petition to have the price list requirement waived at any time after March 1, 1998.

In summary, the Commission's findings and conclusions include the following:

1. That CLPs should not be required:

   a) To be subject to rate-of-return or any other form of price regulation. CLPs should therefore be exempted from G.S. 62-130 (Commission to make rates for public utilities), 62-131(a) (Rates and service), 62-132 (Establishing rates), 62-133 (Rate base/rate of return regulation), 62-134 (Change of rates), 62-135 (Temporary rates under bond), 62-136 (Investigation of rates), 62-137 (Contracts as to rates between utilities), 62-138 (Rate filings), 62-142 (Contracts as to rates between utilities), and Rule R1-17 (Filings of increased rates; application for authority to adjust rates).

   b) To file tariffs. CLPs should therefore be exempted from Rule R9-4 (Filing of telephone and telegraph tariffs and maps).

   c) To file depreciation rates and have them approved or prescribed.

   d) To file annual reports, construction budgets or other financial information. CLPs should therefore be exempt from Rule R1-32 (Filing of annual reports), Rule R9-3 (Annual filings of construction plans and objectives), and Rule R9-9 (Financial and operating reporting requirements).

e) To file affiliated contracts. CLPs should therefore be exempt from G.S. 62-153 (Contracts with affiliates).

f) To be subject to securities regulation by the Commission. CLPs should therefore be exempt from Article 8 of Chapter 62 (Securities Regulation) and Rule R1-16 (Pledging assets, issuing securities, assuming obligations).

g) To utilize the uniform system of accounts. CLPs should therefore be exempt from Rule R9-2 (Uniform system of accounts).

2. That CLPs should be required:

a) To file the regulatory fee report and pay the applicable regulatory fees.

b) To file a monthly report on the number of access lines together with such additional information as the Commission may require.

c) To be subject to Commission complaint jurisdiction.

d) To be subject to the requirements of Rule R9-8 (Service objectives for local exchange companies) and Rule R12 - 1 et seq. (Customer deposits for utility services; disconnecting of service) concerning quality of service and consumer protection. Note also the provisions of Rule R17-2 (g)-(u).

e) To file and seek approval from the Commission of transfers of franchises, etc. under G.S. 62-111 (Transfer of franchises, mergers, consolidations and combinations of public utilities).

f) To utilize GAAP.

g) To be subject to such other requirements as specified by the Commission in this and subsequent Orders and to existing statutes and rules of general application.

h) To file price lists relating to the provision of basic local exchange services.

2. Payphones and Shared Tenant Services

The Public Staff in its initial comments raised the issues of payphone service and Shared Tenant Services (STS) using CLP facilities and public payphone service offered by CLPs. The Public Staff suggested that CLPs be barred from offering local exchange lines for use by COCOTs or STS providers until the Commission has had the opportunity to conduct a rulemaking to amend Rules R13, R14, and R14A. With respect to payphone service offered by CLPs, the Public Staff suggested that the provisions of Rule R13 should apply except that CLPs need not obtain a special certificate. The NCPA suggested that the Commission amend its rules as soon as possible so that CLPs can offer public telephone access service (PTAS) lines upon certification.

The Commission concurs with the Public Staff proposals in this area with one caveat. With respect to the provision of PTAS lines by CLPs to COCOTs, the Commission notes that G.S. 62-110(c) provides that "[t]he certificated local exchange telephone company in the service area where any new pay telephone service is proposed shall be the only provider of the access line from the pay instrument to the network.." A similar provision also occurs in G.S. 62-110(d) and (e) regarding STS. Since CLPs and LECs are now defined terms in the statute and LEC is defined as "a person holding on January 1, 1995, a certificate to provide local exchange services or exchange access services," the Commission at this point lacks authority to authorize CLPs to offer PTAS lines. Nevertheless, the Commission will initiate a rulemaking in Docket Nos. P-100, Sub 84 and P-100, Sub 97 at such time as the law is modified to allow CLPs to offer PTAS lines.[1] With respect to the offering of payphone service by CLPs, the Commission concurs with the placement of CLP payphones under Rule R13. Since CLPs are not subject to full tariff requirements, Rule R13 will serve in lieu of tariffs for CLPs in setting out the terms and conditions of such service, just as it does for COCOTs today.

3. Consumer Protection Provisions

The Attorney General in his initial comments set out "Proposed Service Rules for Competitive Local Telephone Service in North Carolina," which, however, by their terms would appear to apply to both CLPs and LECs. For its part, the Public Staff proposed several rules concerning consumer protection measures in its Rule R17-6 (General CLP Regulations), notably Rule R17-6(j) through (o) AT&T criticized the Attorney General's proposed rules as being repetitive of existing rules in most respects and objectionable as to certain particulars.

The Commission concurs with the Public Staff regarding consumer protection issues. The Commission notes that Rule R12-1 et seq. (Customer Deposits for Utility Services; Disconnecting Service) will remain in effect and will apply to CLPs. The specific recommendations of the Public Staff, as slightly modified, will supplement, not supplant, those rules.

B. CONCLUSIONS REGARDING THE INTERIM RULES AND RELATED MATTERS

The interim rules that the Commission has promulgated and sought comment upon are derived from mandates found for the most part in Section 4 of HB 161 (G.S. 62-110 (f1) - (f3)). Those interim rules fall into two broad groups. The first group deals with definitions and general certification requirements for CLPs. The second group speaks in broad terms, derived in many cases directly from the statutory

[1]A similar, but not identical, problem, arises with respect to the Dual Party Relay System authorized in G.S. 62-157. G.S. 62-157(b) authorizes the Commission to require LECs and telephone membership corporations to impose a monthly surcharge to support the system. The Commission did this by Order dated February 5, 1991, in Docket No. P-100, Sub 110. It is the Commission's opinion that, while CLPs should be required to participate in the dual party relay system (see R17-2(l)), as a matter of public policy and that this is well within the Commission's power, the Commission cannot require the imposition of a surcharge by a CLP on CLP customers in the absence of an amendment to the statute.

language of HB 161, to policy issues such as universal service requirements (Rule R17-3), interconnection (Rule R17-4), and number portability and number assignment (Rule R17-5). In addition, there are policy issues that are not addressed explicitly in the rules, such as resale of local service.

The parties have submitted extensive comments to the Commission concerning these rules. While some parties, notably AT&T, have submitted many proposed revisions, especially as to policy issues, other parties, including the Public Staff, have suggested leaving the basic structure intact and have confined themselves to proposing various technical and substantive changes.

The Commission is persuaded of the basic soundness of the existing interim rules. The general certification requirements comprise a readily understandable structure under which CLP applications can be processed. The rules dealing with policy issues represent a reasonable attempt, consistent with the text of HB161, to balance the needs of an emergent industry with those of an established one and with the public interest. The Commission, moreover, agrees with those commentors who urged the Commission to refrain from prematurely elaborating and finalizing these rules and should instead set out general guidelines and policies subject to revision if conditions warrant.

An additional reason for leaving certain rules in an interim status is the uncertain impact of the federal Telecommunications Act of 1996 on both procedure and substance regarding such issues as interconnection, unbundling, number portability, resale, and universal service. The impact of this far-reaching legislation cannot be definitively assessed at this time, and at least portions of our requirements may need to be revised to conform to its mandates in the future.

Accordingly, the Commission concludes the following:

1. That Rule R17-1 and Rule R17-2 be promulgated as final rules as amended and set out below

2. That Rules R17-3, R17-4, and R17-5 be amended as set out below but retain their interim status.

Along with the text of the rules themselves, the Commission also seeks to provide guidance, at least in a general sense, as to how matters relating to the policy issues should proceed. Accordingly, the Commission concludes the following:

1. Universal Service Issues

By Order dated October 25, 1995, the Commission rescheduled the universal service hearing for June 25, 1996, with prefiled testimony due from the LECs and CLPs on April 9, 1996. Several of the parties submitted a list of universal service issues. The Commission has identified the following "core" universal service issues from those lists which we believe should be addressed in the universal service proceeding to be held in June 1996:

1. Definition of universal service

2. Universal Service Fund (USF)

a) Method of calculating USF requirements
b) Method of funding
   - who contributes and on what basis
c) Who receives funding (customers, carriers), and on what basis
   - end user needs - low income, lifeline
   - high cost areas
   - embedded costs
   - other
d) Who administers fund
e) Time frame of fund

3. Carrier of Last Resort (COLR)
   - definition
   - assignment of responsibility
   - provision for changing

Additionally, the Commission requests parties to submit a list of other "core" universal service issues no later than 21 days from the issuance of this Order. The Commission will thereupon issue such further Order listing such further issues as may be necessary.

The Commission concludes that any specific changes to Interim Rule R17-3 should be deferred until after the Universal Service hearing and that Rule R17-3 should retain its interim status.

2. Interconnection/Unbundling

Along with universal service requirements, interconnection and unbundling are vital elements in clearing the path for local competition. HB 161 addresses the issues of interconnection and unbundling in several places. G.S. 62-110(f1) provides that the Commission is authorized to adopt rules it finds necessary (i) to provide for the reasonable interconnection of facilities between all providers of telecommunications services, (ii) to determine when necessary the rates for such interconnection; (iii) to provide for the reasonable unbundling of essential facilities where technically and economically feasible, and (vi) to carry out the provisions of this subsection in a manner consistent with the public interest."

HB 161 also contemplates that the LECs and CLPs will have "first crack" at interconnection and interconnection-related issues. A following paragraph in G.S. 62-110(f1) provides that LECs and CLPs "shall negotiate the rates for local interconnection," and a process is set up for Commission review of disagreements pursuant to a bona fide request for interconnection.

In its Order of October 25, 1995, the Commission requested comments on Interim Rule R17-4. Several parties urged, in essence, that the Commission apply only broad policy guidelines and to rely on parties to establish interconnection arrangements. The Commission is persuaded that the Commission's Interim Rule R17-4 provides sufficient general guidance and that the remaining details should be worked out in the interconnection negotiations. The Commission, therefore, concludes the following:

a. That CLPs and LECs negotiate in good faith on all relevant interconnection issues. Such negotiations should include what constitutes "reasonable unbundling of essential facilities where technically and economically feasible," number portability issus and resale of local service (see subsection 4. below).

b. That the CLPs and LECs reach agreement to the extent possible as to (a).

c. That, to the extent agreement cannot be reached pursuant to a bona fide request for interconnection, the parties may avail themselves of provisions for resolutions of such disputes pursuant to G.S. 62-110(f1).

The Commission, furthermore, concludes that Rule R17-4 remain an interim rule pending further Order.

3. Number Portability/Number Assignment

HB 161 addresses the issues of number portability/number assignment in a subsection (iv) to G.S. 62-110(f1). That subsection provides that the Commission is authorized to adopt rules it finds necessary "(iv) to provide for the transfer of telephone numbers between providers in a manner that is technically and economically reasonable." The Commission has already made the policy decision that number portability is in the public interest by providing in Interim Rule R17-5(a) that end-users are to have number portability regardless of their chosen LEC or CLP.

The Commission concludes that the parties should negotiate the issues involved in the provision of interim number portability as part of the interconnection negotiations. The Commission also instructs the parties to negotiate on the "true" number portability issues and work towards a permanent solution which is consistent with any national standards which are adopted in the future.

The Commission concludes that Interim Rule R17-5 should remain interim pending negotiations between parties and/or Commission hearing.

4. Resale of Local Service

Resale of local service is one of the most contentious issues facing the Commission with respect to local competition. HB 161 addresses the resale issue cryptically in a subsection (vi) of G.S. 62-110(f1) where it is stated that the Commission is to adopt rules it finds necessary "...(vi) to carry out the provisions of this subsection in a manner consistent with the public interest, which will include a consideration of whether and to what extent resale should be permitted."

The Commission concludes that comments about resale of local service are sufficient to justify a finding that resale of local service and DRP/DAP service should be permitted. However, the Commission is not in a position at this time to make precise determinations as to the exact nature and extent of that resale. Rather, pursuant to HB 161, the Commission concludes that the parties should negotiate these questions. Accordingly, resale issues, including extent, costs, and rates, should be included in the interconnection negotiations and resolved between the parties to the extent possible, with any remaining issues to be brought before the Commission for consideration pursuant to G.S. 62-110(f1) interconnection

procedures. The Commission will not preclude any resale issues from negotiations at this time except that residence service shall not be resold as business service.

5. Miscellaneous

With respect to the miscellaneous issues raised by AT&T, the Commission concludes that matters related to equal access to conduits, pole attachments, rights of way and interoperability, and technical standards should be negotiated between the parties. IntraLATA dialing parity is outside the scope of this proceeding.

C. Specific Amendments to the Proposed Rules R17-1 through R17-5

The Commission concludes that the following changes, as shown by underlining and strike-throughs, should be made to the Interim Rules:

Rule R17-1. DEFINITIONS.

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

(a) Basic Local Exchange Service - The telephone service comprised of an access line, dialtone, the availability of touchtone, and usage provided to the premises of residential customers or business customers within a local exchange area.

Comment: A clarifying change to adopt the recommendation of the Alliance that, while touchtone may be available, some customers may retain rotary; to include the word "telephone" before service as recommended by Time Warner.

(b) Certificate - A certificate of public convenience and necessity to provide local exchange and/or exchange access service as a public utility as defined in G.S. 62-3(23)a.6.

Comment: A clarifying change to adopt the Public Staff's recommendation to insert "and/" before or exchange access service.

(c) Commission - The North Carolina Utilities Commission. (No change)

(d) Competing Local Provider or CLP - Any person applying for a certificate to provide local exchange or exchange access services in competition with a local exchange company. (No change; original language reflects statutory definition.)

(e) ~~Local~~ Exchange Access Service - ~~Facilities~~ Switched or special access service provided by a LEC or CLP ~~public utility~~ to a its customers which facilitates a connection between an end-user and an interexchange carrier. ~~provide connection to the local exchange and/or long distance network.~~

Comment: A clarifying change to adopt the Public Staff's recommendation of wording.

(f) Local Exchange Service Area - ~~An~~ The geographic area ~~in~~ within which a CLP or LEC is authorized to provide local exchange or exchange access service.

Comment: A clarifying change to adopt the Public Staff's recommendation of certain wording.

(g) Local Exchange Company or LEC - Any person, holding on January 1, 1995, a certificate to provide local exchange services or exchange access services, excluding telephone membership corporations. (No change; original language reflects statutory definition.)

(h) Local Exchange Service - Switched service offered by a CLP or LEC, ~~by tariff or otherwise, within a local exchange service area~~ without the payment ~~toll~~ of long distance charges; or dedicated service connecting two or more points within an exchange as defined on an exchange service area map of a LEC.

Comment: A clarifying change to adopt the Public Staff's recommendation of wording.

(i) Number Portability - The technical capability to allow customers to retain their telephone numbers when they change providers of local exchange service but do not change locations.

Comment: Clarifying change to adopt the recommendation of the Public Staff of certain wording.

~~(j) Tariff - A publication approved or allowed by the Commission containing rates, charges, rules, and regulations of CLPs and LECs.~~

(j) Price List - The prices charged for services provided by a CLP which are on file with the Commission.

Comment: Definition necessary to define this term as it is used in the Interim Rule.

(k) Universal Service - The provision of affordable basic local exchange service, part of which may be subsidized through a universal service fund. (No change)

RULE R17-2. REQUIREMENTS AND LIMITATIONS REGARDING CERTIFICATION OF COMPETING LOCAL PROVIDERS.

(a) Any CLP applying for a certificate shall make a satisfactory showing to the Commission:

(1) That it is fit, capable and financially able to render such service; (No change)

(2) That the service to be provided will reasonably meet the service

standards set out in Rule R9-8; (No change)

Comment: The Public Staff proposed that paragraph (a)(2) regarding service standards as set out in Rule R9-8 be deleted from the Rule. BTI and AT&T proposed that (a)(2) be changed to reflect that the service to be provided will reasonably meet the service standards set out in the CLP's tariffs or standard operating procedures. The Commission Staff believes that, at least initially, the CLPs should be held to the same service standards as the LECs and recommends no change in this subsection.

(3) That the provision of the service will not adversely impact the availability of reasonably affordable local exchange service;

Comment: To insert the word "service" after "local exchange," which had been left out inadvertently.

(4) That it will participate to the extent it may be required to do so by the Commission in the support of universally available telephone services at affordable rates; and (No change)

(5) That the provision of the services will not otherwise adversely impact the public interest. (No change)

(b) Any CLP applying for a certificate to provide competing local exchange or ~~local~~ exchange access services shall include in its application the following:

Comment: To comply with change in definition.

(1) The name of the CLP, the address of the corporate headquarters and the names and addresses of the CLP's principal corporate officers; (No change)

(2) If different from above, the names and addresses of all officers and corporate officers located in North Carolina, ~~and~~ the names and addresses of employees responsible for North Carolina operations, and if COCOT service will be provided the address to be used by the serving LEC in billing for PTAS lines or trunks and by the CLP in meeting COCOT notice requirements;

Comment: Clarifying language to adopt the Public Staff's recommended language.

(3) Information about the structure of the business organization and, where applicable, a copy of any articles of incorporation, partnership agreement, or by-laws of the CLP, and a copy of a license to do business in North Carolina; if an office is not maintained in North Carolina, the name and address of the agent for service of process in North Carolina;

Comment: Clarifying language to adopt Sprint's proposed language to clarify requirements for differing business organizations.

(4) Repair and maintenance information including the name, address and telephone number of a contact person responsible for and knowledgeable about the CLP's operations; (No change)

(5) A list of other states where the CLP or any of its affiliates is authorized to operate and a list of those states which have denied any requested authority and an indication of the nature of such denial;

Comment: Clarifying language to adopt the Public Staff's recommendation of certain wording.

(6) A showing ~~as to~~ of the CLP's financial, managerial and technical ability to render local exchange or ~~local~~ exchange access services:

Comment: Clarifying language to adopt the Public Staff's recommendation of wording.

(a) As a minimum requirement, a showing of financial ability shall be made by attaching the CLP's most recent stockholders' annual report, ~~and~~ its most recent SEC 10K or, if the company is not publicly traded, its most recent financial statements;

Comment: Clarifying language to adopt the Public Staff's recommendation.

(b) To demonstrate managerial experience, the CLP shall attach a brief description of its history of providing local exchange or ~~local~~ exchange access or other telecommunications services and shall list the geographic areas in which it has been and is currently providing such services. A newly created company shall list the experience of each principal officer in order to show its ability to provide services; and

Comment: Clarifying language to adopt the Public Staff's recommendation.

(c) Technical ability shall be indicated by a description of the CLP's experience in providing telecommunications services, or in the case of a newly created company, the applicant may provide other documentation which supports its technical ability. (No change)

(7) Notice that the application has been served on the LECs in the CLP's proposed service territory; (No change)

(8) A statement setting forth with particularity the proposed geographic areas to be served together with maps in sufficient detail to designate the actual geographic area or areas to be served initially;

Comment: This subsection was rewritten to more closely track the statutory language.

(9) The types of local exchange and exchange access services to be provided; and (No change)

~~(10) A complete tariff list of proposed local exchange and exchange access services to be provided and the prices to be charged for these services, and~~

Comment: Deleted from application requirement because statute keys tariff filing to persons receiving a certificate, see subsection (h).

(10) A statement that the CLP agrees to abide by all applicable statutes and all applicable Orders, rules, and regulations entered and adopted by the Commission.

Comment: A clarifying change to adopt the Public Staff's recommendation.

(c) The application shall be verified. The CLP shall file the original and 25 copies of its application with the Chief Clerk of the Commission in accordance with Rule R1-5and a statutory filing fee of $250. (No change)

(d) Falsification or failure to disclose any required information in the petition for certification may be grounds for denial or revocation of any certificate.
(No change)

(e) All CLPs shall be willing as a condition to certification to provide support for universal service in a manner determined by the Commission. This requirement shall not be construed as prohibiting the granting of a certificate before the universal service issues are finally determined by the Commission.
(No change)

(f) In the public interest evaluation of a CLP's petition for a certificate to provide local exchange services, the Commission shall at a minimum require the CLP, either directly or through arrangements with other carriers, to be willing to provide as a condition to certification the following:

(1) Access to emergency services and services for the hearing and speech impaired;

Comment: To adopt language proposed by the Alliance and BellSouth.

(2) Access to local and long distance directory assistance and provision of local telephone directories to end-users.
(No change)

(3) Access to operator services; (No change)

(4) Access ~~to all interLATA and intraLATA long distance carriers~~, using standard dialing patterns to all interLATA and intraLATA long distance carriers, including 1+ and 0+ access to the customer's carrier of choice for interLATA calls.

Comment: To adopt changes in wording recommended by the Public Staff.

(5) Compliance with Commission basic services standards as defined in any applicable rules and decisions of the Commission; (No change)

(6) Free blocking of 900 and ~~700 type services~~; 976-type services and other pay-per-call services, including but not limited to calls to 700 and 800 numbers, for which charges are made by the service provider and billed by the CLP;

(7) Free per-call and per-line blocking in accordance with Orders of the Commission applicable to LECs; ~~and~~ subscribers must be advised by bill insert or direct mailing of the availability of these free features at least once per year; and

(8) Number portability where technically and economically reasonable.

Comment: Number portability modified to comply with the underlying statute.

(g) The provisions of Commission Rules R9-8 and R12-1 through R12-9 shall apply to CLPs.

(h) All CLPs shall file price lists relating to the provision of basic local exchange services. Initial price lists must be filed by a CLP as soon as practicable upon receiving a certificate. Price lists filed by a CLP and amendments thereto are presumptively valid and become effective on the same day as filed. Price list filings shall be made to the North Carolina Utilities Commission addressed as follows: Public Staff - North Carolina Utilities Commission, Communications Division, P.O. Box 29520, Raleigh, North Carolina 27626-0520. A CLP may petition for a waiver of the above price list requirement at any time after March 1, 1998.

(i) CLPs shall maintain their books of account in accordance with Generally Accepted Accounting Principles (GAAP).

(j) Financial reports are not required to be routinely filed by CLPs. However, the CLP shall submit specific financial information upon request of the Commission or the Public Staff.

(k) By the 15th day of each month, each CLP shall file a report with the Chief Clerk reflecting the number of local access lines subscribed to at the end of the preceding month by business and residence customers in each respective geographic area served by the CLP. Other operating statistics are not required to be filed except upon specific request of the Commission or the Public Staff.

(l) CLPs shall be required to participate in the telecommunications relay service.

(m) CLPs shall be subject to the provisions of Chapter 62A of the General Statutes, the Public Safety Telephone Act, applicable to service providers.

(n) The public utility services provided by a CLP shall not be disconnected because of a customer's failure to pay for services other than those local exchange or exchange access services provided by the CLP or those services billed by a CLP for a certified interexchange carrier. Partial payments shall be credited to regulated services first unless otherwise instructed by the customer.

(o) The billing statement of a CLP shall show all charges for its local exchange and exchange access services on a separate page from other billed services. On each bill page where nonutility services are stated, the name of the service provider offering the service shall be clearly shown. The following statement must also appear on each bill page where charges for nonutility services appear:

> NONPAYMENT OF ITEMS ON THIS PAGE WILL NOT RESULT IN DISCONNECTION OF YOUR LOCAL TELEPHONE SERVICE: HOWEVER, COLLECTION OF UNPAID CHARGES MAY BE PURSUED BY THE SERVICE PROVIDER.

A contact telephone number for the service provider shall also appear on the bill.

(p) Billing services for intrastate long distance calls may be offered by a CLP only to long distance carriers certified by the Commission or to clearinghouses acting on behalf of certified long distance carriers. The name of the service provider shall be clearly stated on each page of the bill, and a contact telephone number for questions on the service shall appear on the bill. If billing is done through a clearinghouse, the name of the clearinghouse shall also appear on each page of the bill.

(q) A notice by bill insert or direct mailing shall be given by a CLP to all affected customers at least 14 days before any public utility rates are increased and before any public utility service offering is discontinued. Notice of a rate increase shall include at a minimum the effective date of the rate change, the existing rates and the new rates.

(r) A CLP must abide by the provisions adopted by the Commission for the handling of problems arising from billing of 900 calls; other pay-per-call services, including but not limited to calls to 976, 700 and 800 numbers, for which charges are made by the service provider and billed to the caller by the CLP shall be subject to the same provisions as are applicable to 900 calls.

(s) Usage charges and per-call rates for switched local exchange services provided by a CLP shall not apply unless the call is answered. Timing of a call shall not begin until the call is answered and shall end when either the calling party or the answering party disconnects.

(t) The provisions of Commission Rule R13, with the exception of R13-3(a), (b) and (c), shall apply to the offering of public payphone service by a CLP. A CLP has the authority by virtue of its CLP certificate to offer both non-automated collect and automated collect service under the provisions of Rule R13. When the term COCOT Certificate Number is referred to in R13, the docket number in which the CLP was certified shall be utilized, and when the term COCOT certificate or certificate is referred to in R13, the CLP certificate shall be used.

(u) CLPs are responsible for payment of the regulatory fee in accordance with G.S. 62-302 and Commission Rule R15.

Comment: Add (g) through (u) generally in accordance with the Public Staff's recommendations.

RULE R17-3. UNIVERSAL SERVICE REQUIREMENTS

(a) Each LEC shall be the universal service provider in the area in which it is certificated to operate on July 1, 1995, unless otherwise determined by the Commission in further interim or permanent rules.

(b) The Commission will establish a Universal Service Fund, designate a permanent universal service provider for each service area, and determine applicable payment mechanisms in compliance with G.S. 62-110(f1). Interim rules governing universal service shall be in place by December 31, 1996. Any CLP offering telecommunications services in North Carolina will be required to participate in such fund.

(c) To the extent required, the establishment of the Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone services and the calculation of the subsidy required to support those basic local exchange telephone services which the Commission may decide are appropriate.

Comment: Clarifying language to adopt the Public Staff's recommendation in (b) and to correct minor typographical errors.

RULE R17-4. INTERCONNECTION

(a) Interconnection arrangements should make available the features, functions, interface points and other services elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request.

(b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs.

(c) Interconnection arrangements must be made available pursuant to a bona fide written request. No refusal or unreasonable delay by any LEC to another carrier will be allowed.

(d) Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed within 30 days of the conclusion of negotiations.

(e) In the event the parties are unable to agree within 90 days of a bona fide request, either party may petition the Commission for a determination of the appropriate rates and terms for interconnection.

(f) Unbundled functional elements of a LEC's network that are made available through interconnection agreements should also be made available on an individual tariffed basis.

RULE R17-5. NUMBER PORTABILITY AND NUMBER ASSIGNMENT

(a) End-users of local exchange services shall have number portability regardless of their chosen LEC or CLP.

(b) True number portability shall be made available when technically and economically ~~feasible~~ reasonable.

Comment: To conform to statutory language.

(c) Interim number portability arrangements shall be utilized until true number portability is available. The LEC and CLP shall include interim number portability issues in interconnection negotiations.

(d) To the extent feasible, the LEC shall provide the CLP with reservations for a reasonably sufficient block of numbers for its use.

Comment: To correct minor typographical error.

IT IS, THEREFORE, ORDERED as follows:

1. That Interim Rules R17-1 and R17-2, as amended and as set out in Appendix A, be promulgated as permanent rules and that Interim Rules R17-3, R17-4, and R17-5, as amended and as set out in Appendix A, retain their interim status.

2. That CLPs be regulated in a manner consistent with the conclusions concerning appropriate regulatory structure set out above and CLPs be exempted from the following statutes or rules:

a. G.S. 62-130
b. G.S. 62-131
c. G.S. 62-132
d. G.S. 62-133
e. G.S. 62-134
f. G.S. 62-135
g. G.S. 62-136

h. G.S. 62-137
i. G.S. 62-138
j. G.S. 62-139
k. G.S. 62-142
l. G.S. 62-143
m. G.S. 62-153
n. G.S. 62 - Article 8
o. Rule R1-16
p. Rule R1-17
q. Rule R1-32
r. Rule R9-2
s. Rule R9-3
t. Rule R9-4
u. Rule R9-5
v. Rule R9-6
w. Rule R9-8
x. Rule R9-9
y. Depreciation rate filings and prescription of depreciation rates.

3. That CLPs and LECs shall negotiate in good faith on all relevant interconnection issues. Such negotiations shall include unbundling, number portability, and resale of local service.

4. That parties desiring to submit a list of other universal service issues for consideration in the universal service hearing scheduled for June 25, 1996, do so within 21 days of the issuance of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of February 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Appendix A

Rule R17-1 DEFINITIONS

(a) Basic Local Exchange Service - The telephone service comprised of an access line, dialtone, the availability of touchtone, and usage provided to the premises of residential customers or business customers within a local exchange area.

(b) Certificate - A certificate of public convenience and necessity to provide local exchange and/or exchange access service as a public utility as defined in G.S. 62-3(23)a.6.

(c) Commission - The North Carolina Utilities Commission.

(d) Competing Local Provider or CLP - Any person applying for a certificate to provide local exchange or exchange access services in competition with a local exchange company.

(e) Exchange Access Service - Switched or special access service provided by a LEC or CLP to a customer which facilitates a connection between an end-user and an interexchange carrier.

(f) Local Exchange Service Area - The geographic area within which a CLP or LEC is authorized to provide local exchange or exchange access service.

(g) Local Exchange Company or LEC - Any person, holding on January 1, 1995, a certificate to provide local exchange services or exchange access services, excluding telephone membership corporations.

(h) Local Exchange Service - Switched service offered by a CLP or LEC, without the payment of long distance charges; or dedicated service connecting two or more points within an exchange as defined on an exchange service area map of a LEC.

(i) Number Portability - The technical capability to allow customers to retain their telephone numbers when they change providers of local exchange service but do not change locations.

(j) Price List - The prices charged for services provided by a CLP which are on file with the Commission.

(k) Universal Service - The provision of affordable basic local exchange service, part of which may be subsidized through a universal service fund.

RULE R17-2. REQUIREMENTS AND LIMITATIONS REGARDING CERTIFICATION OF COMPETING LOCAL PROVIDERS

(a) Any CLP applying for a certificate shall make a satisfactory showing to the Commission:

(1) That it is fit, capable and financially able to render such service;

(2) That the service to be provided will reasonably meet the service standards set out in Rule R9-8;

(3) That the provision of the service will not adversely impact the availability of reasonably affordable local exchange service.

(4) That it will participate to the extent it may be required to do so by the Commission in the support of universally available telephone services at affordable rates; and

(5) That the provision of the services will not otherwise adversely impact the public interest.

(b) Any CLP applying for a certificate to provide competing local exchange or exchange access services shall include in its application the following:

(1) The name of the CLP, the address of the corporate headquarters and the names and addresses of the CLP's principal corporate officers;

(2) If different from above, the names and addresses of all officers and corporate officers located in North Carolina, the names and addresses of employees responsible for North Carolina operations, and if COCOT service will be provided, the address to be used by the serving LEC in billing for PTAS lines or trunks and by the CLP in meeting COCOT notice requirements;

(3) Information about the structure of the business organization and, where applicable, a copy of any articles of incorporation, partnership agreement, or by-laws of the CLP, and a copy of a license to do business in North Carolina; if an office is not maintained in North Carolina, the name and address of agent for service of process in North Carolina.

(4) Repair and maintenance information including the name, address and telephone number of a contact person responsible for and knowledgeable about the CLP's operations;

(5) A list of other states where the CLP or any of its affiliates is authorized to operate and a list of those states which have denied any requested authority and an indication of the nature of such denial;

(6) A showing of the CLP's financial, managerial and technical ability to render local exchange or exchange access services:

(a) As a minimum requirement, a showing of financial ability shall be made by attaching the CLP's most recent stockholders' annual report, its most recent SEC 10K or, if the company is not publicly traded, its most recent financial statements;

(b) To demonstrate managerial experience, the CLP shall attach a brief description of its history of providing local exchange or exchange access or other telecommunications services and shall list the geographic areas in which it has been and is currently providing such services. A newly created company shall list the experience of each principal officer in order to show its ability to provide services; and

(c) Technical ability shall be indicated by a description of the CLP's experience in providing telecommunications services, or in the case of a newly created company, the applicant may provide other documentation which supports its technical ability.

(7) Notice that the application has been served on the LECs in the CLP's proposed service territory;

(8) A statement setting forth with particularity the proposed geographic areas to be served together with maps in sufficient detail to designate the actual geographic area or areas to be served initially;

(9) The types of local exchange and exchange access services to be provided; and

(10) A statement that the CLP agrees to abide by all applicable statutes and all applicable Orders, rules, and regulations entered and adopted by the Commission.

(c) The application shall be verified. The CLP shall file the original and 25 copies of its application with the Chief Clerk of the Commission in accordance with Rule R1-5 and a statutory filing fee of $250.

(d) Falsification or failure to disclose any required information in the petition for certification may be grounds for denial or revocation of any certificate.

(e) All CLPs shall be willing as a condition to certification to provide support for universal service in a manner determined by the Commission. This requirement shall not be construed as prohibiting the granting of a certificate before the universal service issues are finally determined by the Commission.

(f) In the public interest evaluation of a CLP's petition for a certificate to provide local exchange services, the Commission shall at a minimum require the CLP, either directly or through arrangements with other carriers, to be willing to provide as a condition to certification the following:

(1) Access to emergency services and services for the hearing and speech impaired;

(2) Access to local and long distance directory assistance and provision of local telephone directories to end-users.

(3) Access to operator services;

(4) Access using standard dialing patterns to all interLATA and intraLATA long distance carriers, including 1+ and 0+ access to the customer's carrier of choice for interLATA calls;

(5) Compliance with Commission basic services standards as defined in any applicable rules and decisions of the Commission;

(6) Free blocking of 900 and 976-type services and other pay-per-call services, including but not limited to calls to 700 and 800 numbers, for which charges are made by the service provider and billed by the CLP;

(7) Free per-call and per-line blocking in accordance with Orders of the Commission applicable to LECs; subscribers must be advised by bill insert or direct mailing of the availability of these free features at least once per year; and

(8) Number portability where technically and economically reasonable.

(g) The provisions of Commission Rule R9-8 and R12-1 through R12-9 shall apply to CLPs.

(h) All CLPs shall file price lists relating to the provision of basic local exchange services. Initial price lists must be filed by a CLP as soon as practicable upon receiving a certificate. Price lists filed by a CLP and amendments thereto are presumptively valid and become effective on the same day as filed. Price list filings shall be made to the North Carolina Utilities Commission addressed as follows: Public Staff - North Carolina Utilities Commission, Communications Division, P.O. Box 29520, Raleigh, North Carolina 27626-0520. A CLP may petition for a waiver of the above price list requirement at any time after March 1, 1998.

(i) CLPs shall maintain their books of account in accordance with Generally Accepted Accounting Principles (GAAP).

(j) Financial reports are not required to be routinely filed by CLPs. However, the CLP shall submit specific financial information upon request of the Commission or the Public Staff.

(k) By the 15th day of each month, each CLP shall file a report with the Chief Clerk reflecting the number of local access lines subscribed to at the end of the preceding month by business and residence customers in each respective geographic area served by the CLP. Other operating statistics are not required to be filed except upon specific request of the Commission or the Public Staff.

(l) CLPs shall be required to participate in the telecommunications relay service.

(m) CLPs shall be subject to the provisions of Chapter 62A of the General Statutes, the Public Safety Telephone Act, applicable to service providers.

(n) The public utility services provided by a CLP shall not be disconnected because of a customer's failure to pay for services other than those local exchange or exchange access services provided by the CLP or those services billed by a CLP for a certified interexchange carrier. Partial payments shall be credited to regulated services first unless otherwise instructed by the customer.

(o) The billing statement of a CLP shall show all charges for its local exchange and exchange access services on a separate page from other billed services. On each bill page where nonutility services are stated, the name of the service provider offering the service shall be clearly shown. The following statement must also appear on each bill page where charges for nonutility services appear:

NONPAYMENT OF ITEMS ON THIS PAGE WILL NOT RESULT IN DISCONNECTION OF YOUR LOCAL TELEPHONE SERVICE; HOWEVER, COLLECTION OF UNPAID CHARGES MAY BE PURSUED BY THE SERVICE PROVIDER.

A contact telephone number for the service provider shall also appear on the bill.

(p) Billing services for intrastate long distance calls may be offered by a CLP only to long distance carriers certified by the Commission or to clearinghouses acting on behalf of certified long distance carriers. The name of the service provider shall be clearly stated on each page of the bill, and a contact telephone number for questions on the service shall appear on the bill. If billing is done through a clearinghouse, the name of the clearinghouse shall also appear on each page of the bill.

(q) A notice by bill insert or direct mailing shall be given by a CLP to all affected customers at least 14 days before any public utility rates are increased and before any public utility service offering is discontinued. Notice of a rate increase shall include at a minimum the effective date of the rate change, the existing rates and the new rates.

(r) A CLP must abide by the provisions adopted by the Commission for the handling of problems arising from billing of 900 calls; other pay-per-call services, including but not limited to calls to 976, 700 and 800 numbers, for which charges are made by the service provider and billed to the caller by the CLP, shall be subject to the same provisions as are applicable to 900 calls.

(s) Usage charges and per-call rates for switched local exchange services provided by a CLP shall not apply unless the call is answered. Timing of a call shall not begin until the call is answered and shall end when either the calling party or the answering party disconnects.

(t) The provisions of Commission Rule R13, with the exception of R13-3(a), (b) and (c) shall apply to the offering of public payphone service by a CLP. A CLP has the authority by virtue of its CLP certificate to offer both non-automated collect and automated collect service under the provisions of R13. When the term COCOT Certificate Number is referred to in R13, the docket number in which the CLP was certified shall be utilized, and when the term COCOT certificate or certificate is referred to in R13, the CLP certificate shall be used.

(u) CLPs are responsible for payment of the regulatory fee in accordance with G.S. 62-302 and Commission Rule R15.

RULE R17-3. UNIVERSAL SERVICE REQUIREMENTS

(a) Each LEC shall be the universal service provider in the area in which it is certificated to operate on July 1, 1995, unless otherwise determined by the Commission in further interim or permanent rules.

(b) The Commission will establish a Universal Service Fund, designate a permanent universal service provider for each service area, and determine applicable payment mechanisms in compliance with G.S. 62-110(f1). Interim rules governing universal service shall be in place by December 31, 1996. Any CLP offering telecommunications services in North Carolina will be required to participate in such fund.

(c) To the extent required, the establishment of the Universal Service Fund shall first require the evaluation of the definition of basic local exchange telephone services and the calculation of the subsidy required to support those basic local exchange telephone services which the Commission may decide are appropriate.

RULE R17-4. INTERCONNECTION

(a) Interconnection arrangements should make available the features, functions, interface points and other service elements on an unbundled basis required by a requesting CLP to provide quality services. The Commission may, on petition by any interconnecting party, determine the reasonableness of any interconnection request.

(b) Interconnection arrangements should apply equally and on a nondiscriminatory basis to all CLPs.

(c) Interconnection arrangements must be made available pursuant to a bona fide written request. No refusal or unreasonable delay by any LEC to another carrier will be allowed.

(d) Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed within 30 days of the conclusion of negotiations.

(e) In the event the parties are unable to agree within 90 days of a bona fide request, either party may petition the Commission for a determination of the appropriate rates and terms for interconnection.

(f) Unbundled functional elements of a LEC's network that are made available through interconnection agreements should also be made available on an individual tariffed basis.

RULE R17-5. NUMBER PORTABILITY AND NUMBER ASSIGNMENT

(a) End-users of local exchange services shall have number portability regardless of their chosen LEC or CLP.

(b) True number portability shall be made available when technically and economically reasonable.

(c) Interim number portability arrangements shall be utilized until true number portability is available. The LEC and CLP shall include interim number portability issues in interconnection negotiations.

(d) To the extent feasible, the LEC shall provide the CLP with reservations for a reasonably sufficient block of numbers for its use.

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Local Exchange and Local Exchange Access Telecommunications Competition	)))	ERRATA ORDER

BY THE CHAIRMAN: On February 23, 1996, the Commission issued an Order Setting Out Regulatory Structure for Competing Local Providers and Promulgating Rules. Ordering Paragraph 2.w. provided that competing local providers (CLPs) were to be exempt from Rule R9-8 (service objectives for local exchange telephone companies). This was an error, since the Commission concluded on page 41 of the Order that CLPs should be required to meet the Rule R9-8 service standards.

Second, Rule R17-1(h) should be amended by adding the words "or CLP" at the end as follows:

"'(h) Local Exchange Service - Switched service offered by a CLP or LEC, without the payment of long distance charges; or dedicated service connecting two or more points within an exchange as defined on an exchange service area map of a LEC or CLP."

IT IS, THEREFORE, ORDERED as follows:

1. That Ordering Paragraph 2 be amended by deleting Ordering Paragraph 2.y. and rewriting Ordering Paragraphs 2.w. and 2.x. as follows:

"w. Rule R9-9
x. Depreciation rate filings and depreciation rates."

2. That Rule R17-1(h) be amended as set out above.

ISSUED BY ORDER OF THE CHAIRMAN.
This the 5th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Local Exchange and Local Exchange Access Telecommunications Competition	)	ORDER REQUIRING NOTIFICATION OF INTERCONNECTION REQUESTS AND SETTING OUT PROCEDURE REGARDING PREFILED TESTIMONY PRIOR TO ARBITRATION

BY THE CHAIRMAN: The passage of the Telecommunications Act of 1996 (TA96) appears to have preempted the time-line established in House Bill 161 (HB161) for the resolution of interconnection disputes. Under HB161 either party could petition the Commission for resolution of an interconnection dispute at any point after 90 days of a bona fide request for interconnection. The Commission would then have 180 days in which to render a decision.

TA96 has made the schedule potentially much tighter. Under Section 252(b), the clock starts running on the day the incumbent local exchange carrier (LEC) receives a request for interconnection. "[T]he carrier or any other party to the negotiation" has a period from the 135th to the 160th day in which to petition the State Commission for arbitration. The responding party then has a period of 25 days to respond to the petition. The State Commission must render a decision not later than nine months after the date on which the LEC received the request for interconnection–i.e., approximately 270 days.

Under the worst-case scenario, therefore, if the petitioning party waited until Day 160 to file its petition and the responding party took the full 25 days–i.e., up to Day 185–then this would mean that the Commission would have only 85 days, or about two and one-half months, to render a decision. Since these interconnection disputes may involve questions of fact and may therefore require an evidentiary hearing for which prefiled testimony is appropriate, 85 days may well prove to short a time to do the job properly.

The Chairman concludes that an Order should be issued specifying that the petitioning party in an interconnection dispute must notify the Commission of the date it has initiated an interconnection request, that this request for interconnection must be in writing, and that a copy of this request must be provided to the Commission. Furthermore, the petitioning party must submit prefiled testimony and cost studies at the same time it files its petition for arbitration in addition to any other materials required under Section 252(b)(2). Similarly, the responding party should also be required to prefile testimony and submit cost studies at the same time that it files its response. The petitioning party should be granted an additional 10 days after the filing of the responding party's response in which to prefile any rebuttal testimony.

Such requirements are consistent with TA96. Section 252(b)(4)(B) explicitly provides that the "State Commission may require the petitioning party and the responding party to provide such information as may be necessary for the State Commission to reach a decision on the unresolved issues."

A requirement for prefiled testimony and cost studies from the parties will undoubtedly expedite the interconnection arbitration process and will better enable the Commission to meet its statutory responsibilities under HB161 and TA96.

IT IS, THEREFORE, ORDERED as follows:

1. That the party requesting negotiation for the purpose of interconnection to provide local exchange or local access service must:

(a) make such request of the party from whom interconnection is sought in writing; and

(b) provide a copy of this request to the Commission within five days of having made the request showing clearly the date on which the request was made.

2. That, during the period from the 135th to the 160th day (inclusive) after the date on which an incumbent local exchange carrier receives a request for negotiation, the carrier or any other party may petition the Commission to arbitrate any open issues. Upon petitioning the Commission, and in addition to any other information required by statute, order, or rule, the petitioning party must submit prefiled testimony and any other relevant evidence, including cost studies, at the same time the petition for arbitration is filed.

3. That the responding party must respond to the petitioning party's filing within 25 days after the Commission receives the petition for arbitration and must submit prefiled testimony and any other relevant evidence, including cost studies, at the same time it files its response.

4. That the petitioning party is authorized to submit prefiled rebuttal testimony or other evidence within 10 days after the responding party has filed its response. The requirement to prefile rebuttal testimony is without prejudice to the right of the petitioning party to amend, supplement, or add to said rebuttal testimony based on events occurring during the hearing.

5. That any intervenor in the interconnection dispute who will participate actively in the proceeding must prefile testimony and any other relevant evidence, including cost studies, by no later than 25 days after the Commission receives the petition for arbitration.

6. That parties which have already requested negotiation for the purpose of interconnection in order to provide local exchange or exchange access service provide a copy of this request to the Commission within 10 days of the date of this Order showing clearly the date on which the request was made.

ISSUED BY ORDER OF THE CHAIRMAN.
This the 15th day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P- 100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Local Exchange and Local Exchange)	ORDER AMENDING
Access Service)	APRIL 15, 1996, ORDER

BY THE CHAIRMAN: On April 15, 1996, the Chairman issued an Order Requiring Notification of Interconnection Requests and Setting Out Procedure Regarding Prefiled Testimony Prior to Arbitration. Citing the need for an expeditious resolution of interconnection disputes, the Order required, among other points, that parties requesting interconnection negotiations notify the Commission, that a party petitioning the Commission for arbitration submit prefiled testimony and any other relevant evidence, including cost studies, at the same time the petition for arbitration is filed, and that the responding party also submit prefiled testimony and relevant evidence, including cost studies, at the same time it files its response.

On May 15, 1996, the Alliance of North Carolina Independent Telephone Companies (Alliance) filed a Request for Clarification and Limited Modification of the Commission's April 15, 1996, Order. The Alliance consists of various local exchange carriers (LECs) in North Carolina with less than 200,000 access lines. The Alliance requested the Commission to clarify that its April 15, 1996, Order does not apply to members of the Alliance and, if it does, that the evidentiary requirements set forth in the Order be modified as the Alliance suggests. The Alliance expressed fear that the requirements of the April 15, 1996 Order "may effectively predetermine several of the substantive issues set for consideration under the April 4, 1996 Order proceedings." (The April 4, 1996, Order sought comments from parties on the preemptive effects of the Telecommunications Act of 1996 (TA96) on Commission actions relating to local competition, including interconnection.)

The Alliance suggested that the requirements of the April 15, 1996, Order should not apply to members of the Alliance until and unless the requirements of G. S. 62-110(f)(2) are met and/or the findings required under Section 251(f) of TA96 are made that would require the application of the interconnection order. Additionally, the Alliance noted that Section 252(b)(3) speaks permissively ("may") regarding the responsibility of the responding party to an interconnection petition to respond, while the Commission's April 15, 1996, Order appears to require a response. The Alliance suggested that a compulsory response requirement would be burdensome in some cases to its members.

WHEREUPON, the Chairman reaches the following

CONCLUSIONS

After careful consideration, the Chairman concludes that the April 15, 1996, Order in Docket No. P-100, Sub 133, be clarified to exclude from the prefiled testimony and evidence requirements actions brought under Section 251 (f)(1) of TA96. The Chairman also concludes that Ordering Paragraph No. 3 of the April 15, 1996, Order should be rewritten to be permissive, rather than mandatory, in character

with respect to the answers of respondent parties which are LECs with less than 2% of the nation's subscriber lines.

The Commission's April 15, 1996, Order was an attempt to streamline procedure for the arbitration of interconnection disputes and to make parties aware beforehand of their responsibilities to present the evidence necessary for the Commission to resolve such disputes within the somewhat constricted time frame that TA96 permits.

While the Chairman concludes that it would be unwise and inappropriate to confer a blanket exemption on members of the Alliance as to the provisions of the April 15, 1996, Order, the Chairman notes that the Alliance has raised valid points for consideration.

First of all, Section 251 (f)(1) and (2) confer certain privileges on so-called rural telephone companies with respect to their obligations under other provisions of Section 251, including the duty to interconnect. Section 251(f)(1) specifically provides that the Section 251(c) requirements (Additional Obligations of Incumbent Local Exchange Carriers) do not apply to a "rural telephone company" (a term defined in Section 3(2)(47)) until such company has received a bona fide request for interconnection, services or network elements and the state commission determines that such request is not unduly economically burdensome, is technically feasible, and is consistent with Section 254 (universal service). Section 251 (f)(1)(B) then sets out a procedural schedule for consideration of the termination of the exemption.

Section 251(f)(2) provides for a more limited exemption for LECs with fewer than 2% of the nation's subscriber lines. In that case, the applicable LEC may petition the state commission for a suspension or modification of the requirements of Section 251 (b) (Obligation of All Local Exchange Carriers) or 251(c)(Additional Obligations of Incumbent Local Exchange Carriers). The state commission shall grant the petition if it finds the suspension necessary to avoid a significant adverse economic impact on users of telecommunications services generally; to avoid imposing a requirement that is unduly economically burdensome; or to avoid imposing a requirement that is technically infeasible; and if it find that such action is consistent with the public convenience and necessity.

The Section 251 (f)(1) provision is therefore triggered by a request for interconnection to a defined "rural telephone company," but, since there is a preexisting exemption from Section 251(c), the state commission must rule before the exemption is lifted. In addition, this subsection sets out a procedural schedule with a decision necessary within 120 days after the state commission has received notice of the request. It would therefore not seem necessary to apply the Commission's April 15, 1996, Order requirements to actions brought under Section 251(f)(1). The Commission's April 15, 1996, Order could be modified to exclude from the prefiled testimony and evidence requirements those requests for interconnection made under Section 251(f)(1).

By contrast, the Section 251(f)(2) provision contains no such triggering mechanism based upon a request for interconnection. A LEC with less than 2% of the nation's subscriber lines may petition the state commission at any time for relief from its obligations under Section 251(b) or (c). However, one can well imagine that, if a competing local provider requests a LEC with fewer than 2% of the nation's subscriber lines for interconnection, the applicable LEC may wish to reply, among other points, by seeking

modification or suspension of its Section 251(b) or (c) requirements pursuant to the Section 251(f)(2) provision. In this case, the arbitration for interconnection and the LEC's request for suspension or modification of its obligations could be considered together. It would thus seem appropriate for there to be a provision concerning response by way of prefiled testimony and other evidence.

This leads to the second point as to whether the respondent party's response should be permissive or mandatory. The Alliance has noted that Section 252(b)(3) provides that the non-petitioning party to a negotiation under Section 252 may respond to the petition within 25 days after the state commission receives the petition. By contrast, Section 252(b)(2) provides that the petitioner shall provide all relevant information. However, Section 252(b)(4)(B) provides that the state commission may require the petitioning and the responding parties to provide such information as may be necessary for the state commission to reach a decision on the unresolved issues. This is the provision the Commission relied on in requiring the submission of prefiled testimony and other evidence from both parties.

While the Chairman concludes that the Commission is on firm ground in requiring both the petitioning and the respondent parties to prefile testimony and present evidence at the time that they file, the Chairman does not necessarily object to making such requirement as to the respondent party permissive rather than mandatory. Partly, this is because the Chairman deems it unlikely that a respondent party, faced with a petition for arbitration of an interconnection dispute, would not wish to respond to that petition. Similarly, the Chairman deems it unlikely that a LEC with less than 2% of the nation's access lines which wishes to avail itself of a suspension or modification of its obligations under TA96 and which faces a petition for arbitration of an interconnection dispute would not wish to file a reply and interpose its defenses.

Accordingly, the Chairman concludes that Ordering Paragraph No. 3 should be rewritten to retain its mandatory character for respondent parties generally but not for local exchange companies with less than 2% of the nation's access lines.

IT IS, THEREFORE, ORDERED as follows:

1. That Ordering Paragraph Nos. 2 through 6 of the Commission's April 15, 1996, Order in this docket do not apply with respect to actions brought under Section 251(f)(1) of TA96.

2. That Ordering Paragraph No. 3 of the Commission's April 15, 1996, Order be rewritten as follows:

> "3. That the respondent party must respond to the petitioning party's filing within 25 days after the Commission receives the petition for arbitration and must submit prefiled testimony and any other relevant evidence, including cost studies, at the same time the petition for arbitration is filed; provided, however, that if the respondent party is a local exchange company with less than two percent of the nation's subscriber lines installed in the aggregate nationwide, such party may respond to the petitioning party's filing within 25 days after the Commission receives the petition for arbitration and that, if it chooses to respond,

such respondent party must submit prefiled testimony and any relevant evidence, including cost studies, at the same time it files its response."

ISSUED BY ORDER OF THE CHAIRMAN,
This the 11th day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Local Exchange and Local Exchange Access Competition	)	ORDER REQUIRING DISCLOSURE

BY THE COMMISSION: On January 9, 1996, Time Warner Communications of North Carolina, L.P. (Time Warner), petitioned the Commission to make available for public inspection and copying the interconnection agreement (Agreement) filed by GTE South, Inc. (GTE) in Docket No. P-19, Sub 278, between GTE and Mobile Communications Service Corporation of the Southeast, Inc. (MobileComm). On January 11, 1996, the Commission issued an Order Requiring Response from GTE. On January 24, 1996, GTE responded to Time Warner's request for public disclosure and asked that it be denied. GTE maintained that the agreement contains information which is a trade secret within the meaning of G.S. 66-152(3) and thus falls under a specific statutory exemption from disclosure under the Public Records Law (G.S. 132-1 et seq.). Specifically, GTE stated that the Agreement

> contains a compilation of confidential, proprietary, commercial, and financial information concerning volume, type, and mix of services being ordered by MobileComm and the places of interconnection with GTE, which pertains to market share and is a trade secret....(GTE Response at 4)

Time Warner filed a response on February 14, 1996, reiterating its request for access to the Agreement. Time Warner maintained that the interconnection agreement did not contain trade secrets under the Public Records Law and that, furthermore, under Section 252(a)(1) and 252(h) of the Telecommunications Act of 1996 (TA96), the Commission is obliged to make even previously negotiated interconnection agreements available for public inspection.

On March 28, 1996, the Commission issued an Order Requiring Specific Identification of Proprietary Sections. GTE was directed not only to identify the trade secret items by section and sentence, or clause, but was also told to "relate the citation to the factors previously cited by GTE...or to such other factors as GTE deems the section of part of section to be related to."

On April 11, 1996, GTE filed a Response to the Commission's Order Requiring Specific Identification of Proprietary Sections. GTE did indeed identify the sections that it believed to be proprietary. However, GTE neglected to provide the Commission with the reasons that it was claiming these sections to be proprietary. A copy of the Agreement marked up to show the proprietary claims is attached for the Commission's inspection.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that the Agreement is not proprietary and should be available for public inspection. However, this decision should not take effect for 14 days so that GTE may appeal this decision if it desires to.

First, GTE has failed to show that the material it has labeled as proprietary is truly a trade secret under the Public Records Law. Instead, GTE has made general claims, but when given an explicit direction to identify specific sections and give detailed reasons as to why such material should be held confidential, GTE did not do so. An examination of the sections that GTE has identified as trade secrets does not readily and obviously disclose why they should be treated as confidential.

Second, the policy of TA96 plainly favors disclosure even as to previously negotiated interconnection agreements. As such, TA96 preempts any conflicting state law, including those related to public records.

IT IS, THEREFORE, ORDERED that the agreement referred to herein be made available for public inspection and copying 14 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Local Exchange and Local Exchange Access Competition	)	ORDER DENYING RECONSIDERATION

BY THE COMMISSION: On April 23, 1996, the Commission issued an Order directing that the Paging Interconnection and Traffic Interexchange Agreement (Agreement) between GTE South Incorporated (GTE) and MobileComm of the Southeast, Inc. (MobileComm) be made available for public inspection and copying 14 days from the date of the Order pursuant to a request filed January 9, 1996, by Time Warner Communications (Time Warner) for access to such Agreement.

The Commission found that GTE had failed to show that the material it had labeled as proprietary was truly a trade secret under the Public Records Law in spite of the Commission's April 11, 1996, Order Requiring Specific Identification of Proprietary Sections. This Order had directed GTE to identify specific proprietary sections, together with the reasons therefor. The Commission also found that the policy of the Telecommunications Act of 1996 (TA96) favors disclosure even as to previously negotiated interconnection agreement and that, as such, TA96 preempts any conflicting state law.

On May 7, 1996, GTE filed a Motion for Reconsideration as to that Order. On May 13, 1996, the Commission issued an Order Requesting Response from interested parties, including the Public Staff and the Attorney General. The following parties filed responses: the Public Staff, the Attorney General, AT&T Communications of the Southern States, Inc. (AT&T), Time Warner, WorldCom, Inc., d/b/a LDDS WorldCom (WorldCom), MCI Telecommunications Corporation (MCI), and the Alliance of North Carolina Independent Telephone Companies (Alliance).

GTE's Motion

GTE's arguments in Motion for Reconsideration were two-pronged. First, GTE asserted that the Agreement is not disclosable under the Public Records Law. Second, GTE maintained that TA96 does not mandate the disclosure of an Agreement such as this one.

With respect to the Public Records Law, GTE insisted that it had given detailed reasons as to why parts of the Agreement should be considered to be trade secrets. Nevertheless, GTE went on to argue that parts of the Agreement are confidential because they contain information concerning the number and location of interconnection which will identify the customers being targeted by MobileComm and its area of market coverage. Disclosure of usage levels will indicate the amount of traffic being generated and MobileComm's estimate of future traffic potential over the life of the Agreement. Disclosure of the term and the points of contact of each of the parties is insignificant compared to the other areas that should be protected but could have potential commercial value and is not generally known or readily accessible through independent development or reverse engineering. The use of market studies to target competitive

efforts is one of the most common and most sensitive tools available to a competitor seeking to enter a new market.

GTE also argued that TA96 does not mandate the disclosure of interconnection agreements such as the one being considered here. First, GTE made the general argument that Section 601(c)(1), which provides that TA96 should not be construed to have a preemptive effect on federal, state, or local law unless it expressly so provides, is applicable as a rule of construction. Second, GTE argued that Section 252(a) applies solely to new agreements. GTE noted that a cardinal rule of statutory interpretation is that a statute should be construed to avoid undesirable or irrational consequences. If Section 252(a) applies to old agreements, then every pre-enactment interconnection agreement would become subject to the approval process and this would be extremely burdensome to state commissions. Congress could not have intended such a result.

GTE, of course, noted the existence of Section 252(a)(1) providing that an agreement, "including any interconnection agreement negotiated before the date of enactment of the Telecommunications Act of 1996, shall be submitted to the State Commission under subsection (e) of this section." However, GTE insisted that this clause cannot be considered in a vacuum but must be considered within the context of Section 251, which outlines the obligations of parties and triggers the negotiations process. The obligations under Section 251 leading to Section 252 agreements are intended to promote competition in the local exchange. The Agreement here is unrelated to this purpose, and "'singling out' one clause in TA96 overlooks the purposes of and relationship between Section 251 and Section 252." Thus, it would appear to be GTE's argument that the clause regarding previously negotiated interconnection agreements in Section 252(a)(1) should be read as applying only to previously negotiated local interconnection agreements, not to previously negotiated interconnection agreements in general.

Public Staff's Response

The Public Staff stated that it believed that the Commission's original decision to require disclosure was correct but suggested that the Commission invite comments from MobileComm before ruling on GTE's Motion to Reconsider.

Attorney General's Response

The Attorney General concurred with GTE to the extent that, since TA96 does not expressly preempt state public record laws, the question is whether the Agreement is a trade secret under the Public Records Law. The Attorney General also observed that it seems that the trade secret protection is for MobileComm to invoke, not GTE. The Commission should notify MobileComm of this proceeding and solicit its views.

AT&T's Response

AT&T argued that GTE had failed to supply any new information justifying reconsideration and that GTE had failed to carry its burden that the Agreement contains confidential information. AT&T deprecated the proprietary nature of GTE's claims with respect to the physical location of the points of

interconnection, the volume of traffic to be terminated through GTE's network, the identity of the points of contact within GTE and MobileComm, and the rate bands selected by MobileComm.
GTE's claims continue to be general and its latest arguments do not contain any further factual information regarding MobileComm's particular interest with respect to the Agreement. AT&T found it significant that MobileComm, the real party-in-interest, has not intervened in this docket. Regarding TA96, AT&T argued that GTE's interpretation strains the plain meaning of the Act, which apply to all interconnection agreements. The intent of the filing and disclosure provisions, even with respect to previously negotiated interconnection agreements, was to ensure equal treatment of all parties. This policy was also expressed in the Commission Rule 17-4(d) which provides that interconnection agreements should apply equally and on a nondiscriminatory basis between LECs and CLPs. AT&T reiterated its request that the Commission require the filing of all existing interconnection agreements between LECs and other carriers and that copies of such agreements be furnished to AT&T at the same time. AT&T attached to its filings Orders from Wisconsin, the District of Columbia, and Colorado, all of which interpret TA96 to require the submission of interconnection agreements, including ones previously negotiated, to the state commission for approval, after which they must be made publicly available.

Time Warner's Response

Time Warner argued that GTE had not articulated any reasons justifying reconsideration in this docket. Time Warner maintained that the North Carolina Public Records Law requires production of the interconnection agreement and that GTE's claims regarding trade secret status are without merit. Furthermore, TA96 requires the production of the interconnection agreements clearly and unambiguously. Therefore, GTE's argument that the Commission should construe the statute to avoid "undesirable or irrational consequences" cannot come into play because the act is not ambiguous or susceptible to more than one construction. Time Warner also stated that public service commissions in several states, including the District of Columbia, Wisconsin, Colorado, and Hawaii have already found that TA96 requires the production of all interconnection agreements, including those previously negotiated. The Michigan case cited by GTE was narrowly decided and simply deferred issues; it does not stand for the proposition that previously negotiated interconnection agreements are not subject to disclosure under TA96. In any event, the Commission does not necessarily need to rule in this docket on the basis of TA96 but could base its decision on the Public Records Law. Finally, Time Warner urged that GTE's request of the creation of a separate docket for comments regarding interconnection agreements should be denied and observed that MobileComm has had both ample time and opportunity to intervene.

Alliance's Response

The Alliance supported GTE's position that TA96 does not require disclosure of the Agreement, arguing that TA96 only requires the filing of interconnection agreements for the provision of competitive services between a competing telecommunications carrier and an incumbent LEC. Furthermore, even should the Commission determine that the Agreement must be filed, such ruling is not a binding precedent as to members of the Alliance. The Alliance also maintained that GTE had a valid claim for trade secret status for the Agreement under the Public Records Law.

WorldCom's Response

WorldCom concurred with the Commission's Order Requiring Disclosure. WorldCom rejected what it characterized as GTE's overly narrow reading of the requirements of TA96 and argued that there was no material in the Agreement which would warrant confidential treatment. Even if such information is deemed confidential, the Commission could employ a protective order to permit access to the information by other parties. WorldCom also made certain suggestions regarding a procedure for the filing and consideration of interconnection agreements generally.

MCI's Response

MCI argued that both the letter and spirit of TA96 mandate disclosure of interconnection agreements. Similarly, the state's Public Records Law mandates disclosure since GTE's claims regarding confidentiality are without merit. MCI also cited G.S. 62-138(a) and Rule R17-4. MCI urged the Commission to require the disclosure of all interconnection agreements in order to achieve the objectives of TA96 and North Carolina law.

MobileComm's Response

On June 11, 1996, the Commission requested MobileComm to file a response in this docket regarding its views concerning the confidentiality of the Agreement with GTE.

On July 23, 1996, MobileComm filed a Response stating that it has not been a party to the proceedings in this docket and the only information it has with respect to this matter is contained in the Order Requesting Response. MobileComm stated that it has no interest in participating in this proceeding and it is not in a position to render a decision regarding the confidentiality of the agreement.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that GTE's Motion for Reconsideration should be denied and that the Agreement should be made publicly available 14 days after the issuance of this Order.

There are essentially two issues that have been raised in this case concerning the authority under which the Agreement may be disclosed or not disclosed. The first is whether the Agreement should be disclosed as a public document under the state Public Records Law. This involves consideration of GTE's claim that certain material in the Agreement constitutes a trade secret. The second is whether the Agreement should be disclosed pursuant to Sec. 252(h) of TA96. In this Order, the Commission reaches the conclusion that the Agreement should be disclosed under the Public Records Law. It is not at this time necessary to reach the question of whether the Agreement should be disclosed under TA96.

The Commission notes that it has already decided that the Agreement should be disclosed pursuant to the Public Records Law in its April 23, 1996, Order Requiring Disclosure. The Commission concurs

with those parties that have argued that the Commission's original decision was the correct one and that GTE has presented no convincing proof that the materials for which it claims confidentiality are indeed trade secrets. The Commission furthermore finds it is significant that MobileComm has neither sought to intervene in this proceeding nor has it sought to claim confidentiality for the Agreement. The Commission accordingly concludes that GTE's Motion for Reconsideration should be denied and that the Agreement should be made publicly available on an expeditious basis.

IT IS, THEREFORE, ORDERED as follows:

1. That GTE's Motion for Reconsideration be denied.

2. That the Agreement herein be made publicly available 14 days after the issuance of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Local Exchange and Exchange Access Competition	))	ORDER ALLOWING INTERIM OPERATION UNDER INTERCONNECTION AGREEMENTS

BY THE COMMISSION: On June 7, 1996, the Public Staff filed a Motion Concerning Interconnection Agreements. The Public Staff noted that parties were already entering into local service interconnection agreements and that, in its opinion, there is no legal or practical reason to delay operation under negotiated interconnection agreements that have been submitted to the Commission and are a matter of public record. The Public Staff argued that third-party competitors will not be disadvantaged since, under the Telecommunications Act of 1996 (TA96), the local exchange companies (LECS) must make interconnection available to them under the same terms and conditions as those provided in the agreements that are negotiated. TA96 also favors the introduction of competition as rapidly as possible. TA96 requires Commission approval or disapproval of a negotiated interconnection agreement within 90 days of submission by the parties or the agreement is deemed approved.

After careful consideration, the Commission concludes that good cause exists to amend Rule 17-4(d) as set out below to allow operation on an interim basis under negotiated agreements that have been submitted to the Commission pending approval by the Commission. The Public Staff has astutely observed that Rule R17-4(d) requires the submission of interconnection agreements but does not provide for Commission approval, while TA96 provides for state commission approval but is silent on when these

agreements must be submitted to the state commissions and whether the parties may operate under the agreements during the 90-day period pending commission action.

The Commission emphasizes, however, that this grant of authority to operate under a negotiated interconnection agreement pending approval by the Commission is at the risk of the parties, and later disapproval of the interconnection agreement may give rise to liabilities for one or both of the parties. The Commission further notes that the grant of interim authority to operate under the agreement pending Commission decision applies only to those interconnection agreements that have been filed as public records. Although Sec. 252(h) of TA96 provides that the agreement becomes available for public inspection and copying within 10 days after it is approved, TA96 is silent on the possible confidential status of a negotiated interconnection agreement prior to approval. This provision makes clear that the ability to operate on an interim basis pending approval is contingent upon the parties not claiming confidentiality for the agreement prior to approval.

Accordingly, the Commission concludes that Rule R17-4(d) should be rewritten to read as follows:

> (d) Interconnection agreements are to be negotiated in good faith. Such agreements shall be filed for approval as soon as practicable but in no event later than 30 days from the date of conclusion of negotiations. Parties may operate on an interim basis under a negotiated interconnection agreement which has been filed with the Commission and which is publicly available as a public record pending Commission action on the filing. Interim operations under a negotiated interconnection agreement shall begin no earlier than the date upon which the agreement is filed with the Commission and shall be undertaken, at the risk of the parties, subject to the right of the Commission to approve or disapprove the agreement.

Rule R17-4(d), as so amended, shall become effective as of the date of this Order and shall apply to all negotiated interconnection agreements filed with the Commission as public records, including those interconnection agreements filed prior to the date of this Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Local Exchange and Local Exchange	)	ORDER REGARDING INTERIM
Access Competition	)	FUNDING MECHANISM AND
	)	UNIVERSAL SERVICE HEARING

BY THE COMMISSION: On May 15, 1996, the Commission issued an Order which, among other provisions, sought comments from interested parties regarding universal service issues. The Commission requested comments on a schedule for evidentiary hearing or hearings on universal service issues, a statement of additional universal service issues, an identification of services for which local exchange companies (LECs) and others will be expected to produce cost studies, a recommendation regarding an interim rule for universal service funding, and an assessment of the impact of the Telecommunications Act of 1996 (TA96) and the Federal Communications Commission (FCC) universal service rulemaking on this state's proceeding.

The following parties submitted comments and reply comments: Sprint Communications Company, L.P. (Sprint), the Carolina Utility Customers Association, Inc. (CUCA), the Attorney General, GTE South, Incorporated (GTE), the Alliance of Independent Telephone Companies (Alliance), MCI Telecommunications Corporation (MCI), AT&T Communications of the Southern States, Inc. (AT&T), Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Carolina), Time Warner Communications of North Carolina, L.P. (Time Warner), the Public Staff, and BellSouth Telecommunications, Inc. (BellSouth). The comments and reply comments submitted by the parties were both extensive and useful.

After careful consideration, the Commission concludes the following:

1. That a hearing should not be held on universal service issues until after the FCC has issued it final rules in May 1997. The Commission will issue an appropriate Order nearer to that event in 1997.

2. That the interim universal service mechanism should be a continuation of the present system of funding.

3, That in addition to the universal service issues previously identified by the Commission, the universal service hearing should also consider special rates for certain health care providers and educational providers and libraries as set out in TA96, Section 254.

Universal Service Hearing

The Commission has elected to schedule the hearing on universal service after the FCC has issued its final rules in May 1997, for several reasons.

First, the Commission notes that TA96, Section 254, is very explicit that any state universal service structure must not be inconsistent with the FCC's rules. While a state may adopt additional definitions and standards to preserve and advance universal service, such definitions and standards are not to "rely on or burden Federal universal service support mechanisms." Since this is the case, it would seem reasonable to wait to see exactly what the FCC will do. This will minimize the possibility of wasted effort by the parties and the Commission and virtually eliminate the chances of "getting it wrong" with respect to the FCC rules.

Second, the Commission has a very heavy schedule relating to telecommunications matters. There will be several arbitration hearings that will span the fall and winter of 1996-97 as well as a likely TA96, Section 271 proceeding. Many of the same parties that are involved in these matters both in this state and others will be involved in the universal service hearing. These proceedings are in addition to the Commission's regular workload, which includes many important matters concerning other industries, as well as those pertaining to telecommunications.

Third, the statutory deadlines will allow for scheduling a hearing later rather than sooner. There is no deadline built into TA96, Section 254, applicable to the states. G.S. 62-310(f1) contains a statutory deadline of July 1, 1998, for completion by the Commission of its universal service investigation and adoption of final rules.

Interim Funding Mechanism

As noted above, G.S. 62-310(f1) does require that an interim designation of universal service funding be made by December 31, 1996. Several parties, notably CUCA and the Public Staff, recommended that the Commission continue with the present implicit mechanism for funding until an explicit mechanism is chosen as part of the final rules after comment and hearing. The Commission finds that there is no practical alternative to doing this. There is simply no way of arriving at a brand-new system before the end of this year and, as pointed out above, our universal service structure must be consistent with the FCC rules--which will not be known until next year. Accordingly, the Commission concludes that the present system of funding for universal service should be maintained pending further Order.

Additional Issues

The Commission has already set out a number of issues which cover the reasonable gamut of universal service issues. However, TA96, Section 254, set out special provisions for health care and educational institutions and libraries. Compliance with these provisions must also be issues in this state's universal service hearing.

IT IS, THEREFORE, ORDERED as follows:

1. That the interim universal service mechanism, pursuant to the requirements of G.S. 62-110(f1), shall be the present system of funding.

2. That special rates for health care and educational institutions and libraries shall be issues in a future universal service hearing.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of September, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-100, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Modification to the Rules and Regulations Governing the Filing and Conduct of General Rate Cases for Large Water and Sewer Companies	))))	ORDER ADOPTING REVISION TO COMMISSION RULE R1-17(d)

BY THE COMMISSION: On May 14, 1991, a Recommended Order Adopting Revisions to North Carolina Utilities Rules and Regulations was issued in this docket. On September 4, 1991, the Commission issued an Order Amending Recommended Order of May 14, 1991. Among other things, these Orders revised the first sentence of Rule R1-17(d).

Under said Rule, water and sewer utilities are required to notify their customers by public notice in general circulation newspapers that they have filed a general rate application with the Commission. In dealing with water and sewer utilities, it has been the practice of the Commission to require that customer notice be mailed or hand delivered to all affected customers. That being the case, it is not necessary to require newspaper notification also. The following change would bring the Rule into compliance with the Commission's practice:

> (d) Notice of General Rate Application and Hearing. – Within thirty (30) days from the filing of any general rate case application by any electric, telephone, or natural ~~gas, water or sewer~~ utility, such utility should provide public notice to its customers in newspapers having general circulation . . .

Based upon the foregoing, the Commission is of the opinion that the proposed revision to Rule R1-17(d) should be approved.

IT IS, THEREFORE, ORDERED that the Rule revision included on Appendix A be, and hereby is, approved upon the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX A

Revision to NCUC Rules and Regulations

Revise the first sentence of Rule R1-17(d), to read in part, as follows:

> (d) Notice of General Rate Application and Hearing. -- Within thirty (30) days from the filing of any general rate case application by any electric, telephone, or natural gas utility, such utility should provide public notice to its customers in newspapers having general circulation . . .

DOCKET NO. W-100, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Resale of Water and Sewer Utility Service	)	
in Apartments, Condominiums and Similar	)	ORDER ADOPTING
Places	)	INTERIM RULES

BY THE COMMISSION: On June 21, 1996, the General Assembly ratified Chapter 753 - Senate Bill 1183 - which amended Chapter 62 of the Public Utilities Law of North Carolina by adding subsection 62-110(g) to authorize the Commission to adopt procedures to allow the resale of water and sewer service provided to persons who occupy the same contiguous premises.

G.S. 62-110(g) provides in pertinent part that:

> The Commission shall issue rules to implement the services authorized by this subsection and, notwithstanding any other provision of this Chapter, the Commission shall determine the extent to which such services shall be regulated and, to the extent necessary to protect the public interest, regulate the terms, conditions and rates charged for such services.

On August 23, 1996, the Public Staff-North Carolina Utilities Commission, by and through its Executive Director, Robert P. Gruber, respectfully requested that the Commission institute a rulemaking proceeding to allow and regulate the resale of water and sewer utility service to persons who occupy the same contiguous premises.

N.C.G.S. 62-110(g), now authorizes the Commission to adopt procedures to allow resale of water and sewer service provided to persons who occupy the same contiguous premises.

On September 4, 1996, An Order Requesting Comments was issued. The initial comments were asked to address the issues raised by the Public Staff and the Public Staff's proposed rules. The initial comments were to be filed with the Chief Clerk of the Commission not later than October 8, 1996. Reply comments addressing the initial comments are to be filed not later than October 24, 1996. Other interested persons may petition to intervene at the time they file comments.

A copy of the Proposed Rules as submitted by the Public Staff is attached to this Order and labeled as Appendix A - **Chapter 18. Resale of Water and Sewer Service.** After careful review of these rules by the Commission, the Commission finds good cause to issue an order adopting these rules as interim rules and interim rules only. The interim rules as adopted by the Commission are subject to change upon the Commission's adoption of final rules in this docket.

IT IS, THEREFORE, ORDERED that the attached rules labeled as Appendix A and identified as - **Chapter 18. Resale of Water and Sewer Service** - be, and the same are hereby, adopted as Interim Rules in this docket pending the adoption of final rules by the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Chapter 18.

Resale of Water and Sewer Service.

Rule R18-1. Application.

This Chapter governs resale of water and sewer utility service as authorized by G.S. 62-110(g).

Rule R18-2. Definitions.

(a) *Same contiguous premises.* Property under common ownership or management that is not separated by property owned or managed by others. Property will be considered contiguous even if intersected by a public thoroughfare if, absent the thoroughfare, the property would be contiguous.

(b) *Provider.* The party purchasing water or sewer utility service from a supplier and reselling the service or services to end-users. The provider shall be the owner or manager of the premises served.

(c) *Supplier.* A public utility or an agency or organization exempted from regulation from which a provider purchases water or sewer service.

(d) *End-user.* The party to whom resold water or sewer service is provided.

Rule R18-3. Certificate; bond.

No provider shall begin reselling water or sewer utility service prior to applying for and receiving a certificate of authority from the Commission and posting a bond in the form and amount required by the Commission.

Rule R18-4. Quality of service.

Every provider shall have and maintain all permits required by the North Carolina Department of Environment, Health and Natural Resources and shall comply with the rules of all state and local governmental agencies regarding the provision of water and sewer service.

Rule R18-5. Records and reports.

(a) All records shall be kept at the office or offices of the provider in North Carolina and shall be available during regular business hours for examination by the Commission or Public Staff or their duly authorized representatives.

(b) Every provider shall prepare and file an annual report to the Commission with a copy to the Public Staff in the form prescribed by the Commission. Special reports shall also be made concerning any particular matter upon request by the Commission or Public Staff.

Rule R18-6. Rates.

(a) The rates charged by a provider shall be set to generate revenue no greater than the total of: (1) the cost of purchased water and sewer service, (2) the cost of meter reading, and (3) the cost of billing and collection. All charges shall be based on end-users' metered consumption of water.

(b) No provider shall charge or collect any greater or lesser compensation for the sale of water or sewer service than the rates approved by the Commission.

Rule R18-7. Customer deposits; disconnection; billing procedure.

Customer deposits, disconnection for non-payment, and billing procedure shall be governed by Chapter 12, Rules R12-1 through R12-9, Chapter 7, Rules R7-19 through R7-25, and Chapter 10, Rules R10-15 through R10-19, of the Rules and Regulations of the North Carolina Utilities Commission.

DOCKET NO. E-2, SUB 669

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light	)	
Company for a Certificate of Public	)	ORDER GRANTING
Convenience and Necessity to Construct	)	CERTIFICATE AND APPROVING
Approximately 500 MW of Combustion Turbine	)	STIPULATIONS
Generating Capacity in Wayne County	)	

HEARD: Tuesday, January 9, 1996, at 9:30 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Laurence A. Cobb and Judy Hunt

APPEARANCES:

For Carolina Power & Light Company:

Len S. Anthony, Associate General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602-1551

For North Carolina Natural Gas Corporation:

Alfred E. Cleveland, Attorney at Law, McCoy, Weaver, Wiggins, Cleveland & Raper, Post Office Box 2129, Fayetteville, North Carolina 28302-2129

For Carolina Industrial Group for Fair Utility Rates II:

Ralph McDonald, Attorney at Law, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28680-1269

For LS Power Corporation:

Jeffrey B. Parsons, Attorney at Law, Everett, Gaskins, Hancock & Stevens, 127West Hargett Street, Suite 600, Raleigh, North Carolina 27601

For American National Power:

James L. Shepherd, Vice President & Assistant General Counsel, American National Power, Inc., 10000 Memorial Drive, Suite 500, Houston, Texas 77024

For Southern Environmental Law Center:

Oliver A. Pollard, III, and Jeffrey M. Gleason, Attorneys at Law, 201 West Main Street, Suite 14, Charlottesville, Virginia 22902-5065

Derb S. Carter, Attorney at Law, 137 East Franklin Street, Suite404, Chapel Hill, North Carolina 27514

For the Using and Consuming Public:

A.W. Turner, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

J. Mark Payne, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On December 19, 1994, pursuant to Commission Rule R8-61, Carolina Power & Light Company (CP&L) filed Preliminary Plans for a New Generation Facility which described the plans of CP&L to construct 1200 MW of combustion turbine generating capacity in 1998 and 1999 in Wayne County at a site adjacent to CP&L's Lee Steam Plant.

On September 27, 1995, in accordance with its Rule R8-61 filing and pursuant to N.C. Gen. Stat. § 62-110.1, CP&L filed an Application for a Certificate of Public Convenience and Necessity to construct 500 MW of combustion turbine generating capacity in Wayne County, North Carolina at a site adjacent to CP&L's Lee Steam Plant in 1998.

By Order issued October 10, 1995, the Commission scheduled a public hearing on this matter for December 7, 1995, in Goldsboro, North Carolina and an evidentiary hearing for January 9 and 10, 1996, in Raleigh, North Carolina.

Petitions to Intervene were filed by Carolina Utility Customers Association, Inc. ("CUCA"), North Carolina Natural Gas Corporation ("NCNG"), Southern Environmental Law Center ("SELC"), Leary's Consultative Services ("LCS"), Carolina Industrial Group for Fair Utility Rates ("CIGFUR II"), American National Power, Inc. ("ANP"), and LS Power ("LSP"). The Commission granted all of the Petitions to Intervene.

CP&L filed responses to the Petitions to Intervene of CIGFUR II and SELC and a Response in Opposition to the Petition of ANP. On January 2, 1996, ANP filed its Response to CP&L's Response in Opposition to ANP's Petition for Leave to Intervene.

On December 1, 1995, the Commission issued its Order Scheduling Prehearing Conference for December 13, 1995, which was subsequently continued to January 3, 1996 by order issued December 8, 1995.

The public hearing in Goldsboro, North Carolina was held on December 7, 1995, as scheduled. No public witnesses attended.

On December 20, 1995, CIGFUR II filed a Motion for Extension of Time to File Testimony or Comments and Continuance of Hearing. On December 21, 1995, the Commission issued an Order Granting Extension of Time for Intervenors to Prefile Expert Testimony until December 27, 1995.

On December 29, 1995, pursuant to Rule R1-7, CP&L filed a Motion in Limine and to Strike Intervenor Testimony. On January 3, 1996, LSP filed its Response to Motion in Limine and Motion to Strike Intervenor Testimony.

The Prehearing Conference was held on January 3, 1996 as scheduled. During the prehearing conference Commissioner Allyson Duncan heard oral argument on CP&L's Motion in Limine and to Strike Intervenor Testimony and Response in Opposition to ANP's Petition to Intervene. Commissioner Duncan granted ANP's Petition to Intervene; partially granted CP&L's Motion In Limine by holding that CP&L's failure to utilize an all-source competitive bidding process was probative but not dispositive of the reasonableness of CP&L's evaluation of purchased power options; and granted CP&L's Motion to Strike Intervenor Testimony and to prohibit evidence regarding retail electric competition.

The evidentiary hearing was held on January 9, 1996, as scheduled. At the beginning of the hearing, the Commission was advised that a stipulation had been entered into between CP&L and SELC whereby CP&L agreed to continue to explore alternatives to the construction of the Wayne County facility and to meet with SELC's consultants to discuss energy efficiency programs; and whereby SELC agreed to withdraw the prefiled testimony of its witness Paul Chernick and its opposition to CP&L being granted a certificate to build the Wayne County turbines. The Commission was also advised that another stipulation had been entered into between CP&L and the Public Staff, whereby CP&L agreed to issue competitive bid solicitations for its next two blocks of capacity and the Public Staff agreed to withdraw its opposition to CP&L being granted a certificate to build the Wayne County combustion turbines. ANP concurred in this stipulation. Finally, the Commission was advised that another stipulation had been entered into between CP&L and LSP, whereby CP&L agreed to allow LSP to submit a proposal in response to both of its competitive bid solicitations, continue to explore alternatives to the construction of the proposed Wayne County turbines, consider a proposal by LSP, and meet with LSP's representatives; and whereby LSP agreed to withdraw the testimony of its witness Robert Brooks and its opposition to CP&L being granted a certificate to build the Wayne County combustion turbines. These stipulations are attached hereto for reference.

FINDINGS OF FACT

1. CP&L is a public utility subject to the jurisdiction of the North Carolina Utilities Commission.

2. CP&L is required to secure and maintain adequate and reliable resources to meet the anticipated demands for electricity in its assigned service territory.

3. CP&L's most recent demand and energy forecasts indicate that unless CP&L adds 500 MW of peaking capacity to its system by the summer of 1998 its capacity margin will fall to an unacceptable level and it will not be able to reliably meet the demand for electricity in its assigned service territory.

4. Commission Rule R8-58 requires CP&L to evaluate all resources reasonably available in meaningful quantities in determining the type of resource to be added to its system to meet its projected need for peaking capacity.

5. CP&L evaluated the use of demand-side management resources, purchased power options and company built supply-side resources and determined that the most appropriate type of resource to add to its system in order to meet its projected need for peaking capacity was 500 MW of combustion turbines in Wayne County.

6. The process CP&L utilized to determine that the combustion turbines for which CP&L is seeking a certificate are the most cost-effective peaking resource available was reasonable.

7. CP&L has a need for 500 MW of peaking capacity to be placed in service by the summer of 1998 and the combustion turbines CP&L proposes to build in Wayne County, North Carolina adjacent to its Lee Plant are necessary.

8. Consistent with the Commission's past practice, it will not address the ratemaking treatment to be afforded the costs associated with the proposed Wayne County turbines in this proceeding. Such decisions should be addressed in a general rate case proceeding when the actual costs are known.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

This finding of fact is based upon N.C. Gen. Stat. §§ 62-32, 62-42, 62-110.1 and Commission Rules R8-56 through R8-60. These statutes and rules require electric utilities, such as CP&L, to secure and maintain adequate resources to meet the anticipated demand for electricity in their assigned territories.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

This finding is based on forecasts contained in CP&L's 1995 Integrated Resource Plan (IRP), CP&L's Application for Certificate of Public Convenience and Necessity (the Application) filed on September 27, 1995, and the testimony of CP&L witness Bobby L. Montague.

These forecasts and testimony indicate that: CP&L currently has a total generation capacity of 11,209 MW; a new CP&L record peak demand of 10,156 MW was set in August of 1995; and that CP&L's forecasts project peak load to grow approximately 2.1% annually through 2009. This level of growth corresponds to approximately 228 MW of additional peak load each year. CP&L is predicting peak demands of 10,272 MW, 10,549 MW and 10,802 MW, respectively for the years 1998, 1999 and 2000.

As explained by witness Montague, all utilities require a margin of generating capacity above the capacity used to serve expected load in order to assure reliable service. Generating equipment requires periodic outages to perform maintenance, refuel nuclear plants and repair failed equipment. At any given time during the year, some plants will be out of service and unavailable for these reasons. Adequate reserves must be available to provide for this unavailable capacity and for higher than projected peak demand due to forecast uncertainty and abnormal weather. In addition, some capacity must be available as operating reserve to maintain the balance between supply and demand on a moment-to-moment basis.

As shown in the Application's revised Attachment II, Table III. B-1 of CP&L's R8-61 filing, unless CP&L adds a 500 MW peaking resource in 1998, CP&L's capacity margin will drop to 11.4% in 1998 and 3.1% in the year 2000. CP&L has in the past used a target capacity margin[1] of 15% to determine the need for additional resources and to provide an adequate margin of generating capacity. However, CP&L has recently completed studies which indicate that the target capacity margin can be reduced to 13%.

Witness Montague testified that the capacity margins projected for 1998 and beyond would be inadequate to provide reliable and adequate service to CP&L's customers, and that the addition of a 500 MW peaking resource in 1998 would increase CP&L's 1998 capacity margin to 13.7%.

The Commission finds witness Montague's testimony persuasive and observes that CP&L's evidence on this issue was unchallenged. Thus, the Commission concludes that unless CP&L adds a 500 MW peaking resource by the summer of 1998, CP&L's capacity margin will fall to an unacceptable level and CP&L will not be able to reliably meet the demand for electricity in its assigned service territory.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

This finding is based upon Commission Rule R8-58 which requires CP&L to evaluate all resource options reasonably available in meaningful quantities in determining the type of peaking resource to add to its system in order to meet projected demand. These options include: conservation and demand-side management resources ("DSM"); purchased power; and new company-owned facilities.

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[1]Capacity margin is defined as the ratio of the difference between generating capacity and peak load divided by the generating capacity.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 5 AND 6

This finding is based on the testimony of CP&L witness Montague and Public Staff witness Powell, CP&L's 1995 IRP and the stipulations reached between CP&L and the Public Staff, SELC, LSP, and ANP.

Witness Montague and CP&L's 1995 IRP explained that a comprehensive assessment of all DSM options is an integral part of CP&L's IRP process. CP&L selects cost-effective DSM programs by comparing program costs to its avoided costs. The avoided costs represent the supply-side capacity and energy costs that can be avoided by implementing cost-effective DSM program options. The avoided costs are also the basis for determining payments to cogenerators and small power producers. The use of this common benchmark is intended to ensure fair competition of DSM programs against supply-side resources. Through the end of 1994, CP&L had achieved approximately 1,076 MW of peak load reduction from DSM programs, off-setting the need for a like amount of new supply capacity. CP&L projects that through the year 2000 the total summer peak load reduction from DSM programs will be 1,465 MW. These DSM efforts will represent approximately 389 MW of additional peak load reduction over the reduction achieved through 1994. Between 1995 and 2009, the impact of CP&L's DSM programs, as a percentage of summer peak load, is expected to increase from 10.6% to 13.4%. CP&L's system marginal energy costs contained in Montague Exhibit No. III, are lower than those approved in CP&L's last avoided cost filing. Thus, CP&L asserts that additional cost-effective DSM to meet its capacity need is unlikely to be available. CP&L's 1995 IRP supports witness Montague's testimony as it indicates additional cost-effective DSM potential is insufficient to meet CP&L's projected peaking capacity needs in 1998.

Prior to the beginning of the hearing, the SELC withdrew its testimony on this issue and advised the Commission that as a result of the stipulation it had entered into with CP&L, the SELC no longer opposed CP&L being granted a certificate to construct the Wayne County turbines.

Regarding CP&L's evaluation of purchase power options, CP&L's 1995 IRP states that CP&L evaluated ten unsolicited purchase power proposals to determine if any of them were more cost-effective than building the Wayne County turbines. CP&L witness Montague testified that the proposals that were made for combustion turbine capacity were evaluated against CP&L's planned combustion turbine additions. Proposals for combined cycle cogeneration were evaluated against CP&L's avoided costs. In each case, the proposals were found to be more expensive than building the Wayne County turbines. The proposal with costs closest to the Wayne County project had costs 16% greater than CP&L's planned combustion turbine addition.

Some of the parties suggested CP&L did not adequately consider purchase power alternatives because CP&L did not perform an all-source competitive bid solicitation for the capacity need in question. CP&L witness Montague responded to this allegation by explaining that in this instance, such a solicitation would not have produced any purchase power proposals that were more cost-effective than the proposed Wayne County turbines and that the Company's 1989, 1992 and 1995 IRPs accomplished the same objective as an all-source bid solicitation. Witness Montague stated that all of CP&L's IRPs, beginning with the first IRP filed in 1989, indicated CP&L's need and plans to construct peaking capacity in the later part of the 1990's. CP&L's integrated resource plans and short term action plans are public information

and are available to third party suppliers. These plans provide the notice and information needed for third parties to make proposals for satisfying CP&L's future capacity needs. CP&L carefully evaluates the cost-effectiveness of all proposals received. During the period 1992 through 1994, CP&L received ten purchase power proposals from eight different sources representing 2,673 MW of capacity. For each proposal, the cost was found to be more expensive than the CP&L alternative to build.

Witness Montague explained that it was not surprising that none of these proposals were more cost-effective than the construction of the Wayne County turbines because, regardless of who provides the peaking capacity in question, it will have to be built and CP&L has obtained a very cost-effective turnkey option contract for these turbines. Combustion turbines are the most cost-effective type of peaking capacity, and 80% of the cost of such capacity is the equipment, and all providers of this capacity will purchase the equipment from one of four vendors. CP&L solicited turnkey proposals from these turbine vendors in March of 1995. Witness Montague testified that, through this bid solicitation process, he had obtained a very favorable option contract for the construction of 500 MW of combustion turbine peaking capacity in Wayne County. The cost of this capacity was estimated to be $235 per kW. Witness Montague testified that this was the lowest cost peaking capacity reasonably available. This assertion was supported by the testimony of Public Staff witness Powell, who stated that he had talked with over 25 independent power producers (IPPs) over the last three years, that he is familiar with the cost of peaking capacity, that based upon his knowledge of this industry the price obtained by CP&L of $235 kW was reasonable, and that he was unaware of any independent power producer that could construct this capacity for less than this amount.

Only two IPPs intervened in this proceeding; and these IPPs and the Public Staff withdrew their opposition to CP&L's application for a certificate to construct the Wayne County turbines as a result of the stipulations they entered with CP&L.

Regarding the reasonableness of CP&L's proposal to build combustion turbines at a site adjacent to its Lee Steam Plant in Wayne County to meet its capacity need, CP&L's Application, 1992 and 1995 IRPs and witness Montague's testimony explain that simple cycle combustion turbines are the most economical and reliable peaking resource available. They have short lead times which increase flexibility by allowing more time to determine and verify the need for additional capacity before committing CP&L and its customers to significant expenditures. In addition, combustion turbines have low capital costs which help to minimize the need for rate increases.

Witness Montague explained that CP&L's 1995 IRP demonstrates that combustion turbine capacity is the most cost-effective peaking resource over a range of values for key uncertainties such as combustion turbine fuel prices and load growth. Combustion turbine capacity permits better utilization of CP&L's existing base load generation and the relatively low capital cost of combustion turbines reduces financial risks to CP&L and its customers. The combustion turbines have relatively small unit sizes which helps achieve a closer match of supply to demand and contributes to improved system reliability. Combustion turbines also have short construction lead times which increase flexibility and minimize risks in responding to changing conditions.

CP&L solicited turnkey bids from the four primary vendors of combustion turbines, which are GE, Westinghouse, Seimens Corporation (Seimens), and Asea Brown Boveri (ABB), and engaged in a process

that required these vendors to compete against each other. Through this process CP&L obtained a turnkey proposal from GE that is cost-effective and appears to be the lowest cost obtainable.

Turning to the issue of siting the proposed facility, CP&L witness Montague explained that CP&L implemented a three-phase siting process using increasingly refined criteria to systematically screen potential sites and to provide the basis for selecting the site of best overall land use, environmental compliance, and cost. Criteria were established for each of the three phases of the study. Of the 37 sites initially considered, an order of magnitude cost comparison was developed for the top three sites resulting from the three-phase process. The Wayne County site had the highest overall ranking for land use and environmental compliance, and the lowest site development cost, and therefore was selected as the best site for the combustion turbine facility. The Wayne County site is in close proximity to the Company's existing Lee Steam Electric Plant which offers opportunities to share personnel, maintenance and operating facilities, fuel oil, and demineralized water. In addition, the existing Lee 230 kV Substation and transmission lines in the area have adequate capacity to distribute the new generation and no new transmission lines will be required to accommodate the new capacity.

In light of the evidence described above, the Commission finds that CP&L's proposed addition of 500 MW of combustion turbine capacity in Wayne County is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

This finding is based on the testimony of CP&L witness Montague and CP&L's Application. CP&L witness Montague explained that CP&L's 1992 IRP, which was approved by the Commission, subsequent filings of the Annual Report of Updates to the IRP in 1993 and 1994 and CP&L's 1995 IRP show the need for additional peaking capacity prior to the year 2000 and support the selection of combustion turbines as the least cost option to meet that need. The proposed Wayne County turbines are consistent with these filings. Montague further explained that based on current projections, the Wayne County addition is needed to provide the additional generating capacity necessary to meet estimated customer loads and to maintain an adequate margin of reserve generating capacity. He testified that Wayne County is the most cost-effective generating capacity which CP&L can provide to meet its peaking power and reserve requirements during the planned time period.

The Commission believes that CP&L has expressed valid reasons to support the need for additional peaking capacity by 1998. Witness Montague testified that on January 19, 1994, CP&L's last winter peak, CP&L was able to serve load. However, there were rolling blackouts in Washington, D.C. and certain areas of Virginia. Also he testified that on the morning of January 20, 1994, CP&L had people in the field at daylight ready to pull circuits, and had the weather not moderated and the wind dropped off, he believes that CP&L would have had rolling blackouts on that date. There was a similar situation on August 14, 1995, when a high summer peak hit, and there was no power available on the eastern seaboard.

The Commission concludes that, based upon the facts and circumstances presented here, CP&L's plans to install approximately 500 MW of combustion turbine units at a new site in Wayne County, North Carolina, adjacent to the Company's Lee Steam Electric Plant, are necessary and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Generation construction certification proceedings are conducted pursuant to N.C. Gen. Stat. §§ 62-82 and 62-110.1, neither of which are included in Article 7 of Chapter 62 (which is the portion of Chapter 62 that addresses ratemaking). Section 62-82 is solely concerned with the procedural steps the Commission must follow once a utility files an application for a certificate of public convenience and necessity. Section 62-110.1 establishes the requirement that a utility must demonstrate a public need for a proposed generation facility and obtain Commission approval prior to construction. This section also identifies a number of factors the Commission must consider in determining whether to grant the requested certificate. One of the factors the Commission must consider is the estimated cost of the facility, which is to be considered in the context of whether the proposed facility is needed. Subsection (f) of § 62-110.1, which requires the Commission to monitor the construction of the facility and any changes in the estimated construction costs, represents the General Assembly's recognition of the fact that these are cost estimates and that they may change as a facility is constructed. On the other hand, Article 7 of Chapter 62, and § 62-133 in particular, allow the Commission to evaluate the reasonableness and prudence of costs that have actually been incurred by a utility.

Section 62-133(b)(1) states that:

> "In fixing such [a utility's] rates, the Commission shall: ascertain the reasonable original cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public in the state."

Subsection (c) provides that the test period shall consist of a 12 month historical operating experience. Thus, it can be argued that costs can only be excluded from ratebase and a utility denied recovery of such costs once they are incurred and their reasonableness evaluated in light of the circumstances experienced by the utility during construction.

In determining a utility's ratebase, the costs of utility property may be excluded from ratebase if (1) they were incurred imprudently, or (2) the plant is not used and useful. See State ex rel. Utilities Commission v. Thornburg, 325 N.C. 484, 490-91, 385 S.E.2d 463, 466-67 (1989). In making a determination as to whether a cost was prudently incurred or an investment is not used and useful, the Commission is required to consider all "material facts" that would enable it to set a reasonable rate. (See N.C. Gen. Stat. § 133(d)). Therefore, the Commission must consider the facts and circumstances that existed at the time a cost was incurred in order to determine whether it was prudent to incur such a cost. CP&L cannot be given an adequate opportunity to be heard at this point at this time because the information that it will need to fully justify the actual costs of the facility will not be known, and cannot be known, until the costs are actually incurred.

The Commission concludes that it should reject the Public Staff's request that the Commission issue an order in this proceeding prohibiting CP&L from recovering in rates any amount greater than CP&L's currently estimated costs of constructing the generating facility that is the subject of this proceeding. The Commission will reserve that decision until CP&L's next general rate case when the actual costs are known.

IT IS, THEREFORE, ORDERED as follows:

1. That the attached stipulations entered into between CP&L, the Public Staff, LSP, SELC and ANP are hereby approved.

2. That CP&L's Application for a certificate of public convenience and necessity to construct approximately 500 MW of combustion turbine generating capacity in Wayne County, North Carolina is hereby granted.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of March, 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

(For Stipulations see Official Copy of Order in Chief Clerk's Office.)

DOCKET NO. E-2, SUB 669

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light	)	ORDER REVISING
Company for a Certificate of Public	)	PREVIOUS ORDER
Convenience and Necessity to Construct	)	
Approximately 500 MW of Combustion	)	
Turbine Generating Capacity in Wayne	)	
County	)	

BY THE COMMISSION: On March 21, 1996, the Commission issued its Order Granting Certificate and Approving Stipulations in the above-captioned matter, in which it granted Carolina Power & Light Company's (CP&L's) application for a certificate of public convenience and necessity to construct approximately 500 MW of combustion turbine generating capacity in Wayne County, North Carolina.

On August 1, 1996, CP&L filed a motion to revise the Order of March 21, 1996, in order to include "an actual Certificate of Public Convenience and Necessity." The Motion also requested that the Certificate of Public Convenience and Necessity should be subject to: (1) the reporting requirements of G.S. 62-110.1(f); and (2) the requirement that CP&L file status reports at least annually containing (a) the status of necessary federal and state permits, (b) the status of engineering and construction, (c) explanations for any significant changes in cost or cost estimates, and (d) explanations for any significant changes in forecasts or need for the project.

CP&L asserted in the Motion that it would file the required status reports as a part of its Annual Short-Term Action Plan submitted pursuant to NCUC Rule R8-59; that it would file updates to the status reports within thirty (30) days after any significant change in the estimated cost of the project or the construction schedule; that such updates would be filed as updates to the current Short-Term Action Plan; and that if CP&L does not begin construction within six (6) years after issuance of the certificate, it will be required to renew the certificate by recompliance with G.S. 62-110.1.

Finally, CP&L requested in its Motion that the next-to-last paragraph on page 10 of the March 21, 1996, Order be rewritten as follows:

> This conclusion is supported by the North Carolina Supreme Court's decision in the case of North Carolina ex rel. Utilities Commission v. N.C. Power, 338 N.C. 412, 450 S.E.2d 896 (1994), reh'g denied, 454 S.E.2d 269 (1995), cert. Denied, ___ U.S. ____, 116 S.Ct. 813 (1996). In this case, the Court held that in determining whether an operating expense or investment is recoverable by a utility, the Commission must consider the propriety of having incurred the expense and the reasonableness of the expense. In making this determination, the Commission is required by N.C. Gen. Stat. § 62-133(d) to consider all "material facts." To do so, the Commission must consider the facts and circumstances that existed at the time a cost was incurred in order to determine whether it was reasonable. CP&L cannot be given an adequate opportunity to be heard at this time regarding such facts and circumstances because the information that it will need to fully justify the actual costs of the facility will not be known, and cannot be known, until the costs are actually incurred.

CP&L's Motion cited concerns by the Public Staff regarding the accuracy of the legal standards set forth in said paragraph of the March 21, 1996, Order.

The Commission is of the opinion that CP&L's Motion should be granted. CP&L asserted in its Motion that it had contacted all of the parties to this proceeding and that, with one exception, none of them object to this Motion. The exception was LS Power Corporation, which did not respond to CP&L's inquiries. It should also be noted that the requested revisions are being made pursuant to the stipulations between the parties, and are not necessarily precedent-setting.

IT IS, THEREFORE, ORDERED:

1. That the Commission's Order Granting Certificate and Approving Stipulations, Issued March 21, 1996, in the above-captioned matter, is hereby revised as discussed herein.

2. That the Certificate of Public Convenience and Necessity attached hereto as Attachment 1 is hereby approved.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Attachment 1

DOCKET NO. E-2, SUB 669

Carolina Power & Light Company
411 Fayetteville Street Mall
Raleigh, North Carolina 27602

is issued this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. 62-110.1

authorizing construction and operation
of approximately 500 MW of combustion
turbine generating capacity

located

adjacent to Carolina Power & Light Company's Lee
Steam Plant in Wayne County, North Carolina

subject to the reporting requirements of N.C. Gen. Stat. § 62-110.1(f) and the requirement that CP&L file status reports with the Commission at least annually containing the following information: (a) the status of necessary state and federal permits; (b) the status of engineering and construction; (c) explanations for any significant changes in costs or cost estimates; and (d) explanations for any significant changes in forecast or need for the project. These status reports shall be filed as part of CP&L's Annual Short Term Action Plan submitted pursuant to Commission Rule R8-59. CP&L would also be required to file updates to these status reports within thirty (30) days of any significant change in the estimated cost of the project or the construction schedule. Such updates shall be filed as updates to the current Short Term Action Plan. This certificate must be renewed by recompliance with N.C. Gen. Stat § 62-110.1 if CP&L does not begin construction within six years after the issuance of this certificate.

ISSUED BY ORDER OF THE COMMISSION
This the 13th day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-2 SUB 699

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Carolina Industrial Group for Fair Utility Rates,	)	
Complainant	)	
	)	ORDER ON PETITION
v.	)	FOR INVESTIGATION
	)	AND COMPLAINT
Carolina Power & Light Company,	)	
Respondent	)	

BY THE COMMISSION: On July 19, 1996, the Carolina Industrial Group for Fair Utility Rates (CIGFUR II) filed a Petition for Initiation of Investigation of Existing Rates and Complaint in this docket. CIGFUR asked the Commission to initiate an investigation of the rates of Carolina Power and Light Company (CP&L) or, alternatively, to treat the petition as a complaint with respect to CP&L's rates. In brief, CIGFUR alleges that CP&L's return on equity and rates were set 8 years ago, that circumstances have changed, that CP&L is apparently overearning its authorized return on equity, and that a lower authorized return on equity would be appropriate today.

CP&L filed a Response and Motion to Dismiss on July 29, 1996. CP&L asserts that it is not overearning its return on equity and that a higher, not lower, authorized return on equity would be appropriate in present circumstances.

On August 2, CP&L filed a letter to the effect that it would soon propose certain accounting adjustments which would impact its earnings. On August 6, 1996, the Commission issued an order allowing CP&L until September 16 to submit its list of accounting adjustments and holding the docket in abeyance until that filing. The filings and proceeding relevant to CP&L's proposed accounting adjustments are set forth in the Commission's Order of December 6, 1996, in this docket. The Commission approved certain accounting adjustments for CP&L "without prejudice to the right of any party to take issue with the amount or the accounting treatment of these costs in a general rate case proceeding." The Commission's Order specifically provided that "CIGFUR's petition in this docket will not be impacted by the Commission's action herein." The Commission has not considered the impact of these accounting adjustments in making the decisions in this Order with respect to CIGFUR's petition and complaint.

On August 15, 1996, the Public Staff filed a Response in which it stated in pertinent part:

> Prior to initiating such an expensive and time-consuming proceeding [as a general rate case], the Commission should proceed cautiously and carefully to determine whether a prima facie case of excess earnings can be made based on a review of monitored earnings adjusted for known changes.

> The Commission well knows that the institution of a general rate case could lead to several unintended consequences. For instance, it is conceivable that, given increased investment in plant and other expenses, CP&L might be able to show that a rate increase is justified. More likely, however, is the possibility that the case will present the Commission with a proposal to significantly realign rates among customer classes.

On September 13, 1996, CP&L again moved to dismiss CIGFUR's petition on grounds that its filings "demonstrate clearly that CP&L is not and has not enjoyed excessive earnings..." On October 29, 1996, CP&L filed a Renewed Motion to Dismiss and Motion for Protective Order. As to the motion to dismiss, CP&L said:

> the threshold issue that must be addressed in this proceeding is whether sufficient grounds exist to warrant an investigation of CP&L's rates. As mentioned above, the information contained in CP&L's July 29, 1996 filing conclusively demonstrates that CP&L's existing authorized [return on equity] is not excessive and that in fact CP&L has consistently earned below its authorized [return on equity] since 1988.

As to the request for a protective order, CP&L asked the Commission to issue a protective order requiring CIGFUR to withdraw a data request that CIGFUR had served on CP&L.

CIGFUR filed a Response on November 7, 1996, defending its data request and, as to the motion to dismiss, responding that CP&L had made assertions that raise factual issues that should be addressed in an evidentiary hearing.

Many of the assertions in the filings do raise factual issues, but on the basis of CIGFUR's petition, taken on its face, and matters that the Commission can judicially notice, the Commission makes the following decisions.

First, CIGFUR's petition asks the Commission to initiate an investigation of CP&L's current rates. The authorities cited include G.S. 62-130(d), which provides that the Commission "shall from time to time as often as circumstances may require, change and revise or cause to be changed or revised any rates fixed by the Commission, or allowed to be charged by any public utility." Cases provide that the Commission may investigate rates. See, e.g., Utilities Commission v. Edmisten, 291 N.C. 327, 341 (1976) ("the Commission, either on its own motion or that of another interested party, has plenary authority to intervene and make corrections in the utility's rate schedules..."); Corporation Commission ex rel Raleigh Granite Co. v. Railroad Company, 187 N.C. 424 (1924). But the Commission is aware of no case law elaborating upon when it must initiate such an investigation. It appears that the law grants the Commission a considerable degree of discretion as to when it should initiate a general rate case investigation on its own motion or allow a request for such an investigation from a party other than the utility. A general rate case investigation is inevitably a time-consuming, difficult, and otherwise costly process for all parties involved.

Alternatively, CIGFUR asks that its petition be treated as a complaint with respect to the level of CP&L's current rates. The relevant statute, G.S. 62-73, generally provides that either the Commission on its own or any person having an interest in the matter may make a complaint that any utility rate is unjust

and unreasonable, and it goes on to provide that the Commission shall schedule a hearing "unless the Commission shall determine, upon consideration of the complaint or otherwise, and after notice to the complainant and opportunity to be heard, that no reasonable ground exists for an investigation of such complaint."

G.S. 62-136(a) provides the standard to be applied to the evidence when such an investigation or complaint is heard. It provides that

> whenever the Commission, after a hearing had after reasonable notice of its own motion or upon complaint of anyone directly interested, finds that the existing rates in effect and collected by any public utility are unjust, unreasonable, insufficient or discriminatory, or in violation of any provision of law, the Commission shall determine the just, reasonable, and sufficient and non-discriminatory rates to be thereafter observed and enforced, and shall fix the same by order.

In its petition, CIGFUR cites "the changed circumstances since CP&L's base rates were fixed in 1988, CP&L's apparent overearnings and the extraordinary length of time since CP&L's rate structure was scrutinized" as grounds for an investigation.

CP&L's last general rate case was in Docket No. E-2, Sub 537; it was decided by Commission Order of August 5, 1988. The fact that several years have elapsed since then, standing alone, does not show that CP&L's rates are now unfair, unreasonable or in violation of law. The passage of time alone does not require that an investigation be undertaken. We must examine CIGFUR's other allegations more carefully to determine if they justify our proceeding with an investigation or a complaint.

Much of CIGFUR's petition deals with CP&L's return on equity (hereinafter ROE). An ROE of 12.75% was authorized for CP&L in its 1988 rate case. Pursuant to its obligation under G.S. 62-33, the Commission regularly monitors the overall financial condition of 18 major utilities operating in North Carolina subject to the Commission's jurisdiction. This monitoring includes the ROEs that the utilities are currently achieving. The Commission establishes the parameters for certain financial and operational data to be filed by the utilities, and the Commission receives and publishes this data quarterly. This report is entitled *Quarterly Review*. The report includes estimated ROEs achieved on a jurisdictional basis as calculated by the utilities according to the parameters established by the Commission.

While the Commission monitors ROEs achieved by the utilities, G.S. 62-133 requires that rates be determined on a normalized, pro forma, end-of-period basis using a historical test year. In setting rates, the Commission must adjust the test year data for known and material changes in conditions. Thus, rates are not set solely on the basis of actual test year operating experience, but to a certain extent and within certain constraints, on the basis of revenue and cost expectations, including investor expectations regarding their return requirements. State ex rel. Utilities Commission v. Public Staff, 317 N.C. 26, 44 (1986) ("The Commission is required under N.C.G.S. § 62-133(c) to determine probable future revenues and expenses and to consider such relevant, material and competent evidence as may be offered which tends to show actual changes in costs or revenues."); Utilities Commission v. Duke Power Company, 305 N.C. 1, 14 (1982) ("The courts, however, have interpreted these statutory provisions, taken together, to allow the

Commission to make *pro forma* adjustments to revenue and expenses to reflect what their effect would have been had those future conditions prevailed throughout, or at the end of, the test period or to adjust for abnormalities and changes in conditions."). As these cases indicate, the Commission must take into account numerous changes in revenues and costs in setting rates. It cannot pick and choose adjustments. Often one adjustment will offset another, as was the case in the most recent fuel charge adjustment proceeding of CP&L where the adjustment for growth in sales was more than offset by the adjustment for weather normalization. The test period in CP&L's most recent fuel charge adjustment proceeding, Docket No. E-2, Sub 697, was the 12-month period ending March 31, 1996 -- the same period cited by CIGFUR in this docket in arguing that CP&L overearned its ROE. CP&L's application in that case reflected a positive adjustment of 298,990,587 kWh for growth in sales and a negative adjustment of 425,885,207 kWh for weather, resulting in a net reduction of 126,894,620 kWh to the annual level of kWh sales actually experienced. CIGFUR was a party to that proceeding, but it took no exception to these pro forma adjustments. Thus, when CP&L's actual, annual level of kWh sales for the 12-month period ending March 31, 1996, was normalized for growth and weather, the net effect was a level of kWh sales lower than that actually experienced. It would appear that this would translate into an ROE on a pro forma basis that is lower than the return actually experienced.

Turning back to the allegations in CIGFUR's petition, CIGFUR alleges that CP&L has reported high overall ROEs to the financial community for each year since 1988. According to CP&L's 1995 Corporate and Statistical Profile, CP&L's year-end ROE for the years 1989 through 1995 was over 14% each year except two; in one year, it was over 16%. However, CIGFUR concedes that regulatory ROEs are generally lower than those reported to the financial community due to "regulatory accounting and differing operating results in the three jurisdictions." Therefore, this allegation does not require an investigation.

Based on the ROEs reported by this Commission, CIGFUR alleges that the ROE achieved by CP&L for the 12-month period ending March 31, 1996, was 13.15%[1] and that this exceeds the 12.75% ROE found fair for CP&L in 1988. Since CIGFUR's petition was filed, the ROEs reported to the Commission for the second quarter of 1996 have been made public. CP&L reported an ROE of 13.39% for the 12-month period ending June 30, 1996. But the Commission's records indicate that for the 32 quarters from the time of CP&L's 1988 rate case through June 1996, CP&L has reported ROEs above 12.75% for only three periods -- the 12-month periods ending with the third quarter of 1991 and the first and second quarters of 1996. While this is a matter that merits further monitoring of CP&L through our *Quarterly Review*, the Commission does not believe that this circumstance requires a general rate case investigation of CP&L at this time. As noted by Justice Lake in Utilities Commission v. Morgan, 278 N.C. 235, 239 (1971), "It is impossible to fix rates which will give the utility each day a fair return, and no more, upon its plant in service on that day. The best that can be done, both from the standpoint of the company and from the standpoint of the person served, is to fix rates on the basis of a substantial period of time. Otherwise, rate hearings and adjustments would be a perpetual process." (Emphasis added.) ROEs inevitably vary from year to year depending on the general economy, the local economy, conditions specific

[1]This is the ROE that the Commission estimates CP&L to have achieved, with respect to its North Carolina jurisdictional operations, for the 12-month period ending March 31, 1996, as reported in the Commission's *Quarterly Review*.

to the company, weather, and many other variables. While further monitoring through our *Quarterly Review* is justified, the Commission cannot say now that CP&L has entered a sustained, substantial period of overearning such as would require an investigation of its rates. For the reasons stated herein and pursuant to the discretion granted by statute, the Commission concludes that this allegation does not require an investigation of CP&L's rates at this time.

CIGFUR next alleges that the current cost of common equity capital is significantly lower than it was in August 1988, that the ROEs being allowed utilities in recent rate cases in other states are lower than 12.75%, and that the 12.75% ROE authorized for CP&L in 1988 is too high for current economic conditions. It alleges that the median ROE authorized for electric utilities during 1994 and 1995 was 11% and that ROEs in that range during 1995 and early 1996 have been reported by this Commission. Authorized ROEs from as far back as 1994 are fairly remote for present purposes. Further, the Commission is aware from recent, generally available utility periodicals that during 1996 other state commissions have allowed ROEs of 12% to 13% for electric utilities.[1] The 12.75% last allowed CP&L is within the range of these decisions. Setting an appropriate ROE is a "highly subjective and judgmental process." State ex rel. Utilities Commission v. Public Staff, 323 N.C. 481 (1988). The appropriate ROE cannot be pinpointed with absolute accuracy; there is a zone of reasonableness. Applying the standard of whether the circumstance alleged by CIGFUR requires a general rate case investigation, the Commission again concludes that it does not.

CIGFUR also alleges that CP&L's current rates are higher than those of Duke Power Company, but the level of one company's rates does not show that those of another company are unjust or unreasonable. State ex rel. Utilities Commission v. Municipal Corps., 243 N.C. 193 (1955).

In other allegations, CIGFUR charges that CP&L's sales have increased significantly since 1988, that CP&L has not constructed any new generating plants since 1988 and that its earnings per share, stock price and dividends have increased. CP&L responds that it has built $2.4 billion in plant, that it has incurred purchased power costs and other costs not reflected in rates, that significant expense has been required to support its growth in sales, and that rates have gone down in the last several years due to improved nuclear performance and aggressive cost management efforts. Most of CP&L's responses are matters of fact that the Commission cannot resolve in the present posture of the docket, but the Commission does not have to resolve these matters to determine whether circumstances require a general rate case investigation. The Commission has reviewed the petition on its face and matters within the judicial knowledge of the Commission.

One of the most important matters that the Commission can judicially notice is the general trend of changes underway in the electric utility industry in the United States. The industry is facing an unprecedented period of restructuring as various state and federal regulators move to introduce increased competition in a field previously characterized by large vertically integrated monopolies. These actions have

[1]CP&L cited nine such decisions during 1995-1996 in its Response and Motion to Dismiss of July 29. From generally available periodicals, the Commission notices six of these decisions, with a range of 12.25% to 13%, issued during 1996. A seventh 1996 decision authorizing an ROE of 12% was noted in our *Quarterly Review* for the first quarter of 1996.

created greater uncertainty and risk than the electric utilities have faced in decades. Until a new consensus is reached as to the structure of the electric utility industry, this uncertainty will, all else being equal, tend to drive up the return expectations of electric utility investors and to justify higher ROEs than would be appropriate were the monopoly structure of the industry unquestioned.

Taking the petition on its face and matters within the judicial knowledge of the Commission, the Commission concludes that the present circumstances do not require a general rate case investigation of CP&L. The Commission has reached this decision for the following reasons:

(1) As to the request to initiate a rate case investigation of CP&L, the Commission takes as its standard the provision of G.S. 62-130(d) that the Commission "shall from time to time as often as circumstances may require, change and revise" utility rates.

(2) The passage of time since CP&L's last rate case does not, standing alone, require an investigation of CP&L's rates.

(3) The fact that CP&L's rates are higher than those of another electric utility does not, standing alone, show that CP&L's rates are unjust or unreasonable.

(4) CIGFUR concedes that regulatory ROEs are generally lower than the ROEs reported to the financial community.

(5) Based upon the 12-month period ending June 30, 1996, the ROE that CP&L realized from its North Carolina jurisdictional operations was in the range of 13.39%, but for the 32 quarters from the time of CP&L's 1988 rate case through June 1996, CP&L reported 12-month ROEs above 12.75% for only three quarters. Before this year, CP&L had not exceeded its authorized ROE since 1991.

(6) ROEs inevitably vary from year to year depending on the general economy, the local economy, conditions specific to the company, weather, and many other variables. An increased ROE during one year does not necessarily mean that a utility has entered a sustained, substantial period of overearning.

(7) In setting rates, the Commission must adjust the test year data for known and material changes in conditions. Often one adjustment will offset another. For example, the test period adopted for use by the Commission in CP&L's most recent fuel charge adjustment proceeding, Docket No. E-2, Sub 697, was the 12-month period ending March 31, 1996 -- the same period cited by CIGFUR in this docket in arguing that CP&L overearned its ROE. CP&L's application in that case reflected a positive adjustment of 298,990,587 kWh for growth in sales and a negative adjustment of 425,885,207 kWh for weather, resulting in a net reduction of 126,894,620 kWh to the annual level of kWh sales actually experienced. CIGFUR was a party to that proceeding, but it took no exception to these pro forma adjustments. Thus, when CP&L's actual, annual level of kWh sales for the 12-month period ending March 31, 1996, was normalized for growth and weather, the net effect was a level of kWh sales lower than that actually experienced. It would appear that this

would translate into an ROE on a pro forma basis that is lower than the return actually experienced.

(8) During the calendar year 1996, as reported in generally available and accepted periodicals, regulatory agencies in other states issued seven decisions authorizing ROEs for electric utilities of 12% to 13%.

(9) The electric utility industry in the United States is facing an unprecedented period of restructuring as a result of actions by various state and federal regulators to introduce increased competition in a field previously characterized by large vertically integrated monopolies. These actions have created greater uncertainty and risk than the electric utilities have faced in decades. Until a new consensus is reached as to the structure of the electric utility industry, this uncertainty will tend to drive up the return expectations of electric utility investors and, all else being equal, to justify higher ROEs than were appropriate when the monopoly structure of the industry was unquestioned.

(10) The Public Staff has urged the Commission to proceed cautiously. The Public Staff warns that unintended consequences could flow from an investigation of CP&L's rates, such as a rate increase or a realignment of rates detrimental to non-industrial customers.

(11) The Commission will continue to monitor CP&L's ROE through our *Quarterly Review*.

The Commission does not take CIGFUR's allegations lightly, nor does the Commission foreclose the possibility of an investigation at some point in the future. But for the present, the Commission concludes that circumstances do not require an investigation of CP&L's rates. This is a final decision as to CIGFUR's request for such an investigation in this docket though the Commission will continue to monitor CP&L's ROE through our *Quarterly Review* process.

For similar reasons, the Commission tentatively concludes that there are no reasonable grounds to proceed with CIGFUR's petition as a complaint, but the Commission will give CIGFUR notice and opportunity to be heard as to this decision pursuant to G.S. 62-73. CIGFUR may file comments or a motion for reconsideration within two weeks, followed by reply comments or responses within two weeks thereafter.

IT IS, THEREFORE, ORDERED as follows:

1. That CIGFUR's request that the Commission initiate an investigation of CP&L's rates in this docket is denied and

2. That the Commission tentatively finds no reasonable grounds to proceed with CIGFUR's alternative complaint with respect to the level of CP&L's current rates but

3. That CIGFUR will be afforded an opportunity to be heard as to this decision by filing comments or a motion for reconsideration on or before Friday, January 10, 1997, and other parties may file reply comments or responses on or before Friday, January 24, 1997.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of December, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. E-7, SUB 575

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company Pursuant to G.S. 62-133.2 and Commission Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities - 1996	)))))	ORDER APPROVING FUEL CHARGE ADJUSTMENT

HEARD: Tuesday, May 7, 1996, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Ralph A. Hunt and Judy Hunt

APPEARANCES:

For Duke Power Company:

Robert W. Kaylor, 225 Hillsborough Street., Suite 480, Raleigh, North Carolina 27603

and

W. Larry Porter, Deputy General Counsel, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

For the Public Staff:

Vickie L. Moir, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon, & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

BY THE COMMISSION: On March 8, 1996, Duke Power Company (Duke or the Company) filed an application and accompanying testimony and exhibits pursuant to G.S. 62-133.2 and Commission Rule R8-55 relating to fuel charge adjustments for electric utilities.

On March 13, 1996, the Commission issued an Order Scheduling Hearing and Requiring Public Notice.

Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene which was allowed by the Commission. The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e).

The case came on for hearing as ordered on May 7, 1996. Candace A. Paton, Manager, Regulatory Accounting, Rates and Regulatory Affairs Department of Duke Power Company presented direct and rebuttal testimony for Duke. Thomas S. Lam, Engineer, Electric Division presented testimony on behalf of the Public Staff. No other party presented witnesses and no public witnesses appeared at the hearing.

On May 10, 1996, the Commission issued an order allowing Duke to file a late-filed exhibit and extending the time for the filing of proposed orders. On May 24, 1996, Duke filed a request for an extension of time. On May 28, 1996, the Commission issued an Order extending the time for Duke to file its late-filed exhibit and also extending the time for the filing of proposed orders. On June 3, 1996, Duke filed the affidavit of Matthew G. LaRocque and an exhibit. On June 5, 1996, the Company filed the affidavit of Valerie P. Murphy. On June 11 , 1996, the Company filed the affidavit of Candace A. Paton and another affidavit of Valerie P. Murphy.

On June 5, 1996, the Commission issued an Order rescheduling the filing date for proposed orders. On June 11, 1996, the Company and the Public Staff each filed proposed orders and CUCA filed its brief.

Based upon the Company's verified application, the testimony and exhibits received into evidence at the hearing, Duke's late-filed affidavits and exhibit and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Duke Power Company is a duly organized corporation existing under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission as a public utility. Duke is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in North Carolina. Duke is lawfully before this Commission based upon its application filed pursuant to G.S. 62-133.2.

2. The test period for purposes of this proceeding is the twelve month period ended December 31, 1995.

3. Duke's fuel procurement and power purchasing practices during the test period were reasonable and prudent.

4. The test period per book system sales are 73,025,527 mWh.

5. The test period per book system generation is 81,410,666 mWh and is categorized as follows:

Generation Type	mWh
Coal	32,389,117
Oil & Gas	255,514
Light Off	-
Nuclear	39,836,001
Hydro	2,155,659
Net Pumped Storage	(470,966)
Purchased Power	656,500
Interchange	248,857
Catawba Contract Purchases	6,070,094
Catawba Interconnection Agreements	178,579
Interchange	91,311
Total Generation	81,410,666

6. The nuclear capacity factor appropriate for use in this proceeding is 82%.

7. The adjusted test period sales of 69,748,504 mWh consists of test period system sales of 73,025,527 mWh which are increased by 664,190 mWh for customer growth, reduced by 479,940 mWh for weather normalization, and reduced by 3,461,273 mWh associated with the adjustment for Catawba retained generation.

8. The adjusted test period system generation for use in this proceeding is 77,300,033 mWh and is categorized as follows:

Generation Type	mWh
Coal	36,020,427
Oil & Gas	145,428
Light Off	-
Nuclear	36,478,085
Hydro	1,766,400
Net Pumped Storage	(442,671)
Purchased Power	658,150
Interchange	247,207
Catawba Contract Purchases	2,427,007
Total Generation	77,300,033

9. The appropriate amount to include in purchased power related to ENRON Power Marketing, Inc. (ENRON), purchases is $471,395.

10. The appropriate fuel prices and fuel expenses for use in this proceeding are as follows:

A. The coal fuel price is $15.36/mWh.

B. The oil and gas fuel price is $39.67/mWh.
C. The appropriate Light Off fuel expense is $3,424,000.
D. The nuclear fuel price is $4.99/mWh.
E. The purchased power fuel price is $13.32/mWh.
F. The interchange fuel price is $19.72/mWh.
G. The Catawba Contract Purchase fuel price is $4.85/mWh.

11. The adjusted test period system fuel expense for use in this proceeding is $722,508,000.

12. The proper fuel factor for this proceeding is 1.0359¢/kWh, excluding gross receipts tax.

13. The Company's North Carolina test period jurisdictional fuel expense overcollection was $18,098,000. The adjusted North Carolina jurisdictional test year sales are 46,953,677 mWh.

14. The Company's Experience Modification Factor (EMF) is a decrement of .0385¢/kWh, excluding gross receipts tax.

15. Interest expenses associated with the overcollection of test period fuel revenues amount to $2,715,000 based upon a 10% annual interest rate.

16. The EMF interest decrement is .0058¢/kWh, excluding gross receipts tax.

17. The final fuel factor is .9916¢/kWh, excluding gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. 62-133.2(3c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In Commission Rule R8-55(b), the Commission has prescribed the 12 months ending December 31 as the test period for Duke. The Company's filing was based on the 12 months ended December 31, 1995.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each electric utility to file a Fuel Procurement Practices Report at least once every 10 years and each time the utility's fuel procurement practices change. The Company's updated fuel procurement practices were filed with the Commission in Docket No. E-100, Sub 47, in July 1995 and were in effect throughout the 12 months ended December 31, 1995. In addition, the Company files monthly reports of its fuel costs pursuant to Commission Rule R8-52(a).

No party offered direct testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any direct testimony to the contrary, the Commission concludes that these practices were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-6

The evidence for these findings of fact is found in the testimony of Company witness Paton.

Company witness Paton testified that the test period per books system sales were 73,025,527 mWh and test period per book system generation was 81,410,666 mWh. Public Staff witness Lam accepted these levels of test period per book system sales and generation for use in the fuel computation. The test period per book generation is categorized as follows:

Generation Type	mWh
Coal	32,389,117
Oil & Gas	255,514
Light Off	-
Nuclear	39,836,001
Hydro	2,155,659
Net Pumped Storage	(470,966)
Purchased Power	656,500
Interchange	248,857
Catawba Contract Purchases	6,070,094
Catawba Interconnection Agreements	178,579
Interchange	91,311
Total Generation	81,410,666

Witness Paton testified that Duke achieved a system nuclear capacity factor of 88% for the test period and that the most recent (1990-1994) North American Electric Reliability Council's five-year average nuclear capacity factor for all pressurized water reactor units is 72.80%. Witness Paton's testimony and exhibits reflect the use of an 82% system nuclear capacity factor to determine the fuel factor in this proceeding. No other party contested the use of an 82% nuclear capacity factor in this proceeding.

Based upon the agreement of the Company and the Public Staff as to the appropriate numbers, and noting the absence of evidence presented to the contrary, the Commission concludes that the level of per book sales and generation are reasonable and appropriate for use in this proceeding.

Based upon the performance of the Duke system and agreement of the Public Staff, the Commission concludes that the 82% nuclear capacity factor and its associated generation of 36,478,085 mWh, is reasonable and appropriate for determining the appropriate fuel costs in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is found in the testimony of Company witness Paton.

Witness Paton decreased total per book test period sales by 3,277,023 mWh. This adjustment is the sum of adjustments for customer growth, weather, and Catawba retained generation of 664,190 mWh, negative 479,940 mWh, and negative 3,461,273 mWh, respectively. The level of Catawba retained generation is associated with the system nuclear capacity factor of 82%.

The Public Staff accepted witness Paton's adjustments for customer growth, weather normalization and Catawba retained generation.

The Commission concludes that the adjustments for customer growth of 664,190 mWh, weather normalization of negative 479,940 mWh, and Catawba retained generation of negative 3,461,273 mWh as presented by the Company and reviewed and accepted by the Public Staff are reasonable and appropriate for use in this proceeding. Therefore, the Commission concludes that the per book test period system sales of 73,025,527 mWh should be decreased by 3,277,023 mWh, resulting in an adjusted test period sales level of 69,748,504 mWh which is both reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the testimony of Company witness Paton.

Witness Paton made an adjustment of negative 4,110,633 mWh to per book generation for adjustments relating to weather normalization, customer growth, Catawba retained generation and line losses/Company use, based on an 82% normalized system nuclear capacity factor and, therefore, calculated an adjusted generation level of 77,300,033 mWh.

Witness Lam reviewed and accepted witness Paton's adjusted generation level of 77,300,033 mWh.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The evidence for this finding is found in the testimony and exhibits of Company witness Paton, Public Staff witness Lam, Public Staff Cross-Examination Exhibit 1 and the Company's June 3, 1996, June 5, 1996, and June 11, 1996, filings.

The Company sought to recover $718,615 related to power purchased from ENRON Power Marketing, Inc. (ENRON) through its proposed fuel factor. The $718,615 amount was computed as 90% of the production charges billed Duke by ENRON. The Public Staff challenged the inclusion of these costs on the basis that only the actual fuel portion of purchased power costs is eligible for recovery through the fuel adjustment factor and the Company had not adequately separated out the actual fuel portion from the non-fuel portion in the total purchase amount.

Witness Paton in her rebuttal testimony stated that "(t)he Company made the decision to purchase power from ENRON because the purchases represented the lowest total production cost energy available at the time." She presented Paton Rebuttal Exhibit 1 summarizing the fuel cost component of the ENRON transactions and the previous and subsequent unit dispatches. Witness Paton stated that "(a)s shown on the exhibit, the fuel cost component of the ENRON transactions when compared to the previous and subsequent dispatches is reasonable and should be allowed."

Witness Paton presented no evidence regarding how Duke or ENRON made a general estimate that 90% of the ENRON production costs consisted of fuel. In regard to the 90%, Witness Paton indicated that it is "(a) general estimate of when they [ENRON] make purchases and resell it, in general it's 90 percent." She stated that it was her understanding that the 90% was a "generic figure applicable to all ENRON transactions."

Witness Paton was questioned regarding Public Staff Paton Cross-Examination Exhibit 1. Public Staff Paton Cross-Examination Exhibit 1 was provided to the Public Staff by Duke and reflects Duke's purchases from ENRON and the unit dispatched prior to the ENRON transaction and any dispatches subsequent to any of the ENRON transactions. The cross-examination exhibit shows that for the units dispatched prior to and subsequent to the ENRON transactions the range for actual fuel cost as a percentage of total production cost was from 64.65% to 100%.

Witness Paton acknowledged that fuel cost shown on the cross-examination exhibit for ENRON was arrived at by applying the 90% to the total production cost and that the Company did not have a dollar figure.

Witness Lam testified that examination of Duke's 1995 test year purchased power costs, as filed in Duke's application and in the Company's fuel reports, showed that fuel costs, as a percentage of production costs, were 52% and that among the different suppliers the percentage varied from 39% to 92%. Witness Lam also examined Duke fuel reports for fuel costs as a percentage of purchased power production costs, for the twelve months of 1994, and found that the percentage of fuel costs to production costs among different suppliers varied from 38% to a little over 87% and the average for the year was just under 52%.

Witness Lam further testified that his quick examination of Duke's 1994 FERC Form 1 showed Duke's own power plants had fuel costs ranging from 24% to approximately 85% of plant production costs.

Subsequent to the hearing, the Commission issued an Order Allowing Late-Filed Exhibit. The Commission therein stated that "(t)he Commission does not believe that Duke has mustered the best evidence that it can present as to the fuel-related expense in its purchases from ENRON " and allowed Duke to file a late-filed exhibit in support of its attempt to include the fuel related portion of the ENRON purchases.

On June 3, 1996, Duke filed the affidavit of Matthew G. LaRocque and an exhibit. On June 5, 1996, the Company filed the affidavit of Valerie P. Murphy. On June 11, 1996, the Company filed the affidavit of Candace A. Paton and an additional affidavit of Valerie P. Murphy.

Duke's late-filed affidavits and exhibit provided the actual fuel cost for certain purchase transactions associated with 14 of the 15 companies supplying power to Duke through ENRON during the fuel clause test period. The total verified actual fuel cost furnished to Duke by these 14 companies equals $447,165. This total relates to the purchase of 25,790 mWh from ENRON. Duke was unable to obtain the actual fuel cost figures associated with the remaining 2,450 mWh that it purchased from ENRON during the test period.

According to this evidence as well as Public Staff Paton Cross-Examination Exhibit 1, the total verified actual fuel cost of $447,165 as a composite number represents 59% of the reported production cost associated with the purchase of 25,790 mWh from ENRON which is significantly lower than the 90% estimate for the fuel cost upon which Duke based its request. Thus, it is clear that the 90% estimate should not be used to determine Duke's cost of fuel for the purchases from ENRON given the evidence in this case.

G.S. 62.133.2(a) provides that the "... Commission may allow electric utilities to charge a uniform increment or decrement as a rider to their rates for changes in the cost of fuel and the fuel component of purchased power..." Under subsection (b) of the same statute the Commission is required to "...determine whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel cost component of purchased power over or under base rates established in the last preceding general rate case."

The wording of the statute is clear: the rider is to reflect actual changes in the cost of fuel and the fuel cost component of purchased power. The language limiting purchased power expenses to the fuel cost component was deliberate. Under a prior fuel adjustment statute, G.S. 62-134(e), the Commission's fuel adjustment authority was limited to "changes in the cost of fuel used in the generation or production of electric power." Under that statute, the costs of power purchased from others was not recoverable at all; such costs were only recoverable in a general rate case. When the present statute was enacted, the General Assembly decided to allow the "fuel component of purchased power" to be recovered in an expedited fuel charge adjustment proceeding. The reference to the "fuel component of purchased power" in G.S. 62-133.2 represented a compromise between allowing expedited recovery of all purchased power costs and excluding all such expenses from the fuel adjustment process.

The Commission has had occasion to interpret this language once before, in Docket No. E-2, Subs 526 and 533, when Carolina Power & Light Company (CP&L) sought to include an estimated fuel component of its cogeneration purchased power which was based on its own avoided fuel costs. CP&L argued that the prices it paid cogenerators were based on its avoided costs rather than the cogenerators' costs and that it would be difficult to obtain information from cogenerators concerning their actual fuel costs. The Commission concluded that the fuel cost component of cogeneration purchases is recoverable in a fuel charge adjustment proceeding under G.S. 62-133.2, but that the statute permits only the cost of fuel burned by the cogeneration facilities to be included. The proxy offered by CP&L, based on the

estimated avoided fuel cost of the Company as derived from its calculation of avoided costs in the biennial PURPA proceeding, was not acceptable.

Just as in the CP&L case, the Commission views the issue between Duke and the Public Staff in this case as primarily one of proof. Duke proposed that 90% of the production costs of its purchases from ENRON be regarded as the fuel component of the purchases. Duke's witness at the hearing essentially testified that she got the 90% figure from someone else at Duke, unnamed, who in turn had gotten the figure from someone at ENRON, also unnamed, by telephone. Such testimony could perhaps be termed double anonymous hearsay. Although the Commission's proceedings are not as strict as those in superior court and although the Commission sometimes allows hearsay testimony in evidence, Duke's testimony in this case went beyond the Commission's tolerance for informality. The Commission therefore issued its May 10, 1996, Order allowing Duke time to obtain better evidence. In response, Duke went directly to the utilities that produced the power purchased through ENRON and obtained actual fuel component numbers for most of the purchases. This is clearly better evidence, and the Commission will use the actual numbers in making its decision herein.

However, the Commission is not deciding today that it will require such evidence in every future case. The Commission recognizes that such numbers may not always be available. Will Duke be reluctant to make future purchases from the utilities that it has been unable to get fuel cost information from, even if they offer lower cost power? Witness Paton indicated that the disallowance of fuel costs could affect the Company's future decisions regarding purchasing the lowest cost power available. She referred to the June 8, 1995, purchase from ENRON and the next unit dispatched on that same date, which were reflected on Public Staff Paton Cross-Examination Exhibit 1. She pointed out that although the ENRON purchase was the lowest cost power available, if not permitted recovery of fuel related cost, the Company would have to absorb the total cost while the fuel cost of the dispatched unit would flow through the fuel clause. The Commission notes that running more expensive system plants to insure recovery of known fuel cost, rather than purchasing power at a lower total cost to the Company, would be contrary to the generally accepted notion of economic dispatch and could result in a higher overall cost of operation for Duke and its customers. The Commission believes that selection of a supply with higher overall cost would be inconsistent with sound utility practice and contrary to the good faith intent of the fuel cost recovery statute. It would be inappropriate for Duke's management to allow the Commission's determination as to whether or not a cost can be recovered in fuel rates to influence Duke's dispatch decisions. However, at the same time, the Commission wishes to observe that there may well be some acceptable middle ground of proof between the hearsay testimony originally provided by Duke and the numbers in Duke's late-filed affidavits. This will of course have to be decided on a case-by-case basis by future panels, but this panel does not intend to close the door on some other form of proof. Some reasonable and reliable proxy might pass muster, though the one offered in the CP&L fuel case discussed above did not. When faced with a utility's reliance upon some such form of proof in a future fuel adjustment proceeding, the considerations will be whether the proof can be accepted under the statute, whether the proffered information seems reasonably reliable, and whether or not alternative information is reasonably available.

Turning to the specific facts of this case, the Commission will allow the total verified actual fuel cost of $447,165 for Duke's purchase of 25,790 mWh from ENRON. As noted above, the $447,165 figure as a composite number represents 59% of the reported production cost associated with the purchase

of 25,790 mWh from ENRON. As to the remaining 2,450 mWh that Duke purchased from ENRON, the Commission will allow 59% of the total production cost, which equals an additional fuel cost of $24,230. Thus, the total amount of $471,395 is the allowable cost of fuel in this proceeding for the power purchased from ENRON given the evidence in this case. The inclusion of this amount related to the ENRON purchases, rather than the amount of $718,615 proposed by Duke, results in the North Carolina retail EMF overcollection increasing from $17,932,000 to $18,098,000.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-16

The evidence for these findings of fact is found in the testimony and exhibits of Company witness Paton and Public Staff witness Lam.

Witness Paton recommended fuel prices as follows: (1) coal price of $15.36/mWh; (2) oil and gas price of $39.67/mWh; (3) light-off fuel expense of $3,424,000; (4) nuclear fuel price of $4.99/mWh; (5) purchased power fuel price of $13.32/mWh; (6) interchange fuel price of $20.73/mWh; and (7) Catawba Contract purchase fuel price of $4.85/mWh.

Witness Lam accepted witness Paton's recommended fuel expense and fuel prices, except in the category of interchange power, where the estimated ENRON purchased power fuel costs were included by Duke. The Public Staff's recommended adjustment to interchange power cost for the ENRON fuel costs, reduced the fuel price from $20.73/mWh as filed by Duke to $19.63/mWh. As discussed above, the Commission has found that the appropriate amount to include in purchased power costs related to the ENRON purchases is $471,395. Thus, the fuel price and fuel expense for interchange power is $19.72/mWh.

Therefore, the Commission concludes that adjusted test period fuel expenses of $722,508,000 and the fuel factor of 1.0359¢/kWh, excluding gross receipts tax, are reasonable and appropriate for use in this proceeding. This approved base fuel factor is .0673¢/kWh lower than the base fuel factor set in the Company's last general rate case, Docket No. E-7, Sub 487.

G.S. 62-133.2(d) provides that the Commission "shall incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period...in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case." Further, amended Rule R8-55(c)(5) provides, "Pursuant to G.S. 62-130(e), any overcollection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate."

As discussed in the Evidence and Conclusions for Finding of Fact No. 9, the adjustment to ENRON purchased power costs increases the over-recovered fuel expense from $17,932,000 to $18,098,000. The associated EMF interest increases from $2,690,000 to $2,715,000. The $18,098,000

over-recovered fuel revenue and $2,715,000 EMF interest is divided by the adjusted North Carolina jurisdictional sales of 46,953,677/mWh to arrive at an EMF decrement of .0385¢/kWh, excluding gross receipts tax, and an EMF interest decrement of .0058¢/kWh, excluding gross receipts tax. The Commission concludes that the EMF decrement of .0385¢/kWh, excluding gross receipts tax, and the EMF interest decrement of .0058¢/kWh, excluding tax gross receipts tax, are reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Accordingly, the fuel calculation, incorporating the conclusions reached herein, results in a final net fuel factor of .9916¢/kWh, excluding gross receipts tax, as shown in the following table:

Description	Adjusted Generation (mWh)	Fuel Price $/mWh	Fuel Dollars (000's)
Coal	36,020,427	15.36	$553,163
Oil and Gas	145,428	39.67	5,769
Light-Off		-	3,424
Nuclear	36,478,085	4.99	181,978
Hydro	1,766,400	-	0
Net Pumped Storage	(442,671)	-	0
Purchased Power	658,150	13.32	8,766
Interchange Purchases	247,207	19.72	4,876
Catawba Contract Purchases	2,427,007	4.85	11,771
TOTAL	77,300,003		769,747
Less:			
Intersystem Sales	(2,915,562)		(47,239)
Line Loss	(4,635,967)		0
System MWH Sales	69,748,504		$722,508
Fuel Factor ¢/kWh			1.0359
EMF ¢/kWh			(0.0385)
EMF Interest ¢/kWh			(0.0058)
FINAL FUEL FACTOR ¢/KWH			0.9916

IT IS, THEREFORE, ORDERED:

1. That, effective for service rendered on and after July 1, 1996, Duke shall adjust the base fuel cost approved in Docket No. E-7, Sub 487, in its North Carolina rates by an amount equal to a .0673¢/kWh decrease (excluding gross receipts tax) and further that Duke shall adjust the resultant approved fuel cost by decrements of .0385¢/kWh and .0058¢/kWh (excluding gross receipts tax) for the EMF and EMF interest, respectively. The EMF and EMF interest decrements are to remain in effect for a 12-month period beginning July 1, 1996.

2. That Duke shall file appropriate rate schedules and riders with the Commission in order to implement these approved fuel charge adjustments no later than 10 days from the date of this Order.

3. That Duke shall notify its North Carolina retail customers of these fuel adjustments by including the "Notice to Customers of Net Rate Increase" attached as Appendix A as a bill insert with bills rendered during the Company's next normal billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company Pursuant to	)	NOTICE TO CUSTOMERS
G.S. 62-13.2 and Commission Rule R8-55 Relating to	)	OF NET RATE INCREASE
Fuel Charge Adjustments for Electric Utilities - 1996	)	

NOTICE IS GIVEN that the North Carolina Utilities Commission entered an Order on June 21, 1996, after public hearings, approving a fuel charge net rate increase of approximately $28 million on an annual basis in the rates and charges paid by the retail customers of Duke Power Company in North Carolina. The net rate increase will be effective for service rendered on and after July 1, 1996. The rate increase was ordered by the Commission after review of Duke's fuel expense during the 12-month period ended December 31, 1995, and represents actual changes experienced by the Company with respect to its reasonable cost of fuel and the fuel component of purchased power during the test period.

The Commission's Order will result in a monthly net rate increase of approximately 60¢ for each 1,000 kWh of usage per month.

ISSUED BY ORDER OF THE COMMISSION.
This the 21st day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-13, SUB 171

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Nantahala Power and	)	RECOMMENDED ORDER
Light Company for Authority to Adjust	)	APPROVING GENERAL RATE
and Increase Its Electric Rates and	)	INCREASE AND AN ADJUSTMENT
Charges and to Alter the Method of	)	IN PURCHASED POWER
Recovery of Purchased Power Expense	)	RECOVERY SCHEDULE

HEARD IN: Superior Courtroom, Swain County Administrative Building and Courthouse, Bryson City, North Carolina on October 9, 1996 and Courtroom A, Fourth Floor, Macon County Courthouse, Five West Main Street, Franklin, North Carolina on October 10, 1996.

BEFORE: Laurence A. Cobb, Commissioner

APPEARANCES:

FOR NANTAHALA POWER AND LIGHT COMPANY:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

FOR THE PUBLIC STAFF:

Antoinette R. Wike, Chief Counsel, Public Staff — North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For the Using and Consuming Public

FOR THE NORTH CAROLINA DEPARTMENT OF JUSTICE:

J. Mark Payne, Assistant Attorney General, Post Office Box 629, Raleigh, North Carolina 27602-0629
For the Using and Consuming Public

BY THE COMMISSION: On August 2, 1996, Nantahala Power and Light Company (Nantahala or Company) filed an application with the Commission seeking authority to increase base rates for electric utility service in its service area and to adjust its purchased power recovery schedule. In its application the Company also requested that the Commission permit the proposed rates to go into effect on an interim basis under bond subject to refund.

On August 2, 1996, concurrent with the application, the Company and the Public Staff filed a joint stipulation resolving the matters in dispute between themselves. The parties indicated agreement that the stipulated rates might be put into effect as interim rates pending a final order by the Commission.

On August 16, 1996, the Commission issued an Order establishing general rate case, suspending rates, scheduling hearings, allowing interim rates under bond and requiring public notice.

Public hearings were held on October 9, 1996, in Bryson City, North Carolina, and on October 10, 1996, in Franklin, North Carolina for the purpose of receiving testimony from the Company, any intervenors and from public witnesses. The following public witnesses testified:

Bryson City: Wilma Ash, Ed Huntley, Gerald McKinny, Dale Cable, Roy Sargeant, Dan White, Jim Maness, Virginia DeBord, Dan Moore, Bill Gibson, Gene Robinson, Michael Sexton

Franklin: John A. Leach, Richard Nall, Jerry Hausel, Mel Culbreath, Richard Ford

The Company presented the testimony of Kenneth C. Stonebraker, Vice President and Chief Financial Officer of Nantahala. The Public Staff presented the testimony of Elise Cox, Assistant Director of the Accounting Division and Benjamin R. Turner, Jr., Rate Engineer in the Electric Division of the Public Staff. Of the seventeen public witnesses who testified, thirteen supported the increase. Three witnesses complained of service outages and disruptions, and one generally opposed the increase.

On October 10, 1996, the Commission requested proposed orders from the Company and the Public Staff. On October 23, 1996, the parties filed a joint proposed recommended order.

Based upon the foregoing, the evidence adduced at the hearings and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Nantahala is a wholly-owned subsidiary of Duke Power Company, and is duly franchised by this Commission to operate as a public utility in providing electric utility service to customers residing in its North Carolina service area.

2. Nantahala is seeking an increase in its rates and charges for electric utility service.

3. The test period appropriate for use in this proceeding is the 12-month period ended December 31, 1995.

4. The Company, based on a test year ended December 31, 1995, has requested rates designed to increase its basic rates and charges to its North Carolina retail customers by $4,620,356.

5. The Company in its application has requested permission to implement an industrial time of use rate whereby a portion of the cost savings Nantahala realizes when industrial customers shift demand at the time of Duke's monthly peak are passed through to the industrial customer responsible for the savings.

6. The Company also requests permission to adjust the purchased power component of its rates.

7. The Company is providing adequate electric utility service in its service area.

8. The Company and the Public Staff filed a joint stipulation on August 2, 1996, resolving all matters in dispute between themselves.

9. The Company and the Public Staff agreed in the joint stipulation that the reasonable original cost rate base, used and useful in providing electric utility service, is $109,341,829.

10. The Company and the Public Staff agreed in the joint stipulation that the appropriate level of gross service revenues (exclusive of Schedule "CP" revenues) for the test year under present rates, after end-of-period, accounting and pro forma adjustments, is $28,454,744.

11. The Company and the Public Staff agreed in the joint stipulation that the reasonable level of test year operating revenue deductions under present rates, and after end-of-period, accounting and pro forma adjustments is $21,049,930.

12. The Company and the Public Staff agreed in the joint stipulation that a capital structure consisting of 50.39% long-term debt and 49.61% common equity is appropriate for use in this proceeding. Additionally, the Company and the Public Staff agreed that the appropriate embedded cost of long-term debt is 7.46% and that the appropriate return on common equity is 11%. Combining a return on common equity of 11% with the recommended capital structure and cost of long-term debt yields an overall return of 9.216% to be applied to the Company's original cost rate base to determine the revenue requirement.

13. In order to provide the Company with the opportunity to earn the recommended returns, the Company and the Public Staff agreed in the joint stipulation that the appropriate gross revenue increase to be approved is $4,620,356.

14. The Company and the Public Staff agreed in the joint stipulation that the Company's Schedule "CP," its purchased power cost recovery schedule, should be a factor of $.0271 per kWh for the period ending September 1, 1997.

15. The Company and the Public Staff agreed that the measurement of the over/under recovery of the PPA will be from August 1, 1996, through July 31, 1997, with a true-up for July 1996 estimates. Furthermore, the Company and the Public Staff agreed that it is appropriate to flow back the overcollection of the ratchet costs and the deferred wheeling revenues over a two-year period, with a true-up of the deferred wheeling revenues and ratchet costs refund in year three. Interest at 10 percent per annum will

be applied to the amount of the deferred revenues and ratchet costs to be trued-up whether there is an over or under recovery.

16. The Company and the Public Staff agreed that for future annual proceedings held to consider changes in the schedule "CP" factors, it is appropriate for Nantahala to make its filing on July 10, (preliminary) and August 10 (final), the test year for each proceeding should normally be the 12 months ended July 31, and the schedule "CP" factor should normally be placed into effect for one year beginning September 1.

17. The Company and the Public Staff stated that the joint stipulation filed in this proceeding resulted from extensive negotiations and compromise and therefore does not necessarily reflect the parties' beliefs as to the proper treatment or level of specific components. The parties agree that such components are reasonable only in the context of the overall settlement between the parties. The parties have agreed that none of the positions, treatments, figures, or other matters reflected in this joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue. Based on this understanding, the Commission accepts the joint stipulation of the Company and the Public Staff.

18. In accordance with the recommended increases in revenues set forth in Finding of Fact No. 13, the Company should be allowed an increase in its annual gross service revenues for electric utility service of $4,620,356. The rates, as agreed to by the Company and the Public Staff and attached to the joint proposed recommended order as Appendix 1, will allow this increase, should enable the Company the opportunity to earn a 9.216% return on rate base, and are fair to the Company and its customers. Accordingly, the rates set forth therein are approved as the proper rates in this proceeding.

19. The Company should be allowed to use a purchased power cost recovery factor of $.0271 per kWh for the period ending September 1, 1997.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 1 THROUGH 6

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records regarding this proceeding, the Commission's Orders scheduling hearings, and the testimony of the Company and Public Staff witnesses. These findings are essentially informational, procedural, and jurisdictional in nature, and the matters which they involve are for the most part uncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding comes from the testimony of Nantahala witness Stonebraker and the testimony of the public witnesses testifying at the different locations.

Witness Stonebraker stated that the system was being operated properly and was being well maintained.

There were several witnesses testifying at the hearings in this matter; however, most testified that the Company's service is good. Only three had complaints of service problems.

Based on the above, the Commission is of the opinion that the Applicant is providing adequate service in its service area.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 8 THOUGH 19

The evidence supporting these findings is contained in the joint stipulation entered into between the Company and the Public Staff, wherein all their differences were resolved, and in the testimony provided by the Company witness at the hearing on this matter.

Based upon the foregoing, the Commission accepts the joint stipulation of the Company and the Public Staff for purposes of this proceeding only. As stated by the Company and the Public Staff in the joint stipulation filed in this proceeding, the stipulation does not necessarily reflect the two parties' beliefs as to the proper treatment or level of specific components. The parties agree that such components are reasonable only in the context of the overall settlement between the parties. The parties have agreed, and the Commission concurs, that none of the positions, treatments, figures, or other matters reflected in this joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue.

Based upon the Commission's findings hereinabove concerning the Company's rate base, operating revenues, and operating revenue deductions, the Commission concludes that Nantahala should be allowed an annual increase in its electric service revenues of $4,620,356 in order to have the opportunity to earn an 9.216% return on rate base, which are fair and reasonable returns. The Company should be allowed to use a purchased power cost recovery factor of $.0271 per kWh for the period ending September 1, 1997. Accordingly, the rates attached to the joint proposed recommended order as Appendix 1 are approved as the proper rates for use in this proceeding.

IT IS, THEREFORE, ORDERED, as follows:

1. That the Stipulation of Nantahala Power and Light Company and the Public Staff, filed on August 2, 1996, is adopted by the Commission, with the understanding that none of the positions, treatments, figures, or other matters reflected in this joint stipulation shall have any precedential value, nor shall they otherwise be used in any subsequent proceedings before this Commission or any other regulatory body as proof of the matters at issue.

2. That Nantahala be, and hereby is, authorized to adjust its rates and charges to produce an annual increase in its electric service revenues of $4,620,356

3. That Nantahala be, and hereby is, allowed to charge $.0271 per kWh as its purchased power recovery factor for the period ending September 1, 1997.

4. That the measurement of the over/under recovery of the PPA will be from August 1, 1996, through July 31, 1997, with a true-up for July, 1996 estimates.

5. Nantahala should flow back the over-collection of the ratchet costs and the deferred wheeling revenues over a two year period, with a true-up of the deferred wheeling revenues and ratchet costs refund in year three. Interest at 10 percent per annum shall be applied to the amount of the deferred revenues and ratchet costs to be trued-up whether there is an over or under recovery.

6. That for future annual proceedings that should consider changes in the schedule "CP" factors, Nantahala shall make its preliminary filing on July 10 and its final filing on August 10, and a test year for each proceeding should normally be the 12 months ended July 31, and the schedule "CP" factor should normally be placed into effect for one year beginning September 1.

7. That the Schedules of Rates, attached to the joint proposed recommended order as Appendix 1 are approved for electric utility service rendered by Nantahala and said rates and charges shall become effective for bills rendered on or after the effective date of this Order.

8. That Nantahala, to the extent it has not already done so, shall file appropriate tariffs with the Commission pursuant to the provisions of this Order.

9. That the Notice to Customers, attached hereto as Appendix A, shall be served on the customers by inserting a copy of the Notice in the Company's next regularly scheduled billing statement following the effective date of this Order. A copy of the appropriate rate schedules shall be attached to the Notice when it is served.

ISSUED BY ORDER OF THE COMMISSION
This 28th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

APPENDIX A

DOCKET NO. E-13, SUB 171

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Nantahala Power and Light Company for Authority to Adjust and Increase Its Electric Rates and Charges and to Alter the Method of Recovery of Purchased Power Expense	))))))	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has granted a rate increase to Nantahala Power and Light Company for electric utility service provided in its North Carolina service area. The rates are fully described in the attachments.

This decision is based on evidence presented at public hearings held on October 9, 1996, in Bryson City, North Carolina, and on October 10, 1996, in Franklin, North Carolina.

ISSUED BY ORDER OF THE COMMISSION
This 28th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

DOCKET NO. E-13, SUB 171

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Nantahala Power and Light Company for Authority to Adjust and Increase Its Electric Rates and Charges and to Alter the Method of Recovery of Purchased Power Expense	)))))	ORDER ADOPTING RECOMMENDED ORDER AS FINAL ORDER

BY THE COMMISSION: On October 28, 1996, a Recommended Order Approving General Rate Increase and an Adjustment in Purchased Power Recovery Schedule was entered in this docket by Commissioner Cobb allowing Nantahala Power and Light Company to adjust its rates and charges and providing for exceptions to be filed by November 12, 1996.

The parties to this proceeding have filed a Waiver of Right to File Exceptions, in which they agree that the Recommended Order can become the final order of the Commission.

IT IS, THEREFORE, ORDERED that the Recommended Order entered in this docket on October 28, 1996, is hereby adopted as a final order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of November, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-22, SUB 365

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Power	)	
Pursuant to G.S. 62-133.2 and	)	ORDER APPROVING FUEL
NCUC Rule R8-55 Relating to Fuel	)	CHARGE ADJUSTMENT
Charge Adjustments for Electric Utilities	)	

HEARD: Wednesday, November 13, 1996, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Ralph A. Hunt and Judy Hunt

APPEARANCES:

For North Carolina Power:

James S. Copenhaver, North Carolina Power, Post Office Box 26666, Richmond, Virginia 23261

Robert W. Kaylor, Esq., 225 Hillsborough Place, Suite 480, Raleigh, North Carolina 27603

For the Public Staff:

A. W. Turner, Jr., Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For Carolina Utility Customers Association, Inc. (CUCA):

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For Carolina Industrial Group for Fair Utility Rates (CIGFUR-I):

Ralph McDonald, Bailey and Dixon, Attorneys at Law, Post Office Box 12865, Raleigh, North Carolina 27605-2865

BY THE COMMISSION: G.S. 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil

or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel component established in the last general rate case. The statute further requires that additional hearings be held on an annual basis, but only one hearing for each utility may be held within 12 months of the last general rate case. In addition to the increment or decrement to reflect changes in the cost of fuel and the fuel component of purchased power, the Commission is required to incorporate in its fuel cost determination the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test year. The last general rate case order for North Carolina Power (or "the Company") was issued by the Commission on February 26, 1993, in Docket No. E-22, Sub 333. The last order approving a fuel charge adjustment for the Company was issued on December 8, 1995, in Docket No. E-22, Sub 355.

North Carolina Power filed its fuel adjustment application and supporting testimony and exhibits in accordance with NCUC Rule R8-55 and G.S. 62-133.2 on September 13, 1996. North Carolina Power filed testimony and exhibits for the following witnesses: Ashwini Sawhney - Director, Corporate Accounting; Daniel J. Green - Director, Planning Services; and Glenn A. Pierce - Regulatory Specialist, Rate Design. The Company also filed information and workpapers required by NCUC Rule R8-55(d).

On September 19, 1996, the Commission issued an Order Scheduling Hearing, Requiring Filing of Testimony, and Requiring Public Notice of this proceeding. The Commission issued an Order Rescheduling Hearing on September 20, 1996, to accommodate a conflict in the Commission's calendar.

The Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene dated October 3, 1996, which petition was granted by Order dated October 9, 1996. The Carolina Industrial Group for Fair Utility Rates (CIGFUR I) filed a Petition to Intervene on October 17, 1996, which petition was granted by Order dated October 21, 1996.

On October 18, 1996, the Company filed supplemental testimony and a revised exhibit on behalf of Mr. Sawhney and revised testimony and exhibits on behalf of Mr. Pierce.

On October 29, 1996, the Public Staff filed a Joint Stipulation between North Carolina Power and the Public Staff, which proposed that an additional $50,000 be credited to jurisdictional fuel expenses for the test year ended June 30, 1996. This adjustment will result in an additional credit of $57,500 (including interest) being flowed through the Experience Modification Factor (EMF - Rider B) during the rate year ending December 31, 1997. The Joint Stipulation also provided for the withdrawal of North Carolina Power's October 18, 1996 supplemental filing.

On October 29, 1996, the Public Staff filed the affidavits of Michael C. Maness and Thomas S. Lam, which recommended approval of the Company's fuel adjustment filing, as modified by the Joint Stipulation. The Public Staff also filed a Notice of Affidavits, indicating that the Public Staff would enter the affidavits of Mr. Maness and Mr. Lam into the record at the hearing in the absence of an objection from any party. No objection was raised by any party.

On November 1, 1996, the Company filed a Notice of Affidavits, which indicated that the Company would enter its initial direct testimony, as modified in the Joint Stipulation, into the record by affidavit at the hearing in the absence of an objection from any party. No such objection was raised by any party.

The matter came on for hearing as scheduled on Wednesday, November 13, 1996. The prefiled direct testimony of the Company's witnesses was stipulated into the record by affidavit. The affidavits of Public Staff witnesses Maness and Lam and the exhibits of all of the witnesses were admitted into evidence.

Based upon the foregoing, the prefiled testimony and affidavits of Company witnesses Sawhney, Green and Pierce and Public Staff witnesses Maness and Lam, the Joint Stipulation, and the entire record, the Commission makes the following:

FINDINGS OF FACT

1. North Carolina Power is duly organized as a public utility operating under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. The Company is engaged in the business of developing, generating, transmitting, distributing, and selling electric power to the public in northeastern North Carolina. The Company has its principal offices and place of business in Richmond, Virginia.

2. The test period for purposes of this proceeding is the twelve months ended June 30, 1996.

3. The Company's fuel and power purchasing practices during the test period were reasonable and prudent.

4. The fuel proceeding test period per book system sales are 67,642,848 MWh.

5. The fuel proceeding test period per book system generation is 71,731,904 MWh which includes various energy generations as follows:

	MWh
Coal	29,661,262
Combustion Turbine	1,355,030
Heavy Oil	834,546
Natural Gas	16,996
Nuclear	26,953,782
Hydro	2,860,688
Pumped Storage	(2,514,647)
Power Transactions	
NUG	11,846,955
Other	6,360,951
Sales for Resale	(5,643,659)

6. The normalized system nuclear capacity factor which is appropriate for use in this proceeding is 84.45%, which is the Company's estimated nuclear capacity factor for the rate year ending December 31, 1997.

7. The decrease to system test period sales of 1,640,198 MWh results from a decrease of 190,479 MWh associated with customer growth, 1,083,567 MWH of additional customer usage, a decrease of 2,481,748 MWh associated with weather normalization, and a decrease of 51,538 MWh from the restatement of non-jurisdictional ODEC sales from production level to sales level, added to fuel test period per book system sales of 67,642,848 MWh.

8. The adjusted test period system generation for use in this proceeding is 70,067,645 MWh which includes various energy generations as follows:

	MWh
Coal	29,787,941
Combustion Turbine	1,360,837
Heavy Oil	838,127
Natural Gas	17,048
Nuclear	25,075,609
Hydro	2,860,688
Pumped Storage	(2,514,647)
Power Transactions	
NUG	11,897,565
Other	6,388,138
Interruptible Sales	(5,643,659)

9. The appropriate fuel prices for use in this proceeding are as follows:

A. The coal fuel price is $13.48 MWh.
B. The nuclear fuel price is $4.15/MWh.
C. The heavy oil fuel price is $23.38/MWh.
D. The natural gas price is $3.28/MWh.
E. The internal combustion turbine (IC) fuel price is $27.04/MWh.
F. The fuel price for other power transactions is $17.23/MWh.
G. Hydro, pumped storage, and non-utility generation (NUG) have a zero fuel price.

10. The adjusted system fuel expense for the July 1, 1995, to June 30, 1996 test period for use in this proceeding is $611,454,889.

11. The appropriate fuel cost rider (Rider A) for this proceeding is a decrement of 0.165¢/kWh, excluding gross receipts tax; 0.170¢/kWh decrement including gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense over-collection as filed is $1,926,710. The adjusted North Carolina jurisdictional test year sales are 3,050,409 MWh.

13. An additional $50,000 should be credited to jurisdictional fuel expenses for the test year as recommended in the Joint Stipulation between North Carolina Power and the Public Staff. The total jurisdictional fuel expense over-collection for use in establishing the EMF in this proceeding is $1,976,710.

14. Interest expense associated with the over-collection of test period fuel revenues amounts to $296,507, based upon a 10% annual interest rate.

15. The Company's Experience Modification Factor (EMF) and interest combine for a decrement of 0.075¢/kWh, excluding gross receipts tax; 0.077¢/kWh decrement including gross receipts tax.

16. The final fuel factor is 0.851¢/kWh, excluding gross receipts tax; 0.880¢/kWh, including gross receipts tax.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

This finding of fact is essentially informational, procedural, and jurisdictional in nature and is not controverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

G.S. 62-133.2(c) sets out the verified, annualized information which each electric utility is required to furnish to the Commission in an annual fuel charge adjustment proceeding for an historical 12-month test period. In NCUC Rule R8-55(b), the Commission has prescribed the 12 months ending June 30 as the test period for North Carolina Power. The Company's filing on September 15, 1996, was based on the 12 months ended June 30, 1996.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

NCUC Rule R8-52(b) requires each utility to file a Fuel Procurement Practices Report at least once every ten years, plus each time the utility's fuel procurement practices change. Procedures related to North Carolina Power's procurement of fossil and nuclear fuels were filed in Docket No. E-22, Sub 335, on April 2, 1993. In addition, the Company files monthly reports of its fuel costs pursuant to NCUC Rule R8-52(a).

No party offered direct testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any direct testimony to the contrary, the Commission concludes these practices were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-6

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witnesses Sawhney and Green and the affidavit of Public Staff witness Lam.

Company witnesses Sawhney and Green and Public Staff witness Lam testified with regard to the July 1, 1995 to June 30, 1996 test period sales, test period generation, and normalized nuclear capacity factor. Company witnesses Sawhney and Green testified that the test period levels of sales and generation were 67,642,848 MWh and 71,731,904 MWh, respectively. The test period per book system generation includes various energy generations as follows:

	MWh
Coal	29,661,262
Combustion Turbine	1,355,030
Heavy Oil	834,546
Natural Gas	16,996
Nuclear	26,953,782
Hydro	2,860,688
Pumped Storage	(2,514,647)
Power Transactions	
NUG	11,846,955
Other	6,360,951
Sales for Resale	(5,643,659)

Public Staff witness Lam accepted the levels of sales and generation as proposed by the Company for use in his fuel computation.

Company witness Green testified that the Company achieved a system nuclear capacity factor of 90.8% for the July 1, 1995 to June 30, 1996 test period. Witness Green normalized the system nuclear capacity factor to a level of 84.45%, which is the estimated nuclear capacity factor for the rate year ending December 31, 1997. Witness Lam agreed that the nuclear capacity factor of 90.8% as achieved by the Company should be normalized to 84.45% as proposed by the Company. No other party offered testimony on the normalized nuclear capacity factor. In the absence of evidence presented to the contrary, the Commission concludes that the July 1, 1995 to June 30, 1996 test period levels of sales and generation are reasonable and appropriate for use in this proceeding. The Commission further concludes that the 84.45% normalized system nuclear capacity factor is reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witness Pierce.

Witness Pierce testified that, consistent with Commission Rule R8-55(d)(2), the Company's system sales data for the 12-month period ending June 30, 1996 was adjusted by jurisdiction for weather normalization, customer growth, and increased usage. Witness Pierce adjusted total Company sales by (1,640,198) MWh. This adjustment is the sum of adjustments for customer growth, increased usage, and weather normalization of (190,479) MWh, 1,083,567 MWh and (2,481,748) MWh, respectively, and an adjustment of (51,538) MWh from the restatement of non-jurisdictional ODEC sales from production level to sales level. The Public Staff reviewed and accepted these adjustments.

Based on the foregoing evidence, the Commission concludes that the adjustments due to customer growth, increased usage, and weather normalization of (190,479) MWh, 1,083,567 MWh, and (2,481,748) MWh, respectively, and an adjustment of (51,538) MWh from restatement of non-jurisdictional ODEC sales from production level to sales level are reasonable and appropriate adjustments for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding of fact is found in the testimony and exhibits of Company witnesses Green and Pierce.

Company witness Pierce presented an adjustment to per book MWh generation for the 12-month period ended June 30, 1996, due to weather normalization, customer growth, and increased usage of (1,664,309) MWh, to arrive at witness Green's adjusted generation level of 70,067,645 MWh. Witness Lam reviewed and accepted witness Pierce's adjustment to per book MWh generation for the 12-month period ended June 30, 1996, due to weather normalization, customer growth and increased usage. Witness Lam also accepted witness Green's generation level of 70,067,645 MWh which includes various energy generations as follows:

	MWh
Coal	29,787,941
Combustion Turbine	1,360,837
Heavy Oil	838,127
Natural Gas	17,048
Nuclear	25,075,609
Hydro	2,860,688
Pumped Storage	(2,514,647)
Power Transactions	
NUG	11,897,565
Other	6,388,138
Interruptible Sales	(5,643,659)

Based on the foregoing evidence and with no other evidence to the contrary, the Commission concludes that the adjustment of (1,664,309) MWh is reasonable and appropriate for use in this proceeding, and that the resultant adjusted fuel generation level of 70,067,645 MWh is also reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-11

The evidence supporting these findings of fact is found in the testimony and exhibits of Company witnesses Green and Pierce and the affidavit of Public Staff witness Lam.

Witness Green testified that the Company's proposed fuel factor is based on June 1996 fuel prices as follows: (1) coal price of $13.48/MWh; (2) nuclear fuel price of $4.15/MWh; (3) heavy oil price of $23.38/MWh; (4) natural gas price of $3.28/MWh; (5) internal combustion turbine price of $27.04/MWh; (6) other power transactions price of $17.23/MWh; and (7) hydro, pumped storage, and non-utility generation at a zero fuel price. Witness Lam accepted witness Green's fuel prices.

In the absence of any evidence to the contrary, the Commission concludes that the fuel prices recommended by Company witness Green and accepted by Public Staff witness Lam are reasonable and appropriate for use in this proceeding.

The Commission concludes that adjusted fuel test period expenses of $611,454,889 and the fuel cost rider (Rider A) decrement of 0.165¢/kWh, excluding gross receipts tax (0.170¢/kWh decrement with gross receipts tax), is reasonable and appropriate for use in this proceeding. No party opposed this calculation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12-15

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Pierce, the affidavits of Public Staff witnesses Maness and Lam and the Joint Stipulation between North Carolina Power and the Public Staff.

G. S. 62-133.2(d) requires the Commission to "incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period . . . in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case." Further, Rule R8-55(c)(5) provides: "Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rate as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate."

Company witness Pierce testified that the Company over-collected its fuel expense by $1,926,710 during the test year ending June 30, 1996. Further, witness Pierce testified that the adjusted North Carolina jurisdictional fuel clause test year sales are 3,050,409 MWh.

The Joint Stipulation embodies an agreement of North Carolina Power and the Public Staff to credit an additional $50,000 to jurisdictional fuel expenses for purposes of establishing the EMF in this proceeding. This adjustment reflects a resolution, for purposes of this proceeding, of the appropriate level

of fuel expenses associated with certain power marketers to be recovered through the fuel clause. In particular, the adjustment reflects Public Staff witness Maness' concern that the reported fuel costs for purchases from certain power marketers may not reflect the actual fuel costs of the power supplied from those power marketers. The adjustment is consistent with the treatment of power marketer fuel expenses in the most recent Duke Power Company (Docket No. E-7, Sub 575) and Carolina Power and Light Company (Docket No. E-2, Sub 697) fuel proceedings. The Joint Stipulation was supported by the affidavits of Public Staff witnesses Maness and Lam, was not opposed by any party, and is adopted by the Commission.

The total jurisdictional fuel expense over-collection for use in establishing the EMF in this proceeding is $1,976,710. The Joint Stipulation reflects calculated interest for this over-collection of $296,507 in accordance with Rule R8-55(c)(5) using a Commission approved 10% interest rate.

The Company is proposing to refund the fuel revenue over-collection and associated interest to the customers over a 12-month period beginning January 1, 1997, using the adjusted North Carolina retail sales of 3,050,409 MWh as determined by the Company and accepted by the Public Staff.

The Commission concludes that the fuel revenue over-collection and associated interest of $1,976,710 and $296,507, respectively, are appropriate for use in this proceeding and should be refunded to customers over a 12-month period. No party opposed these calculations. This refund should be in the form of a separate EMF - Rider B.

The $1,976,710 over-collected fuel revenue plus the $296,507 of interest was divided by the adjusted North Carolina jurisdictional sales of 3,050,409 MWh to arrive at the Company's proposed EMF decrement of 0.075¢/kWh, excluding gross receipts tax (0.077¢/kWh including gross receipts tax). Public Staff witnesses Maness and Lam accepted this proposed EMF decrement. The Commission concludes that, there being no controversy, the proposed EMF decrement of 0.075¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding, and shall become effective on January 1, 1997, and shall expire one year from that date.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The evidence supporting this finding of fact is cumulative and is contained in the testimony and exhibits of Company witnesses Sawhney, Pierce and Green, the affidavits of Public Staff witnesses Maness and Lam and the Joint Stipulation between North Carolina Power and the Public Staff.

Based upon our prior findings in this proceeding, the Commission finds that the final net fuel factor, including gross receipts tax, approved for usage in this case is 0.880¢/kWh.

The fuel calculation incorporating these conclusions is shown in the following table:

ELECTRICITY - RATES

	Adjusted Generation (MWh)	Fuel Price $/MWh	Fuel Dollars (000's)
Coal	29,787,941	13.48	401,541
Nuclear	25,075,609	4.15	104,064
Heavy Oil	838,127	23.38	19,595
Natural Gas	17,048	3.28	56
Combustion Turbine	1,360,837	27.04	36,797
Hydro	2,860,688	- 0 -	- 0 -
Pumped Storage	(2,514,647)	- 0 -	- 0 -
Power Transactions			
NUG	11,897,565	- 0 -	45,865
Other	6,388,138	17.23	110,075
Sales for Resale	(5,643,659)	- 0 -	(106,538)
System MWh Generation & Total Fuel Cost	70,067,645		611,455
System MWh Sales at Sales Level	66,002,650		
Fuel Factor (¢/kWh) Excluding Gross Receipts Tax	0.926		
Fuel Factor (¢/kWh) Including Gross Receipts Tax	0.957		
Fuel Factor (¢/kWh) Including Gross Receipts Tax	0.957		
Base Fuel Factor (¢/kWh)	(1.127)		
Fuel Cost/Rider A (¢/kWh)	(0.170)		

	Effective 1/1/97 (Including Gross Receipts Tax)
Base Fuel Factor ¢/kWh	1.127
EMF/Rider B ¢/kWh	(0.077)
Fuel Cost/Rider A ¢/kWh	(0.170)
FINAL FUEL FACTOR ¢/kWh	0.880

IT IS, THEREFORE, ORDERED as follows:

1. That effective beginning with usage on and after January 1, 1997, North Carolina Power shall adjust the base fuel component in its North Carolina retail rates approved in Docket No. E-22, Subs 333 and 335, by a decrement (Rider A) of 0.165¢/kWh, excluding gross receipts tax, (0.170¢/kWh including gross receipts tax).

2. That an EMF Rider decrement (Rider B) of 0.075¢/kWh, excluding gross receipts tax, (0.077¢/kWh including gross receipts tax) shall be instituted and remain in effect for usage from January 1, 1997, until December 31, 1997.

3. That North Carolina Power shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustments approved herein not later than five (5) working days from the date of receipt of this Order;

4. That the Joint Stipulation between North Carolina Power and the Pubic Staff is approved by the Commission; and

5. That North Carolina Power shall notify its North Carolina retail customers of the rate adjustments approved in this proceeding by including the "Notice to Customers of Rate Decrease" attached to this Order as Appendix A as a bill insert with customer bills rendered during the next regularly scheduled billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of December 1996.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

APPENDIX A

DOCKET NO. E-22, SUB 365

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Power	)	
Pursuant to G.S. 62-133.2 and	)	NOTICE TO CUSTOMERS
NCUC Rule R8-55 Relating to Fuel	)	OF RATE DECREASE
Charge Adjustments for Electric Utilities	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on December 10, 1996, after public hearings, approving an approximate $3.3 million decrease in the annual rates and charges paid by the retail customers of North Carolina Power in North

Carolina. The rate decrease will be effective for usage on and after January 1, 1997. The rate decrease was ordered by the Commission after a review of North Carolina Power's fuel expenses during the 12-month test period ended June 30, 1996, and represents actual changes experienced by the Company with respect to its reasonable costs of fuel and the fuel component of purchased power during the test period.

For a typical residential customer using 1,000 kWh per month, the Commission's Order will result in a net rate decrease of approximately $1.07 per month from the previous effective rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 10th day of December, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. G-3, SUB 191
DOCKET NO. G-9, SUB 372

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-3, Sub 191

In the Matter of
Application of Pennsylvania & Southern Gas Company, d/b/a North Carolina Gas Service, a Division of NUI Corporation, for a Certificate of Public Convenience and Necessity to Provide Natural Gas Service to the Remainder of Stokes County

Docket No. G-9, Sub 372

In the Matter of
Application of Piedmont Natural Gas Company, Inc., for a Certificate of Public Convenience and Necessity to Provide Natural Gas Service to Southwest Stokes County or, in the Alternative, for a Declaration that Piedmont's Existing Certificates of Public Convenience and Necessity Authorize it to Construct the Necessary Facilities to Extend Natural Gas Service to Southwest Stokes County

ORDER GRANTING CERTIFICATE TO PIEDMONT NATURAL GAS COMPANY, INC.

HEARD IN: Stokes County Courthouse, Highway 89, Danbury, North Carolina, on Thursday, May 9, 1996

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, June 11, 1996

BEFORE: Commissioner Allyson Duncan, Presiding; Commissioners Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt, Judy Hunt, and Jo Anne Sanford

APPEARANCES:

For North Carolina Gas Service:

Jim Wade Goodman, Attorney at Law, Alfred E. Cleveland, Attorney at Law, McCoy, Weaver, Wiggins, Cleveland & Raper, Post Office Box 2129, Fayetteville, North Carolina 28302

For Piedmont Natural Gas Company, Inc.:

Daniel C. Higgins, Attorney at Law, Burns, Day & Presnell, P.A., Post Office Box 10867, Raleigh, North Carolina 27605

For Frontier Utilities of North Carolina, Inc.:

M. Gray Styers, Jr., Attorney at Law, Petree Stockton, L.L.P., 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Gina C. Holt, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On December 29, 1995, Pennsylvania & Southern Gas Company, a division of NUI Corporation, d/b/a North Carolina Gas Service (NC Gas), filed an application requesting that the Commission confirm that NC Gas' currently certificated area includes all of Stokes County or in the event the Commission determines that the certificated franchise service area of NC Gas does not include all of Stokes County, that the Commission grant it a certificate of public convenience and necessity to provide natural gas service to all of Stokes County. The application alleged that NC Gas presently has natural gas facilities in the southeast corner of Stokes County and is providing natural gas services to industrial, commercial and residential customers in the town of Walnut Cove and the community of Ceramic. A map showing the general location of natural gas pipeline facilities operated by NC Gas was attached to the filing.

On December 29, 1995, Piedmont Natural Gas Company, Inc. (Piedmont), filed an application for a certificate of public convenience and necessity to provide gas service in southwest Stokes County or, in the alternative, for an order declaring that Piedmont's existing certificates of public convenience and necessity authorize it to construct facilities into this area, because it is contiguous to territory already served by Piedmont. Piedmont provided a description of the area for which the certificate was being sought, and a map showing the general location of the area to be served was attached to the filing. Piedmont's filing contained information intended to comply with the requirements of Commission Rule R6-61.

Both NC Gas' and Piedmont's applications requested that the Commission either grant a certificate to serve Stokes County or, in the alternative, declare that their existing certificates authorize such service. G. S. 62-110(a) provides that a certificate is not required for "construction into territory contiguous to that already occupied and not receiving similar service from another public utility." The Commission rejected the contiguous territory arguments made by both companies in an Order dated February 29, 1996.

On February 29, 1996, the Commission issued an Order Consolidating the Applications for Hearing, Giving Public Notice and Requiring the Prefiling of Testimony.

Each applicant intervened in the other's docket, and the following parties intervened in the consolidated proceeding: Carolina Utility Customers Association, Inc. and the Attorney General.

A public hearing was held as scheduled in Danbury, North Carolina, on May 9, 1996. Twelve persons testified as public witnesses. The matter came on for hearing in Raleigh, on June 11, 1996, as previously noticed and scheduled.

NC Gas presented the testimony of the following witnesses: a panel of James Turpin, Vice President of Operations, Southern Division of NUI, Lyle Motley, Jr., Executive Officer and President of NUI's Southern Division, and Rand Smith, Vice President of Finance for NUI; Steven Shute, an officer and shareholder of Frontier Utilities of North Carolina, Inc., and a professional engineer specializing in rural gas utilities through his consulting company, Pipeline Solutions, Inc.; and a panel of Carl Smith, Vice President of Marketing for NUI Corporation, Larry Poll, Assistant Vice President, Southern Division, NUI Corporation, and Division Manager of NC Gas, and E. Scott Heath, President of Heath and Associates, Inc., a management and engineering consulting firm specializing in the natural gas industry.

Piedmont presented the testimony of Kevin O'Hara, Vice President of Corporate Planning for Piedmont Natural Gas.

The Public Staff presented the testimony of a panel consisting of the following witnesses: Eugene H. Curtis, Jr., Director of the Natural Gas Division of the Public Staff, James G. Hoard, Supervisor of the Natural Gas Section in the Accounting Division of the Public Staff, and Thomas W. Farmer, Jr., Director of the Economic Research Division of the Public Staff.

Based on the verified applications, the testimony and exhibits offered at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NC Gas, a division of NUI Corporation, is a public utility providing natural gas service in North Carolina subject to the jurisdiction of the North Carolina Utilities Commission. NC Gas has a franchise to serve the southeast corner of Stokes County. NC Gas has requested a certificate of public convenience and necessity to provide natural gas service to the entire unfranchised portion of Stokes County.

2. Piedmont is also a public utility providing natural gas service in North Carolina subject to the jurisdiction of this Commission. Piedmont has requested a certificate to provide natural gas service to southwest Stokes County.

3. There is a public demand and need for natural gas service in Stokes County, particularly in the more populated southwest portion of Stokes County.

4. NC Gas proposes to serve the King area by a connection with the Frontier Utilities of North Carolina, Inc. (Frontier), system that is planned to serve Pilot Mountain. The Pilot Mountain route of NC Gas consists of 8.5 miles of four-inch high pressure steel transmission main beginning at the Surry/Stokes County line, near the intersection of old US 52 and Volunteer Road, and running along Old US Highway 52 until its intersection with Goff Road on the western edge of King. The estimated cost of this transmission system, including the gate station, is $711,000.

5. Alternatively, if the Commission so ordered, NC Gas would construct a transmission main from its existing system in Walnut Cove. The alternative Walnut Cove route of NC Gas involves a six-inch transmission main extending from its existing system in Walnut Cove for about 15 miles traveling in a westerly direction along various secondary roads to King. The estimated cost for this transmission route is $1,680,210.

6. The distribution system planned by NC Gas for providing natural gas service to the Stokes County portion of King is essentially the same system under both of its proposals. This distribution system incorporates 27.6 miles of distribution main in the King area, composed of 6.8 miles of four-inch plastic main along the major north-south and east-west thoroughfares, 20.8 miles of two-inch plastic main in other areas, and a regulator station at Goff Road. NC Gas estimates that the distribution system would cost $2,086,000.

7. NC Gas estimates that its distribution system in the Stokes County area of King would provide gas service to 548 residential customers and 111 commercial customers, with total estimated annual volumes of 86,900 dekatherms in year five, and that the system will provide service to 880 residentials and 148 commercials with a total annual usage of 127,800 dekatherms by year ten.

8. NC Gas has determined that its Pilot Mountain to King proposal would require $248,795 of expansion funds and that its Walnut Cove to King proposal would require $1,289,418 of expansion funds. NC Gas does not have an expansion fund now, but it plans to institute appropriate proceedings to establish an expansion fund.

9. NC Gas estimates that it will take approximately 18 months from the time construction begins to complete the transmission system and initial distribution system for the Pilot Mountain to King proposal. NC Gas estimates that it could provide service to King via the Walnut Cove to King route within 16 to 18 months from the time construction begins.

10. Piedmont proposes to provide natural gas service to King and later to other areas in southwest Stokes County by constructing nine miles of six-inch transmission main cross-country from its twelve-inch high pressure line located north of Winston-Salem to a point near Rural Hall, and then up Route 52 and on to King. The estimated cost for this proposed transmission system is $3,129,900.

11. The distribution system that Piedmont plans for King is composed of 20.5 miles of distribution main running down King-Tobaccoville Road and South Main Street through downtown and then onto North Main Street with laterals to several residential subdivisions and an industrial park along the route. Piedmont plans to provide service to the RJ Reynolds and CRES facilities located in

Tobaccoville off the six-inch main planned for its expansion into King. The estimated cost of this distribution system is $2,191,000.

12. Piedmont estimates that its initial system would provide gas service to 928 residential customers, 33 commercial customers, and 10 industrial customers with total estimated annual volumes of 375,728 dekatherms in year five. All but two of the ten industrial customers are located in Forsyth County. Three of these Forsyth County industrial customers, which are close to the Stokes County line, represent 96% percent of the expected volumes for industrial customers.

13. Piedmont intends to provide service to the southwest portion of Stokes County without the use of expansion funds or deferral accounting treatment.

14. Piedmont estimates that it will have gas service to southwest Stokes County within 16 months of being awarded a certificate.

15. The City of King is located on the Stokes/Forsyth County line and Piedmont presently has the franchise to serve Forsyth County. Neither of the proposals by NC Gas would provide gas service to the Forsyth County portion of the King area, including the large industrial facilities located there. It would be neither practical nor in the public interest to split the franchise for the King area between two local distribution companies (LDCs) along the county line.

16. Piedmont presently provides natural gas service along the US 52 corridor in Winston-Salem, and its recently-completed 12-inch transmission main north of Winston-Salem positions it well for extending gas service further up US 52 to several industrial facilities located in Forsyth County near Rural Hall, Tobaccoville and King and on into Stokes County. Piedmont's proposed route up US 52 into King and Stokes County reaches the area most likely to develop economically as a result of natural gas being available, and it is the most logical route for delivering gas service to the King area.

17. NC Gas' Pilot Mountain proposal is contingent on making a connection to the Frontier system. It is therefore subject to potential delays since the Commission's grant of a franchise to Frontier has been appealed and even if the appeal is won by Frontier, Frontier must still make final financing arrangements and complete its construction before NC Gas could connect to its system.

18. Piedmont's intention to finance its proposal without the use of an expansion fund or deferral accounting is a crucial factor in Piedmont's favor.

19. It is in the public interest for Piedmont to be granted a certificate of public convenience and necessity for southwest Stokes County.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-2

The evidence supporting these findings of fact is contained in the verified applications and the testimony filed by the applicants and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding of fact can be found in the testimony of the public witnesses at the hearing in Danbury on May 9, 1996, and in the testimony offered by NC Gas, Piedmont and the Public Staff. There appears to be no question about the need for natural gas service in Stokes County, particularly in the more populated southwest portion of Stokes county. At the public hearing in this docket, there were several public witnesses from King, which is located in southwest Stokes County, who were supportive of the need for gas service in the area. Among those testifying to the need for gas service were a representative from the King Chamber of Commerce, the Director of the Stokes County Office of Economic Development, and the City Manager of King.

The Commission concludes that there is a public demand and need for gas service in Stokes County.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-9

The evidence for these findings of fact is found in the testimony of the Public Staff panel and the testimony of NC Gas witnesses Turpin, Motley, R. Smith, Shute, C. Smith, Poll, and Heath.

NC Gas proposes to serve the King area by a connection with the Frontier system that is planned to serve Pilot Mountain. However, the Public Staff requested that NC Gas provide net present value studies and supporting work papers for projects to provide gas service through a route from Walnut Cove. In response to the Public Staff's request , NC Gas provided net present value studies, cost projections, customer and volume projections, maps depicting the transmission and distribution systems and a pipe work network analyses for the Walnut Cove route. NC Gas witness Lyle Motley testified that if the Commission so ordered, NC Gas would be willing to serve Stokes County through the Walnut Cove route, but that NC Gas' proposal was to serve King within Stokes County via connection with the Frontier system at the Stokes/Surry County line. This was NC Gas' original proposal and it did not change after NC Gas' initial filing.

By its original proposal, NC Gas proposes to construct a gate station at an interconnection with the planned Frontier system, which is expected to terminate near Pilot Mountain in Surry County. This NC Gas proposal consists of 8.5 miles of four-inch high pressure steel transmission main beginning at the Surry/Stokes County line, near the intersection of old US 52 and Volunteer Road, and running along Old US Highway 52 until its intersection with Goff Road on the western edge of King. The transmission system, including the gate station, is estimated to cost $711,000.

The distribution system proposed by NC Gas for the first five years reflects 27.6 miles of distribution main in the King area, which is composed of 6.8 miles of four-inch plastic main along the major north-south and east-west thoroughfares and 20.8 miles of two-inch plastic main in other areas. It also includes a regulator station at Goff Road. The distribution system bas an estimated cost of $2,086,000.

NC Gas estimates that the project will cost $2.8 million and take approximately 18 months to complete from the time construction begins. NC Gas has determined that the project, which has a negative

net present value (NPV), would require $248,795 of expansion funds, and that the remaining cost of the project would be financed from traditional debt and equity sources of capital.

NC Gas estimates that its initial system would provide gas service to 548 residential customers and 111 commercial customers, with total estimated annual volumes of 86,900 dekatherms in year five, and that the system will provide service to 880 residentials and 148 commercials with a total annual usage of 127,800 dekatherms by year ten.

NC Gas has also evaluated an alternative transmission route for providing service to the King area. This transmission route involves a six-inch transmission main extending from its existing system in Walnut Cove for about 15 miles traveling in a westerly direction along various secondary roads to King. Once in the King area, the distribution system would be essentially the same system as that described for the Pilot Mountain to King route. The estimated cost of the alternative transmission route is $1,680,210, approximately $970,000 more than the cost of the Pilot Mountain transmission route. NC Gas estimates that the total cost of this proposal is $3,789,640 and that it would require $1,289,418 of expansion funds.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-14

The evidence for these findings of fact is found in the testimony of the Public Staff panel and the testimony of Piedmont witness O'Hara.

Piedmont proposes to run nine miles of six-inch transmission main cross-country from its twelve-inch high pressure line located north of Winston-Salem to a point near Rural Hall, and then up Route 52 and on to King. The total estimated cost for this proposed transmission system is $3,129,900.

The distribution system planned for King is composed of 20.5 miles of distribution main running down King-Tobaccoville Road and South Main Street through downtown and then onto North Main Street with laterals to several residential subdivisions and an industrial park along the route. Piedmont plans to provide service to the RJ Reynolds and CRES facilities located in Tobaccoville off the six-inch main planned for King-Tobaccoville Road. The estimated cost of the initial distribution system planned is $2,191,000.

Piedmont estimates that its initial system would provide gas service to 928 residential customers, 33 commercial customers, and 10 industrial customers with total estimated annual volumes of 375,728 dekatherms in year five. Five of the ten industrial customers, including the Westinghouse Turbine Plant, are located in the Rural Hall area in Forsyth County. The other five industrial customers are located in the King area, three in the Forsyth County portion of King and two in the Stokes County portion of King. Three of these Forsyth County industrial customers, which are close to the Stokes County line, represent 96% percent of the expected volumes for industrial customers.

Piedmont has calculated that the revised proposal has a negative NPV of $1.01 million and that it would require $2.20 million of expansion funds; however, Piedmont witness O'Hara testified that if the Commission awards Piedmont the certificate to serve southwest Stokes County, "Piedmont intends to provide service to this area without the use of expansion funds or the deferral accounting treatment (Commission Rule R6-89)."

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-19

The evidence for these findings of fact and conclusions is found in the testimony of the Public Staff panel, the NC Gas witnesses and Piedmont witness O'Hara and in the preceding findings of fact. Each of the proposals presented at the hearing has its own strengths and weaknesses.

The strength of the Pilot Mountain to King proposal of NC Gas is its low cost. This nine-mile transmission route along Old US Highway 52 has an estimated cost of $711,000, has the shortest route, and is by far the lowest cost option for providing gas service to the King area. Also, because it could later be tied into the Walnut Cove part of the NC Gas system, this option could enhance the prospects for eventually providing gas service to central Stokes County. The major weakness of this option is that the Commission's order granting Frontier a certificate has been appealed, and therefore Frontier has not yet begun to construct its system. Because this option is contingent on gas being available from Frontier at the Surry/Stokes County Line, the availability of gas service to King could be delayed. A delay could lead to higher construction costs. Regarding the Pilot Mountain route, Public Staff witness Hoard testified as follows:

> I think we would recognize that the Pilot Mountain proposal basically is, anyway you look at it is going to be a delay, and do we want to tie gas service to King onto that same delay. Even if, you know, even if it weren't appealed there's still, I don't believe there would be gas service there today. So we would still be looking at having to count on something to be built to Pilot Mountain, and if for some reason it weren't built then we're out of luck. We have a gas line but nothing to connect it to. So we felt as if overall we want to stick with, you know, connect it to pipe that's actually there rather than actually looking, planning on something being there at some point in the future.

Regarding the appeal of the Frontier certificate, witness Hoard testified as follows:

> Well, I mean, there would be a delay, I think yes, but there still would be a delay anyway even if there hadn't been an appeal. ... [T]he gas would not be in Pilot Mountain today. That's something to take into consideration.

The strength of the alternative Walnut Cove to King proposal of NC Gas is that it would make gas available to a significant portion of south-central Stokes County, as well as King, within eighteen months. While this fifteen-mile transmission route costs more than the proposed Pilot Mountain route, its $1.6 million estimated cost is still considerably less than the $3.2 million proposed by Piedmont. According to Public Staff witness Curtis, this proposal, however, would probably require NC Gas to strengthen its line back from Walnut Cove to Mayodan at some time in the future to facilitate growth in the King area and maintain reasonable operating pressures along the line. Additionally, there was little evidence or support for much growth potential in central Stokes County. On the growth potential of a line in central Stokes County, Public Staff witness Hoard testified as follows:

> I don't think we're foreclosing the possibility of growth in the area, but I think that the best route at this point and time is to go where there is good potential for economic development... I can see it (economic development) spurring out from the major areas,

> Walnut Cove and/or King to the rest of the county. One thing to remember is that in our public hearings we didn't have a witness there that was really pushing to get gas service into the northern Stokes County or even really in between Walnut Cove and King. We just didn't have that outpouring of support in this particular case. What we had primarily were King representatives saying, discussing the need for gas in the King area.

Witness Hoard also testified:

> I think overall we've got alternatives. We're not saying that there's not some value to having a line between Walnut Cove and King. What we're saying is that it's more valuable and it's more in the public interest to have a line going up US 52 north of Winston-Salem to King. I mean, it's a priority, which one is of more value to the public and we believe that the Piedmont proposal has more value.

A major weakness of the NC Gas proposals, as compared with Piedmont's proposal, is that they do not make gas service available to the industrial facilities located in the King and Tobaccoville areas of Forsyth County. Since Forsyth County is in Piedmont's franchise territory, neither of the proposals by NC Gas would provide gas service to the large industrial facilities located in the Forsyth County portion of King. We consider this shortcoming to be a significant weakness in the NC Gas application.

The strength of the Piedmont proposal is that it will provide gas service along the US 52 corridor between Winston-Salem and King, including Tobaccoville in Forsyth County. Piedmont's recently-completed 12-inch transmission main north of Winston-Salem positions it well for extending gas service north up US 52 to the industrial facilities presently located in, or considering locating in, northern Forsyth County or southwest Stokes County. Public Staff witness Hoard testified that the Public Staff's decision on which applicant should be awarded the certificate

> got down to a question of whether it was better to provide gas to the King area via US 52 going north from Winston-Salem or coming west from Walnut Cove. And that the [Public Staff] felt that it was a much better probability of economic development coming north from US 52 than coming west from Walnut Cove. We drove between Walnut Cove and King and really there's not a whole lot there. We understand there's no water and sewer between Walnut Cove and King, and therefore not a whole bunch of potential for development, economic development, as compared with US 52. We understand US 52 is going to be upgraded to an interstate highway. It's already a very fine road and everything is in place for economic development along US 52. And we felt that's just – it goes down to looking at those two routes and we felt US 52 going north from Winston-Salem was the better approach to getting gas to King.

Another strength of the Piedmont proposal is that the Company proposes to construct it with traditional financing. Although the proposal has a negative NPV, witness O'Hara testified that Piedmont does not intend to use either its expansion fund or deferral accounting under Commission Rule R6-89 for its proposal. The weakness of the Piedmont proposal is that it is very costly in comparison with the NC Gas proposals. Also, because Piedmont's application is limited to the southwest corner of Stokes County, it

does not provide the potential for extending gas service to central Stokes County, as does the Walnut Cove to King route of NC Gas.

The Commission has carefully evaluated the strengths and weaknesses of the NC Gas and Piedmont proposals in reaching our decision. First, we do not believe that it would be in the public interest to split the franchise for the King area between two LDCs along the county line. Most of King is in Stokes County, but a small portion is in Forsyth County. The two largest industrial facilities in the King area -- the RJ Reynolds and CRES Tobacco plants -- are located in Forsyth County. In addition, the town of Tobaccoville in Forsyth County is very close to King, and the King-Tobaccoville area represents a single economic area. Public Staff witness Hoard testified as follows with regard to whether it would be viable for Piedmont to fully serve Forsyth County and another LDC to serve Stokes County, "No, not really. The county line doesn't really follow roads, it cuts across roads, cuts across backyards; it's kind of -- I don't think it would be in the interest to split the city." Public Staff witness Curtis testified that in other situations where county lines and gas utility franchises meet, "there's been a mutual exchange of territories by the two LDCs." The Commission concludes that it would not be in the public interest for the franchise to provide gas service to the King area to be split. Second, Piedmont presently has the franchise to serve the industrial facilities located in northern Forsyth County and Piedmont is well-positioned to extend service to Stokes County. The proposed route up US 52 into King and Stokes County reaches the area most likely to develop economically as a result of natural gas being available and is therefore the most logical route for delivering gas service to the King area. Third, NC Gas' primary proposal, a transmission line from Pilot Mountain, is contingent on making a connection to the Frontier system for gas supply. It is therefore subject to several potential delays. The Commission's grant of a franchise to Frontier has been appealed. Even if the appeal is decided in the near future and in Frontier's favor, Frontier must still make final financing arrangements, obtain Commission approval thereof, and actually complete its construction before NC Gas could connect to its system. Finally, and very importantly, the Commission believes that Piedmont's intention to finance its proposal without the use of an expansion fund or deferral accounting is crucial. NC Gas plans to apply to establish and to use an expansion fund for its proposal to serve Stokes County. Piedmont, on the other hand, testified at the hearing that it would use traditional financing methods for its proposal. The Commission recently emphasized a similar point in granting the franchise to Frontier in Docket No. G-38, and the Commission believes that this is a crucial factor in Piedmont's favor in this proceeding.

Based on the foregoing, the Commission concludes that the application of Piedmont in Docket No. G-9, Sub 372 should be granted and that the application of NC Gas in its docket should be denied.

Since Piedmont's application asked for a certificate for only the southwest corner of Stokes County, the question remains regarding the assignment of the remaining unfranchised portion of Stokes County. We agree with the Public Staff that this issue should be addressed in Docket No. G-100, Sub 69, after receiving comments from interested parties. The Commission will issue an order this date in that docket calling for comments as to how the remaining unfranchised portion of Stokes County should be assigned.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont is hereby awarded a certificate of public convenience and necessity, attached to this order as Appendix A, to provide natural gas service to southwest Stokes County;

2. That the application for a certificate filed by NC Gas in Docket No. G-3, Sub 191 is denied; and

3. That the Commission will issue an order in Docket No. G-100, Sub 69, requesting comments regarding the assignment of the remaining unfranchised portion of Stokes County and will make an assignment of that area for natural gas service after receiving those comments.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt dissents.
Commissioner Judy Hunt, dissenting:

I respectfully dissent from the majority because I believe this order is premature. On November 15, 1996, the Supreme Court will hear oral argument (expedited) in the Frontier/Piedmont case. Piedmont Natural Gas has appealed the Commission's decision to issue a certificate to Frontier Utilities for the four-county area (Watauga, Yadkin, Wilkes and Surry). Some of the issues to be decided in that case by the Supreme Court are relevant to this case. The availability of gas at Pilot Mountain through Frontier is a part of the North Carolina Gas proposal for Stokes County. The majority opinion cites the Supreme Court appeal and possible delays as a reason to award the Stokes County certificate to Piedmont. Since Piedmont is the party that appealed the Frontier/Piedmont case and caused it to be in the Supreme Court, I think it is inappropriate to award Piedmont a certificate and use the Supreme Court delay as a reason.

Another issue to be decided by the Supreme Court is related to expansion fund use. Similar issues are raised by the majority in this case. The majority says that
"Piedmont 's intention to finance its proposal without the use of an expansion fund....
is a crucial factor in Piedmont's favor." The majority opinion fails to emphasize that Piedmont is not proposing to serve the rural areas in Stokes County. The expansion fund's purpose and long-term public policy are at issue both in this case and the Frontier/Piedmont case on appeal.

Therefore, the Commission should not assign a part of Stokes County to any gas company until these issues are resolved by the Supreme Court. Any problems associated with delay (which Stokes County has indeed suffered for decades) are outweighed by compelling and overriding public policy issues.

/s/ Judy Hunt
Judy Hunt, Commissioner

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-9, SUB 372

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

PIEDMONT NATURAL GAS COMPANY, INC.

is granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide natural gas utility service

in

that area of southwest Stokes County starting at a point, said point being the center line of State Highway 66 and the Forsyth County/Stokes County line proceeding along the center line of State Highway 66 in a northerly direction to a point, said point being the intersection of the center lines of State Highway 66 and State Highway 89; thence in a westerly direction along the center line of State Highway 89 to a point, said point being the intersection of the center line of State Highway 89 and the Stokes County/Surry County line; thence in a southerly direction along the Stokes County/Surry County line to a point, said point being the intersection of the Stokes County/Surry County line and the Forsyth County/Stokes County line; thence in an easterly direction along the Forsyth County/Stokes County line to the originating point, the crossing of the Forsyth County/Stokes County line and the center line of State Highway 66

subject to any orders, rules, regulations,
and conditions now or hereafter lawfully made
by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-38
DOCKET NO. G-9, SUB 357

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. G-38	)	
In the Matter of Application of Frontier Utilities of North Carolina, Inc., for a Certificate of Public Convenience and Necessity to Construct, Own and Operate an Intrastate Pipeline and Local Distribution System and for the Establishment of Rates	)	
Docket No. G-9, Sub 357	)	ORDER GRANTING FINAL CERTIFICATE TO FRONTIER UTILITIES OF NORTH CAROLINA, INC.
In the Matter of Application of Piedmont Natural Gas Company, Inc., for a Certificate of Public Convenience and Necessity to Provide Natural Gas Service in Surry, Watauga, Wilkes and Yadkin Counties or, in the Alternative, for a Declaration that Piedmont's Existing Certificates of Public Convenience and Necessity Authorize It to Construct the Necessary Facilities to Permit It to Extend Natural Gas Service to said Counties	)	

HEARD: First Phase: Wilkesboro Community Center, 1241 School Street, Wilkesboro, North Carolina, on Thursday, December 1, 1994; and Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, January 31, 1995, through Friday, February 3, 1995, Wednesday, February 8, 1995, and Tuesday, March 7, 1995.

Second Phase: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, December 12, 1995 through Thursday, December 14, 1995.

BEFORE: First Phase: Chairman Hugh A. Wells, Presiding, Commissioners William W. Redman, Jr., Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt, and Judy Hunt

Second Phase: Commissioner Laurence A. Cobb, Presiding, Chairman Hugh A. Wells, Commissioners Charles H. Hughes, Ralph A. Hunt, and Judy Hunt

APPEARANCES:

For Frontier Utilities of North Carolina, Inc.:

James P. Cain, Attorney at Law, M. Gray Styers, Jr., Attorney at Law, Petree Stockton, L.L.P., 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Attorney at Law, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

John Willardson, Attorney at Law, Willardson, Lipscomb & Bender, L.L.P., 206 East Main Street, Wilkesboro, North Carolina 28687

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

J. Mark Payne, Assistant Attorney General, Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On September 23, 1994, Frontier Utilities of North Carolina, Inc. (Frontier), filed an application for a certificate of public convenience and necessity to construct, own and operate an intrastate pipeline and local distribution system and for the establishment of rates. Frontier requested authority to serve Surry, Wilkes and Yadkin Counties. Frontier amended its application on October 12, 1994, to include Watauga County.

On September 27, 1994, Piedmont Natural Gas Company, Inc. (Piedmont), filed an application for a certificate of public convenience and necessity to provide natural gas service to Surry, Watauga, Wilkes and Yadkin Counties or, in the alternative, for a declaration that Piedmont's existing certificates of public convenience and necessity authorize it to construct the necessary facilities to permit it to extend natural gas service to said counties. Piedmont's application indicated that the expansion of service into these four counties will not produce a positive return based on Piedmont's existing rates, but noted that a combination of conventional financing and funds from an expansion fund would make construction into the four counties economically feasible. Piedmont contemporaneously filed an amended petition for the establishment of an expansion fund and for the approval of the deposit of certain supplier refunds into the

expansion fund in Docket No. G-9, Sub 328. Piedmont subsequently filed a petition in Docket No. G-9, Sub 362, asking for authority to use expansion funds for a project to serve the four counties.

The Commission, by Order dated October 21, 1994, consolidated the two certificate applications for hearing, required public notice and established intervention and filing deadlines. A public hearing in Wilkesboro was set for Thursday, December 1, 1994, at 9:30 a.m., with the hearing continuing in Raleigh on Tuesday, January 31, 1995, as required for public witnesses and for the testimony and cross-examination of witnesses prefiling testimony.

The Commission invited briefs on the issue of whether Piedmont was entitled to extend natural gas service into Surry, Watauga, Wilkes and Yadkin Counties (Four-County area) under its existing certificates as territory contiguous to territory already occupied by it. By Order dated December 6, 1994, the Commission concluded that there was considerable "unoccupied" territory between those parts of Caldwell, Davie, and Forsyth Counties that are occupied by Piedmont and the unserved Four-County area. The Commission therefore denied Piedmont's alternative claim for authority to serve the Four-County area pursuant to the "contiguous" proviso of G.S. § 62-110(a).

In addition to the Public Staff, the following parties intervened in the consolidated proceeding: Carolina Utility Customers Association, Inc., the Attorney General, Public Service Company of North Carolina, Inc., and Pennsylvania & Southern Gas Company, a Division of NUI Corporation.

A public hearing was held as scheduled in Wilkesboro, North Carolina, on December 1, 1994. Forty-eight persons testified as public witnesses. The matter came on for hearing on January 31, 1995, as previously noticed and scheduled. Seven additional public witnesses testified at this hearing.

During this phase of the hearing, Frontier presented the testimony of the following witnesses: a panel of Robert J. Oxford, Chairman of the Board and President of Frontier and Industrial Gas Services, Inc., and Steven Shute, an officer and shareholder of Frontier and a professional engineer specializing in rural gas utilities through his consulting company, Pipeline Solutions, Inc.; a panel of Richard W. Remley, recently retired Senior Vice President of Greeley Gas Company in Colorado and consultant for Frontier, and E. Scott Heath, President of Heath and Associates, Inc., a management and engineering consulting firm specializing in the natural gas industry; a panel of John P. Schauerman, Vice President of Strategic Planning for ARB, Inc., and James A. Anderson, Senior Vice President of Sutro & Company, Inc.; and Ben Hadden, Director of Transportation Services for Appalachian Gas Sales (AGS), a subsidiary of the Eastern Group, who adopted the pre-filed testimony of Lisa Yoho, also with AGS.

Piedmont presented the testimony of a panel consisting of the following: John H. Maxheim, Chairman of the Board, President and Chief Executive Officer of Piedmont; Ware F. Schiefer, Senior Vice President of Piedmont; and Ray B. Killough, Piedmont's Senior Vice President of Operations.

The Public Staff presented the testimony of a panel consisting of the following: Eugene H. Curtis, Jr., Director of the Natural Gas Division of the Public Staff; James G. Hoard, Supervisor of the Natural Gas Section in the Accounting Division of the Public Staff; and Thomas W. Farmer, Jr., Financial Analyst with the Economic Research Division of the Public Staff. At the conclusion of the Public Staff's initial testimony, the parties agreed and the Commission ordered that the Public Staff would prefile supplemental

testimony setting forth its recommendations on February 21, 1995, and that the hearing would be reconvened for the purpose of receiving the presentation of that testimony on March 7, 1995.

On March 6, 1995, Piedmont filed the supplemental rebuttal testimony of Mr. Maxheim, Mr. Schiefer, and Mr. Killough. The hearing reconvened as scheduled on March 7, 1995, at which time the Public Staff presented its testimony. The Commission sustained Frontier's objection to the majority of Piedmont's supplemental rebuttal testimony as being new additional direct testimony. The testimony deemed to be rebuttal of the Public Staff's recommendation was allowed to be presented. The Commission then recessed the hearing pending further orders.

On March 9, 1995, the Commission issued its Order Inviting Briefs and Proposed Orders. The Commission invited all parties to file proposed orders dealing with how the Commission should proceed with the disposition of the two applications in these dockets. In addition, the Commission invited the parties to file briefs addressing the issue of the Commission's authority to issue a certificate of public convenience and necessity subject to revocation if certain conditions and deadlines are not met.

Following the receipt of proposed orders and briefs, the Commission issued an Order on June 19, 1995, giving Piedmont the option of accepting a certificate subject to several conditions, one of which was that Piedmont would not request or use any expansion funds for the construction of its proposed facilities into the Four-County area. By letter filed July 10, 1995, Piedmont declined to accept the conditional certificate.

By Order dated July 20, 1995, the Commission granted Frontier a certificate with ten conditions and made provision for a second phase of the hearing following the filing by Frontier of testimony relating to these conditions. Piedmont appealed this Order by Notice of Appeal dated August 18, 1995. On September 15, 1995, Frontier filed its Motion for Clarification asking that the Commission clarify the status of the proceeding in light of Piedmont's Notice of Appeal. In this motion, Frontier indicated its intention to move to dismiss Piedmont's attempted appeal on the ground that the Commission's Order dated July 20, 1995, is an unappealable interlocutory order. In addition, Frontier indicated its willingness to proceed with the second phase of the hearing as provided for in the Commission's Order. On September 26, 1995, the Commission issued its Order indicating its intention to proceed as indicated in its Order dated July 20, 1995.

Following the docketing of the settled Record on Appeal with the North Carolina Court of Appeals on December 5, 1995, Frontier filed its motion to dismiss Piedmont's attempted appeal and a brief in support of its motion on December 6, 1995. The Public Staff and the Attorney General filed similar motions on December 8, 1995, and December 12, 1995, respectively. On January 3, 1996, the Court of Appeals issued Orders allowing these motions and dismissing Piedmont's appeal of the Commission's July 20, 1995, Order.

Frontier timely pre-filed its testimony and exhibits for the second phase of the hearing. The only other party pre-filing testimony was the Public Staff. On October 31, 1995, Piedmont filed a Motion to Dismiss Frontier's filing on grounds that the market study filed by Frontier as part of its testimony evaluates "an entirely different proposal" than that originally proposed by Frontier. The Public Staff and Frontier both filed responses. The Commission issued an Order on November 8, 1995, to the effect that

ruling on Piedmont's Motion to Dismiss should be deferred pending the further hearing already scheduled.

A number of towns, economic development groups and individuals filed petitions to intervene. The Commission denied these by Orders dated November 21 and November 30, 1995, on the ground that they were untimely and would result in a delay in the proceedings. The second Commission Order, however, provided for additional public witness testimony at the beginning of the second phase of the hearing, limited to the issue of whether Frontier had met the ten conditions.

The second phase of the hearing came on for hearing as scheduled. Nine public witnesses testified. Frontier presented a panel of Robert J. Oxford, Chairman of the Board and President of Frontier and Industrial Gas Services, Inc.; Steven Shute, an officer and shareholder of Frontier and a professional engineer specializing in rural gas utilities through his consulting company, Pipeline Solutions, Inc.; and John P. Schauerman, Vice President of Strategic Planning for ARB, Inc. Mr. E. Scott Heath, President of Heath and Associates, Inc., a management and engineering consulting firm specializing in the natural gas industry, testified as an independent consultant.

The Public Staff presented the testimony of a panel consisting of the following: Eugene H. Curtis, Jr., Director of the Natural Gas Division of the Public Staff; James G. Hoard, Supervisor of the Natural Gas Section in the Accounting Division of the Public Staff; and Thomas W. Farmer, Jr., Director of the Economic Research Division of the Public Staff.

Based on the foregoing, the testimony and exhibits offered at both phases of the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Frontier and Piedmont both properly applied to this Commission for a certificate of public convenience and necessity to provide natural gas service to Surry, Watauga, Wilkes, and Yadkin Counties (the Four-County area).

2. Frontier is a North Carolina corporation formed to develop a rural natural gas system to provide service to the Four-County area. It proposes to construct 159 miles of transmission mains and an extensive rural distribution system, in excess of 428 miles, using traditional investor financing.

3. Piedmont is a franchised public utility in North Carolina presently providing service in 42 cities and towns in 14 counties in this State. It recently moved its state of incorporation to North Carolina. It proposed to construct approximately 119 miles of transmission mains and, as finally amended, 215 miles of distribution mains primarily in the major towns located in the Four-County area using a combination of traditional financing and customer refunds from its proposed expansion fund.

4. As found in the Commission's previous orders in these dockets, there is a public demand and need for natural gas service in the Four-County area and no natural gas is now available in these unfranchised counties.

5. The key issue in the Commission's decision to award Frontier a conditional certificate was whether use of an expansion fund pursuant to G.S. § 62-158 was appropriate where credible evidence had been presented that adequate service could be provided to the Four-County area without resort to such non-traditional financing. The Commission concluded in its Orders dated June 19, 1995, and July 20, 1995, that it would be inappropriate and inconsistent with the legislative intent expressed in G.S. § 62-158 to allow expansion funds to be used in this case because an alternative that appeared to be feasible is available.

6. It is the policy of the State of North Carolina, as evinced by the enactment of G.S. §§ 62-2(9), 62-36A and its recent amendments, and 62-158, to encourage and facilitate the extension of natural gas service into all counties in the State.

7. To the extent it has been demonstrated that adequate service can be provided to unserved counties using traditional financing, state law and policy require that the feasible option be pursued.

8. The detailed market and economic feasibility studies prepared by Heath and Associates, which is a qualified independent consultant, conclusively demonstrate that it is feasible to provide natural gas service to Surry, Watauga, Wilkes, and Yadkin Counties using traditional financing. In addition, Heath and Associates' analysis of the proposed system design establishes that such service would be adequate and reliable.

9. Frontier is the only applicant willing to provide service to the Four-County area using traditional financing, and it is willing to construct an extensive rural distribution system.

10. Because (a) it is feasible to provide service to the Four-County area using traditional financing and (b) Piedmont has declined to provide service without the use of non-traditional financing, the Commission's failure to grant a final certificate to Frontier for the Four-County area would likely result in no natural gas service being available in these counties in the foreseeable future.

11. The Commission initiated the second phase of this hearing for the following purposes: (a) to allow Frontier the opportunity to finalize the necessary studies and make more definite capacity, financing and other arrangements that could not be made prior to a certificate being granted and (b) to give the Commission the benefit of studies prepared by an independent consultant. The correct standard by which to judge the adequacy of Frontier's filing is whether it provides adequate assurance that Frontier can provide reliable natural gas service to the Four-County area through a reasonably extensive rural distribution system using traditional financing.

12. Frontier has adequately satisfied the ten conditions set forth in the Commission's Order dated July 20, 1995, and should be awarded a final certificate.

13. It is in the public interest for Frontier to post a $4 million bond. This bond is to be used only for the purposes of covering operating expenses if the Commission finds that (a) Frontier has abandoned its utility operations, (b) it is necessary to appoint an emergency operator, and (c) the funds are required to reliably operate Frontier's utility system in the Four-County area. The approval of the security will be at the time Frontier applies for approval of its final financing plans.

14. Frontier should be given nine (9) months from the time this Order becomes final (i.e., by expiration of any period during which this Order may be appealed or by a final decision of any such appeal, whichever is later) in which to file the terms and conditions of its final financing plan, with information about all proposed equity investors, including percent ownership, and specific plans for any debt issuance, to be approved by the Commission pursuant to the relevant statutes, rules, and regulations. In the event Frontier is unable to arrange final financing or fails to file and obtain Commission approval of the terms and conditions thereof, the certificate issued hereby shall expire and become null and void, and the Commission shall issue such further orders as it deems appropriate.

15. Piedmont's application for a certificate is denied. The customer refunds it is holding for possible inclusion in an expansion fund will be dealt with by further orders of the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence supporting this finding of fact is contained in the verified applications and the testimony filed by each of the applicants and the records of the Commission and is generally uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 2 & 3

The evidence supporting these findings of fact is contained in the verified applications, the Commission's records, the applicants' testimony and the testimony of the Public Staff.

Frontier's witnesses testified that Frontier is a North Carolina corporation formed to develop a rural natural gas system to provide service to the Four-County area. It proposes to construct 159 miles of transmission mains and an extensive rural distribution system using traditional investor financing. There was substantial cross-examination on whether Frontier intends to initially construct 428 miles of distribution mains, as projected by Heath's independent study, or a greater number of miles based on Frontier's analysis of additional areas. However, it is uncontroverted that even if only the smaller number of miles from the Heath study were constructed, the majority of the miles of distribution mains would be in rural or other non-urban areas.

Piedmont's project, on the other hand, as proposed in this proceeding and detailed in its filing in Docket No. G-9, Sub 362, includes approximately 119 miles of transmission mains and only 215 miles of distribution mains, primarily in the major towns located in the Four-County area. Of the two applications, Frontier proposes a much more extensive rural distribution system.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact can be found in the testimony of the public witnesses at the hearing in Wilkesboro on December 1, 1994, and in the testimony offered by Frontier, Piedmont and the Public Staff.

The Commission reiterates that there appears to be no question about the need for natural gas service in the four counties that are the subject of the certificate applications. All four counties currently are unfranchised. Over 150 people attended the public hearing in Wilkesboro, including representatives

from Watauga County. This level of attendance amply demonstrates the Four-County area's interest in and need for natural gas service. Forty-seven witnesses from the Four-County area testified in support of natural gas being extended into their counties. An additional witness from King in Stokes County, which is not included in the certificate applications, testified with respect to King's desire and need for natural gas. Additional public witnesses testified at the hearings in Raleigh. The Commission concludes that there is a public demand and need for natural gas service in the Four-County area and that there has been for many years. Both applicants presented evidence of the historical efforts to bring natural gas service to this area.

Piedmont received a natural gas franchise for Yadkin County and the Elkin Township in Surry County in Docket No. G-9, Sub 16, on January 14, 1958. Piedmont had not yet served this area by 1968, when the North Carolina Department of Conservation and Development received a request from Abitibi Corporation seeking natural gas for a plant near Wilkesboro. Public Service Company of North Carolina, Inc. (PSNC), entered into preliminary negotiations to serve Abitibi. PSNC reported that service to Wilkesboro would not be feasible without including service to Elkin Township in Surry County, which was included in Piedmont's franchise. Piedmont thereafter notified PSNC that it would not release the Elkin territory and PSNC notified Abitibi and the Department of Conservation and Development that it could not serve the Wilkesboro area as a result of Piedmont's position.

Area residents meanwhile had organized Blue Ridge Gas Company (Blue Ridge), a non-profit corporation, and had secured franchises from the principal towns in the three counties of Surry, Wilkes and Yadkin. Blue Ridge subsequently applied for a certificate of public convenience and necessity in Docket No. G-30. Its application was consolidated with an application filed by Piedmont at approximately the same time (November 1968) in Docket No. G-9, Sub 72, to serve the same three counties. Three months later, Piedmont filed a motion to withdraw its application.

By Order dated May 30, 1969, the Commission found that there was a public demand and need for natural gas, but denied Blue Ridge's application without prejudice to refile. In that Order the Commission concluded:

> The testimony of the witnesses from the Surry, Wilkes, and Yadkin County area and the witness from the North Carolina Department of Conservation and Development, and the applicant's engineering testimony of a survey of the estimated gas usage in the area, as well as the testimony of the intervenor Abitibi Corporation, all present the strong evidence of the public demand and the need for gas in the area. This public need justifies every effort possible by the Commission and all persons having an interest in securing a gas supply for the area to implement and expedite means by which gas service can be furnished to the area at reasonable rates on a sound economic basis.

In the related Piedmont proceeding, Docket No. G-9, Sub 72, the Commission allowed Piedmont to withdraw its application and to refuse to serve these three counties, but the Commission repeated its conclusion with regard to the need for natural gas in these three counties. The Commission also revoked Piedmont's earlier franchise to provide natural gas service to Yadkin County and Elkin Township in Surry County for failure to provide service in those areas.

In the years since then, this area has not had access to natural gas, and no one applied to the Commission to serve this area until Frontier filed its application on September 23, 1994. Witness Oxford, during the first phase of the hearing, testified that Frontier's parent company was formed to find, evaluate and develop areas in the United States that do not have natural gas. He recounted his efforts to study the area, meet with local government and business leaders, and to compile demographic and industrial information to assess this market for potential natural gas usage. Mr. Oxford noted that after this initial assessment, Frontier was founded as a rural natural gas company to serve the rural towns, communities, and citizens of the Four-County area.

The Commission once again concludes that there is a public demand and need for natural gas service in the Four-County area and no natural gas is now available in these unfranchised counties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-7

During the first phase of this hearing, the Public Staff testified that its recommendation that Frontier be granted a certificate was based in large part on its belief that the purpose and intent of the General Assembly when it enacted G.S. § 62-158 was to make natural gas available in the numerous unserved areas in the State that are economically infeasible to serve. The Public Staff further testified that allowing the construction of a project using expansion fund financing when a feasible alternative was available would not be consistent with this legislative intent. If Frontier can serve the area using traditional financing, the Public Staff noted, the supplier refunds currently being held by Piedmont for possible inclusion in an expansion fund could be used to extend service into other unserved areas. Finally, the Public Staff testified that it feared that not allowing Frontier the opportunity to pursue its project could severely discourage companies other than the currently franchised North Carolina local distribution companies (LDCs) from pursuing gas expansion projects within North Carolina in the future.

The enactment of G.S. § 62-158 was the culmination of years of work through the General Assembly to expand natural gas service into the unserved areas in the LDCs' franchised territories. The General Assembly held several meetings in the late 1980s to explore the status of natural gas service in the State and the reason for unserved areas within the LDCs' franchised territories. As a result of this effort, G.S. § 62-36A was enacted in June of 1989. This statute requires the LDCs to submit reports every two years detailing their plans for providing natural gas service to areas of their territories in which such service is not available. The Commission and the Public Staff are required to analyze and summarize these reports independently and provide their analyses to the General Assembly. The first set of reports were filed in 1990.

Following the receipt of these analyses, which concluded that it appeared to be infeasible to extend natural gas service into the unserved areas within the LDCs' franchised territories, the General Assembly began focusing on special financing methods to facilitate the extension of natural gas service. The General Assembly enacted G.S. § 62-158 on July 8, 1991. The preamble to this legislation specifically states that the reports of the utilities, the Commission, and the Public Staff indicated that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding. In addition, G.S. § 62-2(9) was enacted to establish that it is the public policy of the State to facilitate the construction of facilities and the extension of natural gas service to promote the public welfare throughout the State.

The express terms of G.S. § 62-158 provide for establishment of a special natural gas expansion fund for an LDC to use to construct natural gas facilities in areas within the LDC's franchised territory that otherwise would not be feasible for the LDC to construct. The constitutionality of G.S. § 62-158 was upheld by the North Carolina Supreme Court in *State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc.*, 336 N.C. 657, 446 S.E.2d 332 (1994). Given this legislative intent, the Commission found in its June 19, 1995 Order that it would be inappropriate to grant a certificate premised on the use of expansion fund financing where another applicant for a certificate to serve the same area has offered credible evidence that adequate service can be provided without such non-traditional financing. Consistent with this finding, the Commission held both applications in abeyance and gave Piedmont the option to accept a certificate subject to a number of conditions, including the condition that Piedmont not request or use an expansion fund for the facilities it proposed in Docket No. G-9, Sub 362. Following Piedmont's rejection of the offered certificate, the Commission reconsidered the evidence, granted Frontier a conditional certificate, and scheduled the second phase of the hearing.

The General Assembly passed amendments to G.S. § 62-36A during the summer of 1995 to further its public policy of facilitating the construction of facilities and the extension of natural gas service to promote the public welfare throughout the State. Chapter 216 of the 1995 Session Laws, which was ratified June 12, 1995, amended G.S. § 62-36A by adding a new subsection (b1). This subsection requires the Commission to issue certificates for natural gas service for all areas of the State for which certificates have not been issued. The Commission is in the process of implementing this requirement through proceedings in Docket No. G-100, Sub 69.

Chapter 271 of the 1995 Session Laws, which was ratified June 15, 1995, amended G.S. § 62-36A(b) by adding language that requires the Commission to adopt rules providing that any LDC not providing adequate service to at least some portion of each county within its franchise territory by July 1, 1998, or within three years of the time a franchise is awarded, shall forfeit its exclusive franchise rights to that portion of its territory not being served. The Commission is in the process of implementing this requirement through rulemaking proceedings in Docket No. G-100, Sub 70.

The Commission also takes note of the Public Staff's testimony with regard to the limited availability of expansion funds and its recounting of the variety of measures that it has taken, as well as the LDCs and other persons interested in the expansion of natural gas service into currently unserved counties. This "broadening of the toolbox" for addressing gas expansion issues by evaluating such ideas as deferred accounting and incremental rates, alone or in combination with expansion funds, is in the public interest. The Frontier proposal presents the State with yet another alternative for expanding gas service: a new North Carolina LDC expanding the availability of natural gas in North Carolina using traditional financing.

The Commission reiterates its finding and conclusion that it is in the public interest and in accordance with the public policy goals of this State to pursue gas expansion through traditional financing means if such an alternative is reasonably available.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence in support of this finding is contained in the testimony and exhibits of Mr. E. Scott Heath of Heath and Associates, Inc., Frontier witnesses Oxford and Shute and the Public Staff panel.

Mr. Heath, who is the president of Heath and Associates, Inc. and a registered professional engineer, testified that Heath and Associates, Inc. (Heath and Associates), had been hired to conduct and present an independent (1) detailed market study and (2) economic feasibility study and also to review and provide an opinion as to the adequacy and reliability of constructing transmission mains into the Four-County area and an extensive system of distribution mains within that area.

Mr. Heath testified that he is a registered professional engineer in the State of North Carolina and also has professional registration status in eight other states in the Southeast. He further testified that Heath and Associates has a 36-year history of designing natural gas facilities and overseeing their construction, and now serves 25 to 35 clients. Mr. Heath indicated that since he has been at Heath and Associates, it has designed over 500 miles of natural gas distribution and transmission pipelines. He testified that he had had a significant role in this design activity and either had been the sole engineer or assisted in a review of design capacity of this work. In addition, he testified that Heath and Associates conducts studies including expansion, feasibility analysis, and analysis for new venture companies for system start-up. Other studies and work include the full range of natural gas services, including assistance in obtaining pipeline capacity contracts and warranted supplies of natural gas, load forecasting and peaking studies, planning for future peaking facilities, distribution flow analyses and operations optimization studies, and the writing of operation and maintenance manuals and construction manuals and emergency plans.

Mr. Heath testified that in order to identify, compare, and prioritize the market potential of the residential and commercial customers, the populated areas within the four counties were divided into 53 study areas. These project areas had between 2 and 35 miles of potential main per area. The boundaries of these areas were selected to group similar types of residential areas, commercial areas, and areas with similar pipeline construction conditions together. The project areas represent over 170 square miles and over 600 miles of roads. Heath then reviewed available area maps, topographic maps, city and county maps, state road maps, and county 911 maps within the Four-County area. These available maps were utilized along with "windshield surveys" of the targeted service areas. Virtually every section of road in the targeted areas (97%) was surveyed by car with notes taken as to the quantity and type of potential customers in each section.

Thirty industries were identified as having significant fuel requirements and were classified as industrial customers. Another 29 larger volume customers were identified and classified as industrial customers or larger commercial customers. All of these customers were provided a Fuel Use Questionnaire to complete and return detailing their energy consumption and needs. The majority of large industrial customers completed the questionnaire in detail. Heath and Associates reviewed these questionnaires and confirmed Frontier's calculations of equivalent annual dekatherms.

While conducting a survey of residential and commercial loads, poultry farms also were identified and detailed on data sheets. Several of the marketing study areas were targeted to identify the miles of main needed to connect the highest concentration of poultry load. Selected miles of main were identified within the study areas and beyond the boundaries of the study areas into more rural areas to identify economically attractive routes and poultry loads. In addition, Tyson Foods, which is associated with the majority of poultry farms in the area, provided a detailed study of their "growout farms" in Wilkes County. The study identifies the locations of the farms and tabulates the equivalent dekatherm load at each farm in Wilkes County. This information was also considered in the market study.

In addition to the market study described above, Mr. Heath testified that Heath and Associates performed a detailed economic feasibility study using (1) the information produced by its market study, (2) construction and other costs developed after a review of Frontier's design and layout of the transmission and distribution pipelines needed to serve the Four-County area, (3) the costs of gas supply and capacity produced by a review of the proposals from gas suppliers solicited by Frontier to deliver gas supply and from personal contacts with producers and marketing companies to ascertain the current market value of firm and recallable transportation capacity on Transco, and (4) the proposed retail gas rates Frontier would offer to its customers. Mr. Heath testified that Heath and Associates then analyzed all this information and other details set forth in its report (Frontier Exhibit 1) in a financial model to evaluate the project economics.

Mr. Heath further testified that construction cost estimates, start-up costs, and forecasted operations and maintenance expenses were developed independently for incorporation into the economic feasibility study. Cost estimates for the high pressure steel pipelines were prepared separately from the cost estimates for the distribution pressure polyethylene pipelines. Material quotes for pipe and miscellaneous pipeline appurtenances were received from a number of vendors and incorporated into the cost estimates.

Mr. Heath then testified that the market survey portions of the report demonstrated that the Four-County area has sufficient industrial, commercial, and residential loads to support an independent gas utility. Industrial loads of approximately 3,000,000 dekatherms per year were identified as potential sales for Frontier. This industrial energy need is currently met with propane (26%), No. 2 oil (38%), and No. 5 and No. 6 oil (36%). The five largest industrial customers represent 53% of this total. He further testified that the conversion of the industrial loads should be close to 100% over time. Initially, Frontier can expect to convert approximate 95% of the available propane load, 90% of the No. 2 oil load, and 60% of the No. 5 and No. 6 oil load. Additional industrial loads currently serviced by coal and wood chips represent additional potential industrial sales that are not assumed to be converted in Heath and Associates' model.

With regard to other markets, Mr. Heath testified that economically attractive residential and commercial customer loads were also present in the Four-County area. He believed the approximately 428 miles of distribution main produced by his market study would make gas available to 16,000 residential and 1,500 commercial customers. He further testified that additional residential and commercial markets exist in more rural areas and may become economically attractive opportunities for Frontier. Fifty percent of these potential customers can be expected to convert to natural gas within ten years.

Mr. Heath also testified that Heath and Associates had ascertained that there are also approximately 500 poultry farms that represent potential gas loads within the Four-County area, with approximately 225 to 325 of these farms being economical to connect. He testified that he believes the conversion percentage of these farms should be close to 100%, with the average poultry farm consuming the equivalent of 9.4 residential customers.

Based on the results of Heath and Associates' economic feasibility study, Mr. Heath testified that a natural gas utility could construct and operate an economically feasible, positive net present value project within the Four-County area. He further testified that because of the location of these counties with respect to an interstate natural gas pipeline, a large capital investment to initiate gas service was required.

This capital investment mandates an initially large debt service to revenue ratio and relatively low net incomes while the utility is in the developmental phases of operation. Once the proposed utility matures, however, he believed it would be capable of maintaining a debt service to revenue ratio and net incomes similar to other gas utilities in North Carolina. He further testified that sufficient means are available to Frontier to secure interstate pipeline capacity and firm gas supplies at competitive prices.

Mr. Heath also testified that Frontier's proposed retail gas rates must be set higher than established gas utilities within North Carolina to generate the revenues needed to make the project feasible. These rates should not, however, inhibit Frontier's ability to connect customers and maintain sales to industrial customers. He further testified that approximately $47 million in capital investment over ten years would be needed to construct the transmission and distribution systems produced by his market study. This system is forecasted to have 8,553 customers in year 10 and have sales of 4 million dekatherms per year. He testified in summary that although Frontier might pursue a more aggressive construction, marketing and connection schedule than that assumed by Heath and Associates' analysis, he believed that the project described in Frontier Exhibit 1 is economically feasible.

Heath and Associates reviewed Frontier's design and layout of the transmission and distribution pipelines needed to serve the Four-County area. Flow analyses were performed on each study area where significant loads were anticipated. A more detailed model of the transmission system was constructed to analyze the capacity for various size pipelines. The initial design provides capacity in excess of 30,000 dekatherms per day. According to Heath's study, this capacity should be adequate for a peak day load up to 20 years into the future. Heath and Associates projects a peak day load in 20 years to be about 22,000 dekatherms per day. With compression at Brooks Crossroads, the pipeline system would be capable of handling over 47,000 dekatherms per day. Mr. Heath further testified that Frontier's pipeline design meets and exceeds North Carolina and Federal Minimum Safety Standards and applicable design criteria. The system will be designed to accommodate compression facilities at Brooks Crossroads and Wilkesboro in the event that large unanticipated initial loads are connected to the system. It is the opinion of Heath and Associates that Frontier's proposed design provides adequate capacity to serve the Four-County area in a safe, reliable, and dependable manner.

With regard to Heath and Associates' study and the feasibility of providing natural gas service to the Four-County area, Frontier offered the testimony of Robert J. Oxford, Chairman of the Board and President of Frontier and Chairman of the Board and President of Industrial Gas Services, Inc.; Steven Shute, an officer and shareholder of Frontier and a registered professional engineer specializing in rural gas utilities through his consulting company known as Pipeline Solutions, Inc.; and John P. Schauerman, Senior Vice President for ARB, Inc. They testified that while Frontier believes that the distribution system can be built more quickly, especially along the rural roads, and that the ultimate distribution system will be larger, it accepted the Heath and Associates study. They further testified that this report demonstrates that the potential customers and loads identified by Frontier in the Four-County area can be converted to natural gas at the full range of rates and rate designs that Frontier proposes for approval. In addition, Frontier offered evidence that the system design would provide adequate and reliable service.

The Public Staff witnesses testified that Heath and Associates is a qualified independent consultant and that they believe its market study is an objective assessment of the potential natural gas loads and probable conversions of current potential customers in the Four-County area. They further testified that,

based on their review of the market study, construction cost estimates, and financing plans for the project, they agreed with Mr. Heath's conclusion regarding the economic feasibility of the project. The Public Staff fine-tuned some of the financial modeling and filed the financial forecast it developed for the project as Public Staff Exhibit 1.

In response to a question on cross-examination, Public Staff witness Hoard testified that he had calculated the net present value of the project to be very positive. When asked what the net present value was, he stated that he had performed calculations on the basis of several different capital structures. With a 12% equity return and 55% debt and a 45% equity capital structure, the project has a positive net present value of $9.1 million. With a capital structure consisting of 65% debt and 35% equity, the positive net present value is $13.1 million. He further clarified, in response to questions, that these calculations were done using Heath and Associates' numbers, with the exception of approximately $2 million that was added for additional services.

The Public Staff also testified that the report prepared by Heath and Associates documents that natural gas can be delivered to all of the communities Frontier included in its initial proposal on a feasible basis. In addition, the Public Staff testified that it is feasible to add the additional customers that Frontier plans to add, noting that Frontier could go one-half mile to pick up a poultry customer on a feasible basis. In response to questions, the Public Staff testified several times that it is very clear that additional residential and commercial customers could be added on a feasible basis. The Public Staff further testified that it had reviewed the system design and verified the flow calculations provided by Frontier. The Public Staff concluded that the design proposed by Frontier was adequate.

The Commission concludes that Heath and Associates is an independent qualified consultant. On cross-examination, Mr. Heath's testified that he became involved in this matter initially because investors wanted an independent study. His original contract was to provide an independent report for financing to verify to potential investors that Frontier's proposal was feasible. The Commission notes that the Commission itself initially brought up the idea of using an independent consultant. No objection was made to Heath and Associates serving in that capacity at that time. Mr. Heath and Heath and Associates are extremely well-qualified, experienced and meet the Commission's expectations.

The Commission further concludes that the detailed market and economic feasibility studies prepared by Heath and Associates conclusively demonstrate that it is feasible to provide reliable natural gas service to the Four-County area using traditional financing. Piedmont's argument, made through its Motion to Dismiss, that the report prepared by Heath and Associates does not satisfy the Commission's conditions numbers one and seven is discussed in greater detail hereafter in the Evidence and Conclusion for Finding of Fact Number 12. Suffice it to say here that because Heath and Associates designed a project using farm taps instead of 115 miles of dual, or parallel, distribution mains, the miles of distribution mains in Frontier's project as initially estimated would only be about 600, not 718, miles for purposes of comparing it to the Heath report. In addition, Frontier testified in substantial detail about areas outside of Heath and Associates' study areas that could feasibly be served, and further, that it intends to serve those areas and all other areas that are feasible to serve.

The important point for purposes of this proceeding is that Heath and Associates' studies prove that a 428-mile predominantly rural distribution system, which covers twice as many miles as Piedmont's proposal (as updated and filed in Docket No. G-9, Sub 362), is feasible using traditional financing. It will

make natural gas service available to more citizens and businesses with the attendant opportunities for economic development. The fact that Frontier plans to serve areas in addition to those identified in the Heath report is in Frontier's favor. It does not detract from the feasibility of the 428-mile project identified by Heath and Associates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 & 10

The evidence for these findings of fact is contained in the testimony of Frontier's witnesses during both phases of the hearing and in the testimony of Piedmont's witnesses during the first phase. Piedmont's unwillingness to provide service without use of an expansion fund was reiterated and conclusively established by its declining the option extended by the Commission in its Order dated June 19, 1995, to accept a certificate conditioned on extending service into the Four-County area without use of an expansion fund.

Frontier's initial proposal included 144 miles of transmission mains and 718 miles of distribution mains to be located predominantly in rural areas. This compares to Piedmont's proposal of 118.5 miles of transmission mains and 150 miles of distribution mains, which was later increased to 215 miles, predominantly in more urban areas. Heath and Associates' market study produced a 159-mile transmission system and a 428-mile distribution system, which would have to be increased by 115 miles of distribution mains to place it on a comparable basis with Frontier's initial estimate of 718 miles. (Frontier's initial proposal had 115 miles of distribution main running parallel to a transmission main; Heath proposed eliminating the parallel distribution main and serving customers by farm taps off the transmission main.) The Commission concludes that the distribution system included in Heath and Associates' report, standing alone, is an extensive rural distribution system that is far superior to Piedmont's proposal. Frontier intends to make it even more extensive by adding approximately 145 miles of distribution mains in addition to the 428 miles cited by Heath.

The public witnesses spoke in support of natural gas service being made available in their counties. Many testified in support of Piedmont, citing its lower rates. However, Frontier can provide natural gas service in the Four-County area at economically attractive rates. Although its proposed rates exceed the existing LDCs' tariff rates, the wide variances among the existing LDCs' rates, as illustrated by Public Staff Late-Filed Exhibit No. 1, demonstrate that such variances do not inhibit economic development so long as the rates produce bills that are less expensive than alternative fuels.

Furthermore, as discussed in some detail in the Evidence and Conclusions for Findings of Fact Nos. 5 through 7, it would be inappropriate and inconsistent with the legislative intent expressed in G.S. § 62-158 to allow expansion funds to be used in this case because a feasible alternative is available. To the extent it has been demonstrated that adequate service can be provided to unfranchised counties using traditional financing, state law and policy require that the feasible option be pursued.

Because there is a feasible option using traditional financing and because Piedmont has declined to provide service without the use of expansion fund financing, the Commission's failure to grant a final certificate to Frontier for the Four-County area would likely result in no natural gas service being available in these counties in the foreseeable future. The adequacy of Frontier's testimony to meet the ten conditions

of the Commission's July 20, 1995 Order must be considered in this context so that the citizens and businesses of this area are not denied natural gas service once again.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

This finding of fact is based primarily on previous findings and conclusions, most particularly the Commission's discussion of its Evidence and Conclusions for Findings of Fact Nos. 12 and 13 in the Order dated July 20, 1995.

The Public Staff testified during the first phase of this hearing that Frontier had made a *prima facie* case that it can successfully provide natural gas service to the Four-County area and should be given the opportunity to show that it can finalize the necessary studies and make the definite capacity, financing, and other arrangements that could not be finalized prior to a certificate being granted. The Commission found that Frontier had provided considerable information in support of its application, but noted that substantial additional amounts would have to be spent to firm up and finalize its plans. The Commission agreed with the Public Staff's recommendation that Frontier be given the assurance of a conditional certificate before it spent that additional money.

Because Frontier made a *prima facie* case that its proposed project is feasible and does not require the use of expansion funds or other non-traditional financing, the Commission found and concluded that the public convenience and necessity require that Frontier be given the opportunity to show that it can finalize the necessary studies and arrangements that could not reasonably have been finalized prior to the granting of at least a conditional certificate. In support of its decision to give Frontier this opportunity, the Commission, in its Order dated July 20, 1995, stated the following:

> To do otherwise could discourage any new company from coming to North Carolina to provide utility service to citizens of our State who are now without service. Witnesses Oxford and Shute and the other witnesses testifying on behalf of Frontier are credible and experienced in the natural gas industry. Moreover, the stated corporate purpose and philosophy of Frontier, to provide natural gas to rural areas, matches the needs of a primarily rural region like the Four-County area. If Frontier can finalize its plans to serve the Four-County area, the supplier refunds held in escrow by Piedmont can be used to expand service to other unserved areas of our State or returned to customers.

While not addressed specifically in that Order, the language of conditions one, three and seven make clear that another purpose of the second phase of the hearing was to give the Commission the benefit of studies prepared by an independent consultant. The idea to use an independent consultant arose out of questions from the Commission during the first phase of this hearing. On cross-examination during the first phase of this hearing, Public Staff witness Hoard testified that the idea of an independent consultant had merit because that process could provide the Commission with some additional assurance on the system design and the feasibility of the project.

The Commission's Order granting Frontier a conditional certificate left the hearing open for the receipt of testimony and other evidence as to whether Frontier has met the conditions set forth in the Commission's Order. The Commission specifically stated that the second phase of the hearing would be

limited to determining the adequacy of Frontier's information and that Frontier's filing would not be found to be inadequate merely by a showing that alternative or different approaches, methods, arrangements, or plans are available to Frontier, Piedmont, or any other person. This express limitation on the scope of the second phase of the hearing in this proceeding was for the purpose of keeping extraneous, irrelevant information from being offered as evidence.

A stringent, overly technical interpretation of the conditions for the purpose of finding fault was never intended. Rather, a reasoned evaluation of why the Commission ordered the conditions and whether Frontier's filing is sufficient to give the Commission the information it needs is appropriate. Frontier has filed a great deal more information than any new utility seeking a certificate has ever been required to provide. Elevating form over substance in evaluating Frontier's compliance with the ten conditions would be contrary to the intent expressed in the Commission's previous orders, and would not be in the public interest. The correct standard by which to judge the adequacy of Frontier's filing is whether it provides adequate assurance that Frontier can provide adequate and reliable natural gas service through a reasonably extensive rural distribution system using traditional financing.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is contained in the testimony and exhibits of the Frontier panel, Mr. Heath, and the Public Staff panel. The Commission's Order granting Frontier a conditional certificate required Frontier to complete and file certain identified studies, plans, letters and other filings in substantial compliance with the proposal Frontier presented in its testimony. Each of these requirements, or conditions, will be discussed separately below.

CONDITION ONE

Condition number one requires Frontier to complete and file with the Commission a detailed market study by a qualified independent consultant evaluating the potential customers and loads in the Four-County area and the likelihood that these potential customers and loads could be converted to natural gas at the full range of rates and rate designs that Frontier proposes for approval.

The Frontier panel testified that it had engaged Heath and Associates to perform the independent market study of the Four-County area, and that it had accepted and filed Heath and Associates' report as meeting the requirements of the Commission Order. The Frontier panel testified further, however, that Frontier believed that the distribution system could be built more quickly and more extensively than assumed in the Heath report. The panel further indicated that it believed the Heath report shows slower growth because there are neighborhoods outside of Heath's 53 study areas that have suitable densities for economically feasible gas service. This would include, for example, Millers Creek outside Heath and Associates' study area WC-1 and the Fair Plains area outside of WC-2. The Frontier panel further testified that it had driven the roads in these areas and further examined them using data from rural water systems and poultry growers. By this process, about 5,000 additional potential customers not included in the Heath study have been identified.

On cross-examination, Mr. Heath made clear that the report prepared by Heath and Associates was not Frontier's proposal, but rather was Heath and Associates' analysis and opinion as to how the utility and

distribution system would likely evolve. He further testified that based on the previous hearing and the Commission's Order, his understanding of Heath and Associates' charge was to conduct an independent study of the general geographic areas that Frontier proposed to serve at the same rates Frontier proposed to charge. While agreeing that the area Heath and Associates includes is not 100% of what Frontier initially included, he testified that it includes the vast majority of it and that the market study is in substantial compliance.

Due in large part to Piedmont's Motion to Dismiss, much of the December 1995 hearing focused on how the Heath and Associates report compared to Frontier's initial proposal. As discussed previously herein, for comparison purposes the 115 miles of dual, or parallel, distribution main that Heath and Associates replaced with farm taps must be subtracted from Frontier's initial 718 mile proposal. Frontier had proposed to lay 115 miles of distribution main in the same trench as the transmission main. Heath and Associates eliminated the parallel distribution main and used farm taps to serve customers off the transmission main. While this eliminated 115 miles of distribution main, it did not eliminate any miles of actual natural gas availability.

On cross-examination, Frontier witness Shute further explained that Frontier's original market study was done using statistical data. Using 1990 census data, Frontier estimated the number of households it would reach and then calculated conversions from that data. He further testified that the Heath study, a year later, was done on the basis of actually driving down each road within each study area counting houses, which obviously produces a much more accurate picture. In addition, the census data contained some statistical oddities, such as recognizing apartments and students living in dormitory rooms as individual households. Mr. Shute testified that 4,500 of the non-existent homes produced by the census data were students in dormitory rooms in Watauga County. Frontier further testified that the areas outside of Heath and Associates' study areas that Frontier analyzed, such as Millers Creek and Fair Plains, equate to about 143 miles of distribution mains. They further testified that Frontier intends to construct these miles of distribution mains and serve these customers.

Piedmont cross-examined Frontier witness Schauerman at length about the differences between Frontier's initial estimate of 718 miles of distribution mains and Heath's study, and about the additional cost of putting the system back together with the same number of miles of main as initially estimated by Frontier. Mr. Schauerman did not agree with all of Piedmont's calculations, and Frontier's evidence with regard to the actual costs to build the additional miles and to serve the additional customers is substantial and convincing. In addition, while not addressed at the hearing, the costs of both the farm taps and the parallel lines cannot be included in the calculation, as Piedmont attempted to do. Frontier's witnesses testified in some detail about the costs of the additional miles of distribution mains and services it had identified in addition to the Heath report. The feasibility of Frontier constructing these approximately 143 miles of additional main will be discussed in detail in a subsequent section of this Order.

The Public Staff testified that it believed Heath and Associates had conducted an objective evaluation of potential customers, including conversion rates and expected annual and peak day usage, using the rates proposed by Frontier. The Public Staff further testified that because the Commission's Order required an independent market study, there are some differences between Frontier's initial proposal and Heath and Associates' market study. Heath and Associates performed a market study of the rural distribution system it considered likely to result from a moderately aggressive marketing effort within its

targeted areas. While this study is more conservative, the Public Staff pointed out that it covers the same geographic and market areas and ultimately approximates Frontier's initial proposal. For example, by year 10, Heath shows approximately 4 million total dekatherms being sold each year, which compares very favorably to Frontier's initial proposal of 4.5 million total dekatherms. In addition, Frontier's testimony indicates that, based on its visual examination and its examination of data from rural water systems and poultry growers, it is economically feasible to serve an additional 5,000 potential customers outside the areas targeted by Heath and Associates and that it intends to serve those customers. The Public Staff concluded that the independent report filed by Heath and Associates was in substantial compliance with the Commission's condition number one and that Frontier should be found to have satisfied this condition.

Based on all of the evidence, the Commission concludes that Frontier has adequately satisfied condition number one. The Commission has previously concluded that Heath and Associates is an independent qualified consultant. We now conclude that Frontier's filing of the Heath and Associates report satisfies the requirement in condition number one that Frontier file an independent market study in substantial compliance with Frontier's application to serve the Four-County area.

The Commission's intention with respect to the study it expected in response to this condition was for an independent consultant to analyze the Four-County area and provide a fair and unbiased assessment of the potential customers and loads in that area at the rates that Frontier proposed to offer. The intent of the Commission was not to have a market study that merely "rubber stamped" Frontier's customer counts and conversions. The Commission's Order did not require the consultant to use Frontier's estimated number of miles of distribution mains, nor limit itself to Frontier's estimate of its construction costs, cost of gas, or any other assumptions. The Commission only required substantial compliance. The area studied by Heath and Associates is virtually the same area as that encompassed in Frontier's application. The extensive distribution system produced by Heath and Associates' market study is predominantly a rural one covering basically the same communities (and Pilot Mountain in addition). While Heath and Associates conducted its study in a different manner than Frontier and while its conclusions regarding the number of potential customers are different, such an independent study was exactly what the Commission was interested in obtaining.

The Commission therefore concludes that the market study performed by Heath and Associates provides a fair and unbiased assessment of the potential customers and loads resulting from an extensive rural distribution system in the Four-County area at the rates that Frontier proposed to offer and, further, that this study is in substantial compliance with the Commission's previous Order. Given the constraints imposed by the necessity of filing an independent market study, coupled with Frontier's testimony that it intends to build the distribution system more quickly and more extensively than assumed in the Heath study, the evidence conclusively establishes that Frontier has met condition number one.

CONDITION TWO

Condition number two requires a detailed design of the gas transmission and distribution mains that would be eventually constructed, showing pipeline route, pipe sizes and length of all pipe sizes, pipeline flows at all critical points including junctions and city gates, and cathodic protection requirements. In response, Frontier provided Exhibit 2, a system schematic showing the pipe sizes and distances between

receipt points and delivery points and the pressures at each of these points and the volumes that are being delivered, and Exhibit 3, a more detailed discussion of the project design including cathodic protection.

Heath and Associates reviewed Frontier's design and layout of the transmission and distribution pipelines needed to serve the Four-County area. Flow analyses were performed on each study area where significant loads were anticipated. A more detailed model of the transmission system was constructed to analyze the capacity for various size pipelines. A capacity of 30,650 mcf/day was used as a design point to represent a peak day load 20-plus years in the future.

The Public Staff testified that Frontier's Exhibits 2 and 3 satisfied this condition. In addition, Frontier's design and layout were reviewed by Heath and Associates before it performed its economic feasibility study. As indicated in the letter provided in response to condition number three, Mr. Heath concluded that the proposed design would provide adequate capacity to reliably serve the Four-County area. The Public Staff further testified that it verified Frontier's flow calculations by using the software GasWorks by Bradley B. Bean to analyze the system design.

The Commission concludes that Frontier has adequately satisfied condition number two. The system design provided by Frontier is substantially the same system design that it proposed initially. In addition, the system design is consistent with the market study of the independent consultant, taking into consideration both better than expected conversions and growth over a reasonable period of time. While Frontier did not file a precise design and layout of distribution mains, Heath and Associates' review of the expected design is sufficient for purposes of this proceeding. The exact layout and number of miles of distribution system will depend upon where there is a market, based on conversions or growth.

CONDITION THREE

Condition number three requires an opinion letter from a qualified independent engineer concerning the adequacy and reliability of the system design. Frontier hired Heath to provide this opinion letter. It was filed as Frontier's Exhibit 4.

The opinion letter states that Frontier's pipeline design meets and exceeds North Carolina and Federal Minimum Safety Standards and applicable design criteria and will be adequate to reliably serve the Four-County area. Mr. Heath testified to this effect. According to Heath's study, the system's capacity should be adequate for a peak day load up to 20 years into the future. The system will be designed to accommodate compression facilities at Brooks Crossroads and at Wilkesboro in the event that large unanticipated initial loads are connected to the system. The Public Staff testified that the letter provided by Mr. Heath, a registered professional engineer with substantial experience in system design, adequately satisfied condition number three.

The Commission concludes that Mr. Heath is a qualified independent engineer and that his letter and his conclusion that Frontier's proposed design provides adequate capacity to serve the Four-County area in a reliable manner satisfies condition number three.

CONDITION FOUR

Condition number four requires guaranteed pipe, materials, and construction contracts with reputable and qualified contractors and suppliers for the construction of the transmission and distribution mains. Frontier testified that this condition was satisfied by the commitment letter from ARB, Inc., a very large construction contractor in the United States and a stockholder in Frontier, along with a contract which they are prepared to execute. The letter and illustrative contract were attached as Exhibit 5. Frontier further testified that ARB guarantees unit prices for both the transmission and distribution systems in the letter, and these prices are good for one year. In addition, Frontier testified it also obtained quotes for pipe, valves, fittings and other materials, which was filed as Exhibit 6. It also filed Transco's quote of costs to construct the connection for Frontier, as Exhibit 7.

With respect to whether Frontier planned to execute the contract with ARB, Frontier witness Oxford testified that because ARB had been asked to guarantee prices for twelve months in the future without final design maps, ARB's quoted and guaranteed unit prices may be higher than prices Frontier might be able to obtain from local contractors. For that reason, Frontier plans to present bid documents to a number of contractors, including ARB, and obtain competitive bidding after receiving a final certificate. He further testified that although Frontier may ultimately execute a contract with ARB, it was not prudent to sign this contract at this time. The guarantee provided by ARB does, however, give Frontier a great deal of security because it established a ceiling for its unit costs.

ARB's prices were verified to a large extent by Mr. Heath's independent construction cost estimates. He testified that cost estimates for the high pressure steel pipelines were prepared separately from the cost estimates for the distribution pressure polyethylene pipelines. Material quotes for pipe and miscellaneous pipeline appurtenances were received from a number of vendors and incorporated into the cost estimates. He further testified that while he went over ARB's construction costs in great detail, his estimates were independently arrived at and were approximately 5% lower.

ARB testified that it is ready to sign a contract. Frontier testified that it would sign a contract with ARB, but that it was in its future ratepayers' best interests for it not to do so at this time. Mr. Oxford and Mr. Heath both testified that Frontier could get lower bids.

The Public Staff testified that Frontier's Exhibit 5, the letter from ARB to Mr. Oxford, states that ARB is willing to commit to the proposed construction contract attached to the letter in substantially the same form and the same terms. In addition, ARB attached to its letter guaranteed costs per foot for ARB to construct the proposed transmission and distribution systems. The letter further indicates that these prices are firm for a one-year period. The Public Staff also testified that supplemental information was provided by Frontier including details of the construction cost guarantee submitted by ARB.

The Public Staff testified that it agreed with Frontier's position that it would not be prudent to sign a contract until it has been awarded a final certificate and until it has obtained competitive bidding. On cross-examination, the Public Staff was questioned about its investigation with respect to ARB. The Public Staff testified that it had checked with a number of ARB's references, which were companies for which it had performed natural gas construction work. These references stated that ARB is one of the top pipeline

contractors in the country. Transco, for which ARB has done two recent projects, stated that ARB was always on everyone's bid list.

There was considerable controversy during the hearing over whether the Commission intended Frontier to present a signed contract and whether the letter and illustrative contract submitted as Frontier's Exhibit 5 were sufficient to satisfy the Commission's condition. At the outset, the Commission notes the testimony of Public Staff witness Hoard, who wrote the recommended conditions that were incorporated into the July 20, 1995 Order. He testified that the Public Staff's intention was to make sure that the Public Staff and the Commission have a fairly firm idea of the cost and a commitment for a set price. He further testified in the second phase of the hearing that "[W]e have come back now and we believe that we've got a real good handle on what the construction costs are for the project."

The intent and purpose of this condition was to provide the Commission with a reasonable level of certainty regarding the cost to construct the system. The evidence as to how this condition was developed unequivocably establishes this as the Commission's intent. For example, in response to cross-examination during the first phase of this hearing, Public Staff witness Curtis testified that the Public Staff would like to see some bids. He later testified that the Public Staff was not sure if Frontier could build the system for the cost it estimated and that that was why the Public Staff wanted to see bids. Chairman Wells reiterated this when asking a clarifying question.

The Commission concludes that the letter and illustrative contract submitted as Frontier Exhibit 5, along with the testimony of Mr. Oxford and Mr. Schauerman, are sufficient to satisfy condition number four. The letter from ARB guarantees, for twelve months, the per foot cost to construct the various segments of the transmission and distribution mains, with only possible minor adjustments in costs resulting from final engineering and route selections. The letter from ARB includes all materials involved in the construction of the mains, except for delivery and regulator stations, right of way acquisition and permits. The commitment from ARB provides a ceiling on the cost to construct the mains and provides the Commission with a reasonable level of certainty regarding the overall cost to construct the system. In addition, Heath and Associates' independent analysis of the construction costs verifies ARB's numbers and strengthens the level of certainty that the Commission has as to the cost of the proposed system.

A twelve-month commitment from ARB is reasonable because the bulk of the system will be constructed during that period of time. ARB is a major investor in the project and recognizes that any contracts it has with Frontier must be approved by the Commission as required by G.S. § 62-153. Also, as a major investor in Frontier, ARB has an incentive to keep its construction costs reasonable. Because rates are essentially market-driven, and not based on cost-of-service, during Frontier's early years, ARB will be hurting itself and the other investors in the project if it increases construction costs significantly after the twelve-month guarantee ends.

The Commission concludes that the intent and purpose of this condition is satisfied without a signed contract. The Commission agrees with Frontier and the Public Staff that it would not be prudent for Frontier to sign the contract with ARB at this time because there is a possibility that Frontier may be able to secure lower construction bids at a later date. The Commission does not believe any public purpose is served by requiring Frontier to sign a contract prior to this Order becoming final. The Commission concludes that sufficient evidence was presented to satisfy this condition.

CONDITION FIVE

Condition number five requires Frontier to complete and file with the Commission a detailed presentation of the arrangements that have been made for the delivery of sufficient gas supplies to the Four-County area on satisfactory terms, including commitments from suppliers of the gas and the pipeline capacity required to deliver supplies to the Four-County area with sufficient details for the Commission to evaluate the reliability of the suppliers of the gas and pipeline capacity. Frontier testified that it sent out requests to a number of suppliers and marketers and received nine proposals. Three of these proposals were filed. A proposal from Williams Energy Services Company, which is a subsidiary of the Williams Company and a sister company of Transco, along with information on the company, was filed as Exhibit 8. Frontier's Exhibit 9 is a proposal from Associated Gas Services, Inc., which is a subsidiary of Panhandle Eastern, along with information on it. Similarly, Exhibit 10 is a proposal from Eastern Energy Marketing, Inc., a subsidiary of the Eastern Group, accompanied by information on it. The Eastern Group was formerly Appalachian Gas Sales.

Frontier witness Oxford testified that all of these proposals are for the furnishing of natural gas in 5,000 dekatherms per day increments up to the total requirements of Frontier within the time frame specified. Frontier requested that initial gas deliveries be made in the late fall or early winter of 1996 and that rates be supplied on a firm basis up to 14,000 dekatherms per day for each day during the first year. All of the proposals are warranted for delivery of the specified gas volumes. With respect to the quoted prices on the filed proposals, Frontier testified that they generally agreed with the prices used by Heath and Associates in its feasibility study. In addition to these proposals, Heath and Associates obtained independent information from other sources that were subsequently used in its study. All of the proposals are similar in that they confirm the respective company's ability to supply the required gas volumes and firm capacity up to the amount that Frontier needs to commit.

Frontier further testified that the other six proposals all related to gas supply, transportation, storage, and supply management. It attached, as an example, as Exhibit 11, a letter from ProGas, Limited, a Canadian company that proposes to supply gas from Canada out of the Leidy, Pennsylvania, interconnect of National Fuel and Transco. Other proposals were received from NorAm Energy, Coastal, Summit Energy, e prime, a subsidiary of Public Service Company of Colorado, and Aquila Energy Marketing. A brochure also was received from Pine Needle LNG Company regarding peak-day capacity. Frontier further testified that it intends to pursue discussions with all nine of these companies after receipt of a final certificate. Frontier testified that it had not committed to any of these offers at this time. As suggested by the Commission in its Order, it does not believe it is prudent to do so yet because all of these contracts, once executed, will involve demand charges and all are subject to further negotiation on Frontier's part.

The Public Staff testified that the proposals filed by Frontier are an adequate indication that sufficient gas supplies can be obtained and delivered on a timely basis to the Four-County area on satisfactory terms. In addition, sufficient information has been provided for the Commission to favorably evaluate the reliability of the proposed suppliers. On cross-examination, the Public Staff testified that it had contacted personnel working with several of these companies and discussed conditions of the contracts.

The Commission concludes that sufficient evidence was presented that Frontier is capable of arranging for the delivery of gas supplies sufficient to serve the Four-County area and therefore has satisfied condition number five.

CONDITION SIX

Condition number six requires Frontier to complete and file with the Commission just and reasonable proposed rates, tariffs, and service rules. Frontier filed proposed rules and regulations including rates and charges as Frontier Exhibit 12. Supplemental information was filed on November 13, 1995, clarifying certain points. In addition, Revised Exhibit 12 was filed on November 13, 1995. It shows Frontier's proposed rates by rate schedule. Frontier's proposal is to set flat rates and to charge that single flat rate year-round for residential, commercial, industrial, and transportation customers on an annual basis (except when negotiated for large customers). A monthly facilities charge is proposed for each type of service. Frontier's witnesses testified that Frontier's proposed service rules are very similar to the rules that have been filed by the LDCs here in the State. In some cases Frontier testified they incorporate rules found to be useful and effective in other areas. They further testified that Frontier is willing to proceed with this project using these rates and tariffs.

The Public Staff testified that while it considered the proposed rates, tariffs, and service rules to be reasonable, it had some questions about the inclusion of the fixed gas cost true-up mechanism in Frontier's Purchased Gas Adjustment procedures and the inclusion of Weather Normalization Adjustment (WNA) procedures. The fixed gas cost true-up mechanism and the WNA procedures should be deleted from Frontier's tariffs at this time because Frontier will not need them until after its rates have been established in a general rate case. Frontier agreed to these changes.

CUCA pointed out that Frontier's tariffs seem to limit transportation by industrial customers to those served under Rate Schedule No. 161, or "Large General Interruptible Service." Rate Schedule No. 151, "Large General Service" does not seem to have a corresponding transportation rate. On cross-examination by CUCA's attorney, Mr. Oxford agreed that Frontier did not intend to limit transportation to Rate Schedule No. 161. Based on the testimony, the Commission concludes that Frontier should clarify that Rate Schedule No. 151 customers are also eligible to transport under Rate Schedule No. 171.

CUCA complained that the eligibility provisions of Rate Schedule No. 161 require that the customer have "... operable standby facilities with sufficient storage for 5 days' requirements to burn an alternate fuel." CUCA asserted that the requirement affords little, if any, benefit to the LDC and therefore is an unreasonable interference in the customer's business by the LDC. Under the provisions of G.S. § 62-65(b), the Commission notes that other North Carolina LDCs have tariffs for a similar customer class that include a requirement for having the installed capability to burn an alternate fuel. With regard to the requirement to have 5 days' storage capability, comparable tariffs of Piedmont and Pennsylvania & Southern include a requirement that the customer maintain " . . . sufficient alternate fuel to replace gas service for a reasonable period of interruption." North Carolina Natural Gas requires fuel " . . . to the extent necessary in Customer's opinion." None of the existing LDCs specify the amount of alternate fuel that must be kept on hand. The Commission concludes that it is just and reasonable for Frontier to include a requirement that customers served under Rate Schedule No. 161 install standby facilities. However, the Commission also concludes that Frontier should include language similar to that found in other LDCs'

tariffs that requires a reasonable amount of alternate fuel to be available but leaves the amount of storage and the amount of fuel actually in storage up to the discretion of the customer.

CUCA argued that the Cash Out provisions in Frontier's transportation tariff, Rate Schedule No. 171, are unclear. Under the heading "Balancing of Transportation Volumes," Rate Schedule No. 171 states, "It shall be the Customer's responsibility to bring its supply and requirements into balance on a monthly basis. All imbalances remaining at the end of a billing month may be paid back during the first 6 days following the end of that month. All remaining imbalances after the payback period shall be subject to Cash Out provisions." CUCA complained that Frontier did not specify the exact manner in which the Cash Out mechanism will work. Under cross-examination by CUCA's attorney, the Frontier panel indicated that there are some provisions that cannot be worked out until their final gas supply contracts are signed. The Commission concludes that Frontier should clarify its Cash Out provisions in the tariffs filed pursuant to this Order, subject to the right to file for amendment at a later date.

Frontier's Rate Schedule No. 181 requires the customer to use gas if Frontier matches the customer's alternate fuel price. Mr. Oxford stated that since Frontier was not asking for a Contribution in Aid of Construction (CIAC) from industrial customers, it at least wanted to know that if it matched the alternate fuel price, it would get the business. CUCA noted that other North Carolina utilities have included "minimum margin" or "minimum take" provisions in their contracts with customers in situations where a CIAC might otherwise be appropriate. However, CUCA complained that the Frontier provision would seem to apply whether or not a CIAC was appropriate and requested that the Commission restrict the mandatory take provision to those situations where a CIAC could have appropriately been requested. The Commission concludes that Frontier should revise the language of Rate Schedule No. 181 to limit this proposed mandatory purchase requirement to circumstances in which the Company could appropriately request a CIAC. Frontier has the right to file for amendment at a later date.

Paragraph No. 26 of Frontier's proposed service regulations requires that all customers other than residential customers obtain Frontier's permission before increasing their gas consumption or changing the purpose for which they intend to use the gas. CUCA asked that the Commission strike that portion of Paragraph No. 26 which requires non-residential customers to obtain Frontier's permission before using gas in a different way. CUCA argued that because the Commission has a policy of curtailing customers based on margin, Frontier has no legitimate reason to exercise control over the manner in which a particular customer utilizes natural gas so long as the changed use does not result in an increase in load. CUCA further argued that as long as Frontier is adequately protected from increased customer load, the Commission should not give Frontier control over the manner in which its customers use gas. The service regulations of other North Carolina LDCs contain paragraphs similar to Frontier's Paragraph No. 26, including the requirement that the customer inform the LDC before changing the end use of gas taken. The Commission therefore concludes that Frontier's Paragraph No. 26 is just and reasonable and should be left intact.

No other provisions of Frontier's proposed tariffs and service regulations were contested. The Commission concludes that the tariffs and service regulations proposed by Frontier should be approved subject to the modifications discussed above.

During the hearing there was much discussion of the rates proposed by Frontier. The Public Staff testified that it had done a study of the alternative fuel prices in the area and that Frontier's proposed rates

were considerably less than the cost of alternative energy sources in the Four-County area. It was not the Commission's intent for Frontier to adopt Piedmont's rates, tariffs, and service rules. The reasonableness of the rates for a new company should be evaluated in terms of whether the rates equitably balance the financial requirements of the new company's investors and the needs of the area to be served.

The Commission concludes that Frontier has adequately satisfied condition number six. The Commission recognizes that a number of the public witnesses testified for Piedmont, citing its lower rates. The Commission concludes that Frontier's rates will provide customers with a significant savings over what they are presently paying for alternative fuels. In addition, having gas service available at reasonable rates will improve the ability of the communities in the Four-County area to attract new industry and improve their quality of life. As Commissioner Judy Hunt pointed out, even under Heath's scenario, the project Frontier is proposing includes twice as many miles of distribution main as Piedmont's proposal. Thus in terms of economic development, twice as many businesses and residents would have access to natural gas, which could result in fewer businesses closing.

During the course of the hearing, Commissioner Hughes pointed out that there are big variances in rates among the existing LDCs' territories. Mr. Curtis confirmed this. At the close of the hearing, counsel for Piedmont requested that the Public Staff submit a late-filed exhibit showing a comparison of typical residential and commercial bills based on currently approved tariff rates. This request was then broadened by Commissioner Hughes to include all customer classes. The Public Staff filed its late-filed exhibit on December 21, 1995, showing typical bills for residential, commercial and industrial customers under the existing LDCs' tariffed rates and Frontier's proposed rates. While tariffed rates for industrial customers do not give an accurate picture because they are often negotiated down by all LDCs, this exhibit demonstrates that there are big variances in the current LDCs' rates for all classes of customers.

A number of questions were asked with regard to whether Frontier would be entitled to a rate increase during its first few years of operations because it would not be earning an adequate return. At the outset, the Commission notes that it will not be in Frontier's best interest to seek a rate increase based on its cost of service until it develops into a mature system. As the Public Staff acknowledged, in the early years rates will be based more on what the market will bear (value-based) than on Frontier's costs. Frontier will not be able to persuade customers to connect to the gas system unless there are significant savings over alternate fuels. With respect to Piedmont's cross-examination about the rate of return Jim Anderson of Sutro had recommended during the first phase of this hearing, Public Staff witness Farmer testified that Mr. Anderson was speaking of an investor-oriented rate of return, such as the dividend return plus some appreciation in the value of the stock, not of the return on equity determined by the Commission in a rate case. As a matter of law, the Commission cannot prohibit Frontier from applying for a rate increase during its first few years of operations. However, the Commission would closely scrutinize any such application and would likely deny it to the extent test year operations are not representative of on-going operations for Frontier after the initial growth period.

Based on the foregoing, the Commission concludes that Frontier's proposed rates, tariffs, and service rules, as modified herein, are just and reasonable and that the service rules are in compliance with the Commission's rules and regulations governing natural gas operations in North Carolina. With respect to the tariff issues that were raised and addressed herein, the Commission will expect Frontier to file tariffs consistent with the provisions of this Order within 30 days after this Order becomes final.

CONDITION SEVEN

Condition number seven requires Frontier to complete and file with the Commission a detailed economic feasibility study of the project by a qualified independent consultant. The Frontier panel testified that it had engaged Heath and Associates, under the supervision of E. Scott Heath, to perform the feasibility study of the Four-County area. This study, which was discussed extensively in Evidence and Conclusions for Finding of Fact No. 8, was included in Heath and Associates' report and filed as Frontier Exhibit 1.

Piedmont argued, through its Motion to Dismiss, that Heath and Associates' report does not satisfy condition number seven because the project evaluated in the Heath feasibility study is not in substantial compliance with the proposal that Frontier had presented in its application. Piedmont bases this argument on the fact that the Heath feasibility study uses the Heath market study, which contains fewer customers and miles of distribution main than Frontier had previously estimated.

Piedmont cross-examined Frontier witness Schauerman at length about the differences between the 428-mile distribution system included in the Heath and Associates study and Frontier's intended additions to that system. Counsel for Piedmont led Mr. Schauerman through a series of calculations purported to be designed to establish the cost of the system using Heath's cost assumptions and the additional miles. Piedmont's calculation showed that the extended system would cost approximately $57.3 million. However, Mr. Schauerman did not agree with crucial assumptions Piedmont attempted to use. Mr. Schauerman testified that he did not believe average costs should be used for developing the cost of the additional miles of distribution mains. Frontier witness Oxford subsequently testified that the costs for two of the areas in question were much lower than average, causing Piedmont's estimate to be too high.

Frontier witness Shute testified that the miles of distribution mains and services it had identified in addition to the distribution system detailed in the Heath and Associates report, would cost approximately $5 million for the mains and the services necessary to connect the approximately 2,000 additional customers (5,000 potential customers times a 40% conversion rate). The entire system (approximately 571 miles) therefore was estimated to cost $52 to $53 million.

The Public Staff panel testified that the feasibility study performed by Heath and Associates was an independent study and that the study satisfied condition number seven. The Public Staff witnesses explained that the conditions it recommended to the Commission were developed from a number of questions from various Commissioners during the February 1995 hearing about the possibility of having an independent consultant study the area. The panel testified that it wanted someone to perform a very intensive study of the area and did not want someone to come in and just "rubber stamp" what Frontier had done.

The Public Staff also testified that it had done some calculations to see what the effects were of adding additional residential, commercial and poultry customers, and that it is very clear that those customers can be added on a feasible basis. Because of the rate and cost structure of Frontier, it will be able to go quite a distance to reach those customers, including up to one-half mile for a poultry customer, and it still be feasible to serve them.

The Commission required Frontier to file (1) an independent consultant's market study of the area Frontier's application covered to satisfy condition number one, (2) a system design in response to condition

number two, and (3) an independent consultant's feasibility study to satisfy condition number seven. The Commission intended that the independent consultant's market study would form the basis of the system design and that the independent consultant's market study and the system design would then be used as the basis for the independent consultant's economic feasibility study. Because the independent market study provides a fair and unbiased assessment of potential customers and loads in the Four-County area, it is only logical that this independent market study be used as the basis for the independent economic feasibility study. In addition, it is reasonable for the market study to determine the number of miles of distribution main included in the feasibility study because the layout of distribution mains should be developed based on the concentrations of potential customers determined in the market study.

The Commission's objective in requiring an independent consultant's feasibility study was to obtain a fair and unbiased evaluation of the economic feasibility of natural gas service being provided to the Four-County area through an extensive transmission and distribution system and at the full range of rates that Frontier plans to offer. It was not the intent of the Commission that the independent consultant simply render an opinion on the project's feasibility based on the Frontier's market study because such a study would not have produced an "independent" economic feasibility study. The Commission therefore concludes that the feasibility study contained in the report prepared by Heath and Associates is in substantial compliance and that Piedmont's argument in its Motion to Dismiss is without merit. The Commission therefore concludes that Frontier has satisfied condition number seven. In addition, the evidence is uncontroverted that while adding the cost of the approximately 143 additional miles of distribution mains into the costs estimated by Heath and Associates would increase the cost by $5 million, the additional customers would generate more than enough revenue to make such additions feasible.

CONDITION EIGHT

Condition number eight requires that Frontier file an operating manual. Frontier testified that it had provided, as Exhibit 13, the operating manual that it intends to utilize in the operation of its natural gas system in the Four-County area. The Public Staff testified that this manual appeared to cover all necessary procedures with which Frontier must comply. No party made any objection to the proposed draft operating manual. The Commission concludes that the operating manual filed by Frontier complies with all state and federal regulatory standards and that Frontier has satisfied condition number eight.

CONDITION NINE

Condition number nine requires Frontier to provide evidence of its ability to arrange security in the amount of $4 million, in a form acceptable to the Commission, to make available additional resources, to be used should the need arise, and to provide additional assurance that the proposed natural gas system will be constructed and operated in a safe and reliable manner consistent with all applicable federal and state statutes, the rules and regulations of the Commission, and industry standards, practices and procedures.

As evidence of Frontier's ability to arrange $4 million of security, Frontier witness Schauerman provided a letter from Liberty Bond Services, as Exhibit 14. This letter states Liberty's willingness to provide security and, specifically, $4 million of coverage, a customary performance and payment bond, and provision that the system will be constructed and operated in a safe and reliable manner consistent with all applicable federal and state statutes, the rules and regulations of the Commission, and industry standards,

practices and procedures. Mr. Schauerman also provided in Exhibit 14 evidence that Liberty Mutual Insurance Company (of which Liberty Bond Services is a division) has a surety license for North Carolina and has an underwriting limitation per company of over $188 million for this type of bond. Frontier stated that it is willing to structure this bond in a manner acceptable to the Commission.

Mr. Schauerman also testified that based on its relationship with Liberty, its equity position in Frontier and its confidence in the project, ARB is willing to stand behind the bond to ensure its issuance if necessary. In addition, the evidence indicated that Frontier did not know what structure the Commission required the bond to take. Therefore, it produced evidence that the bond company is willing to provide a bond in whatever form the Commission finally decides it needs.

The Public Staff's testimony indicated that it believed that Frontier had provided sufficient evidence to comply with condition number nine. The Public Staff added that Liberty Mutual Insurance Company is one of the country's largest insurance companies and has a rating of A, or excellent, according to Best's Insurance Reports, 1995 Edition.

The Commission concludes that Frontier has satisfied condition number nine. Its testimony indicates that Liberty Bond Services, a division of Liberty Mutual Insurance Company, is willing to provide Frontier with a $4 million bond for security. Liberty Mutual is one of the country's largest insurance companies, has an excellent rating, and holds a surety license in North Carolina with an underwriting limitation of over $188 million per company. The letter from Liberty Bond and the information on Liberty Mutual, which were provided as Frontier Exhibit 14, as supported and explained through Frontier's testimony, constitute sufficient evidence of Frontier's ability to arrange the required security

As to the structure of the bond, the Commission concludes that it should become payable if (1) Frontier abandons the system so that the Commission has to appoint an emergency operator and (2) the funds are needed for the emergency operator to reliably operate the system. While the Commission considers the likelihood that Frontier would abandon the system to be only a remote possibility, it is in the public interest for the Commission to require the bond that Frontier volunteered to provide. A $4 million bond is appropriate as it would allow for two years of operation of the system in the event of such an emergency. This structure is supported by Frontier and the Public Staff's testimony.

The Commission notes that there are several other forms of bonding and insurance as well as investor involvement in the project that will supplement this security. Frontier witness Schauerman stated that Frontier will require a construction bond from ARB or another construction company. This will provide for the timely completion of the system should the construction company not be able to complete the project. In addition, Frontier witness Oxford testified that the equity and debt investors would likely take action to operate the system in the event of some failure by Frontier management. During construction of the system, the Commission's pipeline safety staff will conduct its normal compliance inspections. Also, upon completion of the system, Frontier will own assets of significant value and will have the usual business and liability insurance to protect these assets. The foregoing tends to mitigate the need for the security that is contemplated by this condition.

The Commission will approve the security in accordance with the above at the time when Frontier applies for approval of its final financing. The need for this security shall be reviewed by the Public Staff

on an annual basis beginning one year from the Commission's approval of Frontier's final financing. The Public Staff should evaluate the current and prospective risks of the project and recommend to the Commission whether the $4 million bond should continue to be required or if some lesser amount or form would be sufficient. It is the Commission's intention that the required security should eventually be eliminated.

CONDITION TEN

Condition number ten requires Frontier to complete and file with the Commission a preliminary financing plan to (a) secure debt and equity capital on reasonable terms to construct and initially operate the system and (b) increase its equity ratio to the 35% range within a reasonable period of time.

Frontier testified that its general preliminary financing plan calls for initial capital to be sourced through a project financing of approximately $29 million. The capital will be raised initially with 30% equity and 70% debt (or approximately $8.7 million of equity and $20.3 million of debt). The equity would be provided by ARB and others and would be in the form of common stock. The debt would be provided in the form of a construction loan with a conversion to term financing at the end of this initial construction period.

Frontier testified that its preliminary plan to secure the equity portion of the financing is to obtain it from a small group of interested investors. Examples of the types of equity investors were included in supporting letters filed as Frontier Exhibits 15, 16, 17 and 18. These supporting letters are from ARB, HC Price, Energy Investors Management, Inc., and KN Energy Corporation. Frontier testified that the equity would, in all likelihood, be provided by some combination of these or similar investors but that it would be premature to make a final determination prior to final certification. Frontier provided some brief background about each of these four potential equity investors.

ARB is a privately held diversified construction company headquartered in Los Angeles, California. It has approximately $200 million in annual revenues and is involved primarily in the construction of natural gas pipeline systems, as well as industrial facilities such as compressor stations, cogeneration facilities, and also commercial structures with a technical element involved, such as laboratories or university structures. Mr. Schauerman testified that it has been the primary capital provider to Frontier to date, having invested in excess of $500,000 to support the effort to bring natural gas into the Four-County area. Mr. Schauerman further testified that ARB's intention is to continue funding the effort through final certification and to assist in arranging the debt and equity financing necessary to build the system. In addition, ARB intends to be a significant, though not majority, equity investor in the project financing.

Mr. Schauerman further testified that HC Price also is a privately held construction company. It is based in Dallas, Texas. ARB and HC Price have a strong relationship and have participated together in projects in the past. HC Price has reviewed the material concerning Frontier and has expressed an interest in investing in the equity required to complete the project.

With respect to Energy Investors Management, Inc., Mr. Shauerman testified that it is a private equity firm based in Boston, Massachusetts. Its funds are comprised of numerous institutional entities which invest specifically in energy related projects. Energy Investors currently manages approximately

$500 million of debt and equity, holding interests in 35 energy related projects with a combined asset value of $2.2 billion. With its current fund, Energy Investors is seeking to place at least $75 million in either debt or equity into energy related projects. It was introduced to this project through Brad Goode, President of Cypress Energy, which is a company controlled by ARB.

Mr. Schauerman further testified that KN Energy also has expressed a strong interest in participating in the equity ownership of Frontier. KN is a vertically integrated natural gas distribution, transmission, processing and energy services marketing company based in Denver, Colorado, with annual revenues in excess of $1 billion and equity capital in excess of $400 million. KN operates gas distribution systems in six states in the Midwest. In addition, KN has been actively looking for opportunities to expand its operations into the eastern part of the United States. Mr. Schauerman testified that this opportunity to participate in Frontier fits directly with KN's corporate objectives.

With respect to these potential investors' expectations regarding dividends, Mr. Schauerman testified that because Frontier is a new entity, all potential equity investors are aware that there will be no dividends for a period of five years or longer. He further testified that equity investors interested in an opportunity such as Frontier tend to be long-term investors more interested in the eventual value of their ownership in Frontier rather than a current cash on cash return.

With respect to how and to what extent the debt to equity ratio would be lowered, Mr. Shauerman testified that during the initial five-year period, Frontier will be retaining its earnings and adding to its equity base to lower the initial debt to equity ratio. Frontier anticipates that through reinvesting retained earnings, along with additional equity investment to support growth, Frontier will achieve debt to equity ratios of better than 65%/35% within five years, which complies with section (b) of condition number ten.

Mr. Schauerman testified that the preliminary plan to secure the debt portion of the financing to construct and initially operate the system was to obtain a construction loan during the initial buildout of the system. He further testified that the construction loan will fund approximately 70% of the capital requirements during the first two years of operation. At the end of year two, this loan will be converted to a term loan. The expected term of the term loan will be 14 to 20 years. Frontier assumed an interest rate of 9.5%, which is conservative based on conversations its principals have had with prospective lenders and financial advisors.

Mr. Schauerman further testified that this is a typical approach for project financing with a construction loan for the term of the construction. When the construction phase is completed, which is year two for this project, the existing construction loan is replaced with the permanent term debt. This is often referred to as the "take out" financing. He testified that Frontier has discussed this approach with various debt providers and with professional advisors who are actively raising project debt for similar situations. He indicated that there is a high level of interest from debt providers in the project and that Frontier will secure formal proposals leading to commitments as soon as a final order has been issued. Frontier filed, as Exhibit 19, a letter from Union Bank, which has reviewed the preliminary information for this project and has an interest in participating as the lender.

In addition to talking directly with debt and equity providers, Mr. Schauerman testified that Frontier has discussed this project with various investment bankers who want to represent Frontier in arranging the financing. He testified that all of the firms with which Frontier discussed the project, including

Interstate/Johnson Lane, Prudential Securities, and Schroeder Wertheim, have expressed strong interest. To provide examples, Frontier filed, as Exhibit 20, a draft engagement letter from Interstate/Johnson Lane, a Charlotte-based investment bank that wants to handle the debt financing. Although Interstate is prepared to sign the engagement letter as presented, it would not be prudent for Frontier to do so until receipt of a final order from the Commission. Mr. Schauerman indicated that similar engagement letters from Prudential and Schroeder could be filed if necessary.

In summary, Mr. Schauerman testified that his overall assessment of the financeability of this project is that this is a project that is readily financeable on terms substantially similar to those outlined in the testimony. He further testified that the sooner a final order is issued, the better it will be for the financing of this project given the current economic climate. As a more practical matter, the spring, summer, and fall seasons are the best times to construct the transmission system in this region. The sooner a final order has been issued, the sooner Frontier can complete the financing and initiate final right-of-way acquisition activities, which can take several months to complete.

The Public Staff testified that it believed that Frontier's preliminary financing plan is complete and reasonable and is in compliance with condition number ten. The Public Staff testified that Frontier has identified the appropriate total amount of financing and allocations of equity and debt and that all potential equity and debt investors are reasonable and have the requisite experience and resources to invest in the project.

The Public Staff also indicated that it believed the potential returns to equity investors are reasonable for investors with a long-term horizon. Since Frontier is a start-up company, traditional rate-making concepts do not apply initially. Rather than deriving rates through a rate base, rate of return and rate design process, customer rates are set by competitive market considerations. Then, returns to investors are projected. The Public Staff believes that these projected returns will attract sufficient long-term investors to fund the equity portion of the financing. The Public Staff also testified that it agrees with Frontier's estimated long-term debt rate of 9.5%, which is 350 basis points above the relevant 10-year U.S. Treasury Note benchmark of approximately 6.0%. Public Staff witness Farmer testified that Mr. James Anderson of Sutro and Company previously testified that he expected a spread of 275 basis points over long-term U.S. Treasuries. Also, Mr. Farmer pointed out that the 9.5% is approximately 125 basis points higher than Standard & Poor's current rates for BBB utility bonds.

The Public Staff further testified that it believed that Frontier's equity ratio is projected to move to the 35% range within a reasonable period of time. Public Staff Exhibit 1, page 6, shows that Frontier's equity ratio moves to 35% in year seven and is over 50% by year ten. The report prepared by Heath and Associates, filed as Frontier Exhibit 1, projects a 36% equity ratio in year three and an equity ratio over 50% by year nine. Based on the foregoing, the Public Staff concluded that Frontier had complied with condition number ten and should be allowed to pursue final financing arrangements.

With respect to final terms and conditions, the Public Staff testified that with a final certificate and after the appeals process has been resolved, Frontier will be able to negotiate final terms and conditions with equity and debt investors. Frontier will then apply to the Commission for approval of these final terms and conditions in accordance with G.S., Article 8, Securities Regulation, §§62-160 through 62-171, and Commission Rule R1-16.

The Commission concludes that Frontier has complied with condition number ten. Frontier witness Schauerman testified extensively about Frontier's preliminary financing plan. The Commission finds the initial capital structure and Frontier's intent with regard to equity investors acceptable, its projected interest rate of 9.5% to be reasonable, its prospects for obtaining both a construction loan and the long-term debt portion of the financing acceptable, and its projections with regard to increasing the equity portion of its capital structure to be satisfactory.

Based on all of the foregoing discussions, the Commission concludes that Frontier has adequately satisfied all of the conditions and that Piedmont's Motion to Dismiss should be denied. The Commission further concludes that the public convenience and necessity require that Frontier be granted a final certificate to serve the Four-County area.

The Attorney General, in his Brief, recommended that the Commission include the following new ongoing conditions in any final certificate issued to Frontier:

(1) Frontier must enter a construction contract with terms substantially the same or better than those in the ARB offer to contract submitted in this case. Further, Frontier must obtain an option contract for the offer from ARB and seek competitive bids from other sources;

(2) Frontier must obtain final financing substantially consistent with the plan it has presented in the recent hearing; and

(3) Frontier must construct and maintain the gas distribution system so that it will provide substantially the same service and rates for non-gas costs as those proposed in this hearing. Further, the Commission should put Frontier on notice that rate increases merely to increase investor return on equity during the first ten years of the operation are not acceptable.

With respect to proposed condition (1) above, the Attorney General states that concerns were raised at the hearing as to whether the document characterized by Frontier as a contract was, in fact, a binding agreement. According to the Attorney General, the issue underlying this concern is whether Frontier's actual construction costs will be significantly higher than projected. That concern would be allayed by a condition in the certificate that requires Frontier to obtain construction at an acceptable cost. In addition, according to the Attorney General, the Commission can remove any residual concerns over the binding nature of the agreement between ARB and Frontier by requiring a formal option contract which binds ARB to the prices set out in Frontier Exhibit 5.

The Commission has carefully considered the further conditions proposed by the Attorney General and concludes that they should be rejected. Frontier has indicated that it will seek competitive bids from other contractors and the Commission expects it to do so. Although ARB has indicated that its prices are valid for one year, it is likely that any appeal of this Order will extend the entering of a construction contract a year or more. With respect to the final financing of the project, the Commission is already required by statute to review and render a decision on the final financing arrangements and will do so upon submission. Further, the Commission is without authority to render any decision at this time on the propriety of any future rate increase requests that may be made by Frontier.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

This finding of fact is based on the previous discussion of the $4 million bond contemplated by condition number nine.

Using the statute governing water utilities, G.S. § 62-110.3, as a general guide, the Commission believes it is appropriate and in the public interest for the bond to be for the purpose of covering operating expenses if the Commission finds (a) Frontier has abandoned its utility operations, (2) it is necessary to appoint an emergency operator, and (3) the funds are required to reliably operate Frontier's utility system in the Four-County area. The approval of the security will be at the time Frontier applies for approval of its final financing plans.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is contained in Frontier's testimony and exhibits and the testimony of the Public Staff.

Construction schedules are determined, in part, by the time of year construction can begin, which, in turn, impacts the timing of financing commitments and closings. Therefore, we will allow Frontier nine (9) months from the time this Order becomes final (i.e., by expiration of any period during which this Order may be appealed or by a final decision of any such appeal of this Order) within which to file its final financing plan for approval pursuant to the relevant statutes, rules, and regulations. We expect Frontier to submit its final financing plan in less than nine months but realize that, if appeal is taken, a final appellate decision could be rendered at a time of year that would necessitate additional time to finalize financing and begin construction. Because of the uncertainty engendered by the possibility of appeal, the Commission concludes that nine months from the date this Order becomes final is a reasonable amount of time to allow for the filing of Frontier's final financing plan. In addition, the Commission notes that the delays inherent in the appellate process may cause unforeseen circumstances to arise. Therefore, the Commission intends to be flexible enough to allow an extension of time upon a convincing showing that the need for such an extension was beyond Frontier's control. The Commission intends to consider Frontier's filing in the manner it typically considers such filings, at one of its Monday morning staff conferences. The closings on the debt and equity financing must occur as soon as possible after the Commission approves Frontier's financing, but no later than 60 days from such approval.

The Commission realizes that setting a deadline for the filing of the final financing plan and requiring the posting of a bond by this new gas utility are unusual requirements for this Commission to impose, although clearly within our authority. We impose these requirements not because of any doubt about Frontier's ability to carry forward its plans, but because Frontier itself has offered to comply with these requirements as a way of satisfying concerns raised in these proceedings by other parties. We appreciate Frontier's willingness to abide by these requirements.

During the interim period from the time this Order becomes final until construction begins, the Commission would like to be kept informed of Frontier's progress and will require quarterly project status reports, beginning ninety (90) days from the date this Order becomes final.

Because of the need of the Four-County area for natural gas as soon as possible, the certificate of public convenience and necessity granted hereby will expire and become null and void in the event Frontier is unable to arrange financing for the project or to obtain Commission approval thereof.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

The Commission's finding that Piedmont's application should be denied is more in the nature of a conclusion of law.

The Commission will follow the procedures set out in the Order of July 20, 1995, granting Frontier a conditional certificate. Pursuant to those procedures, the Commission issues this Order finding that the conditions have been met, granting Frontier a final certificate to serve the Four-County area, and denying Piedmont's application. The Commission will take appropriate action in other dockets, as appropriate, with respect to the customer refunds Piedmont is holding in escrow.

The Commission regards this as a final order in these dockets. Frontier shall file for approval of its final financing plan and security in a separate docket.

IT IS, THEREFORE, ORDERED, as follows:

1. That Frontier is hereby awarded a certificate of public convenience and necessity to construct and operate an intrastate pipeline and distribution system from Transco's line near U.S. Highway 601 approximately four miles southeast of Cooleemee, North Carolina, for the purpose of providing natural gas service to Surry, Watauga, Wilkes, and Yadkin Counties.

2. That Frontier shall file for approval of its final financing plan within nine months of the date this Order becomes final by the expiration of any period during which this Order may be appealed or by final decision of any such appeal of this Order, whichever is later. The financing is required to be closed as soon as possible after the Commission approves Frontier's financing, but no later than 60 days following the date such approval becomes final.

3. That Frontier shall file for approval of its security in accordance with this Order at the time it files for approval of its financing. This security need not be executed at that time, but must be ready to be executed. Following its execution, the Public Staff shall review and file reports with respect to such security in accordance with this Order.

4. That the time periods set forth in this Order may be extended upon a showing by clear and convincing evidence that the events that are required to be completed could not be completed because of unforeseen circumstances beyond Frontier's power to control. We recognize that delays inherent in any appellate process increase the possibility of such unforeseen circumstances.

5. That the certificate of public convenience and necessity granted hereby will expire and become null and void in the event Frontier is unable to arrange final financing for the project or to obtain Commission approval thereof, and the Commission shall issue such further orders as it deems appropriate in that event.

6. That the proposed tariffs and rules and regulations filed by Frontier, as modified in accordance with this Order, are approved. Frontier shall file amended tariffs and rules and regulations within 30 days after this Order becomes final.

7. That Frontier shall file progress reports with the Commission quarterly as specified herein, beginning from the date this Order becomes final. Such reports may be filed on a confidential basis as necessary and appropriate.

8. That Piedmont's Motion to Dismiss is denied and its application to serve the Four-County area is denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of January 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Commissioner Cobb dissents.

COMMISSIONER LAURENCE A. COBB, DISSENTING.

Our order of June 19, 1995 recognized that Piedmont's plan for service to the four county area was superior to that of Frontier. However, a majority of the Commission was of the opinion that the use of expansion funds as requested by Piedmont was inappropriate if Frontier in fact could construct its system with funds raised by it. When Piedmont concluded that it was not able to proceed using traditional financing only, it was necessary to turn to Frontier to give it an opportunity to show that its proposal was feasible.

The July 20, 1995 order granting a certificate to Frontier held only that Frontier had presented a prima facie case that it could build a system serving more customers at less cost in less time. As recommended by the Public Staff, we granted Frontier an additional 90 days to prove it could substantially comply with its proposal. Independent consultants were to evaluate the plan to determine its feasibility and we were to be furnished contracts with reputable and qualified contractors and suppliers to establish the actual construction cost. Only then would Frontier be given an unconditional certificate allowing it to proceed with its efforts to secure satisfactory financing.

When Frontier made its filing pursuant to the July 20 order, a cursory examination revealed that it failed to meet the prescribed conditions. The evidentiary hearings established beyond a doubt that the filing was insufficient, but a finding was made that Frontier had met the intent of the conditions. In other words, we would forget the safeguards and change the rules.

It could be argued as contended by Piedmont in its brief that Frontier failed to meet a majority of the conditions set forth in our order. However, there are four specific areas which are worthy of further comment. They are independent review, the cost of the system, just and reasonable proposed rates and construction timetable.

INDEPENDENT REVIEW. Our order required that Frontier file a market study by a "qualified independent consultant", an opinion letter from a "qualified independent engineer" and an economic feasibility study by "a qualified independent consultant". Amazingly, Frontier filed a report by E. Scott Heath, President of Heath and Associates, Inc. which purported to meet all three of these conditions. This is the same Mr. Heath who had been one of the principal expert witnesses for Frontier in the initial hearings. He expanded on his initial testimony and filed an additional exhibit, but basically confirmed that his original testimony was accurate. This was hardly an unbiased review by a disinterested third party as might have been anticipated.

COST OF THE SYSTEM. Frontier's original proposal was to construct its entire system for approximately $47 million. It was to file "guaranteed pipe, materials, and construction contracts with reputable and qualified contractors and suppliers" to establish the actual cost. Instead, Frontier filed a proposal from ARB, Inc. (65% owner of Frontier's parent company) which had no binding legal effect and which failed to establish an actual total cost. In addition, Frontier offered testimony that the total cost of the system they envisioned -- as contrasted with the system contemplated by Heath in his report -- would be $52 or $53 million. This is much closer to the estimated $56.6 million cost of the admittedly better Piedmont system.

JUST AND REASONABLE PROPOSED RATES. Frontier's initial proposed rates were somewhat higher than Piedmont's, but the actual cost was not known until it filed proposed rates, tariffs and service rules in response to Condition 6. The proposed rates would exceed Piedmont's rates by approximately $135.39, $651.30 and $996.76 per annum for residential, commercial and poultry customers respectively (or a total of $11,851,427.94 for the first ten years using Heath's lower estimate of the number of customers). In addition, the order adopts the position of the Public Staff that rates are just and reasonable so long as they are competitive with the cost of alternate fuels. Rates could be substantially higher than the proposed rates in this case and still meet that test. This bodes ill for those counties still not franchised or which could become disfranchised in the future under the provisions of G. S. 62-36A(b).

CONSTRUCTION TIMETABLE. One of the advantages of Frontier's proposal was that it could be in operation more quickly. The proposed orders of Frontier and the Public Staff provided that if Frontier met conditions (1) through (9), condition (10) would require that Frontier file its financing plan 100 days from the entry of the order, with closing within 30 days from the date the approval order became final. However, no such limitation appeared in our order of July 20 which changed condition (10) to the filing of a preliminary financing plan to be considered along with conditions (1) through (9). Under the present order, Frontier is allowed nine months from the date on which the order becomes final to file its financing plan with closing not later than 60 days following approval.

The decision in this case will have a profound impact on the direction we go in attempting to secure natural gas service throughout the state. While the Public Staff speaks in terms of what is best for the State of North Carolina as a whole, in truth we are determining whether the residents of these four counties and other counties not franchised receive service comparable to the franchised areas of the state or inferior service at a significantly higher cost. The intent of the General Assembly was to grant the former which could be accomplished by granting the certificate to Piedmont and allowing them to use expansion funds in the construction of the system.

Laurence A. Cobb, Commissioner

DOCKET NO. G-3, SUB 194

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Gas Service for	)	
Annual Review of Gas Costs Pursuant to G.S.	)	ORDER ON ANNUAL
62-133.4(c) and Commission Rule R1-17(k)(6)	)	REVIEW OF GAS COSTS

HEARD IN: The Claude Pope Conference Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on October 7, 1996

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioners Charles H. Hughes and Judy Hunt

APPEARANCES:

For North Carolina Gas Service, a Division of NUI Corporation:

James H. Jeffries IV, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For the Public Staff:

A. W. Turner, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Attorney General:

Margaret Force, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629

BY THE COMMISSION: On July 1, 1996, North Carolina Gas Service, a Division of NUI Corporation (NCGS or the Company), filed testimony and exhibits relating to the annual review of its gas costs under G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On July 8, 1996, the Commission issued its Order Scheduling Hearing and Requiring Public Notice. This Order established a hearing date of Wednesday, September 4, 1996, set prefiled testimony dates, and required NCGS to give notice to its customers of said hearing.

On August 1, 1996, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene, and the Petition was subsequently granted by the Commission on August 5, 1996.

On August 14, 1996, the Attorney General of North Carolina filed a Notice of Intervention pursuant to G.S. 62-20.

On August 21, 1996, the Commission issued an Order Rescheduling Hearing changing the hearing date from September 4, 1996 to October 7, 1996.

The direct prefiled testimony and exhibits of Company witness Thomas P. Keating were filed on July 1, 1996. Witness Keating prefiled supplemental testimony on October 4, 1996. The direct prefiled testimony and exhibits of Public Staff witnesses Kirk Kibler and Jeffrey L. Davis were filed on September 23, 1996. Public Staff witness Jeffrey L. Davis filed supplemental testimony on September 25, 1996. No other party filed testimony.

On October 7, 1996, the Company and the Public Staff executed a stipulation (Stipulation) resolving all issues between the Company and the Public Staff and filed that Stipulation with the Commission.

On October 7, 1996, the matter came on for hearing as scheduled in Raleigh. CUCA did not appear at the hearing. The Commission was advised that the Company and the Public Staff had reached agreement on all issues in the case as reflected in the parties' prefiled testimony and the Stipulation, and the Public Staff agreed that NCGS' adjusted gas costs were properly accounted for and prudently incurred. The Commission was further informed that the Company, CUCA, the Attorney General and the Public Staff had waived their right to cross-examine witnesses and had stipulated to the admission of prefiled testimony and exhibits into the record without the necessity for live testimony. Thereafter, counsel for the Company and the Public Staff offered, and the Commission accepted into evidence, the Stipulation and the prefiled testimony and exhibits of:

For the Company: Thomas P. Keating, Director of Accounting;

For the Public Staff: (1) Kirk Kibler, Staff Accountant, Accounting Division (2) Jeffrey L. Davis, ~~Utilities Engineer,~~ Natural Gas Division.

Based on the testimony and exhibits received into evidence in this proceeding, the Stipulation and the record as a whole, the Commission makes the following:

FINDINGS AND CONCLUSIONS

1. NCGS is an operating division of NUI Corporation which is a corporation organized under the laws of the state of New Jersey and duly registered to do business in North Carolina.

2. NCGS is engaged in the business of transporting, distributing, and selling natural gas in a franchised area which consists of all of Rockingham County and part of Stokes County in the northern piedmont area of North Carolina.

3. NCGS is a public utility as defined by G.S. 62-3(23) and is subject to the jurisdiction of this Commission and is lawfully before this Commission upon its application for annual review of

gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

4. NCGS' testimony, exhibits, affidavits of publication and published hearing notices are in compliance with the provisions of the North Carolina General Statutes and the Rules and Regulations of this Commission.

5. The test period for review of gas costs in this proceeding is the 12 months ended April 30, 1996.

6. During the period of review, the Company incurred fixed gas costs of $2,308,157 and collected $2,436,987 in revenues attributed to these gas costs. Commodity gas costs incurred were $7,926,537 with related benchmark commodity cost collections equaling $7,473,977. Total gas costs collected were less than costs incurred by $323,730.

7. During the period of review, NCGS incurred $226,886 in negotiated sales losses, returned $494,191 to its customers through existing temporary decrements and accrued $24,429 in interest income.

8. NCGS' gas purchasing policies are prudent and NCGS' gas costs and collections from customers during the review period were prudently incurred and properly accounted for.

9. NCGS should be permitted to recover 100 percent of its prudently incurred gas costs.

10. The correct balances for the all customer deferred account and the sales only deferred account at April 30, 1996 were ($120,322) and $28,128 respectively. The net change in the Company's deferred gas cost accounts is a decrease of $773,073 from the April 30, 1995 balances.

11. NCGS currently has in place temporary decrements of ($0.1906/dt) relating to sales only customers and ($0.0080/dt) relating to all customers.

12. Based upon the balances of the Company's deferred accounts at April 30, 1996, the current temporary decrements in NCGS' rates should be discontinued and a new decrement of ($0.0078)/dt for sales customers only and new increments should be implemented for all customers as follows: Rate Schedule 101 (Residential) - $0.0134/dt; Rate Schedule 102 (Small General) - $0.0078/dt; Rate Schedule 104 (Large General) - $0.0049/dt; Rate Schedule 105 (Interruptible) - $0.0072/dt.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 1-4

The findings of fact and conclusions set forth in Findings and Conclusions 1 through 4 are jurisdictional and informational and were not contested by any party. They are supported by the testimony and exhibits of the various witnesses, the records of the Commission in other proceedings and the Affidavit of Publication filed with the Commission in this proceeding.

EVIDENCE FOR FINDING AND CONCLUSION NO. 5

The review period for annual prudency periods is established by Commission Rule R1-17. The review period designated for NCGS under Rule R1-17(k)(6)(a) in this proceeding is the 12-month period ending April 30, 1996.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 6-7

The amounts of fixed gas costs ($2,308,157) and commodity costs ($7,926,537) were presented in the testimony of Public Staff witness Kibler and Company witness Keating. These amounts are uncontested.

Company witness Keating testified that the amount of funds returned to customers through the existing temporary decrements during the review period was $494,191 and that the amount of negotiated sales losses and interest income during the period of review were $226,886 and $24,429 respectively.

No other party presented evidence on these issues.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 8-9

Company witness Keating testified that NCGS accounted for its gas costs in accordance with Commission Rules. Public Staff witness Kibler testified that the Company properly accounted for its gas costs during the review period. No evidence was presented to the contrary.

Company witness Keating testified that NCGS' gas purchasing policy was to arrange for reasonably priced secure supplies and firm pipeline capacity sufficient to meet the needs of its firm market. Company witness Keating also testified that NCGS' gas costs during the review period were consistent with this policy and were prudent. During the period of review, NCGS' gas supplies were provided primarily through long-term firm supply contracts whose pricing was tied to a spot market index. Public Staff witness Davis testified that he conducted a review of NCGS' gas purchases during the period of review, including NCGS' gas purchasing practices and philosophies, and concluded that the Company's gas costs were prudent.

No other evidence was presented on these issues.

EVIDENCE FOR FINDING AND CONCLUSION NO. 10

Public Staff witness Kibler testified that the correct balances of the all customer deferred account and the sales only deferred account at April 30, 1996 were ($120,322) and $28,128 respectively. The net change in the Company's deferred gas cost accounts is a decrease of $773,073 from the April 30, 1995 balances. Company witness Keating indicated his support for the Public Staff's corrected deferred account balances in his supplemental testimony. No other party presented evidence on this issue.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 11-12

Public Staff witness Davis testified that the existing deferred account temporary adjustments were decrements of ($0.1906/dt) relating to sales only customers and ($0.0080/dt) relating to all customers. This testimony is undisputed.

Public Staff witness Davis testified that based on the Company's deferred account balances at April 30, 1996, the existing decrements should be discontinued and a new temporary decrement of ($0.0078/dt) for sales only customers should be instituted and new temporary increments for all customers should be implemented as follows: Rate Schedule 101 (Residential) - $0.0134/dt; Rate Schedule 102 (Small General) - $0.0078/dt; Rate Schedule 104 (Large General) - $0.0049/dt; Rate Schedule 105 (Interruptible) - $0.0072/dt.

In his supplemental testimony, Company witness Keating agreed with the temporary decrement/increments proposed by the Public Staff.

No other party presented evidence on this issue.

IT IS, THEREFORE, ORDERED as follows:

1. That the $2,308,157 in fixed gas costs and $7,926,537 in commodity gas costs incurred by NCGS during the period of review be, and they hereby are, determined to be prudently incurred.

2. That NCGS' accounting for all such gas costs as set forth in this Order be, and the same hereby is approved.

3. That NCGS be, and it hereby is, authorized to recover 100 percent of its prudently incurred gas costs during the period of review.

4. That NCGS shall implement in its next billing cycle after the date of this Order a temporary decrement of ($0.0078/dt) relating to sales only customers and temporary increments relating to all customers of $0.0134/dt for Rate Schedule 101 (Residential) customers; $0.0078/dt for Rate Schedule 102 (Small General) customers; $0.0049/dt for Rate Schedule 104 (Large General) customers; and $0.0072/dt for Rate Schedule 105 (Interruptible) customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-5, SUB 356

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Public Service Company of North Carolina, Inc. - Application for Approval of an Adjustment to Rates and Charges	)))))	ORDER APPROVING PARTIAL RATE INCREASE

HEARD: July 9, 1996, at 7:00 p.m., Courtroom No. 2, Iredell County Hall of Justice, 201 Water Street, Statesville, North Carolina

July 10, 1996, at 7:00 p.m., Courtroom B, Gaston County Courthouse, 151 South Street, Gastonia, North Carolina

July 11, 1996, at 7:00 p.m., District Courtroom No. 1-A, Buncombe County Courthouse, 60 Courthouse Plaza, Asheville, North Carolina

August 5, 1996, at 7:00 p.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

August 6, 1996, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioners Laurence A. Cobb, Presiding; Allyson K. Duncan and Charles H. Hughes

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

J. Paul Douglas, Vice President–Corporate Counsel, Public Service Company of North Carolina, Inc., Post Office Box 1398, Gastonia, North Carolina 28053
and
Elizabeth F. Crabill, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28655

For the Public Staff – North Carolina Utilities Commission:

James D. Little and Amy A. Barnes, Staff Attorneys, Public Staff – North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the North Carolina Department of Justice:

J. Mark Payne, Assistant Attorney General, North Carolina Department of Justice, Utility Division, Post Office Box 629, Raleigh, North Carolina 27514

For the City of Durham:

W. I. Thornton, Jr., City Attorney, 101 City Hall Plaza, Durham, North Carolina 27701

BY THE COMMISSION: On March 1, 1996, Public Service Company of North Carolina, Inc. (PSNC) filed an application requesting authority to increase its rates and charges to produce an annual revenue increase of $15,411,021, and to make specified changes to its rules, regulations, and tariffs.

By Order issued March 26, 1996, the Commission suspended the proposed rates for 270 days from and after the proposed effective date of April 1, 1996, declared the matter to be a general rate case pursuant to G.S. 62-137, set the matter for investigation and hearing, established the test period as the twelve-month period ending December 31, 1995, with appropriate adjustments, required public notice, and established dates for the prefiling of testimony. By Order issued April 10, 1996, the Commission permitted all parties to file rebuttal testimony.

The Carolina Utility Consumers Association, Inc. (CUCA) and the City of Durham filed petitions to intervene which were allowed by the Commission. The Public Staff and the Attorney General intervened as allowed by law.

This matter was heard in Statesville on July 9, Gastonia on July 10, Asheville on July 11, and Raleigh on August 5 and 6, 1996.

PSNC submitted the testimony of the following witnesses with its application: Charles E. Zeigler, Jr., Bruce P. Barkley, Jack G. Mason, Sharon D. Boone, F. William Rayner, John E. Olson, and Victor L. Andrews, Ph. D.

At the commencement of the hearing, PSNC, the Public Staff, and CUCA announced that they had filed a settlement on July 23, 1996, resolving all issues except those related to PSNC's proposed Rider F, which would be considered on stipulated facts and written submissions. The Attorney General stated that he did not oppose the Commission's approval of the settlement.

Subsequently, the parties filed briefs addressing their positions with respect to Rider F. Some of the briefs were filed late due to disruptions caused by Hurricane Fran, but all of the briefs have

been considered by the Commission.

Based on the application described above, the testimony and exhibits, the Stipulation, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. PSNC is a corporation duly organized under the laws of the State of North Carolina having its principal office and place of business in Gastonia, North Carolina.

2. PSNC operates a natural gas pipeline system for the transportation, distribution, and sale of natural gas to residential, commercial, and industrial customers within a certificated service area consisting of all or parts of thirty-three (33) counties in central and western North Carolina as designated in PSNC's certificates of public convenience and necessity issued by this Commission. PSNC is a public utility as defined in G.S. 62-3(23) subject to the jurisdiction of this Commission.

3. PSNC is lawfully before this Commission upon its application to increase its rates and charges for retail natural gas service pursuant to G.S. 62-133 and for approval of proposed changes to its rules, regulations, and tariffs.

4. PSNC's application, testimony, exhibits, Form G-1, published hearing notices, and affidavits of publication comply with the provisions of the Public Utilities Act and the Rules and Regulations of this Commission.

5. The appropriate test period for use in this proceeding is the twelve months ended December 31, 1995, with appropriate adjustments occurring after the end of the test period and before the conclusion of the hearing as permitted by G.S. 62-133(c).

6. The Commission concludes that PSNC is properly before the Commission for a determination of the justness and reasonableness of its rates and charges as regulated by the Commission under Chapter 62 of the General Statutes of North Carolina.

7. The quality of service being provided by PSNC is good.

VOLUMES

8. The appropriate level of adjusted sales and transportation quantities for use herein is 63,166,873 dekatherms (Dt), which is composed of 41,323,851 Dt of sales quantities and 21,843,022 Dt of transportation quantities. The purchased gas supply required to generate the appropriate sales level is as follows:

Item	Quantity (Dt)
Sales and transportation	63,166,873
Less: Transportation	(21,843,022)
Sales	41,323,851
Lost and unaccounted for	1,139,854
Company use	132,281
Total gas supply	42,595,986

9. The Commission concludes that for purposes of the settlement and this Order, the adjusted sales and transportation quantities set forth above are reasonable.

COST OF GAS

10. The appropriate level for total fixed gas costs in this proceeding is $43,686,845.

11. The appropriate level for the commodity cost of gas is $121,905,360, based on an estimate of $2.95 per Dt benchmark.

12. The reasonable level for the total cost of gas for purposes of the Stipulation and this Order is $169,345,003 determined as follows:

ITEM	AMOUNT
Commodity cost of gas	$121,905,360
Lost & unaccounted for gas	3,362,569
Company use gas	390,229
Fixed cost of gas	43,686,845
Total	$169,345,003

DEPRECIATION RATES

13. Under the Stipulation of the parties, the depreciation rates approved in PSNC's last rate case, Docket No. G-5, Sub 327, should continue to be used in this proceeding. See 84 N.C.U.C. 159, 243-244 (1994). The Commission finds and concludes that such rates are appropriate, just, and reasonable.

RATE BASE

14. For purposes of this proceeding, the reasonable rate base used and useful in providing service is $368,973,955, which consists of the following:

Item	Amount
Gas plant in service	$607,048,921
Accumulated depreciation	(179,621,679)
Net plant in service	427,427,242
Gas in storage	10,162,175
Materials and supplies	4,285,370
Other working capital items	(17,875,866)
Accumulated deferred income taxes	(55,024,966)
Total original cost rate base	$368,973,955

REVENUE REQUIREMENT

15. The appropriate level of end-of-period pro forma revenues under present rates for use in this proceeding is $315,603,784, which is composed of $314,464,234 of sales and transportation revenues and $1,139,550 of other operating revenues.

16. The appropriate level of operating revenue deductions for use in this proceeding is $278,903,095.

17. The Commission cannot guarantee that PSNC, in fact, will achieve an overall rate of return on rate base of 10.37% to which the partes have agreed in the Stipulation, but the Commission finds and concludes that such overall rate of return is just and reasonable, should be allowed, and will enable PSNC, by sound management, to produce a fair return for its stockholders, to maintain its facilities and services in accordance with the reasonable requirements of its customers, and to compete in the capital markets for funds on terms which are reasonable and fair to its customers and investors.

18. PSNC should be authorized, as part of this proceeding, to increase its annual level of operating revenues through the rates and charges approved in this Order by $2,701,193. After giving effect to this increase, the annual operating revenues for PSNC would be $318,304,977.

RATE DESIGN AND COST-OF-SERVICE

19. As part of the Stipulation, the parties have agreed that, for purposes of this proceeding, the stipulated rates, as shown in Exhibit B of the Stipulation, should produce the revenues shown in the column titled "Total Revenues" and should be adopted and approved.

20. PSNC has proposed, by a separate filing in a separate docket, to implement a pooling service. The Commission will consider and decide this proposal by further order of the Commission in the separate docket.

21. The volumetric rates and facilities charges shown on Exhibit B attached to the Stipulation should be approved as just and reasonable by the Commission in this case, and the Commission further finds and concludes that the rates set forth therein are just and reasonable to all customer classes.

22. The rates approved in this Order should be placed in effect October 1, 1996.

FIXED GAS COST RECOVERY RATES

23. The parties to the Stipulation have agreed that the fixed gas costs should be allocated in accordance with the following amounts, which are appropriate for the purposes of calculating fixed gas cost recovery in Rider D and for the implementation of the weather normalization adjustment factor (Rider E):

Rate Schedule	Per Unit Fixed Gas Costs ($/Dt)
105/120	0.9740
110	1.1044
125	0.8685
145	0.5648
150	0.3848

The Commission finds and concludes that the fixed gas cost recovery rates set forth above are appropriate for the purposes of calculating gas cost recovery in PSNC's Rider D and for the implementation of the weather normalization adjustment factor as approved in this Order.

MISCELLANEOUS CHANGES TO RIDERS, RULES AND REGULATIONS

24. The Commission finds and concludes that, except for proposed Rider F, the changes to PSNC's tariff schedules, riders, and general rules and regulations as recommended by PSNC in Barkley Exhibit 1, Schedule 3, and as amended pursuant to the agreement of the parties, are

appropriate, just and reasonable and should be implemented.

25. The Commission finds and concludes that all of the provisions of the Stipulation of the parties settling the issues in this case with the exception of the issues related to proposed Rider F are fair, just and reasonable under the circumstances of this proceeding, and should be approved.

26. By its proposed Rider F, PSNC requests authority to file annual adjustments to rates in order to recover the estimated costs of replacing bare steel and cast iron mains and services. The Commission finds the facts with respect to PSNC's proposed Rider F as agreed to by PSNC, the Public Staff and CUCA in the Statement of Facts attached to the Stipulation (which is appended hereto as Appendix B). PSNC's proposed Rider F is not just or reasonable and should be denied.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-7

These findings of fact are jurisdictional and informational in nature and are supported by information in PSNC's verified application, the testimony and exhibits filed by the witnesses for PSNC, the Orders of the Commission, and the Commission's public files and records.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-9

The evidence supporting these findings of fact is found primarily in the direct testimony of PSNC witness Barkley and the Stipulation of the parties. The levels of adjusted sales and transportation volumes used in the Stipulation and found to be reasonable by the Commission are the result of the negotiations among the parties and are not opposed by any party. The total quantity of 63,166,873 Dt is composed of 41,323,851 Dt of sales quantities and 21,843,022 Dt of transportation quantities. Based on the foregoing, the Commission concludes that the appropriate throughput level for use in this proceeding is 63,166,873 Dt and the appropriate level of gas supply required is as follows:

Item	Quantity (Dt)
Sales and transportation	63,166,873
Less: Transportation	(21,843,022)
Sales	41,323,851
Lost and unaccounted for	1,139,854
Company use	132,281
Gas supply	42,595,986

The Commission notes that the Company Use Gas and the Lost and Unaccounted For Gas are to be trued-up and accounted for as provided in Rule R1-17(k)(4)(c).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10-12

The evidence supporting these findings of fact is contained in PSNC's application, the direct testimony of PSNC witness Barkley and the Stipulation of the parties. Mr. Barkley testified that a $2.95 per Dt benchmark commodity gas cost is PSNC's existing benchmark and he believes such benchmark is a reasonable estimate of the commodity gas cost for the winter period. The parties agreed in the Stipulation that such benchmark should be established in this rate case. The Commission has reviewed the evidence and Stipulation and concludes that it is reasonable to use a benchmark commodity gas cost rate as part of this Order at $2.95 per Dt. Based on the foregoing, the Commission concludes that the appropriate cost of gas in this proceeding is $169,345,003 which is comprised of the following components:

Commodity cost of gas	$121,905,360
Unaccounted for gas	3,362,569
Company use gas	390,229
Fixed gas costs	43,686,845
Total cost of gas	$169,345,003

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is contained in the direct testimony and exhibits of PSNC witness Barkley and the Stipulation of the parties. The Commission has reviewed these rates and concludes that they are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding was set forth in PSNC's original application, the direct testimony and exhibits of PSNC witness Barkley, and the Stipulation of the parties. The parties have agreed that the original cost rate base at June 30, 1996, is $368,973,955 as shown in the Stipulation and below:

Item	Amount
Gas plant in service	$607,048,921
Accumulated depreciation	(179,621,679)
Net plant in service	427,427,242
Gas in storage	10,162,175
Materials and supplies	4,285,370
Other working capital items	(17,875,866)
Accumulated deferred income taxes	(55,024,966)
Total original cost rate base	$368,973,955

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-18

The evidence for these findings is set forth primarily in the direct testimony and exhibits of PSNC witness Barkley and the Stipulation of the parties. The settlement reached by the parties resolved the differences between them related to revenue issues in this case.

The Commission has reviewed the agreement of the parties and the evidence related to operating revenues, operating revenue deductions, rate base, and rate of return. The Commission concludes that the same are just and reasonable to PSNC and all classes of its customers. Exhibit A of the Stipulation (which is attached to this Order as Appendix A) summarizes the gross revenue, net operating income, and rate of return which PSNC should have a reasonable opportunity to achieve based upon the determination made herein. This Exhibit, illustrating PSNC's gross revenue requirement, incorporates the findings and conclusions made by the Commission in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 19-22

The evidence for these findings of fact is contained in the direct testimony and exhibits of PSNC witness Barkley and the Stipulation of the parties. The Commission has reviewed PSNC's application, Mr. Barkley's testimony and exhibits, and the Stipulation, and concludes that the compromise reached by the parties in the Stipulation is just and reasonable for this case and should be approved. The Commission has carefully reviewed these rates and concludes that the proposed rates shown in Exhibit B to the Stipulation are just and reasonable.

At the time PSNC filed its general rate case, it proposed that the rates be made effective April 1, but the Commission suspended the proposed rates pending this order. As all issues including those related to Rider F have been decided, the Commission believes that it is appropriate to put the rates into effect promptly and concludes that commencement of the rate changes effective October 1, 1996, is just and reasonable and should be so ordered.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence supporting this finding of fact is contained in the testimony and exhibits of PSNC witnesses Barkley and the Stipulation of the parties. The parties to the Stipulation have agreed that the fixed gas costs should be allocated in accordance with the following amounts, which are appropriate for the purposes of calculating fixed gas cost recovery in Rider D and for the implementation of the weather normalization adjustment factor (Rider E):

Rate Schedule	Per Unit Fixed Gas Costs ($/Dt)
105/120	0.9740
110	1.1044
125	0.8685
145	0.5648
150	0.3848

The Commission finds and concludes that the fixed gas cost recovery rates set forth above are appropriate for the purposes of calculating gas cost recovery in PSNC's Rider D and for the implementation of the weather normalization adjustment factor as approved in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-26

The evidence supporting these findings of fact is contained in the testimony and exhibits of PSNC witnesses Barkley and the Stipulation of the parties. The Commission finds and concludes that, with the exception of proposed Rider F which is discussed below, the proposed changes to PSNC's tariffs, including its Rules and Regulations, are just and reasonable and are hereby approved.

The Commission finds the facts with respect to PSNC's proposed Rider F to be as set forth in the Statement of Facts agreed to by PSNC and the Public Staff and attached to their Stipulation (Appendix B of this Order), with the understanding that the statement in paragraph 11 of the Statement of Facts to the effect that "For ratemaking purposes, PSNC's rate base will not reflect the cost of any plant constructed with Rider F surcharges" refers to replacement mains and services. PSNC states in its brief,

> PSNC is not seeking a return on facilities installed to replace bare steel and cast iron mains and services. Rather, PSNC will treat these facilities as having a zero value for purposes of determining its rate base and return and will place the amounts collected in a special account. PSNC will use these funds when it constructs new facilities to extend natural gas service to unserved areas. These "expansion facilities" will be treated as facilities entitled to be included with PSNC's rate base on which it earns a return.

Thus, although Rider F is designed to recover the costs associated with the replacement of bare steel and cast iron mains and services, PSNC proposes to put the money collected in a special account and to use it for extension of service to unserved areas. Numerous issues are raised by PSNC's proposed Rider F, including whether the Commission has the legal authority to approve the Rider F mechanism as proposed, whether there is sufficient justification to treat one ratemaking element (the cost of replacing bare steel and cast iron piping) differently from other expense items in the ratemaking process, and whether proposed Rider F would provide PSNC with the opportunity to earn in excess of its allowed rate of return on investment. For the reasons discussed below, the Commission concludes that the proposed Rider F should be rejected on both legal and policy grounds.

First, the Commission does not believe that an annual adjustment mechanism such as the proposed Rider F would be legal under current North Carolina law. The Commission has adopted and our appellate courts have upheld riders which adjust rates outside of general rate cases only in very limited circumstances involving highly variable and unpredictable expense or volume levels beyond the control of the utility. See, e.g., State ex rel. Utilities Comm. v. Edmisten, 291 N.C. 327, 230 S.E. 2d 651 (1976); State ex rel. Utilities Comm. v. CF Industries, Inc., 299 N.C. 504, 263 S.E.2d 559 (1980); State ex rel. Utilities Comm. v. Thornburg, 316 N.C. 238, 342 S.E.2d 28 (1986); State ex rel. Utilities Comm. v. Public Service Co., 35 N.C. App. 156, 241 S.E.2d 79 (1978); State ex rel. Utilities Comm. v. Thornburg, 84 N.C.App. 482, 353 S.E.2d 413, cert. denied, 320 N.C. 517, 358 S.E.2d 533 (1987). PSNC's replacement of bare steel and cast iron mains and services does not meet these criteria. As the stipulated facts indicate, the replacement costs have been predictably between 3.8 and 5.2 million dollars per year for the past five years and the level of replacement has averaged about 26 miles of mains and 1,057 services per year. Thus, the cost has not been shown to constitute an unpredictable portion of PSNC's annual construction expenditures nor has the number of miles of mains and number of services been highly variable. Further, PSNC has had control as to how much, how often and when the replacement takes place. Thus, these expenditures are not highly variable or unpredictable, and they are generally controllable by PSNC.

Second, PSNC's proposed Rider F should be rejected because it violates traditional ratemaking principles and because there is insufficient justification to treat these expenditures differently from other similar expenditures in the ratemaking process. It is important to note that PSNC has been required by federal law to replace the bare steel and cast iron mains and services since the early 1970s. As of 1996, PSNC had replaced bare steel and cast iron mains and services for over twenty-five years within traditional general rate case procedures, with no special rider mechanism. This long history indicates that PSNC is fully capable of maintaining a strong, viable company without the need for a special surcharge of this nature.

The Commission is concerned that such a mechanism would preclude appropriate regulatory oversight, and without regulatory oversight, the possibility that rates may exceed just and reasonable levels is increased. Expenditures for replacement of these mains and services could be offset by decreases in other cost of service items, such as reductions in operation and maintenance expenses resulting from elimination of leaks. Further, the new replacement mains will allow PSNC to increase deliveries of natural gas, due to the higher operating pressures and the larger diameters of replacement pipe. Increased deliveries will enable PSNC to serve more customers and to increase revenues. Because proposed Rider F would permit PSNC to recover the cost of the replacement

mains without recognition of associated decreases in expenses or increases in revenues, it would increase the possibility that PSNC may earn in excess of its allowed rate of return. This concern is increased by the sheer magnitude and pace of PSNC's replacement program. If PSNC continues its current level of replacement, it will have replaced approximately 100 miles of mains and 5000 services in less than 10 years. Proposed Rider F would allow PSNC to recover the dollars associated with this replacement without any of the expenditures being subjected to the level of regulatory scrutiny which a general rate case provides. Review of PSNC's total cost of service in the context of a general rate case is the most effective way to balance all relevant ratemaking elements.

Long-standing ratemaking principles allow utilities to recover the cost of plant over its useful life and to earn a rate of return on the unrecovered portion of its investment. Adherence to these principles results in intergenerational equity and balance because ratepayers pay for plant as they use it. Proposed Rider F would set aside these long-standing principles and would require present ratepayers to pay for certain capital improvements as the funds are expended, rather than as the service is provided. This would lead to a gross mismatch between when costs are recovered and when service is provided. This mismatch would cause current ratepayers to subsidize the cost of serving future generations of ratepayers.

Twice in just the past five years, the Commission has declined to adopt riders in situations similar to the present case, and for reasons similar to those discussed above. In 1991, North Carolina Power proposed a purchased capacity and purchased energy rider, also known as a NUG rider, to recover post-1990 non-utility generation expense outside of the framework of a general rate case. The Commission declined to adopt the rider. In its Order Approving Partial Rate Increase in that case, 81 NCUC 263, 278-81 (1991), the Commission stated

> VEPCO has substantial control through the terms of its bidding program and the negotiations of contracts with the winning bidders over how much electricity is available to be purchased, the terms under which it is available, when it is purchased and at what price...The Company's proposed NUG rider mechanism would preclude appropriate regulatory oversight of the Company's overall expenses. This is because increases in payments to NUGs for additional capacity and energy could be offset by decreases in other cost of service items, such as reduced operation and maintenance expenses, and increases in sales and revenues...

In 1994 in PSNC's last rate case, PSNC requested a rider to recover the costs of the clean-up of manufactured gas plants. The Commission again ruled against the rider mechanism on much the same legal and policy grounds. See Order Granting Partial Rate Increase, 84 NCUC 159, 177-81 (1994).

Finally, the Commission notes that PSNC seeks to justify proposed Rider F by proposing that surcharges be put in a special account and used for expansion, rather than for replacement mains and services. But this is a poor mechanism for financing natural gas expansion. The surcharges may be subject to federal and state income taxes when they are collected, in which case (assuming a composite state and federal income tax rate of 40%), only 60% of the funds collected through Rider F would be available to fund growth. The remaining 40% would be owed as income taxes. Thus, the effectiveness of the proposed rider in financing growth may be significantly diminished. Further,

it would be difficult to explain to consumers why money collected for replacement of mains and services is being used for extension of service to new areas.

IT IS, THEREFORE, ORDERED as follows:

1. That Public Service Company of North Carolina, Inc., is authorized to adjust its rates and charges effective for service rendered on and after October 1, 1996, so as to produce an annual level of revenue of $318,304,977 from its retail customers based upon the adjusted test year level of operations found just and reasonable herein. This amount represents an increase of $2,701,193 more than would be produced from the rates in effect prior to this Order, based upon the test year level of operations.

2. That changes to PSNC's General Rules and Regulations are approved as discussed herein and shall be effective for service rendered on and after October 1, 1996. PSNC shall file the revised General Rules and Regulations as approved herein not later than thirty (30) days after the date of this Order.

3. That PSNC shall file appropriate tariffs and riders in conformity with the provisions of this Order, properly adjusted for all approved increments and decrements. These tariffs and riders shall be filed within thirty (30) days from the date of this Order, and shall be effective for service rendered on and after October 1, 1996.

4. That PSNC shall prepare a notice for its customers of the rate changes ordered in this docket, and shall give notice to its customers by appropriate bill insert in the next billing cycle.

ISSUED BY ORDER OF THIS COMMISSION.
This the 25th day of September, 1996

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Hughes concurs.

Commissioner Hughes concurring:

I find some merit in PSNC's request for Rider F. The North Carolina General Assembly has repeatedly signaled its strong interest in promoting the extension of gas service to unserved areas. Gas local distribution companies do not have unlimited capital. PSNC's need to replace bare steel and cast iron mains places a significant demand on the company's limited capital. In addition, until the next rate case, money spent on these projects does not provide any incremental revenue, further reducing cash available for expansion. The mechanism described by PSNC in its Rider F seems to be one way to address this problem. However, I agree that the Commission currently lacks statutory authority to approve such a rider, and therefore I concur.

Commissioner Charles H. Hughes

APPENDIX A
EXHIBIT A

Public Service Company of North Carolina, Inc.
Operating Income for Return and End of Period Net Investment
For the Test Year Ended December 31, 1995

Line No.		As Filed Originally By PSNC	Update Adjustments	After Pro Forma Adjustments	Adjustments For Proposed Changes	After Adjustments For Proposed Changes
	Operating Revenues:	(1)	(2)	(3)	(4)	(5)
1.	Gas Sales and Transportation	313,220,921	1,243,313	314,464,234	2,701,193	317,165,427
2.	Other Operating Revenues	1,095,817	43,733	1,139,550	0	1,139,550
3.	Total Operating Revenues	314,316,738	1,287,046	315,603,784	2,701,193	318,304,977
	Operating Expenses:					
4.	Purchased Gas	169,339,615	5,388	169,345,003	0	169,345,003
5.	Operating and Maintenance	59,390,540	(2,893,746)	56,496,794	9,081	56,505,875
6.	Depreciation	21,366,678	222,623	21,589,301	0	21,589,301
7.	General Taxes	16,768,812	(23,962)	16,744,850	89,378	16,834,228
8.	State Income Taxes	2,664,524	270,422	2,934,946	201,712	3,136,658
	Federal Income Taxes -					
9.	Current	7,188,452	1,126,606	8,315,058	840,358	9,155,416
10.	Deferred - Net	3,912,299	0	3,912,299	0	3,912,299
11.	Amortization of ITC	(435,156)	0	(435,156)	0	(435,156)
12.	Total Operating Expenses	280,195,764	(1,292,669)	278,903,095	1,140,529	280,043,624
13.	Net Operating Income	34,120,974	2,579,715	36,700,689	1,560,664	38,261,353
14.	Other	0	0	0	0	0
15.	Net Operating Income for Return	34,120,974	2,579,715	36,700,689	1,560,664	38,261,353
	End of Period Net Investment:					
16.	Utility Plant	606,482,951	565,970	607,048,921	0	607,048,921
17.	Accumulated Depreciation	(179,902,209)	280,530	(179,621,679)	0	(179,621,679)
18.	Construction Work in Progress	0	0	0	0	0
19.	Working Capital	(903,348)	(2,524,973)	(3,428,321)	0	(3,428,321)
20.	Deferred Income Taxes	(56,246,496)	1,221,530	(55,024,966)	0	(55,024,966)
21.	End of Period Net Investment	369,430,898	(456,943)	368,973,955	0	368,973,955
22.	Rates of Return	9.24%		9.95%		10.37%

APPENDIX B

STATEMENT OF FACTS

RIDER F

1. The Bare Steel Main and Cast Iron Replacement Program is the name given to PSNC's program of replacing the bare steel and cast iron distribution mains and services which were installed in PSNC's service territory during the 1950's.

2. PSNC installed bare steel mains and services on its distribution system until the mid-1960's. Federal regulations which became effective in 1970 required LDCs to install only coated or wrapped mains from that point on.

3. The replacement program eliminates and prevents leaks in the mains and services and allows in some instances the pressure and system throughput to be increased.

4. In 1990, PSNC replaced 22 miles of its bare steel main and 588 of its services at a cost of $3,885,274. In 1991, PSNC replaced 41 miles of its bare steel main and 937 of its services at a cost of $4,904,183. In 1992, PSNC replaced 32 miles of its bare steel main and 1,269 of its services at a cost of $5,343,325. In 1993, PSNC replaced 36 miles of its bare steel main and 1,304 of its services at a cost of $5,319,565. In 1994, PSNC replaced 23 miles of its bare steel main and 1,075 of its services at a cost of $4,606,894. In 1995, PSNC replaced 23 miles of its bare steel main and 1,169 of its services at a cost of $4,820,665.

5. PSNC estimates that it will spend in excess of $50,000,000 on main and services replacement in the next ten years, one-half related to bare steel during years one through five and one-half related to cast iron during years six through ten.

6. PSNC's annual capital budgets for the years 1995 through 1999 reflect $5.0 million per year for estimated cast iron and bare steel main and services replacement expenditures. The total annual capital budget for the year 1995 was $56.6 million, and is forecasted to be $61.0 million for 1996, and $65.0 million for each of the years 1997 through 1999. (per G-1, Item 32). Thus, the estimated cost to replace the cast iron and bare steel main and services for the next five years is approximately one twelfth of PSNC's annual capital budget.

7. PSNC has proposed to file annually an adjustment to the rates, known hereafter as Rider F, under Rate Schedule Nos. 105, 110, 125, 145, 150, 175 and 180 to recover the estimated costs of this replacement program. Under Rider F, PSNC would compute a Cast Iron and Bare Steel Main Replacement program increment for an annual period by dividing the estimated annual cost for cast iron and bare steel main and services replacement by the sales and transportation quantities approved by the Commission in the Company's most recent general rate case.

8. The allocation of the estimated costs of the program among PSNC's rate schedules under Rider F differs from the manner in which distribution mains are allocated to the rate schedules

in the cost of service studies.

9. The procedural mechanisms which PSNC wishes to employ for the Rider F are the submission of reports to the Commission on a quarterly basis setting forth the amounts collected from customers under Rider F and PSNC's actual expenditures (including indirect costs) for the replacement of bare steel and cast iron pipe. These reports would be submitted to the Commission within forty-five days after the close of a calendar quarter.

10. The Uniform System of Accounts requires that the cast iron and bare steel main and services replacement expenditures be recorded as utility plant in service and depreciated over its useful life of forty-eight years. For ratemaking purposes, the Company's annual revenue requirement (or cost of service) reflects one year's depreciation expense on the plant expenditures and a return on the cumulative undepreciated portion of the plant expenditures. The present accounting and ratemaking treatment results in ratepayers paying for these plant expenditures over the period that the plant is providing service to ratepayers.

11. PSNC proposes to account for amounts received pursuant to Rider F in a separate account and treat them as a reduction of its utility plant. For ratemaking purposes, PSNC's rate base will not reflect the cost of any plant constructed with Rider F surcharges. The proposed accounting and ratemaking treatment will result in ratepayers paying for these expenditures during the same annual period that the expenditure is made.

12. The taxability of the Rider F surcharge as current income is uncertain at this time.

DOCKET NO. G-5, SUB 361

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Public Service Company of North Carolina, Inc. — Application For Annual Review Of Gas Costs Pursuant to G.S. § 62-133.4(c) and Commission Rule R1-17(k)(6)	)))))	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD: Tuesday, August 13, 1995, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

Tuesday, August 27, 1995, at 10:00 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Laurence A. Cobb, Presiding, and Commissioners Ralph A. Hunt and Jo Anne Sanford

APPEARANCES:

For Public Service Company of North Carolina, Inc.:

J. Paul Douglas, Vice President-Corporate Counsel, Public Service Company of North Carolina, Inc., Post Office Box 1398, Gastonia, North Carolina 28053

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, Post Office Drawer 1269, Morganton, North Carolina 28655-1269

For the Using and Consuming Public:

Gina C. Holt, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On June 3, 1996, Public Service Company of North Carolina, Inc. (PSNC or Company) filed the direct testimony and exhibits of Franklin H. Yoho, Senior Vice President – Marketing and Gas Supply, and Melinda C. Russell, Senior Financial Accountant, in connection with the annual prudence review of PSNC's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On June 11, 1996, the Commission issued its Order Scheduling Hearing And Requiring Public Notice (Hearing Order) setting dates for the filing of testimony and intervention, ordering PSNC to publish notice of these matters in the form of notice attached to the Hearing Order, and ordering a public hearing to commence on August 13, 1996. By Order On Motion To Compel issued July 19, 1996, the Commission granted the Public Staff's motion to compel, as clarified, to require PSNC to make available for inspection journal entries for all transactions recorded by PSNC Production Corporation during the review period and extended the time for the filing of testimony by the Public Staff and other intervenors to August 12, 1996. The Commission further provided that the hearing previously scheduled for August 13, 1996, would be held for public witness testimony only, and the hearing for expert testimony would be rescheduled for August 27, 1996.

On June 23, 1996, the Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene. This petition was allowed by order issued August 1, 1996.

On August 12, 1996, the Public Staff filed the direct testimony of James G. Hoard, Supervisor of the Natural Gas Section in the Accounting Division of the Public Staff, and Jan A. Larsen, a Utilities Engineer in the Natural Gas Division of the Public Staff. No other party filed any testimony.

PSNC witness Yoho and Public Staff witnesses Hoard and Larsen were the only witnesses who testified at the public hearing on August 27, 1996. Counsel for PSNC stated at the commencement of the hearing that none of the parties had requested to cross-examine PSNC witness Russell and she had not appeared. Upon motion, PSNC witness Russell's prefiled testimony was copied into the record, and her exhibits were admitted.

Based on the testimony, schedules and exhibits, the entire record in this proceeding, and matters which may be judicially noticed, the Commission makes the following:

FINDINGS OF FACT

1. PSNC is a corporation duly organized under the laws of the State of North Carolina having its principal office and place of business in Gastonia, North Carolina. PSNC operates a natural gas pipeline system for the transportation, distribution, and sale of natural gas within a franchised area consisting of all or parts of thirty-three (33) counties in central and western North Carolina as designated in PSNC's certificates of public convenience and necessity issued by this Commission.

2. PSNC is engaged in providing natural gas utility service to the public and is a "public utility," as defined in G.S. 62-3(23), subject to the jurisdiction of this Commission pursuant to G.S. 62-2.

3. PSNC has filed with the Commission, and submitted to the Public Staff, all of the information required by G.S. 62-133.4(c) and Commission Rule R1-17(k), and has complied with the procedural requirements of such statute and rule.

4. The test period for review of gas costs in this proceeding is the twelve months ending March 31, 1996.

5. As of March 31, 1996, PSNC had a balance of $12,205,483 recoverable from customers in its deferred account for sales customers only and a $285,850 balance recoverable from customers in its deferred account for all customers.

6. The Public Staff took no exceptions to PSNC's accounting for gas costs and recoveries during the review period. The Public Staff noted that PSNC had agreed to make a credit of $200,000 to the deferred account for all customers for net compensation related to certain capacity release and secondary market transactions.

7. PSNC has properly accounted for its gas costs and collections from customers during the period of review.

8. PSNC has adopted a gas supply policy, which it refers to as a "best cost supply strategy"; this gas supply policy is based upon three primary criteria: supply security, operational flexibility, and cost of gas.

9. PSNC has a portfolio of gas supply contracts which include long-term supply contracts with major producers, marketing companies, and interstate pipeline marketing affiliates. Most of these contracts have provisions which ensure that the pricing remains market sensitive.

10. PSNC has made prudent gas purchasing decisions, and all of the gas costs incurred during this review period were prudently incurred.

11. PSNC should be permitted to recover 100 percent of its prudently incurred gas costs.

12. A rate increment of $0.02507 per therm will be established to collect the March 31, 1996, balance in the sales-only deferred account, and the decrement in the all customers deferred account, established in Docket No. G-5, Sub 346, will be discontinued. No rate increment will be required to collect the March 31, 1996, balance in the all-customers deferred account; that amount will remain in the deferred account and will be considered part of the activity for the next review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 2

These findings are essentially informational, procedural, or jurisdictional in nature, and were not contested by any party. They are supported by information in the Commission's public files and records, the testimony, and exhibits and schedules, filed by the witnesses for PSNC and the Public Staff, and matters which may be judicially noticed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 - 4

The evidence for these findings of fact is contained in the testimony of PSNC witnesses Yoho and Russell and Public Staff witnesses Hoard and Larsen, and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6). *See* Rule R1-17(k)(6)(a).

The relevant statute, G.S. 62-133.4, requires PSNC to submit to the Commission specified information and data for a historical 12-month test period, including its actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. In addition, Commission Rule R1-17(k)(6)(c) requires the filing of weather-normalized sales volume data, work papers, and direct testimony and exhibits supporting the information filed.

Commission Rule R1-17(k)(6) requires PSNC to submit to the Commission the required information based on a 12-month test period ending March 31. An examination of Ms. Russell's testimony confirms that PSNC has complied with the filing requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k)(6). Ms. Russell further testified that (i) PSNC filed with the Commission, and submitted to the Public Staff, throughout the review period, complete monthly accounting of the computations required by Commission Rule R1-17(k)(5)(c), and (ii) she was aware of no outstanding issues with respect to those filings. Public Staff Witness Hoard states that PSNC has properly

accounted for its gas costs during the review period after adjustment for the $200,000 credit to the all-customers deferred account. The Public Staff has not taken issue with any of these filings, and they are found to be in conformity with the rules.

The Commission concludes that PSNC has complied with all of the procedural requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k) for the 12-month review period ending March 31, 1996.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 - 7

The evidence supporting these findings of fact is found in the testimony of PSNC witness Russell and Public Staff witness Hoard.

As of March 31, 1995, PSNC witness Russell testified that the deferred account balance for sales-only customers was $12,205,483 owed to PSNC. Witness Russell summarized activity in the sales-only deferred account during the twelve months ending March 31, 1996, as follows:

Beginning balance, April 1, 1995	$ 300,990
Commodity cost undercollections	12,082,911
Negotiated margin losses	646,066
Sub 332 increment	(1,090,245)
Sub 338 refund	45
Accrued interest	265,716
Ending balance, March 31, 1996	$12,205,483

The all-customers deferred account balance was $285,850 recoverable from customers. Ms. Russell summarized activity in the all customers deferred account for the twelve months ending March 31, 1996, as follows:

Beginning balance, April 1, 1995	$(3,794,600)
Demand cost undercollections	1,326,052
Sub 332/346 decrements	5,374,790
True-up of unaccounted for gas	(263,306)
True-up of company-use gas	(85,292)
Claim of right tax credits	(15,489)
Adjustment to reverse refund of Southeast Expansion deposit	80,841
Buy/sell credits	(1,498,205)
Capacity release credits	(381,464)
Other secondary market transaction credits	(664,425)
Accrued interest	206,948
Ending balance, March 31, 1996	$ 285,850

Witness Hoard testified that the Public Staff had examined PSNC's accounting for gas costs during the review period ending March 31, 1996, and concluded that PSNC had properly accounted

for its gas costs during this review period with the exception of the $200,000 credit to the all-customers deferred account. With this adjustment, the ending balance in the all-customers deferred account becomes $85,850.

Based upon the testimony, and exhibits and schedules, of the witnesses, the monthly filings by PSNC as required by Commission Rule R1-17(k)(5)(c), and the findings of fact set forth above, the Commission concludes that PSNC has properly accounted for its gas costs during the review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 - 11

The evidence supporting these findings of fact is found in the testimony of PSNC witness Yoho and Public Staff witness Larsen.

Mr. Yoho testified that approximately 48% of PSNC's market is comprised of deliveries to industrial or large commercial customers which either purchase gas from PSNC or transport gas on PSNC's system. The majority of these customers have the capability to use fuels other than natural gas (*e.g.*, distillate fuel oil, residual fuel oil, or propane) and will use their respective alternate fuels when they are priced below natural gas. The remainder of PSNC's sales are primarily to residential and small commercial customers, and the primary competition for this market segment is electricity.

Mr. Yoho testified that the most appropriate description of PSNC's gas supply policy would be a "best cost supply strategy," which is based on three primary criteria: supply security, operational flexibility, and the cost of gas. The first and foremost criterion is security of gas supply. To maintain the necessary supply security for PSNC's firm customers, all of its firm interstate pipeline transportation capacity is supported by either supply contracts providing delivery guarantees or storage. The rationale for this requirement is that during design peak day conditions, PSNC's interruptible markets would most likely be curtailed.

Mr. Yoho testified that PSNC has executed long-term supply agreements and supplemental short-term supply agreements with a variety of suppliers including producers, interstate pipeline marketing affiliates, and independent marketers. By developing a diversified portfolio of capable long-term and short-term suppliers, PSNC believes it has increased the security of its gas supply. Potential suppliers are evaluated on a variety of factors including past performance and gas delivery capability.

The second primary criterion, Mr. Yoho testified, is maintaining the necessary operational flexibility in PSNC's gas supply portfolio. Operational flexibility is required because of the daily changes in PSNC's market requirements related to the unpredictable nature of the weather, the operating schedules of its industrial customers, and their capacity to switch to an alternate fuel. While each of its gas supply agreements has different purchase commitments and swing capabilities, PSNC's gas supply portfolio as a whole must be capable of handling the monthly, daily, and hourly changes in the market requirements.

The third primary criterion is the cost of gas. Mr. Yoho testified that PSNC is committed to acquiring the most cost effective supplies of natural gas available for its customers, while maintaining the necessary security and flexibility to serve their needs.

Mr. Yoho further testified that the greatest challenge confronting PSNC involves making long-term decisions today which will affect PSNC and its customers for many years in light of future uncertainty with respect to critical planning factors such as market demand, supply availability, regulation, and legislation. These factors directly affect PSNC's business, and future changes are almost impossible to predict. To address these uncertainties, PSNC attempts to insert language in its supply and capacity contracts to allow PSNC to readdress the terms of the contract if PSNC's merchant function changes dramatically and also periodic redetermination provisions.

Although Transcontinental Gas Pipe Line Corporation (Transco) remains PSNC's primary interstate pipeline transporter, PSNC has a backhaul arrangement with Transco to redeliver gas from firm transportation and storage agreements with CNG Transmission Corporation (CNG). PSNC also has upstream firm transportation agreements with Texas Eastern Transmission Corporation, Tennessee Gas Pipeline Company, Texas Gas Transmission, and Transco, which deliver gas into CNG for delivery to Transco for redelivery to PSNC via this backhaul transportation arrangement. PSNC has also executed a transportation agreement with CNG to move gas that PSNC will receive from the Cove Point LNG facility in Maryland commencing during the 1996-1997 winter heating season.

With respect to the gas supplies used to support its firm transportation contracts, Mr. Yoho testified that PSNC has developed a portfolio gas strategy which includes the execution of long-term supply contracts that conform to PSNC's best cost supply strategy. PSNC currently has approximately 245,000 Dt per day under long-term contracts with six major producers and four interstate pipeline marketing affiliates. All but one of these contracts have provisions which ensure that the price stays market sensitive. Mr. Yoho stated that PSNC's gas supply and capacity portfolio has the flexibility necessary to meet its market requirements in a secure and cost-effective manner.

In addition, Mr. Yoho testified that PSNC has undertaken the following activities to keep its gas costs as low as reasonably possible, while accomplishing its stated policies and maintaining security of supply and operational flexibility:

1. PSNC is actively participating in all proceedings before FERC and other federal and state governmental agencies whose actions could reasonably be expected to impact PSNC's rates and services to its customers.

2. PSNC has pursued opportunities for capacity release and other secondary market transactions.

3. PSNC continues to work with its industrial customers to transport customer-owned gas. These transportation services permit PSNC to compete with alternate fuels without having to negotiate the rates under its regular rate schedules.

4. PSNC has frequent communications directly with numerous supply sources and other industry participants, and actively researches and monitors the industry using a variety of sources, including industry periodicals.

5. PSNC has frequent internal discussions among senior level officers regarding gas supply policies and major purchasing decisions.

6. Given the market requirements experienced during its most recent design day, PSNC is evaluating various capacity and supply options to ensure that future peak day requirements continue to be met.

In response to questions from the Attorney General and counsel for CUCA, Mr. Yoho stated that the 75/25 sharing mechanism for net compensation from secondary market transactions was necessary to provide sufficient incentives for PSNC to take the risks associated with pursuing secondary market transactions.

Mr. Larsen, testifying for the Public Staff, stated that he had reviewed PSNC's gas supply contracts to determine how the commodity or variable costs were determined and then reviewed any fixed gas cost fees that might apply. Mr. Larsen also reviewed PSNC's responses to the Public Staff's data requests regarding PSNC's gas purchasing philosophies, customer requirements, and gas portfolio mixes. Mr. Larsen further testified that he considered other information received in response to the Public Staff data requests concerning PSNC's future needs, including (i) design day estimates, (ii) historical and forecasted load duration curves, (iii) historical and forecasted gas supply needs, (iv) company purchasing practices, and (iv) projection of capacity additions and supply changes. Mr. Larsen stated that, based upon his review of this information, PSNC's gas costs were prudently incurred during the review period.

At the hearing, no party questioned the prudence of the gas costs incurred by PSNC during the review period.

Based upon the foregoing, the Commission concludes that the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1996, were reasonable and prudently incurred.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

PSNC's balance in the sales-only customers deferred account as of March 31, 1996, was $12,205,483 owed to PSNC, and the all-customers deferred account balance was $85,850 owed to PSNC. (The $85,850 figure reflects the $200,000 credit to this account mentioned earlier.) Ms. Russell stated that the March 31, 1996, balance due PSNC in the all-customers account should remain in the deferred account and be treated as activity during the next review period. She requested that an increment of $0.02507 per therm be established to recover the balance due PSNC in the sales-only customers deferred account.

CUCA essentially conceded that the Commission is obligated by the language of G.S. 62-133.4(c) to allow the increment requested by PSNC so that the Company may recover the

$12,205,483 deficiency, but CUCA goes on to argue that the present benchmark commodity cost of gas included in PSNC's rates is too high and that the Commission should, on its own initiative, order a reduction in the benchmark to offset the increment requested by PSNC. The Commission disagrees with CUCA's recommendation. G.S. 62-133.4(a) provides that a natural gas utility "may apply to the Commission" for permission to change its rates to track changes in the cost of gas. PSNC has not done that in this proceeding, though witness Yoho did testify that the Company was considering such an application. CUCA cites several statutes dealing with the Commission's general ratemaking authority to argue that the Commission has authority to order a change on its own motion. Although the Commission may have authority to initiate a proceeding to investigate the level of a utility's benchmark cost of gas, it would have to give appropriate notice and opportunity for hearing. In this proceeding, there was no notice that the Commission was considering a reduction in PSNC's benchmark cost of gas, and we do not believe that the Commission has authority to order such in the circumstances of this case.

The Commission concludes that it is just and reasonable to adopt the recommendations of PSNC's witness Russell.

IT IS, THEREFORE, ORDERED as follows:

1. That PSNC's accounting for gas costs and recoveries during the twelve-month review period ending March 31, 1996, be, and the same hereby is, approved;

2. That the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1996, were reasonable and prudently incurred, and PSNC be, and hereby is, authorized to recover its gas costs as provided herein;

3. That PSNC recover the $12,205,483 deferred account balance for sales-only customers as set forth above;

4. That the existing decrement to all customers approved in Docket No. G-5, Sub 346, shall be discontinued; and

5. That PSNC shall give notice to all of its customers of the changes in rates approved in this order by appropriate bill inserts in the first billing cycle following the date of this order.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-9, SUB 382

Before the North Carolina Utilities Commission

In the Matter of Application of Piedmont Natural Gas Company, Inc., for a General Increase in its Rates and Charges	)	ORDER APPROVING PARTIAL RATE INCREASE

HEARD IN: Guilford County Courthouse, Greensboro, North Carolina, on September 17, 1996; Charlotte-Mecklenburg Governmental Center, Charlotte, North Carolina, on September 18, 1996; and Commission Hearing Room, Dobbs Building, Raleigh, North Carolina, on October 15, 1996

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioner Charles H. Hughes and Commissioner Ralph A. Hunt

APPEARANCES:

For the Applicant:

Jerry W. Amos, Post Office Box 787, Greensboro, North Carolina 27402

For the Public Staff:

Paul L. Lassiter and Vickie Moir, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the North Carolina Department of Justice:

Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27514

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28655

For Enron Capital & Trade Resources Corporation:

Ellen S. Bailey, Bracewell & Patterson, L.L.P., 2000 K. Street, NW, Washington, D.C. 20006

For El Paso Energy Marketing Company and Perry Gas Companies, Inc.:

M. Gray Styers, Jr., Petree Stockton, L.L.P., 4101 Lake Boone Trail, Suite 400, Raleigh, NC 27607-6519

BY THE COMMISSION. On April 1, 1996, Piedmont Natural Gas Company, Inc. (Piedmont or the Company) gave notice pursuant to Commission Rule R1-17(a) of its intent to file for a general increase in its rates and charges. On May 14, 1996, Piedmont filed a petition in Docket No. G-9, Sub 382, requesting a general increase in its rates and charges for natural gas service and approval of certain changes to its rate schedules, classifications, and practices.

On June 12, 1996, the Commission declared Piedmont's application to be a general rate case pursuant to G.S. 62-137 and suspended the proposed rates for a period of 270 days from the proposed effective date of June 13, 1996. In that order, the Commission also set the matter for hearing, required Piedmont to give notice of the hearing, and established dates for the prefiling of direct testimony by the intervenors and for the prefiling of rebuttal testimony by Piedmont.

On April 26, 1996, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene in Docket No. G-9, Sub 382, and on May 2, 1996, the Commission issued an order granting the petition.

On September 12, 1996, the North Carolina Attorney General (Attorney General) filed notice of intervention.

On September 9, 1996, Enron Capital & Trade Resources Corp. (Enron), Perry Gas Companies, Inc. (Perry) and El Paso Energy Marketing Company (El Paso) filed their petitions to intervene, and on September 18, 1996, the Commission issued an order granting their petitions.

Several other motions were filed by the parties and the record reflects the Commission's ruling on these motions.

On September 17, 1996, the matter came on for hearing as scheduled. At the hearing in Greensboro, William Wilburn testified as a public witness.

On September 18, 1996, the hearing was continued in Charlotte, at which time, Guy Northey, Richard Vinroot, Anne Register and Terry Orell testified as public witnesses.

On October 8, 1996, the Company filed (1) a stipulation (Stipulation) resolving all of the issues in this proceeding as between the Company, the Public Staff and CUCA and (2) testimony in support of the Stipulation. The Stipulation states that the Attorney General does not oppose the Stipulation and will not appeal any order approving the Stipulation. On October 10, 1996, El Paso and Perry advised the Commission that they did not oppose the Stipulation. On October 11, Enron notified the Commission that it "supports the stipulation as a fair and reasonable resolution of the issues in the proceeding."

On October 15, 1996, the case in chief came on for hearing as scheduled in Raleigh. The Stipulation was offered into evidence and explained to the Commission.

At the hearing, the prefiled testimony and exhibits of the following witnesses were offered and accepted into evidence:

For the Company: (1) John H. Maxheim, Chairman of the Board, President, and Chief Executive Officer of Piedmont; (2) Barry L. Guy, Vice President and Controller of Piedmont; (3) Chuck W. Fleenor, Vice President of Gas Supply of Piedmont; and (4) Dr. Donald A. Murry, Economist with C. H. Guernsey & Company and Professor of Economics at the University of Oklahoma.

For CUCA: (1) Donald W. Schoenbeck, a consultant in the field of public utility regulation and a member of Regulatory & Cogeneration Services, Inc.; and (2) Kevin W. O'Donnell, President of Nova Utility Services, Inc.

For El Paso: Ralph W. Johnson, Director of Gas Operations of El Paso.

For Perry: Richard D. Sheldon, Manager of Industrial Marketing of Perry.

Based upon the verified application, the testimony and exhibits received into evidence at the hearings, the Stipulation, the agreement of the Attorney General not to oppose the Stipulation and not to appeal an order approving the Stipulation, and the record as a whole, the Commission makes the following:

FINDINGS AND CONCLUSIONS

1. The Company is engaged in the business of transporting, distributing and selling natural gas in 59 towns and communities located in 14 counties in North Carolina.

2. In its application in this docket, the Company is seeking an increase in its rates and charges for natural gas service to its North Carolina customers.

3. The Company is a public utility within the meaning of G.S. 62-3(23).

4. The Commission has jurisdiction over, among other things, the rates and charges of public utilities, including the Company.

5. The Commission concludes that the Company is properly before the Commission for a determination of the justness and reasonableness of its rates and charges as regulated by the Commission under Chapter 62 of the General Statutes of North Carolina.

6. The only parties submitting evidence in this case with respect to revenue, expenses and rate base used a test period of the twelve months ended January 31, 1996, updated for the most part through September 30, 1996, and the Stipulation was based upon the same test period.

7. The Commission concludes that the appropriate test period for use in this proceeding is the twelve months ended January 31, 1996, updated primarily through September 30, 1996.

8. The Stipulation executed by Piedmont, the Public Staff and CUCA is unopposed by any party. The Stipulation settles all matters in this docket.

9. The Stipulation provides for an increase in annual revenues of $3,118,974.

10. As required by G.S. 62-133(b)(1), the Commission has ascertained the reasonable original cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing natural gas utility service to the public within North Carolina, less that portion of the cost which has been consumed by depreciation expense, all as set forth in Exhibit A attached to this Order. The Commission concludes that these amounts are appropriate for use in this docket.

11. As required by G.S. 62-133(b)(2), the Commission has determined the Company's end-of-period pro forma revenues under the present and proposed rates, as is set forth in Exhibit A attached to this Order. The Commission concludes that these amounts are reasonable for use in this docket.

12. As required by G.S. 62-133(b)(3), the Commission has ascertained the Company's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation, as is set forth in Exhibit A attached to this Order. The Commission concludes that these amounts are reasonable for use in this docket.

13. As required by G.S. 62-133(b)(4), the Commission has fixed the rate of return on the cost of the property ascertained pursuant to paragraph 10 above as will enable the Company by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors. This amount is set forth on Exhibit A attached to this Order. The Commission concludes that this amount is fair and reasonable and will enable the Company by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

14. The Commission concludes that for the purpose of this proceeding the appropriate level of adjusted sales and transportation volumes is 77,760,538 dekatherms (dts), which is composed of 55,994,508 dts of sales quantities and 21,766,030 dts of transportation quantities. The Commission further concludes that the appropriate level for lost and unaccounted for gas is 917,987 dts, that the appropriate level of company use gas is 87,406 dts, and that the appropriate level of purchased gas supply is 56,999,901 dts, consisting of sales volumes, company use gas and lost and unaccounted for gas.

15. The Commission concludes that the rate schedules reflecting new volumetric rates, facilities charges and demand charges as shown in the column entitled "Proposed Rates $2.98 Benchmark" on Exhibit C to the Stipulation, which is not attached to this Order, should be established by the Commission as just and reasonable in this case; however, it is understood that the Company will actually charge the rates listed under the column entitled "Adjusted for Temporary Increments/Decrements" until such rates are changed by order of the Commission. The Commission further concludes that the proposed rates are just and reasonable to all customer classes.

16. The Commission concludes that the fixed gas costs that should be embedded in the proposed rates and used in true-ups of fixed gas costs for periods subsequent to October 31, 1996, in proceedings under Rule R1-17(k) are those fixed gas costs set forth in Exhibit B attached to this Order which are based on a fixed gas cost allocation to North Carolina of 78%.

17. The Commission concludes that the "R" values and heat factors that should be used in the Company's Weather Normalization Adjustment (WNA) for periods subsequent to October 31, 1996, are those "R" values and heat factors set forth in Exhibit C attached to this Order.

18. The Commission finds and concludes that all of the provisions of the Stipulation are fair and reasonable under the circumstances of this proceeding and should be approved.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 1-5

The findings of fact and conclusions set forth in Findings and Conclusions 1-5 are jurisdictional and were not contested by any party. They are supported by the Company's verified application and the testimony and exhibits of the various witnesses and the N.C.U.C. Form G-1 that were filed with the application.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 6-7

The Company filed its application and exhibits using a test period of the twelve months ended January 31, 1996. In its Order of June 12, 1996, the Commission ordered the parties to use a test period of the twelve months ended January 31, 1996, with appropriate adjustments. The Stipulation is based upon the test period ordered by the Commission, and this test period was not contested by any party.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 8-9

These findings and conclusions are supported by the Stipulation and are not contested by any party.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 10

The reasonable original cost of the Company's property used and useful, or to be used and useful within a reasonable time after the test period, in providing natural gas utility service to the public within North Carolina, less that portion of the cost that has been consumed by depreciation expense,

is set forth in Exhibit A attached to this Order. The amounts shown on Exhibit A attached to this Order are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 11

The probable revenues under the Company's present and proposed rates are set forth in Exhibit A attached to this Order. The amounts shown on Exhibit A are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are reasonable and appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 12

The Company's reasonable operating expenses, including actual investment currently consumed through reasonable actual depreciation, is set forth in Exhibit A attached to this Order. The amounts shown on Exhibit A are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these amounts and concludes that they are appropriate for use in this docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 13

The rate of return on the cost of the Company's used and useful property is set forth on Exhibit A attached to this Order. This rate of return is the result of negotiations among the parties and is not opposed by any party. The Commission has carefully reviewed this return and concludes that it will allow the Company by sound management the opportunity to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they now exist, to maintain its facilities and services in accordance with the reasonable requirements of its customers in the territory covered by its franchise, and to compete in the market for capital funds on terms which are reasonable and which are fair to its customers and to its existing investors.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 14

The level of adjusted sales and transportation volumes used in the Stipulation is 77,760,538 dekatherms . This volume level is derived as follows:

Gas Supply	56,999,901
Transportation Supply	21,766,030
Lost & Unaccounted for	(917,987)
Company Use	(87,406)
Adjusted Sales and Transportation	77,760,538

This throughput level is the result of negotiations among the parties and is not opposed by any party. The Commission has carefully reviewed this throughput level and concludes that it is a fair and reasonable approximation of the Company's pro forma adjusted sales and transportation volumes.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 15

The computation of revenues under the proposed rates is set forth on Exhibit A attached to this Order. These computations show that the proposed rates will produce the revenues used by the Commission in its determination of the revenue increase granted in this order. The rates approved herein provide an overall increase to the Company of 0.81%. These rates result in an increase for residential customers of 2.89%, an increase for commercial customers of 1.68%, a decrease for firm industrial customers of 7.87% and a decrease for interruptible customers of 4.17%. These rates are the result of negotiations among the parties and are not opposed by any party. The Commission has carefully reviewed these rates and concludes that they are just and reasonable to all customer classes.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 16

Under the Commission's procedures to true-up fixed gas costs in proceedings under Rule R1-17(k), it is necessary and appropriate to determine the amount of fixed gas costs that are embedded in the rates approved herein. In the Stipulation, the parties agree that for the purpose of this proceeding and future proceedings under Rule R1-17(k) the appropriate amount of fixed costs for each rate schedule is the amount set forth in Exhibit B attached to this Order, which gas costs are based on a fixed gas cost allocation to North Carolina of 78%. The Commission has carefully examined these amounts and concludes that they are just and reasonable.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 17

Under the Company's WNA, it is necessary and appropriate to determine the "R" values and heat factors that will be used in the Company's WNA. In the Stipulation, the parties agree that the "R" values and heat factors that should be used in the Company's WNA are those "R" values and heat factors set forth in Exhibit C attached to this Order. The Commission has carefully reviewed the "R" values and heat factors and concludes that they are appropriate and in compliance with the rates approved herein and with the other provisions of this order.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 18

For the reasons set forth in the foregoing paragraphs, the Commission concludes that the Stipulation provides a just and reasonable resolution of all the issues in this case, will allow the Company a reasonable opportunity to earn a fair return, and provides just and reasonable rates to all customer classes. Therefore, the Commission finds and concludes that all of the provisions of the Stipulation, taken together, are fair and reasonable under the circumstances of this proceeding and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont is hereby authorized to adjust its rates and charges in accordance with the Stipulation effective on service rendered on and after November 1, 1996, and the Stipulation is approved. The Stipulation provides for an increase in annual revenues of $3,118,974.

2. That Piedmont shall file appropriate tariffs to comply with paragraph 1 of this order within five (5) days from the date of this order.

3. That in the true-up of fixed gas costs for periods subsequent to October 31, 1996, in proceedings under Rule R1-17(k), Piedmont shall use the fixed gas costs set forth in Exhibit B attached to this Order.

4. That for periods subsequent to October 31, 1996, Piedmont shall use the "R" values and heat factors set forth in Exhibit C attached to this Order.

5. That Piedmont shall send the notice attached hereto as Exhibit D to its customers as a bill insert beginning with the billing cycle that includes the rate changes approved herein.

ISSUED BY ORDER OF THE COMMISSION
This the 23rd day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

EXHIBIT A

Piedmont Natural Gas Company, Inc.
Net Operating Income and Rate of Return
Docket No. G-9, Sub 382
For The Test Period Ended January 31, 1996

Line No.		As Filed	Update Adjustments	After Update Adjustments	Adjustments For Proposed Rates	After Adjustments For Proposed Rates
	Operating Revenues					
1	Sale and Transportation of Gas	383,950,475	0	383,950,475	3,118,974	387,069,449
2	Other Operating Revenues	1,378,057	71,521	1,449,578	0	1,449,578
3	Total Operating Revenue	385,328,532	71,521	385,400,053	3,118,974	388,519,027
	Operating Expenses					
4	Cost of Gas	222,449,344	(5,613,564)	216,835,780	0	216,835,780
5	Other Operation & Maintenance	67,188,101	(333,081)	66,855,020	12,436	66,867,456
6	Depreciation	21,090,351	1,140	21,091,491	0	21,091,491
7	General Taxes	19,871,840	(28,857)	19,842,983	100,132	19,943,115
8	State Income Taxes	2,702,621	564,013	3,266,634	232,996	3,499,630
9	Federal Income Taxes	11,187,961	2,349,749	13,537,710	970,694	14,508,404
10	Amortization of Investment Tax Credits	(307,623)	0	(307,623)	0	(307,623)
11	Total Operating Expenses	344,182,595	(3,060,600)	341,121,995	1,316,258	342,438,253
12	Net Operating Income	41,145,937	3,132,121	44,278,058	1,802,716	46,080,774
13	Interest on Customers' Deposits	(283,328)	0	(283,328)	0	(283,328)
14	Amort. of Debt Redemption Premium	(108,224)	0	(108,224)	0	(108,224)
15	Net Operating Income for Return	40,754,385	3,132,121	43,886,506	1,802,721	45,689,227
	Original Cost Rate Base					
16	Plant in Service	657,360,169	(1,299,011)	656,061,158	0	656,061,158
17	Accumulated Depreciation	(150,721,788)	(7,750,184)	(158,471,972)	0	(158,471,972)
18	Customer Advances for Construction	(131,227)	0	(131,227)	0	(131,227)
19	Net Plant in Service	506,507,154	(9,049,195)	497,457,959	0	497,457,959
20	Allowance For Working Capital	29,990,991	(6,903,926)	23,087,065	0	23,087,065
21	Accumulated Deferred Income Taxes	(65,579,252)	1,924,809	(63,654,443)	0	(63,654,443)
22	Cost-Free Capital	(5,113,269)	186,693	(4,926,576)	0	(4,926,576)
23	Unamortized Debt Redemption Premium	417,445	17,864	435,309	0	435,309
24	Total Original Cost Rate Base	466,223,069	(13,823,755)	452,399,314	0	452,399,314
25	Return on rate base	8.74%		9.70%		10.10%

EXHIBIT B

Piedmont Natural Gas Company, Inc.
Fixed Gas Cost Embedded In Proposed Rates
DOCKET G-9, SUB 382

	Fixed Cost per dt	Apportionment Percentage
Residential Rate 101		
Year Around Service including Government Housing Authority	$1.0636	33.77%
Heating Only	$1.1838	11.14%
Commercial Rate 102	$0.9582	31.25%
Industrial		
Rate Schedule 103, 113, 104 & 114 Commodity		19.14%
Winter First 1,500	$0.5657	
Next 3,000	$0.5342	
Next 9,000	$0.4718	
Next 46,500	$0.4094	
Over 60,000	$0.0000	
Summer First 1,500	$0.3055	
Next 3,000	$0.2742	
Next 9,000	$0.2118	
Next 16,500	$0.1494	
Next 30,000	$0.1182	
Over 60,000	$0.0000	
Rate Schedule 103 Demand	$5.50 per month	4.70%

Note: The "Fixed Gas Cost Embedded in Proposed Rates" shown above include gross receipts tax

EXHIBIT C

Piedmont Natural Gas Company, Inc.
Calculation of "R" Values for WNA Computations
DOCKET G-9, SUB 382

	Base Rate ($/therms)	Demand ($/therms)	Commodity* ($/therms)	"R" Value ($/therms)	Heat Factor (therms/DDD)	Base Factor (therms/mo.)
Residential						
Rate Schedule 101 - Residential Year Around Service	0.65221	0.10636	0.29306	0.25279	0.18605	16.35595
Rate Schedule 121 - Residential Heating Only	0.67428	0.11838	0.29306	0.26284	0.17897	3.12249
Rate Schedule 141 - Residential Government Housing Authority	0.65221	0.10636	0.29306	0.25279	0.12833	28.97413
Commercial						
Rate Schedule 102 - Small Commercial Year Around						
First 5,000 therms	0.63721	0.09582	0.29306	0.24834	1.05405	445.69884
All Over 5,000 therms	0.57721	0.09582	0.29306	0.18834	1.05405	445.69884
Rate Schedule 122 - Small Commercial Heat Only						
First 5,000 therms	0.63721	0.09582	0.29306	0.24834	0.74938	4.93912
All Over 5,000 therms	0.57721	0.09582	0.29306	0.18834	0.74938	4.93912

*Commodity based upon $2.80 benchmark, grossed up to $2.8932 plus $0.0374 commodity related charge from Unacct & Co. Use

EXHIBIT D

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-9, SUB 382

Before the North Carolina Utilities Commission

In the Matter of Application of Piedmont Natural Gas Company, Inc., for a General Increase in its Rates and Charges	))))	PUBLIC NOTICE

The North Carolina Utilities Commission issued an Order allowing Piedmont Natural Gas Company, Inc. (Piedmont), to increase its rates and charges by approximately $3.1 million annually, or 0.81% overall, effective November 1, 1996.

Piedmont's application for a rate increase was filed with the Commission on May 14, 1996. In its application, Piedmont requested an increase of approximately $9.9 million annually. The increase approved by the Commission was the result of a stipulation entered into between Piedmont and other parties to the proceeding, including the Public Staff of the North Carolina Utilities Commission.

In its application, Piedmont stated that the rate increase was needed because it has been adding customers, making capital improvements in its utility properties and obtaining new long-term capital from the sales of securities at unprecedented levels. The reasons cited by Piedmont in support of its request for a rate increase were to allow it to maintain its facilities and services in accordance with the reasonable requirements of its customers, to compete in the market for capital funds on fair and reasonable terms and to produce a fair profit for its stockholders.

The Commission notes that the increase to specific classes of customers will vary in order to have each customer class pay its fair share of the cost of providing service.

A typical year-round residential customer's annual bill will increase approximately 2.86% based on 876 therms of gas usage.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-9, SUB 384

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Piedmont Natural Gas Company, Inc., for Annual Review of Gas Costs Pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6)	)	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD: October 14, 1996, at 2:00 p.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioner Charles H. Hughes and Commissioner Ralph A. Hunt

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For the Public Staff:

Paul L. Lassiter and Vickie Moir, Staff Attorneys, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the North Carolina Department of Justice:

Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Box 1269, Morganton, North Carolina 28655

BY THE COMMISSION. On July 31, 1996, Piedmont Natural Gas Company, Inc. (Piedmont or the Company) filed (1) the direct testimony of Thomas E. Skains, Senior Vice President of Gas Supply and Services, (2) the direct testimony and exhibits of Chuck W. Fleenor, Vice President of Gas Services and (3) the direct testimony and exhibits of Ann H. Boggs, Director of Gas Accounting, relating to the annual review of Piedmont's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On August 5, 1996, the Commission issued an Order scheduling a public hearing for October 1, 1996, setting dates for prefiled testimony and intervention, and requiring public notice. On August 13, 1996, an Order was issued rescheduling the hearing to October 14, 1996.

On August 6, 1996, the North Carolina Attorney General (Attorney General) filed notice of intervention.

On August 26, 1996, the Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene, and on August 28, 1996, the Commission issued an order granting the petition.

On September 19, 1996, the Public Staff filed the testimony of James G. Hoard, Supervisor, Natural Gas Section, Accounting Division and Eugene H. Curtis, Director, Natural Gas Division. On September 26, 1995, the Public Staff filed supplemental testimony of Messrs. Hoard and Curtis.

On October 14, 1996, the matter came on for hearing as scheduled.

Based upon the evidence adduced at the hearing and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. The Company is a public utility as defined in Chapter 62 of the North Carolina General Statutes.

2. The Company is engaged primarily in the business of transporting, distributing and selling natural gas to over 538,000 customers in the Piedmont region of North Carolina, South Carolina, and the metropolitan area of Nashville, Tennessee.

3. Piedmont has filed with the Commission and submitted to the Public Staff all of the information required by G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The review period in this proceeding is the twelve months ended May 31, 1996.

5. During the review period, Piedmont incurred gas costs of $228,261,153, received $212,478,688 of this amount through rates and the balance of $15,782,465 through a debit to the deferred accounts.

6. At May 31, 1996, the Company had a net debit balance (payable from the customers to Piedmont) of $10,876,818 in its deferred accounts consisting of a debit balance of $12,531,138 in the Sales Only Deferred Account and a credit balance of $1,654,320 in the All Customers Deferred Account. An accounting entry change was subsequently made to reclassify $438,344 between the two deferred accounts due to an improper recording of balances in the two deferred accounts. The revised balances in the deferred accounts are a $12,092,793 debit in the Sales Customers' Deferred Account and a $1,215,976 credit in the All Customers Deferred Account.

7. During the review period, the Company realized net compensation of $3,789,351 from secondary market transactions. In accordance with the Commission's orders in Docket No. G-100, Sub 63 and Docket No. G-100, Sub 67, $3,280,987 of the net compensation was treated as a reduction in gas costs for the benefit of Piedmont's customers.

8. Piedmont properly accounted for its gas costs during the review period.

9. Piedmont has transportation and storage contracts with interstate pipelines which transport gas to Piedmont's system and long term supply contracts with producers, marketers and other suppliers.

10. Piedmont has adopted a "best cost" gas purchasing policy consisting of five main components - the price of gas, the security of the gas supply, the flexibility of the gas supply, gas deliverabilty, and supplier relations.

11. The Company's gas costs during the review period were prudently incurred.

12. The Company should be permitted to recover 100% of its prudently incurred gas costs.

13. Piedmont proposed to collect the net debit balance in the deferred account beginning with the first billing cycle of the month that follows the date of the Commission's order in this docket.

14. As of the date of the hearing, Piedmont had a temporary decrement of $(0.0600)/dt in its Sales Only Deferred Account and the following increments in its All Customers Deferred Account:

Rate 101-YR	Rate 101-HO	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0315/dt	$0.0320/dt	$0.0304/dt	$0.0277/dt	$0.0174/dt	$0.0094/dt

Both the Sales Only Deferred Account decrement and the All Customers Deferred Account increments were approved by Commission order in Docket No. G-9, Sub 367, effective January 1, 1996.

15. Piedmont should refund the May 31, 1996 balance in its All Customers Deferred Account by implementing the following decrements for each rate schedule, as recommended by the Public Staff:

Rate 101-YR	Rate 101-HO	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0264/dt	$0.0268/dt	$0.0253/dt	$0.0229/dt	$0.0137/dt	$0.0065/dt

16. Piedmont should collect the May 31, 1996 balance in its Sales Only Deferred Account by implementing an across-the-board increment of $0.1951/dt as recommended by the Public Staff.

17. The Company advised the Commission that it intends to phase in a 5% reserve margin over a period of four years beginning in the 1996-1997 winter period and attaining the full 5% level in the winter of 1999-2000 as part of its supply plan for the Carolinas.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 1-2

The evidence supporting these findings is contained in the official files and records of the Commission and the testimony of Piedmont witness Skains. These findings are essentially informational, procedural or jurisdictional in nature and are based on evidence uncontested by any of the parties.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 3-4

The evidence supporting these findings is contained in the testimony of Piedmont witness Boggs and Public Staff witness Hoard.

G.S. 62-133.4 requires that each natural gas utility submit to the Commission information and data for an historical twelve-month test period concerning its actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. In addition, Commission Rule R1-17(k)(6)(c) requires the filing of information and data showing weather-normalized sales volumes, workpapers, and direct testimony and exhibits supporting the information.

Ms. Boggs testified that Piedmont filed with the Commission and submitted to the Public Staff throughout the review period complete monthly accounting of the computations required by Commission Rule R1-17(k)(6)(c). Mr. Hoard confirmed that the Public Staff had reviewed the filings and that they complied with the Rules.

The Commission therefore concludes that Piedmont has complied with all of the procedural requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k) for the review period.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 5-8

The evidence supporting these findings is contained in the testimony of Piedmont witnesses Skains and Boggs and Public Staff witnesses Hoard and Curtis.

Mr. Skains testified that Piedmont achieved net compensation of $3,789,351 from secondary market transactions; $3,280,987 of this net compensation was treated as a reduction in gas costs for the benefit of Piedmont's customers in accordance with procedures established in Docket No. G-100, Sub 63 and Docket No. G-100, Sub 67.

The Attorney General raised questions about the advisability of the procedures established in Docket No. G-100, Sub 67. In his Brief, the Attorney General stated that due to the incentives given shareholders to engage in secondary market transactions, it is important for the Commission to monitor the level of net compensation over time. Accordingly, the Attorney General recommended that Piedmont be required to report the net compensation received during the review period on a

monthly basis as part of its testimony and exhibits in the next annual review. The Attorney General further recommended that Piedmont should establish the same information for prior periods by filing a report or as part of its testimony in the next annual review.

The Commission, in its Order in Docket No. G-100, Sub 67, dated December 22, 1995, provided for the accounting of secondary market transactions by the LDCs and stated that it would monitor the effect of the sharing ratio in the context of the annual review proceedings for the LDCs' gas costs. The Commission notes that Piedmont witness Skains' testimony reflected the level of net compensation achieved by Piedmont from secondary market transactions and the Commission would assume that Piedmont would continue to provide such information in testimony in subsequent review periods. However, if such information is not provided, the parties would have the right to obtain same through discovery.

With respect to the Attorney General's request for information for prior review periods, the Commission notes that this matter was dealt with in its Order of October 8, 1996, on the Attorney General's Motion to Compel and it will not disturb the decision therein.

The Attorney General's Brief also addressed the sharing of net compensation from secondary market transactions to the extent it adds capacity in excess of its design day projections. The Attorney General noted that Piedmont's projection for excess supply relates to future periods, and the Commission does not need to take action concerning the supply under consideration in this annual review period. However, according to the Attorney General, before the future review periods in which Piedmont seeks recovery of costs associated with excess supply, the Commission should determine whether revenue sharing from secondary market transactions is appropriate to the extent such excess supply is projected for a design day.

In her prefiled testimony Ms. Boggs indicated that, as of May 31, 1996, Piedmont had a net debit balance (payable from customers to Piedmont) of $10,876,818 in its deferred accounts. This debit balance consisted of a debit balance of $12,531,138 in the Sales Only Deferred Account and a credit balance (payable from Piedmont to its customers) of $1,654,320 in the All Customers Deferred Account.

The Public Staff found an incorrect entry in the Sales Only Deferred Account and submitted supplemental testimony reconciling the adjustments made in the deferred accounts. During the month of May 1996, the Company incorrectly recorded a debit to the Sales Customers' Deferred Account of $438,344 and credited the All Customers Deferred Account for the same amount. Mr. Hoard stated that the new balance in the Sales Customers' Deferred Account becomes $12,092,793 and the new balance in the All Customers Deferred Account becomes $1,215,976. At the hearing, Piedmont made changes to Ms. Boggs' testimony and exhibit to correct for the $438,344 error.

Based on the foregoing, the monthly filings by Piedmont pursuant to Commission Rule R1-17(k)(5)(c), and the findings of fact set forth above, the Commission concludes that Piedmont properly accounted for its gas costs during the review period and that the deferred account balances as reported are correct.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 9-12

The evidence supporting these findings is contained in the testimony of Piedmont witnesses Skains and Fleenor and Public Staff witness Curtis.

Mr. Skains testified that Piedmont's gas purchasing policy is best described as a "best cost" policy. This policy consists of five main components: price of gas, security of gas supply, flexibility of gas supply, gas deliverability, and supplier relations. Mr. Skains stated that all of these components are interrelated and that Piedmont considers and weighs each of these five factors in establishing its entire supply portfolio.

Mr. Skains further testified that Piedmont purchases gas supplies under a diverse portfolio of contractual arrangements through the spot market and through long-term contracts. Spot gas is purchased under a contract with a term of 30 days or less while long-term gas is purchased under a contract ranging in term from one year (or less) to terms extending through October, 2004. Spot gas contracts provide for little or no supply security because they are interruptible and short-term in nature. Long term firm supplies are usually more expensive; however, firm supplies are the most reliable and secure source of gas. Some of these firm contracts are for winter service only and some provide for 365 day service.

Mr. Skains described how the interrelationship of the five factors affects Piedmont's construction of its gas supply portfolio under its "best cost" policy. The long term contracts, supplemented by long-term peaking services and storage, generally are aligned with the firm market; the short term spot gas generally serves the interruptible market. In order to weigh and consider the five factors, Piedmont must be kept informed about all aspects of the natural gas industry. Piedmont therefore stays abreast of current issues by intervening in all major proceedings affecting pipeline suppliers, attending conferences, and subscribing to industry literature.

Mr. Skains stated that Piedmont's greatest obstacle in applying its "best cost" policy is in dealing with future uncertainties in a dynamic national and regional energy market. Future demand for gas is affected by economic conditions, weather patterns, regulatory policies and industry restructuring in the energy markets. Future availability and pricing of gas supplies is affected by overall demand, domestic oil and gas exploration and development, pipeline expansion projects, and regulatory policies and approvals. Mr. Skains further stated that Piedmont did not make any changes in its "best cost" gas purchasing policies or practices during the year; however, the Company did contract for additional firm transportation and storage expansion capacity to meet the needs of its rapidly growing market consistent with its "best cost" policy. These contractual commitments are in the form of precedent agreements with Transcontinental Gas Pipe Line Corporation for "Sunbelt" firm transportation capacity scheduled for service in 1997, and Pine Needle LNG Company for firm LNG peaking storage capacity scheduled for service in 1999.

Mr. Skains stated that the Company participated in an open season for Transco's SunBelt expansion project for incremental firm mainline transportation capacity. After evaluating pipeline service alternatives, Piedmont determined that the SunBelt project was the best service offering available to meet Piedmont's seasonal growth needs in 1997. Piedmont nominated 40,000 dt/d of

SunBelt capacity and has been allocated such entitlement. The SunBelt project has been approved by the FERC on a preliminary basis, subject to further environmental review.

Mr. Skains testified that the Pine Needle LNG project is a 4 Bcf capacity LNG peak storage facility to be located near Transco's pipeline system in Guilford County, North Carolina. Piedmont participated in an open season conducted by Pine Needle for firm peaking service. After evaluating its options for needed peaking service, the Company determined that the Pine Needle project was the best alternative available and submitted a request for 200,000 dt/d of such peaking service and has been allocated such entitlement which, subject to approval and construction, is scheduled for service commencing May 1, 1999. The Pine Needle project has been approved by the FERC on a preliminary basis, subject to further environmental review.

Mr. Skains testified that Piedmont secures incremental capacity and supply to meet the growth requirements of its firm customers consistent with its "best cost" policy. To implement this policy, Piedmont attempts to contract for timely and cost effective supply and capacity. Acquiring long-term expansion project capacity precisely in balance with Piedmont's market growth profile is impossible due to external factors beyond the Company's control. To fill the gap between the in service dates of new expansion projects and to meet the requirements of the Company's growing market demand, Piedmont contracts for temporary "bridge" services from various sources of supply and capacity. This process has been successfully employed in the past by the Company, and is expected to be used in the future to meet the growth demand requirements of the Company.

Finally, Mr. Skains testified that Piedmont had taken a number of steps to manage its gas costs, consistent with its "best cost" policy. The Company has participated in matters before the FERC and other regulatory agencies, actively renegotiated and restructured eligible supply and capacity contracts in order to take advantage of market opportunities, utilized the flexibility available within its supply and capacity contracts to purchase and dispatch gas and to release capacity in the most cost effective manner, "locked in" gas prices for periods of time to maintain its competitive position in specific markets and has provided transportation services to large volume customers in order to maintain system throughput and reduce average unit costs, actively promoted growth from "year around" markets in order to improve the Company's load factor and reduce average unit costs, and continued an internal review committee to receive input and direction on its gas supply performance and planning activities

Mr. Fleenor testified that the Company has experienced a growth rate several times the national average in recent years. Over the last five years, the average annual increase in net customers has exceeded 5.5% per year. This increase is a result of additional high priority firm customers. Design day and seasonal requirements for firm reliable gas services are significant for these customers.

Mr. Curtis testified that he had reviewed the Company's gas supply contracts to determine how the commodity and variable costs were determined. He then reviewed the fixed gas costs that apply. In addition, Mr. Curtis stated that he reviewed information related to (1) design day information, (2) historical and forecast load duration curves, (3) historical and forecast gas supply requirements, (4) the Company's purchasing practices, and (5) projections of capacity addition and

supply charges. Mr. Curtis stated that, in the Public Staff's opinion, Piedmont's purchasing practices were reasonable and prudent.

Based on the foregoing, the Commission concludes that Piedmont's gas costs during the review period were reasonably and prudently incurred and should be recovered.

EVIDENCE IN SUPPORT OF FINDINGS AND CONCLUSIONS 13-16

The evidence supporting these findings is contained in the testimony of Piedmont witness Boggs and Public Staff witness Curtis.

Ms. Boggs testified that, as of the date of the hearing, Piedmont had a decrement of $(0.0600)/dt in its Sales Only Deferred Account and the following increments in its All Customers Deferred Account:

Rate 101-YR	Rate 101-HO	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0315/dt	$0.0320/dt	$0.0304/dt	$0.0277/dt	$0.0174/dt	$0.0094/dt

Both the Sales Only Deferred Account decrement and the All Customers Deferred Account increments were approved by Commission order in Docket No. G-9, Sub 367, January 1, 1996.

Ms. Boggs presented an exhibit showing the rate change relating to the balance in the Sales Only Deferred Account should be a increment of $0.1951/dt across-the-board. Mr. Curtis agreed with this increment.

Mr. Curtis presented an exhibit showing his calculation of the rate changes relating to the balance in the All Customers Deferred Account at May 31, 1996. According to this exhibit, the following decrements should be implemented:

Rate 101-YR	Rate 101-HO	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0264/dt	$0.0268/dt	$0.0253/dt	$0.0229/dt	$0.0137/dt	$0.0065/dt

Ms. Boggs testified that the Company proposes to change its rates under its Rate Schedules as proposed by Mr. Curtis' exhibit for the All Customers Deferred Account and Ms. Boggs's exhibit for the Sales Only Deferred Account. Piedmont proposes to place these rates into effect the first billing cycle of the month following the Commission's Order approving these rate changes and to keep them in effect for 12 calendar months.

The Commission finds that collecting the May 31, 1996 balance in the Company's Sales Only Deferred Account should be accomplished by implementing an across-the-board increment of $0.1951/dt.

The Commission believes that the temporary increments and decrements proposed by Piedmont and the Public Staff are just and reasonable to collect and simultaneously refund the balances in the deferred accounts until further order of the Commission.

Although CUCA concedes that the Commission is obligated by the language of G.S. 62-133.4(c) to approve the $0.1951/dt increment in order to allow Piedmont to recover the balance in its Sales Only Deferred Account, CUCA goes on to argue that the present benchmark commodity cost of gas included in Piedmont's rates is too high and that the Commission should order a reduction to a level more reflective of current wellhead prices. CUCA recognizes that the Commission recently rejected a similar argument that it made in its post hearing brief in the Public Service Company of North Carolina, Inc. gas cost review proceeding in Docket No. G-5, Sub 361 on grounds that the parties had been given no notice that the Commission was considering such a reduction. The Commission stands by the reasoning of its decision in the Public Service case. Alternatively, CUCA urges the Commission to convene a separate proceeding to investigate the appropriateness of Piedmont's current benchmark. Two days following the filing of CUCA's brief in this docket, Piedmont filed a petition in new Docket No. G-9, Sub 385 in which it proposes to increase its benchmark commodity cost of gas. That docket is pending before the Commission, the level of Piedmont's benchmark is clearly at issue in that docket, and that docket is the appropriate one for CUCA to present its position that the benchmark should be reduced. There is thus no need for the Commission to consider opening an investigation in a new docket.

EVIDENCE IN SUPPORT OF FINDING AND CONCLUSION 17

The evidence supporting these findings is contained in the testimony of Piedmont witness Fleenor and Public Staff witness Curtis.

Mr. Fleenor testified that the Company intends to phase in a 5% reserve margin over a period of four years beginning in the 1996-1997 winter period and attaining the full 5% level in the winter of 1999-2000 as part of its supply plan for the Carolinas. Mr. Fleenor explained that a reserve margin is the amount by which available firm supply resources under contract exceed the estimated firm requirements during a period of "design day" conditions. The reasons for maintaining a reserve margin include coping with the uncertainty of demand estimates, supplying colder-than-design temperature conditions, accommodating supplier failure, transportation capacity losses and facility problems, and providing stand-by service.

During cross-examination of Mr. Fleenor by Mr. Lassiter, Mr. Fleenor testified that Piedmont was not seeking approval of the 5% reserve margin in this instant docket.

Mr. Curtis stated that even though Piedmont has reached or exceeded the design day criteria on several occasions, it has been able to meet its demand by buying peaking services or moving gas from other service territories. He testified that he neither agrees nor disagrees with the reserve margin proposed but stated that the Public Staff will be reviewing Piedmont's capacity needs and purchases in each annual gas cost proceeding and would make an appropriate recommendation at that point in time.

In his Brief, the Attorney General pointed out that Piedmont apparently intends to seek recovery of costs associated with the reserve margin as "gas costs" under G.S. 62-133.4 and suggested that whether or not the costs associated with a reserve margin should be recoverable under G.S. 62-133.4 is a matter which should be raised and addressed in a generic proceeding. Similarly, according to the Attorney General, before Piedmont seeks recovery of costs for supply in excess of demand on a design day and designated for release on the secondary market, Piedmont should seek a reassessment of whether those costs meet the definition of "gas costs" under G.S. 62-133.4.

The Commission concludes that it is not necessary to authorize Piedmont approval of a 5% reserve margin to its peak day calculation of total demand at this point in time.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont's accounting for gas costs during the twelve months ended May 31, 1996, is approved.

2. That Piedmont is authorized to recover 100% of its gas costs incurred during the twelve months ended May 31, 1996.

3. That Piedmont shall implement the following temporary decrements to refund the credit balance related to the All Customers Deferred Account beginning with the first billing cycle of the month following the date of this order:

Rate 101-YR	Rate 101-HQ	Rate 101-PH	Rate 102	Rate 103/113	Rate 104/114
$0.0264/dt	$0.0268/dt	$0.0253/dt	$0.0229/dt	$0.0137/dt	$0.0065/dt

4. That Piedmont shall implement a temporary increment of $0.1951/dt to collect the debit balance related to the Sales Only Deferred Account beginning with the first billing cycle of the month following the date of this order.

5. That the existing decrements to sales customers and the increments to all customers approved in Docket No. G-9, Sub 367, shall be discontinued.

6. That Piedmont shall give notice to all of its customers of the changes in rates approved in this order by appropriate bill inserts beginning with the first billing cycle that includes the changes in rates approved herein.

ISSUED BY ORDER OF THE COMMISSION
This the 27th day of November 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-21, SUB 341

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Natural	)	
Gas Corporation for Annual Review of	)	ORDER ON
Gas Costs Pursuant to G.S. 62-133.4(c)	)	ANNUAL REVIEW OF
and Commission Rule R1-17(k)(6)	)	GAS COSTS

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 9, 1996, at 10:00 a.m.

BEFORE: Commissioner Laurence A. Cobb, Presiding; and Commissioners Ralph A. Hunt and Judy Hunt

APPEARANCES:

For North Carolina Natural Gas Corporation:

Alfred E. Cleveland and Jim Wade Goodman, McCoy, Weaver, Wiggins, Cleveland and Raper, Post Office Box 2129, Fayetteville, North Carolina 28302

For the Using and Consuming Public:

Gina C. Holt, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On January 31, 1996, North Carolina Natural Gas Corporation (NCNG or Company) filed the direct testimony and exhibits of John M. Monaghan, Jr., Vice President of Gas Supply and Transportation and Gerald A. Teele, Senior Vice President, Treasurer and Chief Financial Officer, relating to the annual prudence review of NCNG's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On February 13, 1996, the Commission issued its Order scheduling a public hearing for April 9, 1996, setting dates for pre-filed testimony and intervention in this docket and ordering NCNG to publish Notice of these matters in a form of notice attached to the Commission's Order.

On February 21, 1996, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene which was allowed by the Commission on March 7, 1996. On February 23, 1996, the Attorney General also filed a Notice of Intervention.

The Public Staff filed the direct testimony of Kirk Kibler, Staff Accountant with the Public Staff's Accounting Division, and Jeffrey L. Davis, Utilities Engineer, on March 25, 1996. CUCA did not pre-file testimony in this proceeding.

Prior to the hearing, the Company and the Public Staff reached an agreement that no parties desired to cross-examine the witnesses of the other, and the prefiled testimony of the Company witnesses and the Public Staff witnesses was copied into the record as if given orally from the stand and the exhibits were identified and admitted. NCNG filed Affidavits of Publication evidencing the publishing of the notices required by the Commission and such Affidavits were entered into evidence at the start of the hearing. CUCA informed the Commission before the hearing that its attorney would not be present at the hearing.

Based on the testimony and exhibits and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG is a public utility as that term is defined in Chapter 62 of the North Carolina General Statutes.

2. NCNG primarily is engaged in the purchase, distribution, and sale of natural gas (and in some instances, the transportation of customer-owned gas) to more than 143,000 customers in south central and eastern North Carolina.

3. NCNG has filed with the Commission and submitted to the Public Staff all of the information required by G.S. 62-133.4(c) and Commission Rule R1-17(k) and has complied with the procedural requirements of such statute and rule.

4. The test period for review of gas costs in this proceeding is the twelve months ended October 31, 1995.

5. During the period of review, NCNG incurred gas costs of $90,171,995, and recovered $99,028,369 for gas costs through its rates. This resulted in an overrecovery of $8,856,374. However, NCNG refunded more than that through rate decrements during the review period.

6. During the period from November 1994 through October 1995, NCNG recorded gross compensation of over $1.1 million as a result of capacity release and buy/sell agreements. The Company credited 90% of the net compensation from these transactions to its all customers deferred account pursuant to the Commission's Order in Docket No. G-100, Sub 63.

7. At October 31, 1995, NCNG had a net credit balance of $1,750,396 in its deferred gas cost accounts, consisting of a credit balance of $2,877,682 in the commodity deferred account (sales customers only) and a debit balance of $1,127,286 in the demand deferred account (all customers).

8. The Public Staff took no exceptions to NCNG'S accounting for gas costs and recoveries during the period of review.

9. NCNG has transportation and supply contracts with the interstate pipelines which transport gas directly to NCNG's system and long term supply contracts with 10 other suppliers.

10. Based on NCNG's contracts with gas suppliers, the gas costs incurred by NCNG during the period of review were prudently incurred.

11. NCNG should be permitted to recover 100% of its prudently incurred gas costs.

12. At the time of the hearing, NCNG did not propose to change its rates.

13. As of the date of the hearing, NCNG had a temporary decrement of $0.0276/dekatherm (dt) for all customers, effective July 1, 1995. This decrement was proposed to be in the Company's rates for twelve months beginning with its effective date.

14. Since the end of the test year, the market prices of gas have been extremely volatile.

15. It is just and reasonable to continue the current temporaries until further order of the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence for these findings of fact is contained in the official files and records of the Commission and the testimony of NCNG witness Monaghan. These findings are essentially informational, procedural or jurisdictional in nature and are facts uncontradicted by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

The evidence for these findings of fact is contained in the testimony of NCNG witnesses Monaghan and Teele and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

G.S. 62-133.4 requires that NCNG submit to the Commission information and data for a historical twelve-month test period which information and data include NCNG's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes and transportation volumes. In addition to such information, Commission Rule R1-17(k)(6)(c) requires that there be filed weather-normalized sales volume data, work papers, and direct testimony and exhibits supporting the information filed.

Witness Monaghan testified that Commission Rule R1-17(k)(6) required NCNG to submit to the Commission on or before February 1, 1996, the required information based on a twelve-month test period ending October 31, 1995. Mr. Monaghan testified that NCNG complied with the filing requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k)(6) and an examination of witness Monaghan's and Teele's testimony and exhibits confirms the same. Mr. Teele also testified that

NCNG filed with the Commission and submitted to the Public Staff throughout the review period complete monthly accountings of the computations required by Commission Rule R1-17(k)(5)(c). Public Staff witness Kibler confirmed that the Public Staff had reviewed the filings and that they complied with the Rules.

The Commission concludes that NCNG has complied with all the procedural requirements of G.S. 62-133.4(c) and Commission Rule R1-17(k) for the twelve month review period ended October 31, 1995.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 THROUGH 7

The evidence supporting these findings of fact is found in the testimony of NCNG witness Teele and Public Staff witnesses Kibler and Davis.

NCNG witness Teele testified that as of October 31, 1995, NCNG had a credit balance of $1,750,396 in its deferred accounts. This credit balance consists of a credit balance of $2,877,682 in the commodity deferred account (sales customers only) and a debit balance of $1,127,286 in the demand deferred account (all customers).

According to Mr. Teele, during the period from November, 1994 through October 1995, NCNG recorded gross compensation of over $1.1 million as a result of capacity release and buy/sell agreements. The Company credited 90% of the net compensation from these transactions to its all customers deferred account pursuant to the Commission's Order in Docket No. G-100, Sub 63.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is found in the testimony of Public Staff witnesses Davis and Kibler and Company witness Teele and is uncontroverted.

Witness Kibler testified that the Public Staff had examined NCNG's accounting for gas costs during the review period and determined that NCNG had properly accounted for its gas costs.

Based upon the testimony and exhibits of the witnesses, the monthly filings by NCNG as required by Commission Rule R1-17(k)(5)(c) and the findings of fact set forth above, the Commission concludes that NCNG has properly accounted for gas costs during the period of review.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 THROUGH 11

The evidence supporting these findings of fact is found in the testimony of NCNG witnesses Monaghan Teele and Public Staff witness Davis.

Witness Monaghan testified that the primary objective of NCNG's Board of Directors gas supply acquisition policy is to ensure that the Company has adequate volumes of competitively priced natural gas to meet the peak day demands of all firm customers on its system and to provide the maximum service possible to all customers during other times throughout the year. The key features

of the policy include the requirement of a "portfolio mix" of long-term supply contracts, that the backup of peak gas supplies is maintained (mainly in the form of gas in storage), that long-term contracts provide for periodic renegotiation to keep them market-responsive, and that firm gas supplies be required primarily to meet peak season firm requirements.

NCNG sells or transports gas to two groups, which are its firm and interruptible markets. Its firm market is principally residential. commercial, and small industrial. NCNG's firm market also includes customers who have firm contracts for the purchase or transportation of certain volumes of gas and demand charges in their rates, including NCNG's four municipal customers. Witness Monaghan testified that NCNG believes that spot market purchases are more appropriate in the summer months when it is serving primarily an interruptible market.

Witness Monaghan testified that NCNG has 10 long-term supply contracts, including the Transco FS sales service contract, representing a total firm supply of 182,607 dts per day for winter delivery and lesser amounts in the remainder of the year. Mr. Monaghan also testified that of these 10 contracts, three are multi-year, winter only, contracts which are utilized only during the five winter months when the demand is the greatest, and the reservation fees are also payable only during the five winter months. Mr. Monaghan further stated that three of the remaining contracts provide higher quantities in the winter months than the summer months, and the remaining four contracts have a level contract quantity year-round.

According to Mr. Monaghan, NCNG purchased 9,883,000 dts during the review period in the spot market for system supply and storage injection requirements, primarily during the seven summer months. Mr. Monaghan testified that he believes that spot market purchases are most appropriate in the summer months when the Company serves primarily an interruptible market.

Public Staff witness Davis stated that, in addition to reviewing responses to the data requests posed to NCNG, the Public Staff reviewed gas purchase and transportation contracts; reservation or fixed cost fees; design day estimates; forecasted load duration curves; forecasted gas supply needs; customer load profile changes; and projections of capacity additions and supply changes. Based upon the examination of the data which the Public Staff had, Mr. Davis testified that in the Public Staff's opinion, NCNG's purchasing practices were reasonable and prudent.

The Commission concludes that the gas costs incurred by NCNG during the review period ended October 31, 1995, were reasonable and prudently incurred, and NCNG should be permitted to recover 100% of its prudently incurred gas costs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 12 THROUGH 15

Witness Teele testified that as of the date of the hearing NCNG had in its rates a temporary decrement of $0.0276/dt for all customers, which became effective July 1, 1995. This decrement was proposed to be in the Company's rates for twelve months beginning with its effective date. Mr. Teele also stated that the Company did not propose to change its rates. He explained that since the end of the test year, the market prices of gas have been so volatile, that placing temporary increments or

decrements into rates based on the deferred account balances at October 31, 1995, would not be realistic.

Public Staff witness Davis testified that he agreed with the Company's proposal not to change its rates at this time. In further support for not changing the Company's rates, Mr. Davis noted how the credit balance for the Sales Only Deferred Account at October 31, 1995, was $2,877,682 owed to customers, but because of the dramatic spot market increases, the balance in this account as of January 31, 1996, was a debit balance of $5,836,518 owed by customers. Additionally, at October 31, 1995, there was a debit balance in the All Customers Deferred Account of $1,127,286 owed by customers; however, this account had a credit balance of $1,514,877 owed to customers at January 31, 1996.

The Commission believes that it is just and reasonable to continue the $0.0276/dt decrement in NCNG's all customers account until further order by the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's accounting for gas costs and recoveries during the twelve-month period of review ended October 31, 1995, is approved;

2. That NCNG is authorized to recover 100% of its gas costs incurred during the twelve-month period of review ended October 31, 1995, as the same are reasonable and prudently incurred; and

3. That the decrement and NCNG's rates, which are presently in place, remain unchanged until further order of the Commission.

ISSUED BY ORDER OF THIS COMMISSION.
This the 21st day of May 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-9, SUB 328

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Piedmont Natural Gas Company,	)	ORDER ESTABLISHING EXPANSION
Inc. for the Establishment of a Natural Gas	)	FUND AND APPROVING INITIAL
Expansion Fund Pursuant to G.S. 62-158	)	FUNDING ON CONTINGENT BASIS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 28, 1995, at 10:00 a.m.

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners William A. Redman, Charles H. Hughes, Laurence A. Cobb, Judy Hunt, and Ralph Hunt

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

James H. Jeffries, IV, Amos & Jeffries, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

For the Using and Consuming Public:

Gisele L. Rankin, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Mark Payne, Associate Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: G.S. 62-158 authorizes the Utilities Commission to order the creation of an expansion fund to be used by a natural gas local distribution company (LDC) to construct facilities into "unserved areas" of its franchise territory that otherwise would be economically infeasible. Commission Rule R6-82(b) provides that a petition requesting the establishment of an expansion fund show that there are unserved areas in the petitioning LDC's franchised territory and that expansion of natural gas facilities into such areas is economically infeasible. In addition, Rule R6-82(b)(1) provides that if approval for use of supplier refunds is

requested, the amount of supplier refunds involved must be shown. Finally, Rule R6-82(d) provides that before establishing a fund, the Commission must find that it is in the public interest to do so.

Piedmont Natural Gas Company, Inc. (Piedmont) initially filed a petition on July 20, 1992, requesting the establishment of a natural gas expansion fund and the deposit of certain supplier refunds into the fund. On August 13, 1992, the Public Staff filed a motion asking that Piedmont's petition be dismissed because Piedmont had failed to comply with G.S. 62-158 and Commission Rule R6-82 or, alternatively, that Piedmont be required to refile its petition. The Commission, by Order dated September 2, 1992, agreed with the Public Staff that Piedmont's petition was inadequate. The Commission required Piedmont to supplement its petition.

On September 27, 1994, Piedmont filed its amended application. Piedmont's amended application included a summary of 12 expansion projects that Piedmont believes to qualify under G.S. 62-158. On November 23, 1994, the Commission issued its order scheduling a public hearing and requiring Piedmont to give public notice.

The following parties intervened: Carolina Utility Customers Association, Inc. (CUCA), Frontier Utilities of North Carolina, Inc.(Frontier), the Attorney General (AG) and the Public Staff. Frontier did not participate in the hearing in this docket.

On March 7, 1995, Piedmont filed a motion to consolidate this docket with Docket No. G-9, Sub 362 in which Piedmont had filed a petition for approval of a expansion project to serve Surry, Watauga, Wilkes, and Yadkin Counties. The Public Staff filed a response on March 16, 1995, noting that public notice of a consolidated hearing could not be given prior to the hearing already scheduled in the present docket. In addition, the Public Staff pointed out that the Sub 362 docket depended upon the outcome of a third docket, Docket No. G-9, Sub 357, in which Piedmont applied for a certificate for the four counties. By Order dated March 20, 1995, the Commission denied Piedmont's motion to consolidate.

The hearing came on as scheduled. Piedmont presented the testimony of Kevin M. O'Hara, its Vice President of Corporate Planning. The Public Staff presented the testimony of James G. Hoard, Supervisor of the Natural Gas Section of the Accounting Division of the Public Staff.

Following the hearing, proposed orders and briefs were filed by the parties, but the Commission decided to take no action pending resolution of a related docket, Piedmont's application in Docket No. G-9, Sub 357. Upon decision in that docket, the Commission issued an order on February 15, 1996, allowing the parties to file additional comments and updates as to their proposed orders and briefs. In that order, the Commission proposed to take judicial notice of certain developments since the hearing. Updates were filed by the parties on March 8, 1996.

Based on the testimony and exhibits offered at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont is duly organized as a corporation under the laws of the State of North Carolina and is duly authorized to do business in the State of North Carolina. Its principal office and place of business is in Charlotte, North Carolina.

2. Piedmont is a public utility engaged in the business of operating natural gas transmission lines, distribution facilities and other facilities for furnishing and delivering natural gas service to the public in its franchised territory in North Carolina.

3. Piedmont's franchise area in North Carolina includes all or part of 14 counties, all of which presently have some level of natural gas service with the exception of Piedmont's territory in Gaston County which lies along Piedmont's transmission line from Transcontinental Gas Pipe Line Corporation.

4. For purposes of establishing an expansion fund, G. S. 62-158 and Commission Rule R6-82 require Piedmont to show (a) that there are "unserved areas" in its franchise territory, (b) that extension of natural gas facilities into such areas is economically infeasible, and (c) that it is in the public interest to establish an expansion fund for Piedmont. "Unserved areas" as used in G. S. 62-158 has been defined by the Commission as "Counties, cities or towns of which a high percentage is unserved."

5. Piedmont's amended application listed 12 expansion projects that Piedmont considers to be economically infeasible and eligible for use of expansion funds. Six of these projects involve extending service to four counties that are not currently within Piedmont's franchised territory. At the time of the filing, Piedmont had a pending application in Docket No. G-9, Sub 357 seeking a certificate to serve these four counties, but the Commission issued an order on January 30, 1996, denying Piedmont's application. Another project on the list involves an extension of service into Piedmont's territory in Alexander County, which has since been completed without use of expansion funds. The Commission finds that the remaining five projects, which have not been undertaken and which are within Piedmont's present territory, support the establishment an expansion fund for Piedmont on a contingent basis as hereinafter provided, but the Commission will decide whether any of these projects actually qualifies for use of expansion funds as individual applications are filed for projects to be funded. The combined negative net present values (NPVs) of these five projects in Piedmont's present territory is approximately $3.3 million, before tax and other considerations that are appropriately taken into account as specific projects are evaluated.

6. Piedmont filed an application on December 29, 1995, in Docket No. G-9, Sub 372 seeking a certificate of public convenience and necessity to provide natural gas service to a portion of southwest Stokes County. The Commission issued an order on February 26, 1996, scheduling hearings in that docket for May 9 and June 11, 1996. The hearings have been consolidated with a competing application filed by another LDC.

7. On June 12, 1995, the North Carolina General Assembly amended G.S. 62-36A by adding a new subsection (b1). This new statute provides that the Commission

> shall issue a certificate of public convenience and necessity in accordance with the provisions of Article 6 of this Chapter for natural gas service for all areas of the State for which certificates have not been issued. Issuance of certificates shall be completed by January 1, 1997, and shall be made after a hearing process in which any person capable of providing natural gas service...may apply to the Commission to be considered for the issuance of a certificate under the provisions of the subsection..... In the event that the Commission receives no application for issuance of a certificate for service to a particular area of the State, or in the event a certificate for service to a particular area is not awarded for any reason, the Commission shall issue a certificate for that area to a person or persons to whom a certificate has already been issued.

On August 23, 1995, the Commission initiated certificate proceedings in Docket No. G-100, Sub 69 to implement G.S. 62-36A(b1).

8. New franchise territory may be certified to Piedmont in either Docket No. G-9 Sub 372 or Docket No. G-100, Sub 69, or both, in the near future. Although presently unfranchised territory may not serve as a basis for either establishment or use of an expansion fund, the Commission concludes that the pending proceedings in Docket Nos. G-9, Sub 372 and G-100, Sub 69 support establishment of an expansion fund on a contingent basis as hereinafter provided.

9. The General Assembly has made the policy decision that it is necessary and in the public interest to authorize special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the construction of facilities and the extension of natural gas service into areas of the State where it may not be economically feasible to expand with traditional funding methods. The projects cited by Piedmont were selected to put infrastructure in areas with growth potential. Establishment of an expansion fund for Piedmont as ordered herein is in the public interest.

10. G.S. 62-158(b) provides that funding for an expansion fund may include refunds to an LDC from its suppliers of natural gas and transportation services. Piedmont has requested that certain supplier refunds being held by it be deposited into its expansion fund, and public notice of the request has been given. These supplier refunds, in the amount of $15,382,025.64, plus applicable interest, are just and reasonable sources of initial funding for the expansion fund and should be transferred to the fund on a contingent basis as hereinafter provided.

11. The establishment of an expansion fund for Piedmont and the transfer to it of supplier refunds, plus applicable interest, proportionate to the negative NPVs shown by Piedmont in its testimony is contingent upon Piedmont's filing, within a reasonable time, a petition for approval of a project to use the expansion fund to construct facilities to serve "unserved areas" within its territory at the time that are economically infeasible to construct and the Commission's finding such "unserved areas" within the meaning of G.S. 62-158 and granting such a petition. The transfer into the fund of the remainder of Piedmont's supplier refunds of $15,382,025.64, beyond the amount proportionate to the negative NPVs shown in Piedmont's testimony, plus applicable interest, is contingent upon

Piedmont's being granted, within a reasonable time, a certificate for new franchise territory that includes "unserved areas" that are infeasible to serve.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

The evidence for these findings of fact is contained in Piedmont's application, the Commission's files and records, and the testimony of Piedmont witness O'Hara and Public Staff witness Hoard. These findings are essentially informational and uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-8

The evidence for these findings of fact is contained in Piedmont witness O'Hara's testimony and exhibits and in the testimony of Public Staff witness Hoard and in matters judicially noticed by the Commission.

Piedmont's amended application and its testimony listed as its justification for the establishment of an expansion fund 12 projects that Piedmont considers to be "unserved areas" economically infeasible to serve and therefore eligible for use of expansion funds. Six of these projects involve extending service to counties that are not currently within Piedmont's franchised territory. These projects involve service to Surry, Watauga, Wilkes and Yadkin Counties, which were the subject of Piedmont's certificate application in Docket No. G-9, Sub 357. These projects were also the subject of Docket No. G-9, Sub 362, in which Piedmont requested approval to use its expansion fund, once created, to extend service into these counties. The Commission takes notice of its order of January 30, 1996, in Docket Nos. G-38 and G-9, Sub 357, in which the Commission franchised these four counties to Frontier and denied Piedmont's application for a certificate to serve these counties. These projects do not support establishment of an expansion fund for Piedmont. Another one of the 12 projects would have extended service into Alexander County. With regard to the Alexander County project, Piedmont witness O'Hara testified that Piedmont extended service to its portion of Alexander County in August 1994 without using an expansion fund. In light of this testimony, this project does not support establishment of a fund.

The other five projects involve extensions of service in counties that already have some level of natural gas service from Piedmont. The five projects are: Conover to Claremont in Catawba County; Lowesville to Denver to Westport in Lincoln County; High Point to Ledford in either Forsyth or Davidson County; to Sunmerfield, an unincorporated community in Guilford County; and Thomasville to Denton in Davidson County. Piedmont generally takes the position that a project to an unserved town within an otherwise served county is a project to serve an "unserved area" within the meaning of G.S. 62-158, citing the definition of "unserved areas" in Commission Rule R6-81(b) in support of its argument. The Public Staff has taken the position that expansion funds can only be used for the construction of transmission lines into virtually unserved counties because the legislative history of G.S. 62-158 requires a narrow interpretation of its applicability. CUCA agrees. CUCA argues that the expansion fund statute was never intended for incremental expansion that is likely to occur without special assistance in the near future. CUCA refers to the projects cited by Piedmont as "little more than glorified 'infill' projects." The AG states that there "are clearly questions" as to whether any of these projects would qualify for use of an expansion fund.

The Commission heard similar arguments as to the meaning of "unserved areas" when we adopted the rules implementing G.S. 62-158. We defined the term in Rule R6-81(b) as "Counties, cities or towns of which a high percentage is unserved," but we noted the difficulty of defining the term and we wrote that we intended to "maintain flexibility." We continue to find the term difficult to define in a generic sense. The Commission found "unserved areas" within the franchise territories of North Carolina Natural Gas Corporation and Public Service Company of North Carolina, Inc. when we established expansion funds for them, but the evidence was clearer in those cases. In each of those cases, there were entire counties without any natural gas service. The issue is more difficult as to Piedmont since Piedmont has some level of service in all its counties (except for its pipeline corridor through Gaston County). As to Piedmont, we believe that the appropriate parameters of "unserved areas" can best be decided on a case-by-case basis as individual projects are proposed for approval of the use of expansion funds. This conclusion might lead us to adopt the AG's recommendation that we hold this docket in abeyance to see if Piedmont is assigned new territory, but the Commission feels that this docket has been held in abeyance long enough. Establishment of a fund now will enable us to transfer the supplier refunds now held by Piedmont from Piedmont's escrow account, where they are invested in short term securities, to the Office of the State Treasurer, where they will likely earn a higher return. Further, establishment of a fund now will allow any possible appeals to proceed and be resolved, thus putting Piedmont in a better position to move forward promptly with project approvals and extensions of service. The Commission therefore concludes that the evidence supports establishment of an expansion fund on a contingent basis as hereinafter provided. The fund is being established on a contingent basis so that the issue of whether any particular project qualifies for use of the fund as an "unserved area" can be decided in the future as individual applications are filed.

Certain further developments add support for the establishment of a fund on a contingent basis. Piedmont has filed an application for a certificate to include new territory in its franchise area. Piedmont filed an application on December 29, 1995, in Docket No. G-9, Sub 372 seeking a certificate of public convenience and necessity to provide natural gas service to a portion of southwest Stokes County. The Commission issued an order on February 26, 1996, scheduling hearings in that docket for May 9 and June 11, 1996. A decision will be made promptly thereafter. Further, on June 12, 1995, the North Carolina General Assembly amended G.S. 62-36A by adding a new subsection (b1). This new statute requires the Commission to issue franchises for natural gas service to all areas of the State which are unfranchised. If no applications are filed (and that is the case with much of the State), the Commission is to assign unfranchised areas to the existing LDCs. On August 23, 1995, the Commission initiated certificate proceedings in Docket No. G-100, Sub 69 to implement G.S. 62-36A(b1). A decision in that docket will be forthcoming soon. The Commission takes judicial notice of these two developments. It appears from these developments that new territory may well be certified to Piedmont in either Docket No. G-9 Sub 372 or Docket No. G-100, Sub 69, or both, in the near future. Although presently unfranchised territory may not serve as a basis for establishment of an expansion fund, the Commission concludes that the pending proceedings in Docket Nos. G-9, Sub 372 and G-100, Sub 69 add further support for establishment of an expansion fund on a contingent basis as hereinafter provided.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The North Carolina General Assembly has declared that it is the policy of the State to facilitate the "construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State." G.S. §62-2(9). The North Carolina Supreme Court has stated that in enacting G.S. 62-158, the General Assembly, "has effectively declared that the establishment of an expansion fund is in the public interest." State ex rel Utilities Commission v. Carolina Utility Customers Association Inc., 336 N.C. 657, 671, 446 S.E.2d 332, 340 (1994). Piedmont witness O'Hara testified that Piedmont's purpose in bringing this proceeding and identifying potential expansion projects was to attempt to put natural gas infrastructure into areas with growth potential to facilitate growth in all customer classes in those areas. The establishment of an expansion fund for Piedmont is a necessary first step in allowing Piedmont to utilize the expansion fund mechanism authorized by G.S. 62-158 to promote this public policy. The Commission concludes that it is in the public interest to create and fund an expansion fund for Piedmont as provided herein so that Piedmont may utilize those funds for expansion upon approval of individual projects by the Commission. As noted elsewhere in this order, requests for actual disbursements of monies from the fund for specific projects will be made and reviewed in separate proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence for this finding of fact is contained in Piedmont witness O'Hara's testimony and exhibits and in the testimony of Public Staff witness Hoard.

Piedmont witness O'Hara testified that Piedmont was requesting that supplier refunds of approximately $15.4 million be deposited into its expansion fund. Public Staff witness Hoard recommended that these supplier refunds, in the amount of $15,382,025.64, plus applicable interest, should be approved for deposit into an expansion fund established for Piedmont. He further testified that remaining supplier refunds of $1,072,016.37 that are subject to an appeal should continue to be held in Piedmont's escrow account. Both CUCA and the AG argue that even if some of the projects cited by Piedmont would qualify for use of an expansion fund, the combined negative net present values (NPVs) of the projects in Piedmont's present territory, which is the amount that can be financed from the fund (G.S. 62-158(c)), do not support deposit of the full $15.4 million amount of supplier refunds held by Piedmont. The combined negative NPVs of the five projects in Piedmont's present territory is approximately $3.3 million. The AG says that we should only create a fund proportionate to the negative NPV of qualifying projects. CUCA urges us to refund all or most of the money being held by Piedmont to customers; CUCA argues that we should not "park" the money in a fund in anticipation of Piedmont's getting new franchise territory.

Based on the findings and conclusions made in this Order, the Commission concludes that the supplier refunds in the amount of $15,382,025.64, plus applicable interest, are just and reasonable sources of initial funding for Piedmont's expansion fund and should be transferred to the fund on a contingent basis as ordered herein. The Commission recognizes that even if the listed projects within Piedmont's present territory qualify for use of an expansion fund (which we are not deciding now), they do not have negative NPVs totaling $15.4 million. However, as noted above, it is likely that Piedmont will be assigned new territory in the near future. It is possible, though we cannot know

now, that such new territory will have substantial negative NPVs to serve. Rather than refunding much of the $15.4 million now (as CUCA urges us to do) and thereby losing the use of it for expansion purposes, the Commission concludes that the full amount should be deposited into the fund on a contingent basis as hereinafter provided. If the assignment of new territory to Piedmont does not come about within a reasonable time or if the assignment simply does not support an expansion fund of $15.4 million, the Commission will, upon motion of an interested party, reexamine the amount in Piedmont's expansion fund. If the assignment of new territory does support an expansion fund of this amount, the money will be available in the fund.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

This finding is more in the nature of a conclusion, based upon the foregoing findings and discussions, as to the contingent basis of Piedmont's expansion fund and the transfer of Piedmont's supplier refunds to it.

As to the establishment of the fund and initial funding, the key issue is whether there are "unserved areas" within Piedmont's territory that qualify under G. S. 62-158. Piedmont's testimony showed five projects within its present territory with combined negative NPVs of approximately $3.3 million. The Commission is not deciding now whether these projects will qualify for use of an expansion fund or what their exact negative NPVs are. Those issues will be decided in future dockets as specific projects are proposed. For now, establishment of an expansion fund for Piedmont and transfer of supplier refunds, plus applicable interest, proportionate to the negative NPVs shown by Piedmont in its testimony shall be contingent upon Piedmont's filing, within a reasonable time, a petition or petitions for approval of a project to use the expansion fund to construct facilities to serve "unserved areas" within its territory at the time that are economically infeasible to construct and upon the Commission's finding such "unserved areas" and granting such petition(s). The transfer of the supplier refunds beyond the amount proportionate to the negative NPVs shown in Piedmont's testimony shall be contingent upon Piedmont's being granted, within a reasonable time, a certificate for new territory that includes "unserved areas" that are infeasible to serve. Imposing these contingencies allows us to create a fund on the present record, to preserve the full amount of supplier refunds for possible expansion financing, and to earn a better return on the supplier refunds while at the same time reserving judgment as to specific projects and retaining the possibility of refunding all or part of the supplier refunds to customers if they are not needed for expansion.

IT IS, THEREFORE, ORDERED as follows:

1. That an expansion fund for Piedmont should be, and hereby is, created in the Office of the State Treasurer, and supplier refunds, plus applicable interest, proportionate to the negative NPVs shown in Piedmont's testimony should be, and hereby are, transferred to the fund, both expressly contingent upon Piedmont's filing, within a reasonable time, a petition or petitions for approval of a project to use the expansion fund to construct facilities to serve "unserved areas" within Piedmont's franchise territory at the time that would otherwise be infeasible to construct and upon the Commission's finding such "unserved areas" within the meaning of G.S. 62-158 and granting such petition(s);

2. That the transfer of the remainder of Piedmont's $15,382,025.64 supplier refunds, beyond the amount proportionate to the negative NPVs shown in Piedmont's testimony, plus applicable interest, is expressly contingent upon Piedmont's being granted, within a reasonable time, a certificate for new franchise territory that includes "unserved areas" that are infeasible to serve;

3. That Piedmont shall transfer all of these funds to the Commission for deposit in Piedmont's expansion fund within ten days of the maturity date(s) of the financial instruments in which the funds are currently held; and

4. That Piedmont shall notify its customers of the Commission's decision by sending a copy of the Notice attached hereto as Appendix A as a bill insert in its next billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

Former Commissioner Redman did not participate in this decision.

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-9, SUB 328

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Piedmont Natural Gas Company	)	
Inc., for the Establishment of a Natural Gas	)	PUBLIC NOTICE
Expansion Fund Pursuant to G.S. 62-158	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission, upon petition of Piedmont Natural Gas Company, Inc., and following a hearing at which several parties participated, entered an Order on April 4, 1996, establishing an expansion fund for Piedmont and approving initial funding of the expansion fund in order to carry out the intent of the General Assembly as expressed in G. S. 62-158.

G. S. 62-158 was enacted by the General Assembly on July 8, 1991. The statute authorizes the Utilities Commission to "order a natural gas local distribution company to create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas within the company's franchised territory that otherwise would not be feasible for the company to construct." The statute goes on to provide that sources of funding for such an expansion fund may include "refunds to a local distribution company from the company's suppliers of natural gas and transportation services pursuant to refund orders or requirements of the Federal Energy Regulatory Commission."

Piedmont petitioned the Commission to create an expansion fund and to transfer certain supplier refunds to the expansion fund. The Commission's Order created an expansion fund and ordered Piedmont to transfer refunds totaling approximately $15.4 million, plus interest, to the expansion fund pursuant to G. S. 62-158. The Commission made the fund contingent upon approval of specific projects and upon Piedmont's being assigned new franchise territory.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of April 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-140, Sub 48

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of AT&T Communications	)	
of the Southern States, Inc.	)	
For an Amendment to its Certificate of	)	ORDER AMENDING CERTIFICATE
Public Convenience and Necessity so as to	)	OF PUBLIC CONVENIENCE AND
Authorize it to Provide Telecommunication	)	NECESSITY
Services Throughout North Carolina	)	
Including Local Exchange Services	)	

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, May 30, 1996, at 9:30 a.m.

BEFORE: Commissioner Jo Anne Sanford, presiding, Judge Hugh A. Wells and Commissioners Charles H. Hughes, Laurence A. Cobb, Allyson K. Duncan, Ralph A. Hunt, Judy Hunt

APPEARANCES:

FOR AT&T:

Kenneth McNeely, Senior Attorney, AT&T, 1200 Peachtree Street, Atlanta, Georgia 30309

Wade H. Hargrove, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Post Office Box 1800, Raleigh, North Carolina 27602

Kenneth W. Lewis, Burford & Lewis, P.L.L.C., 719 West Morgan Street, Raleigh, North Carolina 27603

Francis P. Mood, Attorney at Law, Post Office Box 11889, Columbia, South Carolina 29211

FOR THE PUBLIC STAFF:

Paul L. Lassiter, Staff Attorney, Post Office Box 29520, Raleigh, North Carolina 27626-0520

FOR THE ATTORNEY GENERAL

Margaret A. Force, Assistant Attorney General, N.C. Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: This proceeding was initiated by the filing of an application on February 29, 1996, by AT&T Communications of the Southern States, Inc. (AT&T). The application seeks authority for AT&T to offer local exchange service as a competing local provider (CLP) in North Carolina and is fashioned as an amendment to AT&T's certificate of public convenience and necessity. The application was assigned docket number P-140, Sub 48 and was supplemented on March 26, April 12, and May 15, 1996.

Petitions to Intervene were filed by Time Warner Communications of North Carolina, L.P., GTE South Incorporated, BellSouth Telecommunications, Inc., Carolina Telephone and Telegraph Company, and Central Telephone Company, and the petitions were subsequently granted by the Commission. The Attorney General filed a notice of intervention on March 20, 1996.

An Order was issued April 19, 1996, setting the application for public hearing on May 30, 1996, at 9:30 a.m. and requiring the prefiling of testimony.

AT&T prefiled testimony on May 17, 1996. No other party filed testimony.

The matter was heard as scheduled. As a preliminary matter, AT&T moved for leave to allow Frank P. Mood, a member of the bar of the State of South Carolina to appear in this proceeding, and the motion was granted. AT&T then presented the testimony of James Mertz, District Manager - Government Affairs for AT&T. No other party offered testimony.

Subsequent to enactment by the North Carolina General Assembly of H.B. 161, which authorized the Commission to allow competition in the provision of local exchange and exchange access services, the U.S. Congress enacted S. 652, the Telecommunication Act of 1996. The Commission takes judicial notice of the Act. The Act and subsequent rules to be adopted by the Federal Communications Commission to implement the Act may be preemptive of certain State laws and decisions of this Commission.

After careful consideration and review of the entire record in this proceeding, the Commission now makes the following:

FINDINGS OF FACT

1. AT&T Communications of the Southern States, Inc. (AT&T) is a New York corporation which is authorized to do business in North Carolina, with its principal office and place of business at 295 North Maple Ave., Basking Ridge, New Jersey 07920.

2. AT&T is a wholly owned subsidiary of AT&T Corp., which is a New York corporation authorized to do business and doing business in North Carolina.

3. AT&T seeks a certificate of public convenience and necessity to provide local exchange telecommunications services as a CLP throughout North Carolina. While the Commission is authorized by state law to issue such a certificate for service areas within the State of local exchange companies with more than 200,000 access lines, it is not authorized to issue such a certificate for service areas having 200,000 or fewer access lines unless the local exchange company serving such an area applies for price regulation pursuant to G.S. 62-133.5(a), [See G.S. 62-110(f1) and (f2)] or to

issue a certificate for service in areas served by telephone membership corporations [See G. S. 62-110(f3)]. AT&T's witness indicated that G.S. 62-110(f2) may be preempted by the Telecommunication Act of 1996 and regulations of the Federal Communication Commission promulgated thereunder, but that is not yet clear. The Federal act provides for local competition but also provides an exemption for rural telephone companies. In any event, AT&T has not shown a basis upon which this Commission may authorize local competition in service areas fitting the exception provided in G.S. 62-110(f2) and (f3). Therefore, it is appropriate at this time to limit the certificate as required by G.S. 62-110(f2) and (f3). AT&T's witness testified that before AT&T offers service in any of the areas having 200,000 or fewer access lines, it will negotiate with the current local exchange company and will file a letter with the Commission. AT&T's certificate may be expanded at that time as appropriate.

4. AT&T is fit, capable, and financially able to render local exchange telecommunications services as a CLP in the State of North Carolina. AT&T was granted a certificate of public convenience and necessity authorizing it to provide interLATA telecommunication services in North Carolina in intrastate commerce on December 30, 1983 and has provided such services in North Carolina since that time. AT&T states that its parent corporation and sole owner, AT&T Corp., is prepared to and will provide the funds and financial resources necessary to qualify AT&T to enter the local exchange market in North Carolina, and provides the 1994 Annual Report for AT&T Corp. in support of its application.

5. AT&T has stated that the service to be provided will meet the service standards set out in Rule R9-8.

6. AT&T has stated that it will abide by all applicable statutes, orders, rules and regulations entered and adopted by the Commission including the Commission's Order dated February 23, 1996 which promulgated interim rules governing local exchange providers.

7. There has been no showing that the provision of the proposed service will adversely impact the availability of reasonably affordable local exchange service.

8. AT&T has stated that it will, to the extent it may be required to do so by the Commission, participate in the support of universally available telephone service at affordable rates.

9. There has been no showing that the provision of the proposed service will adversely impact the public interest.

CONCLUSIONS

Based on the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that AT&T should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide local exchange telecommunications services as a CLP in the State of North Carolina, subject to the following terms and conditions:

A. AT&T shall abide by all applicable rules and regulations of the North Carolina Utilities Commission.

B. AT&T shall not hereafter abandon or discontinue service under its certificate in North Carolina unless AT&T has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C. AT&T shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. At this time, the portion of the State in which AT&T may be authorized to provide local exchange service is limited to the service areas within the State of local exchange companies with more than 200,000 access lines, but this limitation is subject to change in a later proceeding.

E. AT&T shall comply with the price list filing requirements of Rule R17-2(h) until such time after March 1, 1998 as AT&T petitions the Commission for a waiver and the Commission grants a waiver of the price list filing requirement.

IT IS, THEREFORE, ORDERED as follows:

1. That AT&T, be, and the same is hereby granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide local exchange telecommunications services as a CLP in the State of North Carolina, subject to the following terms and conditions:

A. AT&T shall abide by all application rules and regulations of the North Carolina Utilities Commission.

B. AT&T shall not hereafter abandon or discontinue service under its certificate in North Carolina unless AT&T has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C. AT&T shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. AT&T is authorized to provide local exchange telecommunications service within the North Carolina service areas of any local exchange company with more than 200,000 access lines.

2. That this Order shall constitute an amendment to the certificate of public convenience and necessity granted to AT&T Communications of the Southern States, Inc., by the North Carolina Utilities Commission to allowing it provide local exchange telecommunications services as a CLP in North Carolina.

ISSUED BY ORDER OF THE COMMISSION
This the 16th day of July, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-472

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Time Warner Communications of	)	
North Carolina, L.P. for a Certificate of	)	ORDER GRANTING
Public Convenience and Necessity to Provide	)	CERTIFICATE OF PUBLIC
Local Exchange and Exchange Access Services	)	CONVENIENCE AND
in North Carolina	)	NECESSITY

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday January 11, 1996, at 9:30 a.m.

BEFORE: Commissioner Jo Anne Sanford, presiding and Commissioners Charles H. Hughes, Laurence A. Cobb, Allyson K. Duncan, Ralph A. Hunt, and Judy Hunt

APPEARANCES:

For Time Warner Communications of North Carolina, L.P.:

Wade H. Hargrove and Elizabeth Faecher Crabill, Attorneys, Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., Suite 1600 First Union Capitol Center, Raleigh, North Carolina 27601

For the Public Staff:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, N.C. Department of Justice, Post Office Box 629, Raleigh, North Carolina, 27602
For: The Using and Consuming Public

For MCI Telecommunications Corporation:

Cathleen M. Plaut, Attorney, Bailey & Dixon, L.L.P., 2500 Hanover Square, Raleigh, North Carolina 27602-1351

For Sprint Mid-Atlantic Telecom, Inc., Carolina Telephone and Telegraph Company, And Central Telephone Company:

Robert Carl Voigt, Senior Attorney, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900

For ALLTEL Carolina, Inc.:

Daniel C. Higgins, Attorney, Burns, Day & Presnell, P.A., Post Office Box 10867, Raleigh North Carolina

BY THE COMMISSION: This proceeding was initiated by the filing of an application on July 3, 1995, by Time Warner Communications of North Carolina (Time Warner) for a certificate of public convenience and necessity to provide local exchange and exchange access telecommunications service in North Carolina as a competing local provider (CLP). Time Warner filed amendments to its application on August 15, 1995, and September 1, 1995.

Petitions to intervene were filed by BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company and Central Telephone Company; GTE South Incorporated; North State Telephone Company; MCI Telecommunications Corporation; and ALLTEL Carolina, Inc., and were subsequently granted by the Commission.

The case was originally set for public hearing on December 5, 1995. On November 8, 1995, the Commission issued an Order rescheduling the application for hearing on January 11, 1996, and requiring the prefiling of testimony on behalf of Time Warner by December 1, 1995, and on behalf of the Public Staff and intervenors by December 15, 1995.

Time Warner filed testimony on December 1, 1995. No other party filed testimony.

This matter was heard as scheduled. Time Warner presented the testimony of witnesses Thomas Morrow, President of Time Warner Communications; Raymond Wendell, Director of Product Marketing for Time Warner Communications; Danny G. Engleman, Director of Switch Technology for Time Warner Communications; and Randall Fraser, Division President of Time Warner Cable's Raleigh-Durham-Chapel Hill-Fayetteville Division. No other party offered testimony.

Subsequent to the enactment by the North Carolina General Assembly of HB161, which authorized the Commission to allow competition in the provision of local exchange and exchange access services, and subsequent to the hearing in this proceeding, the United States Congress enacted S.652, the Telecommunications Act of 1996. The Commission takes judicial notice of this Act. The Act and the resulting rulemaking by the Federal Communications Commission may be preemptive of certain state laws and decisions of this Commission.

After careful consideration and review of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. Time Warner is a Delaware limited partnership authorized to do business within the State of North Carolina, and its principal office and place of business is 3012 Highwoods Boulevard, Suite 301, Raleigh, North Carolina 27604.

2. Time Warner seeks a certificate of public convenience and necessity to provide local exchange and exchange access telecommunications services as a CLP throughout North Carolina.

3. Time Warner is fit, capable, and financially able to render local exchange and exchange access services as a CLP in the State of North Carolina.

4. Time Warner has stated that the service to be provided will meet all applicable service standards that the Commission may adopt.

5. The provision of the proposed service will not adversely impact the availability of reasonably affordable local exchange service.

6. Time Warner has stated that it will, to the extent it may be required to do so by the Commission, participate in the support of universally available telephone service at affordable rates.

10. The provision of the proposed services will not otherwise adversely impact the public interest.

CONCLUSIONS

Based on the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that Time Warner should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide local exchange and exchange access telecommunications services as a CLP in the State of North Carolina, subject to the following terms and conditions:

A. Time Warner shall abide by all applicable rules and regulations of the North Carolina Utilities Commission.

B. Time Warner shall not hereafter abandon or discontinue service under its certificate in North Carolina unless Time Warner has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C. Time Warner shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. G.S. 62-110(f1 and 2) places certain restrictions on the Commission's ability to authorize competing local providers, such as Time Warner, to provide local exchange and exchange access services. The state law statutory restrictions at this time are as follows: First, local exchange and exchange access competition may not be authorized in any service are prior to July 1, 1996, unless the Commission has approved a price regulation plan for the local exchange company serving that

area. Second, beginning July 1, 1996, local exchange and exchange access competition may not be authorized within any area served by a local exchange company which has 200,000 or fewer access lines unless the local exchange company serving that area has filed a price regulation plan with the Commission.

E. Time Warner shall comply with the price list filing requirements of Rule R17-2(h) until such time after March 1, 1998, as Time Warner petitions the Commission for a waiver and the Commission grants a waiver of the filing requirement.

IT IS, THEREFORE, ORDERED as follows:

1. That Time Warner be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide local exchange and exchange access telecommunications services as a CLP in the State of North Carolina, subject to the following terms and conditions:

A. Time Warner shall abide by all applicable rules and regulations of the North Carolina Utilities Commission.

B. Time Warner shall not hereafter abandon or discontinue service under its certificate in North Carolina unless Time Warner has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C. Time Warner shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. Time Warner is authorized to provide local exchange and exchange access telecommunication services within the North Carolina service areas of any local exchange company with more than 200,000 access lines upon the Commission's approval of a price regulation plan for that local exchange company or July 1, 1996, whichever occurs first.

E. Time Warner shall comply with the Commission's price list filing requirements contained in Commission Rule R17-2(h) until such time after March 1, 1998, as Time Warner petitions the Commission for a waiver and the Commission grants a waiver of the filing requirement.

2. That this Order shall constitute the certificate of public convenience and necessity granted to Time Warner by the North Carolina Utilities Commission to provide local exchange and exchange access telecommunications services as a CLP in North Carolina.

ISSUED BY ORDER OF THE COMMISSION
This the 19th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-474, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of MCImetro Access Transmission Services, Inc. for a Certificate of Public Convenience and Necessity to Provide Local Exchange Telecommunications Services	)))	ORDER GRANTING CERTIFICATE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh,North Carolina, on Tuesday, December 7, 1995, at 9:30 a.m.

BEFORE: Commissioner Jo Anne Sanford, presiding, and Commissioners Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt and Judy Hunt

APPEARANCES:

For MCImetro Access Transmission Services, Inc.:

Ralph McDonald, Attorney at Law, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602

Marsha A. Ward, Attorney at Law, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342

For Time Warner Communications of North Carolina L.P.

Wade H. Hargrove, Attorney at Law, and Elizabeth F. Crabill, Attorney at Law, Brooks, Pierce, McLendon, Humphrey & Leonard, Post Office Box 1800, Raleigh, North Carolina 27602

For GTE South:

Robert W. Kaylor, Attorney at Law, Bode, Call & Green, Post Office Box 6338, Raleigh, North Carolina 27628

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For the Attorney General:

Karen E. Long, Assistant Attorney General, N.C. Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602 For: The Using and Consuming Public

BY THE COMMISSION: This proceeding was initiated by the filing of an application on July 3, 1995, by MCImetro Access Transmission Services, Inc., (MCImetro) for a certificate of public convenience and necessity to provide local exchange telecommunication services as a competing local provider (CLP) in North Carolina. The application was assigned docket number P-474, Sub 1. On August 18 and October 13, 1995, MCImetro filed first and second supplements to its application.

Petitions to intervene filed by BellSouth Telecommunications, Inc., on September 29, 1995, Carolina Telephone and Telegraph Company and Central Telephone Company on October 16, 1995, and GTE South Incorporated on October 16, 1995, were allowed by Orders of October 3, October 17, and October 18, 1995, respectively.

An Order was issued on October 26, 1995, setting the application for public hearing on December 7, 1995, at 9:30 a.m. and requiring the prefiling of testimony on behalf of MCImetro by November 15, 1995, and on behalf of intervenors by November 30, 1995.

Petitions to intervene filed by Time Warner Communications of North Carolina, L.P. on November 6, 1995, The Alliance of North Carolina Independent Telephone Companies on November 27, 1995, and North State Telephone Company on November 30, 1995, were allowed by Orders of November 8, November 28, and December 4, 1995, respectively. The Attorney General gave notice of intervention on December 1, 1995.

MCImetro prefiled testimony on November 16, 1995. No other party filed testimony.

This matter was heard as scheduled. MCImetro presented the testimony of Anne M. Cullather, Senior Policy Analyst, Public Policy and Industry Affairs, of MCI Communications Corporation (MCIC), the parent company of MCImetro. No other party offered testimony.

After careful consideration and review of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. MCImetro is a Delaware corporation authorized to do business within the State of North Carolina with its principal office and place of business in Richardson Texas.

2. MCImetro seeks a certificate of public convenience and necessity to provide local exchange telecommunications services as a CLP throughout North Carolina, except within franchised areas within the State that are being served by incumbent local exchange companies having 200,000 or fewer access lines or by telephone membership corporations.

3. MCImetro is an indirect subsidiary of MCI Telecommunications Corporation (MCI). In turn, MCI is a wholly owned subsidiary of MCIC.

4. MCIC's consolidated financial reports for 1994 as reported in the Company's annual report to stockholders reflect current assets which exceed current liabilities by more than $1.5 billion,

total assets of more than $16 billion, stockholders' equity in excess of $9 billion, and annual revenue in excess of $13 billion. The annual report also states with respect to MCImetro:

> The company is planning capital expenditures of approximately $500 million for MCImetro during 1995 and expects to make significant additional investments in MCImetro over the next several years.

5. MCIC stands behind MCImetro and will fund MCImetro to the extent necessary to provide adequate and continuing local exchange telecommunications services to customers in North Carolina.

6. MCImetro is fit, capable, and financially able to render local exchange telecommunications services as a CLP in the State of North Carolina.

7. MCImetro has stated that the service to be provided will meet the service standards set out in Rule R9-8.

8. The provision of the proposed service will not adversely impact the availability of reasonably affordable local exchange service.

9. MCImetro has stated that it will, to the extent it may be required to do so by the Commission, participate in the support of universally available telephone service at affordable rates.

10. The provision of the proposed service will not otherwise adversely impact the public interest.

CONCLUSIONS

Based on the foregoing findings of fact and the entire record in this proceeding, the Commission concludes that MCImetro should be granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide local exchange telecommunications services as a CLP in the State of North Carolina, subject to the following terms and conditions:

A. MCImetro shall abide by all applicable rules and regulations of the North Carolina Utilities Commission.

B. MCImetro shall not hereafter abandon or discontinue service under its certificate in North Carolina unless MCImetro has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C. MCImetro shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. At this time, the portion of the State in which MCImetro may be authorized to provide local exchange service is limited to the service areas within the State of local exchange companies with more than 200,000 access lines. MCImetro shall not provide local exchange or exchange access

service in any of these areas prior to the Commission's approval of a price regulation plan for the local exchange company serving that area, or July 1, 1996, whichever occurs first.

E. MCImetro shall comply with the price list filing requirements of Rule R17-2(h) until such time as the Commission may grant a waiver of such requirements.

IT IS, THEREFORE, ORDERED as follows:

1. That MCImetro be, and the same is hereby, granted a certificate of public convenience and necessity pursuant to G.S. 62-110 to provide local exchange telecommunications services as a CLP in the State of North Carolina, subject to the following terms and conditions:

A. MCImetro shall abide by all applicable rules and regulations of the North Carolina Utilities Commission.

B. MCImetro shall not hereafter abandon or discontinue service under its certificate in North Carolina unless MCImetro has received approval from the Commission to do so upon such terms and conditions as the Commission may prescribe.

C. MCImetro shall pay all regulatory fees relating to intrastate service provided in North Carolina from date of certification forward.

D. MCImetro is authorized to provide local exchange telecommunication service within the North Carolina service areas of any local exchange company with more than 200,000 access lines upon the Commission's approval of price regulation plan for that local exchange company or July 1, 1996, whichever occurs first.

E. Prior to offering and while offering any intrastate service in North Carolina, the Company shall comply with any applicable price list filing requirement then in effect.

2. That this Order shall constitute the certificate of public convenience and necessity granted to MCImetro Access Transmission Services, Inc., by the North Carolina Utilities Commission to provide local exchange telecommunications services as a CLP in North Carolina.

ISSUED BY ORDER OF THE COMMISSION
This the 12th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

(SEAL)

DOCKET NO. P-61, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Housecalls Healthcare Group, Inc., Complainant	)	
	)	RECOMMENDED ORDER
	)	CONCERNING RANDOLPH
v.	)	TELEPHONE COMPANY
	)	APPLICATION OF PAYMENTS
Randolph Telephone Company. Respondent	)	POLICY

HEARD IN: Court Room, Town Hall, 239 South Fayetteville Street, Liberty, North Carolina on June 18, 1996 at 10:00 a.m.

BEFORE: Daniel Long, Hearing Examiner

APPEARANCES:

For the Complainant:

J. Sam Johnson, Jr., Attorney at Law, Johnson, Tanner, Cooke, Younce & Moseley, 400 W. Market Street, Suite 500, Greensboro, North Carolina 27401

For Randolph Telephone Company

Daniel C. Higgins, Burns, Day & Presnell, P.A., Post Office Box 10867, Raleigh, North Carolina 27605

For the Using and Consuming Public

A.W. Turner, Jr., Staff Attorney, Public Staff -- North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

LONG, HEARING EXAMINER: This matter began on December 5, 1995, when the Complainant, Housecalls Homehealth Group, Incorporated (Housecalls or the Complainant), filed a complaint with the Consumer Services Division of the Public Staff of the North Carolina Utilities Commission about a disputed bill the Complainant had received from the Respondent, Randolph Telephone Company (RTC or the Respondent). On that date, the Public Staff received faxed information from Housecalls that RTC had notified Housecalls it would disconnect service for area code (910) 662-3071 if Housecalls failed to pay $13,565.99 by December 6, 1995, at 9:00 a.m. In response, the Public Staff contacted RTC in an effort to prevent the disconnection and to allow the Public Staff an opportunity to investigate the situation. Subsequently, RTC agreed to postpone the

disconnection date until December 18, 1995, upon a "good faith" payment of one half of the $13,565.99.

By 5:00 p.m. on December 5, 1995, Housecalls had paid $3,353.36 for what it contended were regulated charges for (910) 662-3071, (910) 622-4398 and (910) 622-3011. Additionally, its president Terry Ward paid RTC $7,217.73 for a total payment of $10,570.08. In light of this, RTC agreed to postpone disconnection of Housecall's service until 9:00 a.m. on Monday, December 18, 1995.

On December 18, 1995, RTC disconnected Housecalls, but reconnected service on a verbal request from the Commission. The day after, on December 19, 1995, the Commission issued an Order Not to Disconnect (December Orders) which recited the foregoing procedural history. That Order found as a fact that the total payment of $10,570.08 had been applied by RTC to non-regulated charges.

On that same date, Housecalls filed a formal complaint by letter dated December 15, 1996, which alleged that RTC had taken payments made by Housecalls and applied them to unregulated charges. RTC filed an answer and motion to dismiss the complaint on January 26, 1996. Housecalls filed both a reply and a response to RTC's answer on February 19,1996. RTC filed a further answer on March 12, 1996. Housecalls filed a response to the further answer on April 2, 1996.

After twice scheduling a hearing on the matter, the Commission issued an Order on May 1, 1996, rescheduling the matter for hearing on June 18, 1996 in Liberty, North Carolina. The hearing was held as scheduled. Mr. Terry Ward, president of Housecalls appeared and testified on behalf of the Complainant. Mr. Steve Cox and Ms. Lavonne Lewis appeared and testified on behalf of the Respondent, Randolph Telephone Company. All three witnesses offered testimony and exhibits.

On the basis of the evidence adduced at the hearing and the entire record in this matter, the Hearing Examiner makes the following

FINDINGS OF FACT

1. The Complainant, Housecalls, is a corporation created and existing under the laws of the State of North Carolina. The Complainant provides in-home nursing services for the ill and elderly in all 100 counties of North Carolina. The Complainant's principal place of business is in Liberty, North Carolina, where it is a customer of the Respondent.

2. The Respondent, Randolph Telephone Company (RTC), is a North Carolina corporation which provides telephone service in North Carolina and is subject to the Commission's jurisdiction as to its rates and services.

3. There is a billing dispute between the Complainant and the Respondent about charges for wiring work which RTC performed to connect the Complainant to the Respondent's point of presence at a new shopping center into which the Complainant was moving. The amount in dispute for this wiring is $677.26. This wiring is an unregulated service.

4. There is a second billing dispute between the Complainant's president Terry Ward in his individual capacity as the shopping center developer and the Respondent about charges for inside wiring that the Respondent performed to hook up computer and telephones within the shopping center to serve the Complainant. The amount in dispute for this wiring is $2,408.04. Inside wiring is an unregulated service.

5. Consistent with its past business practice, the Respondent tendered a separate bill for the unregulated wiring work on or about October 19, 1996. Respondent hand delivered the bill to the Complainant's president, Mr. Terry Ward, but Mr. Ward refused to accept it and disputed the total amount of the charges.

6. The Respondent subsequently included the charges for the unregulated wiring work on the Complainant's telephone bill dated November 1, 1995. The labor charges were broken down into increments none larger than $960 and labeled "SERVICE CALL/REP OF CUS-OWNED EQP." Materials used for the unregulated wiring were listed on separate lines of the telephone bill. The total bill was for $13,565.99 with $12,242.12 of that amount labeled "TOTAL LOCAL SERVICE AND OTHER CHARGES." The bill stated that payment was due by November 16, 1995.

7. On November 22, 1995, Mr. Robert G. Holden, President of RTC, sent Mr. Ward a letter stating that if payment of the bill was not made by December 6, 1995, RTC would disconnect Housecalls' telephone service. Mr. Ward responded by letter dated November 30, 1995, in which, among other things, he tendered payment of $3,352.36 for the regulated charges for Housecalls as well as $138 for material overruns for one of the inside wiring jobs.

8. By letter of December 4, 1995, Mr. Holden returned the check for $3,352.36 because it was less than the total amount of the telephone bill. This letter stated that unless payment in full was received by 9:00 a.m. on December 6, 1995, Housecalls' telephone service would be discontinued.

9. On December 5, 1995, Mr. Ward personally delivered to two employees of RTC a Housecalls check for $3,352.36 for regulated phone charges and material overruns and a check drawn on one of his personal accounts for $7,217.73 for payment of the wiring jobs.

10. Mr. Ward contended the checks were tendered as accord and satisfaction of the disputed amounts. RTC disputes that representation. RTC cashed the checks.

11. RTC disconnected the Complainant's telephone service for less than a day on December 18, 1996 but reconnected it at the Commission's request. During the brief period of the disconnection, Housecalls communicated with its clients, nurses, care givers, and doctors by cellular telephone.

12. RTC applied payments received from Housecalls to non-regulated charges first.

13. Complainant is current on the payment of regulated charges.

Whereupon, the Hearing Examiner reaches the following:

CONCLUSIONS

The central question in this case is whether RTC wrongfully terminated Complainant's telephone service by applying amounts tendered to nonregulated services first rather than regulated services. The Hearing Examiner concludes that RTC did act wrongfully. It should be the policy of RTC and, by extension, other local exchange companies to apply payments in such a way to avoid, rather than foster, the termination of local service.

Evidence for the findings of facts in this docket are contained in the testimony and exhibits of Complainant's witness, Mr. Terry Ward, and in the testimony and exhibits of the Respondent's witnesses Mr. Steve Cox and Ms. Lavonne Lewis.

The key document in deciding this case is RTC's Exhibit R-6, sponsored by Lavonne Lewis. Lewis agreed that excluding the unregulated charges reflected on Exhibit R-5 from the $12,242.12 identified as November Local Service, Other Charges, And Credits leaves $1,301.09. (Tr. pp. 119-20, 129-30.) The difference, $10,941.03, is unregulated charges. As the Commission's December Order recited, Complainant paid a total of $10,570.09 in December. If those funds had been applied first to all regulated charges and the excess to unregulated charges, there would be no dispute over whether the Complainant had paid all regulated charges. As the Commission pointed out, however, "all payments received from Housecalls were applied to the non-regulated charges first." Steve Cox, RTC's Manager of Operations, testified that "the intent was to apply this [payment] to the oldest agreements which would have been the two contracts" (Tr. p. 106) rather than the regulated charges.

An examination of Exhibit R-6 demonstrates the problems with RTC's policy of crediting payments. The total of all the figures in the column identified as Total Current Charges and Credits equals $30,647.54. The total of all the figures in the column identified as Amount Paid equals $25,529.67. The difference between those two totals, $5,117.87, is much less than what Lewis agreed was the total unregulated charges shown on Exhibit R-5, which totaled $10,941.03.

An additional point needs to made here. In response to a question on redirect, Lewis stated that she subtracted $3,223.30 (the amount the Commission found was in dispute in its December Order) from the amount RTC claims is due, $5,117.87, and the difference of $1,894.57 is the outstanding balance for **regulated service**. (Tr. p. 131.) From the foregoing discussion and calculations, however, this total clearly relates to the **unregulated** charges from the November and December bills. Her earlier testimony in response to questions from the Public Staff and the Attorney General support that conclusion. Furthermore, testimony from Cox was that Complainant's December payments were sufficient to have covered all regulated charges then due.

The transcript of Cox's cross-examination at p.107 reads:

> Q. Do you have reason to believe and is Randolph Telephone challenging today that whatever remaining regulated charges might have been outstanding would not have been at least covered by that additional check of $7,217.73? Do you believe that after the full $10,500, approximately, was received

by Randolph that there were regulated charges that had not yet been paid?

A. No.

The conclusion from all these calculations is that the Complainant has paid sufficient amounts on a timely basis to avoid disconnection. RTC's policy of crediting payments first to unregulated charges, however, has created a perception that the Complainant may have outstanding regulated charges.

RTC attempted to raise one question at the hearing that should be addressed. Through the testimony of Lewis, RTC apparently maintained at the hearing that the Complainant is delinquent in its payments and that the delinquency has grown worse since the Commission's December Order. In that December Order, the Commission expressly found that the amount in dispute was $3,223.30, and it required the Complainant to pay "[a]ll current regulated charges...as they become due." RTC focused on those findings and, through Exhibit R-6 and the testimony of Lewis, attempted to show that the Complainant should now be disconnected. The evidence does not support that position.

The Commission's December Order can be read in two ways. If it dealt only with the November 1, 1995, bill, then RTC cannot maintain that the total in dispute is the $3,223.30. Instead, that amount would have increased when the December bill was rendered. If, instead, the Commission's Order covered both the November and December bills, then RTC cannot maintain that any regulated charges are overdue in light of the Commission's statement that the Complainant's payments tendered as of December 5, 1995, "covered all regulated charges for [Complainant's phone numbers]." RTC's evidence paradoxically supports both interpretations. Footnote 2 of Exhibit R-6 states that after the payments were applied, the remaining $3,223.30 related to the November 1995 billing. Cox testified, however, that there were no unpaid regulated charges after the December payments.

Regardless of which interpretation is correct, the "increase" in the charges that RTC claims have accrued since that Order was issued all relate to charges pre-dating the Commission's Order. Again, as verified in footnote 2 of RTC's own Exhibit R-6, the "increase" in the deficiency totaling $2,502.06 is related to the December bill. On its face, Exhibit R-6 shows that Complainant has paid the exact amount of total current charges for February, March, April, May, and June of 1996. For January, the total of current charges and credits was $3,420.38, and Complainant actually paid more than that amount, $4,027.87.

The Hearing Examiner rejects RTC's arguments. First of all, if RTC had appropriately credited the December payments to regulated charges, there would be no dispute at all. Secondly, regardless of which month's bills the Commission's Order was addressing, Complainant has complied with it. After issuance of the Order on December 19, 1995, Complainant has kept its regulated charges current.

The Hearing Examiner believes that the law is clear that utility service may not be disconnected for non-payment of unregulated charges. *E.g.*, In the Matter of Mary Gibson and Others Similarly Situated v. Duke Power Company, Docket No. E-7, Sub 439 (October 31, 1988) all Orders

by the Commission in Docket No. P-100, Sub 111 (investigation of billing and collecting for 700, 900, and 976 services); and the Commission's December Order in this docket ("It is the general understanding in the industry that services cannot be disconnected for failure to pay non-regulated utility charges."). RTC's personnel should have been aware of this principle. Howver, Steve Cox, Manager of Operations, testified that he did not know if he could disconnect telephone service for non-payment of an unregulated charge. (Tr. p. 111.) He also had no idea what, if anything, RTC's tariffs said about the subject. (Tr. p. 111-12.) Cox agreed that the December disconnection was based on the overdue November bill, but he did not know how much of the November bill was for regulated charges. (Tr. p. 105.) Finally, he very candidly agreed that RTC threatened to disconnect telephone service so that the Complainant would pay the outstanding unregulated charges. (Tr. pp. 108-09.)

The Hearing Examiner does not believe the local exchange market in Liberty can be subject to meaningful competition in the next five years. (See Tr. p. 112-13.) Regardless of that question, however, the market is not now competitive.

Finally, the Hearing Examiner notes that RTC is not without recourse in the collection of disputed non-regulated charges. It can, for example, go to the General Court of Justice to obtain these monies. What it cannot do is cut-off Complainant's service for nonpayment of nonregulated charges or so manipulate the application of payments to jeopardize Complainant's local service. RTC's attempt to coerce payment of unregulated charges through disconnection of its monopoly service amounts to an abuse of its monopoly power.

IT IS, THEREFORE, ORDERED as follows:

1. That RTC cease any further attempts to terminate service to Complainant for nonpayment of bills for unregulated goods and services.

2. That RTC henceforth apply payments first to outstanding bills for regulated utility service and only then to unregulated charges unless the customer has given other written instructions to the utility as to how the payment should be applied.

3. That RTC bill for unregulated good and services either in separate bills or on separate pages of the telephone bill which are clearly marked: "Nonpayment of items on this sheet will not result in disconnection of your local telephone service; however, collection of unpaid charges may be pursued by the service provider."

4. That RTC adjust its billing program to credit payments appropriately in conformity with Ordering Paragraph No. 2 and 3 above.

5. That a copy of this Recommended Order be sent to all local exchange companies under the jurisdiction of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-61, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Housecalls Healthcare Group, Inc., Complainant	)	FINAL ORDER OVERRULING EXCEPTIONS AND AFFIRMING RECOMMENDED ORDER
v.	)	
Randolph Telephone Company, Respondent	)	

BY THE COMMISSION: On August 5, 1996, Commission Hearing Examiner, Dan Long, entered a Recommended Order in this docket entitled "Recommended Order Concerning Randolph Telephone Company Application of Payments Policy." On August 20, 1996, Randolph Telephone Company (Respondent) filed certain exceptions to the Recommended Order. On September 11, 1996, Housecalls Healthcare Group, Inc. (Complainant), filed a response to the Respondent's exceptions. On September 13, 1996, the Public Staff and the Attorney General also filed responses to the Respondent's exceptions.

On October 3, 1996, an Order Scheduling Oral Arguments On Exceptions was issued by the Chairman scheduling oral arguments for Tuesday, November 12, 1996, at 3:00 p.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The hearing came on to be heard and was heard at this date, time, and location.

Based upon a careful consideration of the entire record in this proceeding, the Commission finds and concludes that all of the Findings of Fact, Conclusions, and Decretal paragraphs set forth in the Recommended Order of August 5, 1996, are fully supported by the record; that the Recommended Order should be affirmed and adopted as the Final Order of the Commission; and that each of the exceptions filed by the Respondent should be denied. We note that the Hearing Examiner obviously found the testimony offered by the witnesses for the Complainant to be credible and convincing on the issues. Our review of the record in this case leads us to the same conclusion.

IT IS, THEREFORE, ORDERED as follows:

1. That each of the exceptions filed by the Respondent be, and each is hereby, overruled and denied.

2. That the Recommended Order entered in this docket on August 5, 1996, be, and the same is hereby, affirmed and adopted as the Final Order of the Commission.

ISSUED BY ORDER OF THE COMMISSION.
This the 18th day of November 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-140, SUB 50
DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-140, SUB 50	)	
	)	
In the Matter of	)	
Interconnection Agreement Negotiations	)	
Between AT&T Communications of the	)	ORDER EXCLUDING INTERVENORS,
Southern States, Inc., and BellSouth	)	SETTING OUT ARBITRATION
Telecommunications, Inc. Pursuant to the	)	PROCEDURE, REQUESTING
Telecommunications Act of 1996	)	PUBLIC STAFF ASSISTANCE, AND
	)	SCHEDULING ARBITRATION
DOCKET NO. P-100, SUB 133	)	PROCEEDING REGARDING
	)	BELLSOUTH AND AT&T
In the Matter of	)	
Local Exchange and Local Exchange	)	
Access Competition	)	

BY THE COMMISSION: On July 25, 1996, Sprint Communications, L.P. (Sprint) filed a Petition for Intervention in Docket No. P-140, Sub 50, asserting that the Commission's consideration of the petition of AT&T Communications of the Southern States, Inc. (AT&T) for arbitration of interconnection with BellSouth Telecommunications, Inc. (BellSouth) pursuant to the Telecommunications Act of 1996 (TA96) may have a "direct and material effect" upon it. On July 29, 1996, the Alliance of North Carolina Independent Telephone Companies (Alliance) filed a Petition to Intervene, asserting that its membership, consisting of various local exchange companies in North Carolina, may potentially be affected by the outcome of Commission proceedings.

On July 23, 1996, the Attorney General filed a Notice of Intervention pursuant to G.S. 62-20 in Docket No. P-140, Sub 50. On August 9, 1996, Business Telecom, Inc. (BTI) filed a Petition for Intervention, as did BellSouth Advertising & Publishing Corporation (BAPCO). On August 14, 1996, Sprint filed a Motion to Deny AT&T's Request.

AT&T Response

On August 2, 1996, AT&T filed a Response to the Petition of Notice of Intervention of Sprint, the Attorney General, and the Alliance. AT&T requested that the Commission limit the intervention and participation of the Attorney General, Sprint, the Alliance, and

any other nonparty intervenor to only the review process contemplated under Section 252(e) of TA96.

The thrust of AT&T's argument was that Section 252(b) of TA96 does not provide for participation by nonparties in arbitration proceedings. Rather, TA96 provides for arms-length business negotiations, followed by arbitration, if necessary, which will result in binding contracts. Intervenors would not be bound by the resulting contracts or arbitrations. Furthermore, the language of Section

252(b) at various points speaks only as to the rights and obligations of "parties" to the arbitration. AT&T noted that the Florida Public Service Commission had utilized such reasoning in excluding intervenors in its July 17, 1996, Initial Order Establishing Procedure in Docket No. 960833-TP. Arbitration is not a regulatory hearing or investigation of general applicability, but rather an adjudication of a commercial dispute between two parties.

AT&T further maintained that allowing nonparties to intervene would delay and frustrate the resolution of arbitrable issues between the parties. Although acknowledging that consumer advocates such as the Attorney General and the Public Staff or other parties have an important role to play, AT&T suggested that their intervention would be appropriate only at that stage when, under TA96, Section 252(e), the agreement reached by parties either through arbitration or negotiation must be submitted to the Commission for approval. The Section 252(e) independent review would be redundant and unnecessary if nonparties could simply intervene in the parties' Section 252(b) arbitration proceedings.

BAPCO Response to AT&T

BAPCO in its August 9, 1996, filing maintained that it has interests that will be directly affected by the contract sought by AT&T and noted that Commission Rule R1-19 allows the Commission to grant intervention to "any person having an interest in the subject matter" of a pending action. Moreover, there is nothing in Section 252 of TA96 which prohibits intervention by interested parties, and TA96 does not preempt the states in this matter. BAPCO stated that its intervention would not unduly delay or hinder the proceedings and that it would inject no new issues in the proceedings. BAPCO concluded by saying that, by intervening in the action, it does not waive its exemptions from Commission jurisdiction pursuant to prior law and decisions.

Attorney General's Response to AT&T

The Attorney General in a Reply filed August 9, 1996, took exception to AT&T's argument that TA96 does not provide for the participation of consumer advocates such as the Attorney General and Public Staff. The Attorney General also pointed out that he may intervene in proceedings before the Commission as a matter of right pursuant to G.S. 62-20. To limit the Attorney General's participation to a 30-day window before the issuance of a final arbitration order would not allow him sufficient time to evaluate the issues and provide useful insights to the Commission. On August 13, 1996, the Alliance filed a Reply joining in the Attorney General's Reply.

Sprint's Response

Sprint in its August 14, 1996, filing argued that all intervenors should be permitted full participation in the arbitration process, both because of the impact that the Commission's arbitrated decision will have on intervenors but also because of the disparate treatment of negotiated and arbitrated agreements under Section 252 of TA96. Sprint suggested that the practical effect of the arbitration will be to establish a de facto standard that will be applied to other arbitrations. Sprint also cited a decision made by the Public Utilities Commission of Colorado allowing interventions in arbitration.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that good cause exists to exclude all intervenors from this docket and other arbitration dockets, except for the Attorney General. The Commission also concludes that certain procedures should be promulgated to define and expedite the arbitration process and that an arbitration should be conducted in response to the petition of AT&T. Finally, the Commission concludes that the Public Staff should be requested to provide direct assistance to the Commission pursuant to G.S. 62-15(g) with respect to this and other arbitrations, instead of exercising its option to be a party in this and other arbitration proceedings.

Exclusion of Intervenors

First, intervenors should be excluded in the interests of judicial efficiency and economy and because the essence of an arbitration is the resolution of a dispute between the contesting parties. The Commission is on an extremely tight time-frame in the resolution of these arbitrations. The introduction of intervenors will tend to delay and complicate the proceedings by both their presence and activity. While the Commission concurs that TA96 does not generally preempt the Commission with respect to its procedural rules, the Commission notes that intervention is permissive, rather than mandatory, except as to the Attorney General and the Public Staff, should they choose to intervene.

Second, it is not a violation of due process to exclude intervenors in arbitration proceedings. Intervenors will not generally be legally disadvantaged by not being allowed to intervene. This is so because the intervenors are not bound by the outcome of the arbitration. For example, an intervenor who wishes to interconnect with the Respondent may either avail itself of the terms and conditions emerging from this arbitration or, if it is so inclined, may enter into its own negotiations with the Respondent and seek arbitration for itself if these negotiations are unsuccessful. The interest of such an intervenor is indirect. The interests of other potential classes of intervenors are even more indirect and remote. With respect to BAPCO, the Commission concludes that its interests are adequately protected inasmuch as it is an affiliate and/or agent of BellSouth. In any event, would-be intervenors will still have the opportunity to observe the proceedings and to file comments in accordance with the arbitration procedure set out later in this Order.

Third, Section 252 of TA96 appears to contemplate an arbitration essentially limited to the Petitioner and Respondent, as AT&T has argued and as the Florida Public Service Commission has ruled. A number of other states appear to be following this practice. Such a conclusion can also be drawn from the nature of arbitrations generally.

Arbitration Procedure

Attached to this Order are rules to govern arbitration procedure which the Commission believes comport with both the letter and spirit of TA96. An important feature of the rules is that they afford an opportunity, after the Recommended Arbitration Order (RAO) is issued, for interested persons to submit their comments to the Commission for consideration. The arbitration procedure is relatively straightforward conceptually. The responsible arbitrator(s) will make a decision to be

embodied in the RAO within the nine-month statutory period for resolution of unresolved issues set out in TA96, Section 252(b)(4)(C). Parties will then have an opportunity to object to the RAO and other persons will have the opportunity to comment on the RAO within a time certain. Concomitantly, the parties will prepare a "Composite Agreement," consisting of both negotiated and arbitrated terms, for presentation to the Commission. After submission of the "Composite Agreement" by the parties, the Commission will have the statutory thirty days to make the decision for approval or disapproval pursuant to TA96, Section 252(e)(4).

Assistance by the Public Staff

As noted above, the Commission further concludes that, with reference to the AT&T/BellSouth and other arbitration dockets, the Public Staff should be requested to render direct technical and other assistance to the Commission rather than exercising its option to participate as a party in the hearing as authorized under G.S. 62-15(d), so that the purposes of Chapter 62 and TA96 may be effectually carried out.

The legal basis for the request is to be found in G.S. 62-15(g), which states in relevant part as follows:

> (g) Upon request, the executive director shall employ the resources of the Public Staff to furnish to the Commission...such information and reports or conduct such investigations and provide such other assistance as may be reasonably be required in order to supervise and control the public utilities as may be necessary to carry out the laws providing for their regulation. (Emphasis added)

There are several reasons for this request. First, as noted above, the Commission views these arbitration proceedings authorized under TA96 to be unlike other proceedings coming before the Commission. They are essentially commercial disputes between two parties and should be limited to those parties, except as to those entities directly authorized by law to intervene.

Second, the arbitrations present complex issues of a highly technical and voluminous nature for consideration within a compressed time frame and, as such, it is reasonable to believe that the greater technical resources of the Public Staff relative to the Commission can be more usefully deployed in direct assistance to the Commission rather than as a party to the proceedings. Direct assistance by the Public Staff to the Commission is in the public interest. The public interest aspect relative to the proceedings themselves will still be represented by the Attorney General.

Lastly, the Commission recognizes that this request is an unusual one and notes that the exceptional requirements of TA96 make this an unusual time. Directly assisting the Commission in this fashion is not the usual posture of the Public Staff, nor should it be. Yet the statute authorizes direct assistance upon request. It is to no one's advantage, least of all that of the public or the parties, that the Commission lack the necessary resources to ably analyze these complex matters within the constricted time frames that TA96 has created.

BellSouth/AT&T Arbitration Hearing

The last matter to be considered is the scheduling of the arbitration proceeding between BellSouth and AT&T in Docket No P-140, Sub 50. The Commission concludes that good cause exists to schedule this arbitration proceeding to begin on Monday, September 30, 1996. In an Order Granting Relief Concerning Prefiled Testimony issued on July 18, 1996, it was provided that AT&T's prefiled rebuttal testimony would be due on September 30, 1996. This must obviously be changed. The Commission therefore concludes that AT&T's prefiled rebuttal testimony should instead be submitted on Thursday, September 26, 1996.

The Commission wishes to stress that, due to the severe nature of the time constraints under which the Commission and parties must operate, great effort must be expended by all to ensure that these proceedings go smoothly and expeditiously. It is the Commission's intent that this arbitration proceeding, and any other proceeding which may be consolidated with it, should be concluded within the week that the matter has been assigned for hearing.

IT IS, THEREFORE, ORDERED as follows:

1. That all intervenors be excluded from arbitration proceedings with the exception of the Attorney General.

2. That arbitration proceedings be conducted according to the procedure set out in Appendix A.

3. That the Public Staff be, and is hereby, requested to render direct assistance to the Commission in Docket No. P-140, Sub 50, and other arbitration dockets pursuant to G.S. 62-15(g) instead of being a party to such dockets. Further, that the Public Staff is requested to file a statement not later than Friday, August 23, 1996, indicating a willingness to provide the assistance requested by the Commission in lieu of participating in arbitration proceedings as a formal party.

4. That the arbitration proceeding between BellSouth and AT&T in Docket No. P-140, Sub 50, be scheduled to begin Monday, September 30, 1996, beginning at 1:30 p.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. AT&T shall prefile its rebuttal testimony not later than Thursday, September 26, 1996.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Cynthia S. Trinks, Deputy Clerk

Appendix A

Arbitration Procedure

1. Arbitrations pursuant to Section 252 of TA96 may be conducted by panels of three Commissioners, an individual Commissioner, or a Commission-appointed hearing examiner. The arbitrator(s) will decide unresolved issues pertaining to requests for interconnection and issue a Recommended Arbitration Order (RAO) within nine months of the date the relevant request for interconnection was made.

2. Interventions will not be allowed in arbitration proceedings, except for the Attorney General. However, interested persons may file comments concerning the RAO and agreed-upon terms and conditions not hitherto approved by the Commission as set out in Paragraph 5 below.

3. No later than 30 days after the issuance of the RAO, a party to the arbitration may file objections to the RAO. Such objections shall be clearly and concisely stated, shall include an executive summary, and shall be limited to whether the RAO:

a. Meets the requirements of Section 251 of TA96, including regulations prescribed by the Federal Communications Commission (FCC); and/or

b. Meets the standards set forth in subsection (d) of Section 252 of TA96.

4. Between the 30th and the 45th day after the issuance of the RAO, the petitioning party and the responding party shall jointly file with the Commission for final approval or disapproval a document to be known as the Composite Agreement incorporating all the relevant terms and conditions. This document shall consist of terms and conditions agreed upon by the parties and previously approved by the Commission, terms and conditions agreed upon by the parties but not hitherto approved by the Commission, and terms and conditions decided in the RAO. Those terms and conditions which have been agreed upon by negotiation, including their approval status, and those which have been decided by the RAO, shall be identified as such.

5. No later than 30 days after the issuance of the RAO, any interested person not a party to the arbitration proceeding may file comments regarding the RAO and any agreed-upon terms and conditions not hitherto approved by the Commission. Comments relating to the RAO shall be clearly and concisely stated, shall include an executive summary, and shall be limited to whether the RAO:

a. Meets the requirements of Section 251 of TA96, including regulations prescribed by the FCC pursuant to Section 251; and/or

b. Meets the standards set forth in subsection (d) of Section 252.

6. At the same time comments on the RAO are due, any interested person not a party to the arbitration may file comments regarding any agreed-upon terms and conditions not hitherto approved by the Commission. Such comments shall be clearly and concisely stated, shall include an executive summary, and shall be limited to whether:

a. The agreed upon terms and conditions discriminate against a telecommunications carrier not a party to the agreement; and/or

b. The implementation of such terms and conditions is not consistent with the public interest, convenience, and necessity.

7. The Commission shall issue an Order approving or rejecting the Composite Agreement within 30 days of the submission of the Composite Agreement pursuant to Paragraph 4 above. Rejection of all or part of the Composite Agreement shall not be construed as rejection of agreed-upon terms negotiated by the parties and approved earlier by the Commission.

DOCKET NO. P-140, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Interconnection with BellSouth Telecommunications, Inc.	)	RECOMMENDED ARBITRATION ORDER

HEARD IN: Commission Hearing Room 2115, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, September 30, 1996, Tuesday October 1, 1996, through Thursday, October 3, 1996, and Monday October 7, 1996, through Wednesday, October 9, 1996

BEFORE: Commissioner Jo Anne Sanford, Presiding, and Commissioners Allyson K. Duncan and Ralph A. Hunt

APPEARANCES:

For AT&T Communications of the Southern States, Inc.:

Kenneth McNeely and Roger Briney, Attorneys at Law, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30309

Kenneth W. Lewis, Attorney at Law, Burford & Lewis, PLLC, 719 W. Morgan Street, Raleigh, North Carolina 27603

Francis P. Mood, Attorney at Law, Sink & Boyd, PA, Post Office Box 11889, Columbia, South Carolina 29211

E. Sanderson Hoe, Thomas Lemmer and Tami Lyn Azorsky, McKenna & Cuneo, Attorneys at Law, 1900 K Street N.W., Washington, D.C. 20006

For BellSouth Telecommunications, Inc.:

A.S. Povall, Jr., General Counsel, Leon H. Lee, Jr., General Attorney, William J. Ellenberg, Jr., General Attorney, R. Douglas Lackey, Associate General Counsel, BellSouth Telecommunications, Inc., 300 S. Brevard Street, Room 1521, Charlotte, North Carolina 28202

For the Using and Consuming Public:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: This arbitration proceeding is pending before the North Carolina Utilities Commission pursuant to Section 252(b) of the Telecommunications Act of 1996 (TA96 or the Act) and G.S. 62-110(f1) of the North Carolina General Statutes. This proceeding was initiated by a petition filed in this docket by AT&T Communications of the Southern States, Inc. (AT&T) on July 17, 1996. By its petition, AT&T requested that the Commission arbitrate certain terms and conditions with respect to interconnection between itself as the petitioning party and BellSouth Telecommunications, Inc. (BellSouth).

By Order entered in Docket Nos. P-140, Sub 50, and P-100, Sub 133, on August 19, 1996, the Commission adopted certain procedures governing arbitration proceedings, excluded intervenors other than the Attorney General from participating in arbitration proceedings, and scheduled the AT&T/BellSouth arbitration proceeding for hearing beginning Monday, September 30, 1996, at 1:30 p.m., in Commission Hearing Room 2115. By Order dated August 28, 1996, the Commission consolidated the AT&T/BellSouth arbitration proceeding in Docket No. P-140, Sub 50, for purposes of hearing with the MCI/BellSouth arbitration proceeding in Docket No. P-141, Sub 29. Numerous other motions and pleadings have been filed in the consolidated dockets and various Orders have been issued by the Commission addressing those motions and pleadings. All of those motions, pleadings and Commission Orders are matters of public record and are contained in the official files maintained by the Chief Clerk of the Commission.

At the evidentiary hearings, which began as scheduled on September 30, 1996, AT&T offered the testimony of Joseph Gillan, an economist; Ronald H. Shurter, Vice President of Network Systems; James A. Tamplin, a Manager with AT&T; David L. Kaserman, an economist; Wayne Ellison, District Manager in the Law and Government Affairs Organization; L.G. Sather, District Manager in the Government Affairs Organization; Art Lerma, Area Controller-Regional Controller Organization; William J. Carroll, Vice President-Local Services; and Don J. Wood, a consultant. BellSouth offered the testimony of Alphonso J. Varner, Senior Director-Regulatory Policy and Planning; Robert C. Scheye, Senior Director-Strategic Management; Keith Milner, Director-Strategic Management; William Victor Atherton, Jr., Manager-Infrastructure Planning; Anthony V. Pecoraro, a telecommunications consultant; Richard D. Emmerson, an economist; Gloria Calhoun, Manager-Strategic Management Unit; D. Daonne Caldwell, Manager-Finance Department; and Walter S. Reid, Senior Director-Finance Department.

The purpose of this arbitration proceeding is for the Commission to resolve the issues set forth in the petition and responses. 47 U.S.C.A. Section 252(b)(4)(C). Under the Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission (FCC) regulations pursuant to Section 252, shall establish rates according to the provisions in 47 U.S.C.A. Section 252(d) for interconnection, services, or network elements, and shall provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C.A. Section 252(c).

Pursuant to Section 252 of TA96, the FCC issued its First Report and Order in CC Docket Numbers 96-98 and 95-185 on August 8, 1996 (Interconnection Order). The Interconnection Order adopted a forward-looking incremental costing methodology for pricing unbundled telephone network elements which an incumbent local telephone exchange company (ILEC) must sell new entrants, adopted certain pricing methodologies for calculating wholesale rates on resold telephone service, and provided proxy rates for State Commissions that did not have appropriate costing studies for unbundled elements or wholesale service. Several parties, including this Commission, appealed from the Interconnection Order and on October 15, 1996, the Eighth Federal Circuit Court of Appeals issued a stay of the FCC's pricing provisions and its "pick and choose" rule pending the outcome of the appeals.

Based upon a careful consideration of the entire record in this arbitration proceeding, the Commission now makes the following

FINDINGS OF FACT

1. BellSouth is obligated to offer for resale at wholesale rates any telecommunications services that it provides at retail to subscribers who are not telecommunications carriers with certain exceptions set out in Evidence and Conclusions for Finding of Fact No. 1.

2. Use and user restrictions currently in BellSouth's tariffs will carry forward into resold services with the exception of such prohibitions and restrictions as have been or will be specifically prohibited.

3. The Commission declines to enact specific performance standards and instructs the parties to negotiate mutually agreeable terms.

4. The Commission declines to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues.

5. BellSouth must diligently pursue the development of real-time and interactive access via electronic interfaces for unbundled network elements as requested by AT&T to perform pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. These electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards.

6. BellSouth does not have to provide customized routing of calls for operator services and directory assistance services directly to AT&T's platform. Customized routing is not technically feasible at this time.

7. BellSouth does not have to brand services sold or information provided on behalf of AT&T.

8. The issue of what billing system and what format should be used to render bills to AT&T for services purchased from BellSouth has been mutually resolved by the parties and is no longer in need of arbitration. BellSouth has agreed that within 180 days from the effective date of its interconnection agreement with AT&T, it will have modified its Customer Record Information System (CRIS) billing system to allow it to bill for unbundled network elements in a way that more closely resembles the Carrier Access Billing System (CABS) billing format requested by AT&T.

9. Neither the Act nor the FCC's interconnection rules require BellSouth to provide AT&T an appearance on the cover of its white and yellow page directories.

10. Access to directory assistance databases through BellSouth's Directory Assistance (DA) Access Service, Direct Access Directory Assistance Service (DADAS) and Direct Access Database Service (DADS) is appropriate and must be provided to AT&T by BellSouth.

11. BellSouth must give advance notice to AT&T of any changes in the network or services either 30 days before such changes or at the time of internal notification, whichever is earlier.

12. Primary Interexchange Carrier (PIC) changes shall be accomplished via BellSouth's mechanized Customer Account Record Exchange (CARE) interface.

13. BellSouth must file with the Commission all interconnection agreements with competing local providers (CLPs) to which it is a party within 30 days after the conclusion of negotiations or within 30 days after the date of this Order, as applicable. BellSouth must file all interconnection agreements with Class A carriers on or before June 30, 1997. All such agreements shall be available for public inspection when filed.

14. BellSouth must provide the following network elements, which were identified and required by the FCC to be provided on an unbundled basis:

- Local Loop,
- Network Interface Device (connection to be established through an adjoining NID deployed by the requesting carrier),
- Switching Capability (including local and tandem switching),
- Interoffice Transmission Facilities (dedicated to a particular customer or carrier, or shared by more than one customer or carrier),
- Signaling Networks and Call-Related Databases (including signaling links, signaling transfer points, and access to Advanced Intelligent Network databases through signaling transfer points), and
- Operator Services and Directory Assistance.

The Commission declines to enact a requirement for direct connection of an AT&T-provided loop to BellSouth's Network Interface Device (NID). Therefore, at this time, BellSouth is required to

allow an AT&T loop connection to be established through an adjoining NID of AT&T (i.e., NID to NID).

Further, BellSouth is not required to allow interconnection of AT&T's call-related databases to BellSouth's signaling system until a mediated access mechanism has been developed on an industry-wide basis. The mediated access mechanism, the Open Network Access Point (ONAP), should be promptly addressed and developed through BellSouth's participation in an industry-wide forum.

15. AT&T should be allowed to combine unbundled network elements in any manner it chooses. When local switching is purchased as an unbundled network element, vertical services should be included in the price of that element at no additional charge, but when vertical services are obtained through resale, the discounted resale rate should apply. BellSouth should submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements, if any, which constitute resold services for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This information should be filed within 30 days of the date of this Order.

16. BellSouth must make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions equal to that which it provides itself.

17. BellSouth must make available to AT&T all four (4) methods of interim number portability, until such time as a permanent number portability method is available. However, AT&T's request for local exchange routing guide assignment (LERG) at the NXX-X level is denied.

18. The implementation and the cost of long-term number portability are issues that are best determined by the industry at large.

19. There is insufficient evidence in this proceeding to find or conclude that dark fiber is a network element; therefore, BellSouth is not required to make dark fiber available to AT&T.

20. BellSouth must provide AT&T with copies of BellSouth's records regarding rights-of-way, provided that AT&T has a bona fide engineering need for such information and agrees to protect the confidentiality of such information by entering into a confidentiality agreement with BellSouth.

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

22. Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 21, the wholesale discount rates which are appropriate for BellSouth are 21.5% for residential services and 17.6% for business services.

23. The establishment of interim rates, based on consideration of the FCC's proxies, for unbundled network elements is a reasonable and appropriate course of action for the Commission to follow at this time, pending resolution of the appeal of the FCC Interconnection Order and pending establishment of final rates by this Commission. To ensure that no carrier is disadvantaged by the interim rates, those rates should be subject to true-up provisions at such time as the Commission

establishes final rates based on appropriate cost studies. The arbitrating parties shall meet and jointly develop the necessary mechanisms and otherwise establish and implement the appropriate administrative arrangements as will be needed in order to accomplish the aforesaid true-up.

24. The establishment of interim rates for transport and termination services consistent with the methodology utilized and the procedures implemented herein with respect to interim rates established for unbundled network elements, including true-up provisions, is reasonable and appropriate for purposes of this proceeding.

25. "Bill and keep" is not an appropriate alternative at this time for transport and termination charges given the probable traffic and cost imbalances between BellSouth and AT&T.

26. The establishment of interim rates for certain interconnection support elements based on the methodology set forth herein, including true-up provisions, is reasonable and appropriate for purposes of this proceeding.

27. Access charges are not subject to arbitration in this proceeding.

28. Rates applicable to collect and third party intraLATA calls do not represent issues in need of arbitration.

29. The general contractual terms and conditions, other than those outlined elsewhere in this Order, should be negotiated between AT&T and BellSouth.

30. The development of a cost-recovery mechanism for dialing parity is beyond the scope of this proceeding.

31. AT&T should bear the costs of conversion from existing virtual collocation to physical collocation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Issue: What services provided by BellSouth, if any, should be excluded from resale?

POSITIONS OF PARTIES

AT&T: The Act requires that BellSouth offer for resale to AT&T at wholesale rates all telecommunications services which BellSouth provides at retail to non-carrier subscribers.

BELLSOUTH: BellSouth will offer all of its telecommunications services available at retail to subscribers who are not telecommunications carriers, except for grandfathered or obsolete services, Lifeline or LinkUp services, contract service arrangements (CSAs), promotions, 911 and E-911 services. BellSouth's independent payphone provider access line services are available for resale by AT&T.

ATTORNEY GENERAL: N11 is clearly not a retail service. The resale of grandfathered or obsolete services, Lifeline or LinkUp, 911 and E911 should be permitted, but only to the subset of subscribers who are retail customers currently of such services. Contract service arrangements should not be resold for the time being, but if it can be shown that contract services are being used to defeat competition, then the Commission should reconsider.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Sather, Carroll, and Shurter and BellSouth witnesses Varner and Scheye.

Section 251(c)(4) of TA96 requires the ILEC (incumber local exchange company or incumbent LEC) to offer for resale at wholesale rates any telecommunications services that it offers at retail to subscribers who are not telecommunications carriers. ILECs are also forbidden to prohibit or to impose unreasonable or discriminatory conditions or limits on resale. State Commissions are authorized, however, to prohibit cross-class resale.

Rule 51.613(a) of the FCC Interconnection Order explicitly authorizes prohibition of cross-class resale and addresses an aspect of short-term promotions. Subparagraph (b) of Rule 51.613 allows the ILEC to impose restrictions not permitted under Rule 51.613(a) if it can prove to the State Commission that the proposed restriction is reasonable and nondiscriminatory.

The FCC Interconnection Order clearly disfavors restrictions on resale. Resale restrictions are deemed to be presumptively unreasonable. ILECs can rebut this presumption only if the restrictions are narrowly tailored. FCC Interconnection Order, Paragraph 939.

CONCLUSIONS

The Commission concludes that BellSouth should not be allowed to prohibit or restrict resale except as set out below:

1. Cross-class resale. There is a specific provision in TA96, Section 251(c)(4), noted above, that allows a State Commission, consistent with FCC rules, to prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail to a specific category of subscribers from offering such service to a different category of subscribers. The most often cited example is resale of residential service to business customers. The Commission will not allow such cross-class resale.

2. Grandfathered or obsolete services. The Commission finds these to be retail telecommunications subject to resale, but only as to existing customers of such service. See Paragraph 968 of the FCC Interconnection Order.

3. 911 and E911. The Commission finds these to be telecommunications services subject to resale. They are sold to the public, albeit a more restricted public than the general public (i.e., local governments). This will allow greater competition in this sphere with beneficial economic effects for local government.

4. Lifeline or LinkUp. The Commission finds these to be retail telecommunications services subject to resale, but only as to eligible subscribers. (See FCC Interconnection Order, Paragraph 962)

5. CSAs. The Commission finds these to be retail telecommunications services subject to resale. See FCC Interconnection Order, Paragraph 948, where the FCC concluded that there was no basis for creating a general exemption from the resale requirement.

6. Promotions. The Commission finds these to be retail telecommunications services subject to resale if the promotion is over 90 days. If the promotion is under 90 days, then the Commission concludes that it is reasonable to consider it not subject to resale. See FCC Interconnection Order, Paragraph 949ff. However, the ILEC should not utilize promotions in such a way as to evade its wholesale rate obligation, as for example with sequential less than 90-day promotions.

7. N11. The Commission finds this not subject to resale since it is not a retail service offering pursuant to Commission Order. If, however, it should become a retail service offering, it will be subject to resale.

8. Other. Concerning the provision of payphone lines by ILECs, the Commission observes that the FCC Interconnection Order, Paragraph 876, has provided that "the services independent public payphone providers obtain from incumbent LECs are telecommunications services that incumbent LECs provide 'at retail to subscribers who are not telecommunications carriers' and that such services should be available to telecommunications carriers." Moreover, the FCC further concluded that, "because independent payphone providers are not 'telecommunications carriers,' ILECs need not make available service to independent public payphone providers at wholesale rates." The FCC continued, saying that this was "consistent with our finding that wholesale offerings must be purchased for the purpose of resale by telecommunications carriers." In essence, Paragraph 876 means that telecommunications carriers would be eligible for a discounted wholesale payphone rate but independent payphone providers would not. Moreover, the purchase of a discounted wholesale payphone line by a telecommunications carrier would only be allowed if the carrier turned around and resold it to someone else. In other words, the telecommunications carrier could not buy the discounted line to provide service to its own payphones.

Lastly, the Commission observes that the ILEC's own public payphone service is not subject to resale because it is not per se a retail service, since no end-users pre-subscribe to it.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: What terms and conditions, including use and user restrictions, if any, should be applied to the resale of BellSouth services?

POSITIONS OF PARTIES

AT&T: Resale restrictions on resale are presumptively unreasonable and prohibited by the Act.

BELLSOUTH: For any service not otherwise exempted from resale, any terms and conditions contained in the retail tariff shall apply. The Act does not require BellSouth to enhance or alter its retail offerings for the purposes of resale.

ATTORNEY GENERAL: The statutory language strongly suggests that current tariffed restrictions on individual services should apply to their resale. Probably the most important of those restrictions are those which limit certain services and rates to either residential or business customers of the ILEC.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Sather and Carroll and BellSouth witnesses Varner and Scheye.

There are two major considerations concerning the conclusion below. First, if there are use and user restrictions in the ILEC tariffs that do not apply to the reseller, then this would be discriminatory vis-a-vis the ILEC. While this can be remedied by modifying the ILEC tariff, there are also practical considerations. There are a myriad of ILEC services potentially subject to resale. It is impossible at this time to know comprehensively the use and user restrictions that are in each and every one of them. Many of these restrictions may in fact be reasonable. Rather than eliminate the restrictions in a summary and unexamined fashion, it would be better to require a CLP that believes itself aggrieved by a specific use and user restriction first to approach the ILEC with its concerns and, if they are not allayed, to approach the Commission for resolution of the conflict. The CLP should prevail if it can be shown that the restriction is unreasonable or discriminatory. Furthermore, there is nothing to prevent an ILEC from moving forward to delete such tariff restrictions that it believes to be unreasonable and violative of the FCC Interconnection Order. ILECs should be encouraged to do so.

CONCLUSIONS

The Commission concludes that the use and user restrictions which are currently in ILEC tariffs should carry forward into resold services, with the exception of such prohibitions or restrictions which have themselves been specifically prohibited. For example, an ILEC may not enforce and should delete outright prohibitions on resale from applicable tariffs but may maintain restrictions on cross-class resale.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to AT&T by BellSouth?

POSITIONS OF PARTIES

AT&T: The Act requires parity. 47 U.S.C.A. Section 251(c)(2)-(4). The same level of quality between BellSouth and new entrants and a mechanism for ensuring compliance is key to an entrant's ability to compete effectively with BellSouth.

BELLSOUTH: BellSouth will provide the same quality for services provided to AT&T and other CLPs that it provides to its own customers for comparable services. The current Commission rules for service quality and monitoring procedures should be used to address any concerns. BellSouth in its testimony suggested with respect to AT&T that the parties negotiate "mutually agreeable specific quality standards" and develop "mutually agreeable incentives for maintaining compliance" with the quality measurements within 180 days after the approval of the agreement.

ATTORNEY GENERAL: The same level of quality must exist between BellSouth and new entrants. Both the Act and the FCC Interconnection Order define service quality from the point of view of the end users. The parties should be instructed to negotiate reasonable service standards and report back by March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and BellSouth witnesses Scheye and Varner.

The Commission believes that it is neither appropriate nor practical for it to become involved, at least at this stage, in the minutiae of performance standards. These are quintessentially matters for negotiation between the parties concerned, who possess superior knowledge about the processes involved. It would be premature for the Commission to impose either a "one size fits all" approach, or an approach which would lead to different sets of performance standards applicable to each ILEC with respect to each CLP. This may be an area where the experience that the companies have had in interexchange services will lead to industry-wide consensus on appropriate standards, with minor variations perhaps to accommodate specific concerns and expectations.

BellSouth has indicated a willingness to negotiate performance standard terms, which may include "incentives." The Commission believes that parties negotiating in good faith can resolve this question without further need of Commission intervention.

CONCLUSIONS

The Commission concludes that it should decline to enact specific performance standards and instead instruct the parties to negotiate mutually agreeable terms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Must BellSouth take financial responsibility for its own action in causing, or its lack of action in preventing, unbillable or uncollectible competitive revenues?

POSITIONS OF PARTIES

AT&T: BellSouth is the only party in a position to prevent the errors that lead to unbillable or uncollectible revenues. Thus, BellSouth should compensate AT&T for revenue losses caused by BellSouth errors.

BELLSOUTH: BellSouth will agree to reasonable provisions regarding liability for errors. Such provisions are included for existing access customers and should be applicable here.

ATTORNEY GENERAL: The Commission should require the arbitrating parties to report to it by March 31, 1997, that they have agreed to reasonable provisions for unbillable or uncollectible accounts. These provisions may be modeled on the provisions currently in place for exchange access.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Shurter and Carroll and BellSouth witnesses Scheye and Varner.

The interconnection agreement between BellSouth and AT&T does not have to contain any special provision regarding liability for errors such as a liquidated damages provision. For a number of years, AT&T has been a BellSouth customer for access service. Therefore, any remedies that have otherwise been available are still available with regard to local service. The Commission does not believe it is appropriate or practical for the Commission to get involved, at least at this stage, in adopting provisions governing liability for errors. BellSouth has indicated a willingness to agree to reasonable provisions regarding liability for its errors. Therefore, the Commission believes that the parties, negotiating in good faith, can resolve this question without further need of Commission intervention.

CONCLUSIONS

The Commission declines to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues. Instead, the affected parties should negotiate reasonable terms and conditions regarding liability for unbillable or uncollectible accounts.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Should BellSouth be required to provide real-time and interactive access via electronic interfaces for unbundled network elements as requested by AT&T to perform the following:

- **Pre-ordering,**
- **Ordering,**
- **Provisioning,**
- **Maintenance/repair, and**
- **Billing?**

POSITIONS OF PARTIES

AT&T: The Act requires BellSouth to provide services to AT&T equal to that which BellSouth provides to itself and its affiliates. 47 U.S.C.A. Section 251(c)(2)-(4). This requires the requested real-time and interactive access via electronic interfaces. Because AT&T's ability to attract and retain customers is highly dependent upon such interfaces, BellSouth should immediately implement a mutually acceptable real-time automated interface (gateway) as an interim measure, if necessary.

BELLSOUTH: BellSouth has prepared for the entry of competitors into the local exchange marketplace by making available a number of electronic interfaces. It is continuing to enhance those interfaces currently available as well as create new ones. Further, AT&T has been intimately involved, as a partner, with some of this development. The development of additional electronic interfaces is complex, costly, and time consuming and should be developed based on a clear understanding of the need, specifications, and cost-recovery mechanisms to be used.

ATTORNEY GENERAL: The FCC Interconnection Order provides that nondiscriminatory access to operations support systems functions is technically feasible and must be provided no later than January 1, 1997. Thus, a real-time electronic interface between BellSouth and its competitors must be available to competitors in a matter of weeks. The Commission should require that a firm plan to implement automated interfaces with commitments to deadlines which are mutually satisfactory must be in place by March 31, 1997, with the interfaces developed and in place promptly thereafter. If the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and Carroll and BellSouth witness Calhoun.

The FCC Interconnection Order requires BellSouth to provide nondiscriminatory access to operational support systems, and any relevant internal gateway access, in the same time and manner in which BellSouth provides such functions to itself. The parties have come to agreement on the issue of appropriate electronic interfaces with respect to resale, thereby removing that issue from arbitration. However, the parties were unable to agree on the types of interfaces for particular unbundled network elements. BellSouth is presently working to enhance its currently available interfaces and pursuing the development of new ones. BellSouth plans to provide electronic data interchange (EDI) on an interim basis for unbundled network elements. Under EDI, there is a manual element whereby BellSouth technicians will take data transmitted electronically by AT&T and use it to manually input orders to BellSouth's service order system. AT&T argues that such manual processing, as proposed by BellSouth, is inherently inferior to electronic interfaces. For example, in the case of trouble reporting, the lack of real-time, interactive electronic interface will adversely affect the timeliness of making necessary repairs. Such electronic bonding is required to prevent the ILEC from having an unfair competitive advantage by controlling databases and information. The requested electronic interfaces will indeed have to be provided and they should preferably be uniform, industry-developed interfaces. AT&T requested that the real-time, interactive, electronic interfaces for unbundled network elements be made available no later than the fourth quarter of 1997.

CONCLUSIONS

The Commission encourages BellSouth to diligently pursue the development of real-time and interactive access via electronic interfaces for unbundled network elements, specifically the operations support systems consisting of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions supported by BellSouth's databases and information. The requested electronic interfaces are

required and they should be provided promptly. All affected parties should work together to accomplish such electronic bonding through the development of uniform, industry-wide standards.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: Must BellSouth route calls for operator services and directory assistance (OS/DA) services directly to AT&T's platform?

POSITIONS OF PARTIES

AT&T: The Act generally and the FCC Interconnection Order specifically require this customized routing, absent a showing by BellSouth that it is not technically feasible. 47 U.S.C.A. Section 252(c)(2); FCC Interconnection Order, Paragraph 418. Customized routing is technically feasible. It may be accomplished on an interim basis with Line Class Codes (LCCs); switch upgrades will solve any capacity problems. There are long-term solutions that would eliminate the need to use LCCs.

BELLSOUTH: Customized routing is not required under the Act for the provision of BellSouth retail services to AT&T for resale purposes. The Act requires BellSouth to make its retail services available to AT&T for resale as those services are offered to BellSouth's end users. As to customized routing through unbundling, BellSouth has thoroughly investigated the technical issues and found such routing not to be technically feasible. Further, AT&T has the ability to route calls by simply using a different set of access codes; e.g., AT&T already uses 00 to reach its operator.

ATTORNEY GENERAL: Fairness to the parties, especially the end user, requires customized routing. The parties should be ordered to report to the Commission by March 31, 1997, what the long-term technical solution will be, a schedule for implementation of the long-term solution, and an explanation of the interim solution to direct routing requests. If the arbitrating parties are unable to agree on the technical solution and scheduling, the Commission should order compliance.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Shurter, Tamplin, and Carroll and BellSouth witnesses Milner and Pecoraro.

The Commission recognizes the importance of AT&T's customers being able to dial the same operator and DA numbers as BellSouth's customers and reach AT&T's operators. In the case of resale, however, the Commission agrees that BellSouth is not required by the Act to unbundle OS/DA from resold services, because BellSouth does not provide OS/DA as a separate service to its retail customers. Whether customized routing should be provided for resold services is an issue only if BellSouth is required to rebrand OS/DA. This is discussed under Evidence and Conclusions for Finding of Fact No. 7, below.

With regard to unbundled network elements, the issue is whether it is technically feasible for BellSouth to provide customized routing. AT&T urges the adoption of an interim solution using LCCs, but the Commission is not convinced that customized routing through the use of LCCs is

technically feasible in any practical sense. It is clearly not the long-term solution the industry is seeking, and even on an interim basis it has a number of shortcomings. Switch types and capacities vary, LCCs could be exhausted by the first few CLPs requesting customized routing, and system upgrades would not be available in all central offices simultaneously. Thus, it is unlikely that customized routing can be achieved on a reasonable and nondiscriminatory basis at this time. BellSouth and AT&T are co-chairing a working group in the Industry Carriers Compatibility Forum (ICCF) to find a long-term solution. Instead of requiring customized routing using LCCs under these circumstances, the Commission believes compliance with the Act will be better achieved by working toward a long-term, industry-wide solution.

CONCLUSIONS

The Commission declines to require customized routing at this time. The Commission encourages the parties to continue working in the ICCF to develop a long-term, industry-wide solution.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Issue: Must BellSouth brand services sold or information provided to customers on behalf of AT&T?

POSITIONS OF PARTIES

AT&T: The Act requires that BellSouth not impose discriminatory conditions on resale. 47 U.S.C.A. Section 251(c)(4)(b). Branding is a prerequisite for achieving parity. 47 C.F.R. Sections 51.305(a), 311(b); FCC Interconnection Order, Paragraphs 244, 313, 970. Branding eliminates customer confusion. Branding also enables a CLP to establish and maintain its identity in the local market. BellSouth personnel who provide services to AT&T customers should give them materials provided by AT&T. BellSouth's proposal to use generic cards is inadequate, especially when contrasted with professionally printed materials BellSouth uses. BellSouth should also brand its OS/DA with the AT&T brand whenever AT&T chooses to have these calls routed to a BellSouth service platform. The FCC Interconnection Order requires BellSouth to brand OS/DA services for resale unless it is not technically feasible. 47 C.F.R. 51.613(c); FCC Interconnection Order, Paragraph 971. Customized routing is technically feasible.

BELLSOUTH: Using identical dialing digits is not feasible nor is it appropriate for a resale offering. The selective routing of calls to AT&T's platform would be such an enhancement or alteration to BellSouth's resold services. BellSouth has agreed that its service technicians will represent themselves as employees of BellSouth providing services on behalf of the CLP. BellSouth employees have or will have received training to conduct themselves appropriately while interfacing with the CLP's customers. If the customer is not on the premises, BellSouth will leave a generic "no access" card with the appropriate CLP name filled in.

ATTORNEY GENERAL: The insistence on branding of services has the potential to confuse the using and consuming public. OS/DA should not be branded by any arbitrating party until customized routing is in place and working. BellSouth repairmen should be required to indicate either verbally or with written notices or both that they are performing work on behalf of the CLP.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Shurter and Carroll and BellSouth witnesses Varner and Scheye.

The FCC has ruled that failure to comply with reseller unbranding or rebranding requests where OS/DA is part of a service offered for resale constitutes a restriction on resale which may be imposed only if the ILEC proves to the State Commission that it is reasonable and nondiscriminatory, such as that the ILEC lacks the capability to comply with the request. 47 C.F.R. Section 51.613(c)(1). Until customized routing is implemented, however, BellSouth lacks the capability to rebrand OS/DA. In the meantime, the Commission believes that providing operator services with the BellSouth name is neither unreasonable nor discriminatory. We agree that unbranding would discriminate against BellSouth, because BellSouth could never brand its operator services, even to its own customers, while AT&T could brand its operator services when its customers use unique dialing patterns to reach AT&T operators. Furthermore, we recognize the administrative burden on BellSouth of managing an array of branded customer information provided by AT&T and other CLPs and the potential for error in performing this function. Therefore, we believe it is reasonable and nondiscriminatory for BellSouth employees providing either resold services or unbundled elements to make premises visits without providing AT&T branded information but using generic "leave behind" cards.

CONCLUSIONS

The Commission concludes that BellSouth should not be required to unbrand services provided to its customers but should be required to rebrand resold OS/DA when customized routing is implemented. Furthermore, BellSouth should not be required to unbrand or rebrand its uniforms or vehicles nor should BellSouth employees be required to use branded materials provided by AT&T but should be allowed to use generic "leave behind" cards. The Commission expects BellSouth to train its employees to conduct themselves appropriately when providing services on behalf of AT&T. Problems and complaints will be addressed by the Commission on a case-by-case basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: What billing system and what format should be used to render bills to AT&T for services purchased from BellSouth?

POSITIONS OF PARTIES

AT&T: AT&T requested BellSouth provide the billing and usage recording services through an electronic interface compatible with BellSouth's Carrier Access Billing System (CABS) rather than BellSouth's Customer Record Information System (CRIS). It considers these services necessary for accurate and timely billing services, which are important to customer satisfaction.

BELLSOUTH: The Act does not define the requirements for billing between the incumbent and the CLP. BellSouth will use its present billing systems to assure the issuance of accurate and timely bills. BellSouth has a quality assurance process available for unbundled elements and has agreed to develop a similar process for resale and other unbundled element billing.

ATTORNEY GENERAL: The dispute over bill formats begs for national standards which the evidence at the hearing indicated were being developed. All parties should participate in good faith in establishing national standards and report to the Commission by March 31, 1997 on the progress of establishing these standards.

DISCUSSION

By letter filed December 12, 1996, by AT&T and the Negotiations Report filed by BellSouth on December 13, 1996, the Commission has been advised that this issue has been resolved to the mutual satisfaction of the parties. BellSouth has agreed that within 180 days from the effective date of its interconnection agreement with AT&T, it will have modified its CRIS billing system to allow it to bill for unbundled network elements in a way that more closely resembles the CABS billing format requested by AT&T.

CONCLUSIONS

As indicated above, this issue has been mutually resolved by the parties and is no longer in need of arbitration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: Should BellSouth be required to allow AT&T to have an appearance (e.g., name, logo) on the cover of its white and yellow page directories?

POSITIONS OF PARTIES

AT&T: AT&T must appear on the cover of BellSouth's directory in a manner at least equal to BellSouth's appearance. Although BellSouth agreed to include the logo on the cover, the terms and conditions were excessive, restrictive and anticompetitive.

BELLSOUTH: The resolution of this issue is between BellSouth Advertising and Publishing Corporation (BAPCO) and AT&T; it is not an issue for arbitration.

ATTORNEY GENERAL: BAPCO has signed two-year contracts with several major new local telephone providers for BAPCO to provide paper directory service including white page listings, yellow page listings, customer guide pages and informational pages to the CLP. These contracts do not provide for the printing of the CLP's logo on the cover. The cover should have some indication that the directory includes listings for all local service providers. The Attorney General requests the issue be deferred until reconsideration of the issue upon petition after August 1, 1997, and strongly encourages the parties to negotiate this matter before the deadline so that the arbitration will not be necessary.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and BellSouth witnesses Varner and Scheye.

The Commission agrees with AT&T that this matter should be subject to arbitration because BAPCO is a wholly-owned subsidiary of BellSouth. The Commission, however, finds nothing in the Act or the FCC's interconnection rules which requires an incumbent LEC to include the logo of a CLP on a directory cover. The logo is not a part of any resold service. That is to say, local service presently sold at retail includes a listing in the directory but not a logo on the front cover.

CONCLUSIONS

BellSouth is not required to provide AT&T an appearance on the cover of its white and yellow page directories. AT&T is free to enter into a contract for any services it needs with BAPCO.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Issue: Must BellSouth provide AT&T with access to BellSouth's directory assistance databases?

POSITIONS OF PARTIES

AT&T: AT&T's access to BellSouth's directory assistance database is necessary for AT&T to provide directory assistance services, which are important to customer satisfaction.

BELLSOUTH: BellSouth has proposed that CLPs add, delete, or modify directory listings in the DA database through the most efficient process available presently, the service order process.

ATTORNEY GENERAL: If the parties cannot assure each other of their mutual good will in answering directory queries and cannot cooperate in good faith, then the intermediary step for access to the directory database should be imposed on all local exchange telephone companies, both the incumbent and the new entrants, to insure that the privacy of end users is protected.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and BellSouth witness Varner.

BellSouth currently offers three services that are consistent with and would appear to meet AT&T's request as well as be offered to all CLPs under the same terms as any other resold service. These services are:

1) Directory Assistance (DA) Access Service which is currently provided to IXCs
2) Direct Access Directory Assistance Service (DADAS) provides direct on-line access to BellSouth's directory assistance database
3) Direct Access Database Service (DADS) which provides a copy of the BellSouth DA database

CONCLUSIONS

The Commission adopts BellSouth's position to allow access to DA databases through Directory Assistance Access Service, Direct Access Directory Assistance Service, and Direct Access Database Service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Issue: Should BellSouth be required to provide advance notice to its wholesale customers of service and network changes?

POSITIONS OF PARTIES

AT&T: Timely notice permits AT&T to compete with BellSouth on an equal basis. Specifically, AT&T requests that at least a 45-day advance notice of changes in service offerings or concurrent with BellSouth's internal notification process, whichever is earlier should be required.

BELLSOUTH: BellSouth will provide notice of new services, price changes, etc. when the tariffs are filed with the North Carolina Utilities Commission.

ATTORNEY GENERAL: If BellSouth intends to make a network change which will affect a new entrants' ability to deliver resold service to its end users, BellSouth should provide notice well in advance of the change and certainly in advance of the very short tariff or price list notice filing required by BellSouth's price cap plan. If, however, the matter is a new service which the new entrant will want to resell, then reasonable notice does not need to be nearly so lengthy.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and BellSouth witnesses Varner and Scheye.

The Act requires in Section 251(c)(5) that reasonable notice be given for changes in the network; however, this probably does not cover changes to services, tariffs, etc. The FCC Interconnection Order does not specifically address this issue. Therefore, the issue focuses on parity. Under the Act, an ILEC must provide parity which can be defined as "a new entrant's capability to provide its customers the same experience as BellSouth provides its own customers." In effect, the ILEC must be considered separately in its roles of wholesaler and retailer and prevented from giving its retail operation any preferable treatment.

CONCLUSIONS

The Commission concludes that BellSouth should be required to give advance notice of any changes in the network or services either 30 days before such changes or at the time of internal notification, whichever is earlier.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: How should BellSouth treat a PIC change request received from an IXC (other than the CLP) for a CLP's local customer?

POSITIONS OF PARTIES

AT&T: AT&T requested that it be the contact point for PIC change requests for AT&T's local customers. It also requested that BellSouth reject any PIC change request from another carrier and notify that carrier to submit the request to AT&T. AT&T considers this process a necessary component of AT&T's ability to fulfill its responsibility as a local service provider.

BELLSOUTH: The local service to be resold includes the capability for IXCs to change the carrier PIC via BellSouth's mechanized Customer Account Record Exchange (CARE) interface.

ATTORNEY GENERAL: BellSouth should be required to notify a new entrant of the request for a PIC change a reasonable time before BellSouth makes the change. This will give the new entrant time to check and verify the change with its end user if it so desires and hopefully may avert some of the slamming. Section 258 of TA96 appears consistent with this suggestion in that it provides that "...no telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the [FCC] shall prescribe."

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and BellSouth witnesses Varner and Scheye.

BellSouth believes that the local service offered by the Company for resale includes the capability for IXCs, with proper end user authorization, to change the PIC on the resold line via the industry's mechanized interface known as CARE. Further, BellSouth believes that the continued use of the CARE process is the appropriate vehicle for processing PIC changes in a local resale environment. To impose on BellSouth the duty to honor AT&T's request would increase the level of service order activity flowing from AT&T to BellSouth and place on BellSouth the burden of developing procedures to treat AT&T differently from how it treats other CLPs. There is no justification at this time for treating PIC changes from resold lines differently from PIC changes as currently processed. However, with regard to this matter, BellSouth states that it is analyzing the feasibility of a separate electronic process that would notify a CLP that a PIC change has occurred on a resold line.

CONCLUSIONS

The Commission accepts BellSouth's position to allow carrier PIC changes via BellSouth's mechanized CARE interface. In addition, the Commission encourages BellSouth to continue analyzing the feasibility of a separate electronic process that would notify a CLP that a PIC change has occurred on a resold line.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Issue: Must BellSouth produce all interconnection agreements to which BellSouth is a party, including those with other ILECs, executed prior to the effective date of the Act?

POSITIONS OF PARTIES

AT&T: The Act requires BellSouth to provide copies of all interconnection agreements subject to the Act. 47 U.S.C.A. Section 252(i). AT&T must have access to all agreements to ensure that it is receiving nondiscriminatory prices and services.

BELLSOUTH: All interconnection agreements negotiated pursuant to the Act will be made available within 15 days of the filing of the agreement with the Commission. The Act does not require BellSouth to make available any agreements negotiated prior to the passage of the Act. Sections 251 and 252 apply only to agreements resulting from requests for interconnection under the Act. BellSouth will make available all agreements with Class A carriers on or before June 30, 1997, as prescribed by the FCC Interconnection Order. The Commission should set a date for providing agreements with other carriers at a later time.

ATTORNEY GENERAL: Both sides have distorted the intent of the Act. Section 252(a)(1) clearly requires that interconnection agreements negotiated prior to the date of enactment be submitted to State Commissions. On the other hand, the legislative history of Section 252 speaks only of interconnection agreements between competing local service providers and not interconnection agreements between peer ILECs. BellSouth must file all interconnection agreements with CLPs but need not at this point file interconnection agreements with peer ILECs.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and BellSouth witness Varner.

This is essentially a legal issue. Under the plain language of the Act, agreements for interconnection, services or network elements that were negotiated prior to the passage of the Act must be submitted to State Commissions for approval. 47 U.S.C.A. Section 252(a)(1). Arguments that this requirement applies only to agreements negotiated pursuant to Section 251 of the Act have not been found persuasive by the FCC. Interconnection Order, Paragraphs 166 - 169. The Commission agrees with the FCC that there are no exceptions. The FCC has left the procedures for filing of preexisting agreements largely to the states but has established June 30, 1997, as the outer time limit for such agreements between Class A carriers. 47 C.F.R. Section 303(b).

Although Section 252(h) of the Act provides that interconnection agreements become available for public inspection and copying 10 days after they are approved by a State Commission, the Act is silent on the availability of agreements for inspection prior to approval. The Act does, however, require that any interconnection, service, or network element provided under an agreement approved under Section 252 be made available to any other requesting telecommunications carrier upon the same terms and conditions. 47 U.S.C.A. Section 252(i). Moreover, we note that in our Order of June

18, 1996, in Docket No. P-100, Sub 133, we allowed interim operation under interconnection agreements filed as public records pending Commission action, and, in our Order of August 7, 1996, in the same docket, we affirmed our earlier decision that a paging interconnection agreement with an ILEC filed prior to the Act should be made available for inspection under the Public Records Law, G.S. 132-1. Finally, we note that our Rule R17-4(d) requires that all negotiated interconnection agreements "be filed for approval as soon as practicable but in no event later than 30 days from the date of conclusion of negotiations."

CONCLUSIONS

The Commission will require BellSouth to file all agreements for interconnection, services, or network elements with CLPs to which it is a party within 30 days after negotiations have concluded or within 30 days after the date of this Order, as applicable. The Commission will require BellSouth to file all interconnection agreements with Class A carriers on or before June 30, 1997. Such agreements will be available for inspection under the North Carolina Public Records Law, G.S. 132-1, the Commission's Orders of June 18 and August 7, 1996, in Docket No. P-100, Sub 133, and Sections 252(h) and (i) of the Act.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Issue: Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for BellSouth to provide CLPs with these elements?

- **Network Interface Device**
- **Loop Distribution**
- **Loop Concentrator/Multiplexer**
- **Loop Feeder**
- **Local Switching**
- **Operator Systems**
- **Dedicated Transport**
- **Common Transport**
- **Tandem Switching**
- **Signaling Link Transport**
- **Signal Transfer Points**
- **Service Control Points/Databases**

POSITIONS OF PARTIES

AT&T: The Act requires that BellSouth provide access to all unbundled network elements that AT&T requests, unless not technically feasible. 47 U.S.C.A. Section 251(c)(3). It is technically feasible to provide access to the twelve network elements that AT&T requested.

BELLSOUTH: BellSouth agrees generally that unbundled network elements must be provided unless not technically feasible or if it is already provided pursuant to tariff. BellSouth believes that, of the requested elements by AT&T, the Network Interface Device cannot be provided due to technical non-

feasibility. BellSouth has agreed to provide all other requested capabilities; however, in some instances BellSouth's service definitions may differ from AT&T's.

ATTORNEY GENERAL: AT&T was initially requesting the ability to buy elements out of an unbundled loop but resolved it by agreeing that they would negotiate unbundled loop elements when AT&T had a bona fide request for unbundled loop elements. The Commission should find this approach entirely reasonable and should resolve this issue by concluding that while the local loop will eventually have to be unbundled, final resolution of this issue should be deferred until a new entrant has a bona fide request for an unbundled loop.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Carroll, Tamplin, and Gillan and BellSouth witnesses Varner and Milner.

The FCC Rules require the following network elements to be provided on an unbundled basis:

- Local Loop,
- Network Interface Device (connection to be established through an adjoining NID deployed by the requesting carrier),
- Switching Capability (including local and tandem switching),
- Interoffice Transmission Facilities (dedicated to a particular customer or carrier, or shared by more than one customer or carrier),
- Signaling Networks and Call-Related Databases (including signaling links, signaling transfer points, and access to Advanced Intelligent Network databases through signaling transfer points), and
- Operator Services and Directory Assistance.

BellSouth argues that AT&T's request to unbundle the Network Interface Device (NID) cannot be provided due to technical non-feasibility. Initially, AT&T had also requested that the local loop be unbundled into its subelements consisting of the loop distribution, the loop concentrator/multiplexer, and the loop feeder, but later withdrew this loop-subelement unbundling from its request. However, AT&T is still requesting that the NID be unbundled and that AT&T be allowed to directly connect into BellSouth's NID in order that AT&T not be required to install its own NID which would then be connected to BellSouth's NID.

Network Interface Device: The NID serves two purposes. It connects BellSouth's network to the customer's inside wiring, and it is a standard test access point that BellSouth uses to test its loop to determine if trouble exists in its loop or in the customer's inside wiring. BellSouth argues that the direct connection of a CLP to BellSouth's existing NID would result in improper grounding of BellSouth's loop resulting in an electrical hazard which could cause personal injury or damage to BellSouth's network. AT&T is requesting direct connection to BellSouth's NID, rather than a NID-to-NID connection, although AT&T witness Tamplin testified that, "The FCC order assumes that a new entrant, when providing its own facilities, will install its own NID on the customer's premises and interconnect to the customer's inside wiring by an external connection from the new entrant's NID to the existing NID."

Local Loop Using Integrated Digital Loop Carrier Facilities: AT&T requests that BellSouth be required to unbundle the local loop where the loop is provided via a type of concentrator/multiplexer referred to as an integrated digital loop carrier (IDLC). The FCC Interconnection Order requires BellSouth to unbundle IDLC-delivered loops. If they are not unbundled, AT&T will not be able to serve all of BellSouth's customers via unbundled loops. The FCC states that if these loops are not unbundled it will encourage the ILECs to hide loops from competitors through the use of IDLC technology. AT&T argues that it is technically feasible to provide these IDLC-delivered loops through the use of preexisting copper pair facilities, preexisting universal digital loop carrier facilities, next generation digital loop carrier systems, or where sufficient demand is available through the purchase by a new entrant of the entire IDLC's complement of contiguous loops. In its Proposed Order, BellSouth states that it has agreed to offer access to such unbundled loops. Further, BellSouth states that where it provides access to unbundled loops which are currently provided over IDLC, the cost of separating the loop from the switch, or the equivalent function, shall be included as a cost of providing access to unbundled loops because the request for access to unbundled loops is not limited to non-integrated loops.

Advanced Intelligent Network: AT&T is seeking access to BellSouth's signaling elements and, in particular, unmediated access to its AIN triggers. BellSouth states that unbundled access to BellSouth's AIN need not be provided until a mediated access mechanism such as the Open Network Access Point (ONAP) has been developed. BellSouth further states that if unmediated access occurs it could result in disruptions to BellSouth's network in a manner similar to a computer virus disrupting the functioning of a personal computer. AT&T witness Tamplin testified that, "The FCC order concluded that access to AIN Service Control Points ("SCPs") is technically feasible, but noted that such access may present a need for mediation mechanisms to, among other things, protect data in the AIN SCPs and ensure against excessive traffic."

CONCLUSIONS

The Commission finds that the following network elements, which were identified and required by the FCC to be provided on an unbundled basis, should be so provided:

- Local Loop,
- Network Interface Device (connection to be established through an adjoining NID deployed by the requesting carrier),
- Switching Capability (including local and tandem switching),
- Interoffice Transmission Facilities (dedicated to a particular customer or carrier, or shared by more than one customer or carrier),
- Signaling Networks and Call-Related Databases (including signaling links, signaling transfer points, and access to AIN databases through signaling transfer points), and
- Operator Services and Directory Assistance.

Further, the Commission makes the following findings and conclusions on these matters:

(1) In its rules, the FCC provided for connection to the incumbent LEC's Network Interface Device through an adjoining network device deployed by the requesting telecommunications carrier. Therefore, the Commission concludes that BellSouth is

not required to provide direct connection of an AT&T-provided loop to BellSouth's NID but is required to allow an AT&T loop connection to be established through an adjoining NID of AT&T (ie., NID to NID).

(2) BellSouth has agreed to provide IDLC-delivered loops as an unbundled network element. Therefore, the Commission considers this issue resolved and encourages the parties to further negotiate the rates, terms, and conditions of providing unbundled loops from IDLC facilities.

(3) The Commission concludes that BellSouth should not be required to allow interconnection of AT&T's call-related databases to BellSouth's signaling system until a mediated access mechanism such as the Open Network Access Point has been developed on an industry-wide basis. The Commission encourages BellSouth to actively participate in an industry-wide forum to promptly address this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Issue: Should AT&T be allowed to combine unbundled network elements in any manner it chooses?

POSITIONS OF PARTIES

AT&T: The Act prohibits BellSouth from placing any limitations on AT&T's ability to combine unbundled elements with one another, or with resold services, or with AT&T's or a third party's facilities, to provide telecommunications services to customers in any manner AT&T chooses. 47 U.S.C.A. Section 251(c)(3). The FCC specifically found that CLPs may combine unbundled elements any way they choose. 47 C.F.R. Sections 51.309(a) and 51.315(c). Interconnection Order, Paragraphs 292, 296.

BELLSOUTH: AT&T should not be permitted to combine unbundled network elements in order to recreate existing BellSouth services that are already available on a resale basis. Congress did not intend for major loopholes in the Act to be created, which would occur if unbundling and resale were identical. Recombinations of unbundled elements that are the equivalent of existing BellSouth retail services should be priced at the wholesale rates rather than the sum of unbundled network elements. Payment of access charges, use and user restrictions, and the joint marketing prohibition should also apply.

ATTORNEY GENERAL: The FCC Interconnection Order favors AT&T's position, which BellSouth asserts is contrary to the intent of the Act. The issue is arbitrage, and arbitrage does not encourage the innovation and new services that competition is supposed to bring to end users. If a CLP buys all seven of the current unbundled elements and reassembles them into services identical to BellSouth's, the elements are essentially resale and should be priced as wholesale services.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Tamplin and Gillan and BellSouth witnesses Varner and Scheye.

AT&T asserts that the ability to combine the unbundled loop and local switching elements allows a new entrant to create a "platform configuration" for local exchange services, which it can then market or combine with its own network elements, such as OS/DA. The use of the platform by a new entrant allows for lower prices and ease of shifting among providers, does not require reconfiguration for a change in providers, and solves the problem of local number portability. AT&T also asserts that a new entrant will not choose to combine unbundled elements to recreate a service available for resale simply to avoid paying wholesale rates.

A plain reading of the Act, reinforced by the FCC Interconnection Order, leads to the inescapable conclusion that to prohibit a CLP from recombining unbundled network elements as it chooses would be both legally impermissible and practically impossible. The Act imposes on ILECs the duty to provide unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C.A. Section 251(c)(3). Since the Act does not provide for any restrictions on combining the unbundled elements, it appears that a CLP must be allowed to recombine unbundled network elements in any manner it chooses. The FCC concluded in its rulemaking that Congress did not intend Section 251(c)(3) to be read to contain a requirement that CLPs own or control some of their own facilities before purchasing and using unbundled network elements to provide telecommunications services. Interconnection Order, Paragraphs 328, 329. The FCC further concluded that to impose a requirement that in order to obtain access to unbundled network elements CLPs must own and use their own facilities, in combination with unbundled network elements, for the purpose of providing local services, would be administratively impossible. Paragraph 339.

The Commission notes that, in a case involving LDDS and Ameritech, the Illinois Commission rejected Ameritech's argument that allowing a CLP to combine network elements to provide end-to-end service is redundant of the requirement that LECs make their retail services available for resale. Illinois also rejected Ameritech's position that the CLP should not retain access revenues provided through network elements and Centel's request to exclude custom calling and CLASS features from the network element.[1]

BellSouth, however, is not urging this Commission to prohibit the recombination of unbundled network elements per se. BellSouth simply proposes that the Commission recognize certain combinations of unbundled network elements as resold services and require that they be treated accordingly. BellSouth argues that, while the Act clearly permits CLPs to use both resale and purchase of unbundled network elements to provide services to their customers, there is nothing in the Act to suggest that rebundling of network elements can be used to recreate a retail service that could be resold. Allowing CLPs to combine unbundled local loops and local switching, in BellSouth's view, would render the provision for resale at wholesale prices meaningless. It would also result in

[1]Nos. 95-0458 and 95-0531 (consol.) at 63-65 (Illinois Commerce Commission June 26, 1996).

unreasonable and discriminatory impacts on BellSouth's ability to compete, because CLPs could avoid the joint marketing restrictions in the Act, use and user restrictions in BellSouth's tariffs for resold services, and access and subscriber line charges associated with resold services. BellSouth asserts that when a CLP rebundles a BellSouth loop and switch, it has essentially recreated a 1FR or 1FB (one flat rate residential phone line or business phone line), and even if it uses its own operator services, the recombination should be treated as resale and priced at the appropriate tariff rate less the retail discount. BellSouth also asserts that software features, while technically provided in the central office, are not local switching features but are retail services and, therefore, the Commission should require CLPs to pay the discounted resale rate for vertical services that they purchase from BellSouth rather than only the rate for local switching.

The Commission finds merit in BellSouth's proposal, assuming that it is consistent with the Act. However, we are unable on the record before us to identify the combinations of unbundled network elements that would constitute resold services. BellSouth itself refers both to recombinations of unbundled network elements that are "the equivalent" of BellSouth retail services and to recombinations that are "substantially identical" to BellSouth retail services as well as to rebundling "a BellSouth loop and switch." The Attorney General, on the other hand, refers to combining all seven unbundled elements into services that are "identical" to BellSouth services. We do not find these terms to be synonymous.

We are aware that two of our neighboring states, Tennessee and Georgia, have recently sided with BellSouth on this issue. Under the Tennessee decision, AT&T and MCI may purchase unbundled network elements, capabilities, and/or functions but may not combine them in any manner they choose; they must combine them to provide a new or different service from those being provided by BellSouth with the same combination of network elements, capabilities, and functions. These requirements are effective until universal service and access charge issues are resolved or until BellSouth has been authorized to enter the interLATA market, whichever is earlier. BellSouth may ask the Regulatory Authority to investigate if it believes AT&T or MCI has violated the rebundling restriction and, if necessary, impose the wholesale rate.[1]

The Georgia Commission found that, under the Act and the FCC rules, AT&T clearly may purchase unbundled elements and recombine them in any manner it chooses. The Commission further found that the ability to purchase unbundled elements and recombine them, without adding any additional capability, to recreate services identical to BellSouth retail offerings would allow AT&T to avoid the Act's pricing standard for resale as well as the Act's joint marketing restrictions and charge requirements. The Georgia Commission, therefore, determined that it should conduct a generic proceeding on the appropriate long-term pricing policy regarding rebundled network elements. On an interim basis, the Georgia Commission ordered that, when AT&T recombines unbundled elements to create services identical to BellSouth's retail offerings, rates for those rebundled services should be computed as BellSouth's retail price less the wholesale discount and offered under the same terms and conditions, including the same application of access charges and joint marketing restrictions. In this situation, the Georgia Commission ruled, "identical" means that AT&T is not using its own switching

[1]Nos. 96-01152 and 96-01271 (consol.) at 26-27 (Tennessee Regulatory Authority November 25, 1996).

or other functionality or capability together with the unbundled elements to produce its service; operator services is not considered a functionality or capability for this purpose.[1]

Apart from the overall principle adopted, however, these decisions contain little detail regarding implementation, and the Commission has identified a significant number of serious obstacles to feasible administration of such a provision. Thus, even if we conclude that treating certain combinations of unbundled network elements as resold services is legally permissible under the Act, we are nevertheless without sufficient information to determine whether and how a decision to this effect could be implemented. The Commission, therefore, will leave this issue open for further consideration upon receipt of additional information.

We are, however, able to address the provision of vertical services as part of the local switching element. This is clearly required by the Act. The definition of "network element" includes features, functions, and capabilities that are provided by means of the facility or equipment. 47 U.S.C.A. Section 153(29). The FCC has ruled that the local switching element includes all vertical features that the switch is capable of providing and has refused to classify vertical switching features exclusively as retail services. According to the FCC, the availability of vertical switching features through resale does not remove such features from the definition of network element. Interconnection Order, Paragraphs 412-14. We are compelled to agree with the FCC on this issue. Therefore, when local switching is purchased as an unbundled network element under Section 251(c)(3) of the Act, vertical services should be included in the price of that element at no additional charge, but when vertical services are obtained through the resale provision of Section 251(c)(4), they should be priced at the retail rate less the wholesale discount.

CONCLUSIONS

The Commission concludes that AT&T should be allowed to combine unbundled network elements in any manner it chooses. The Commission further concludes when local switching is purchased as an unbundled network element, vertical services should be included in the price of that at no additional charge, but when vertical services are obtained through resale, the discounted resale rate should apply. Finally, the Commission concludes that BellSouth should be allowed to submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements that constitute resold services for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This information should be filed within 30 days of the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Issue: Must BellSouth make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions equal to that which it provides itself?

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[1] No. 6801-U at 51-52, 93 (Georgia Public Service Commission December 3, 1996).

POSITIONS OF PARTIES

AT&T: The Act requires nondiscriminatory access. 47 U.S.C.A. Section 251 (c)(2) and (6). Any difference in access between BellSouth and AT&T is discriminatory.

BELLSOUTH: BellSouth shall make access to its poles, ducts, conduits, and rights-of-way available to AT&T on nondiscriminatory rates, terms, and conditions as BellSouth has been doing for cable television providers pursuant to 47 U.S.C.A. Section 224.

ATTORNEY GENERAL: This is an issue where common sense and good faith can produce better results than the Commission. The Commission, therefore, should order the parties to work out capacity reservation procedures and schedules on these facilities that treat all players equally and to report back to the Commission by March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Tamplin and BellSouth witnesses Varner and Milner.

Section 251(b)(4) of TA96 provides that local telephone providers have the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224—that is, on a nondiscriminatory basis. The language of TA96, therefore, supports AT&T's position that BellSouth must make its rights-of-way, poles, ducts, and conduits available to the CLPs on terms and conditions equal to that BellSouth provides itself.

While BellSouth must make available to CLPs access to its poles, ducts, conduits, and rights-of-ways, TA96 makes it clear that an ILEC can deny access where there is insufficient capacity and/or for reasons of safety, reliability, and generally applicable engineering purposes. [224(h) referenced in Section 251(b)(4)]. The question is then raised as to how much spare capacity, if any, BellSouth can reserve ("warehouse") to the detriment of the CLPs. BellSouth takes the position that it should have the right to reserve five years' worth of capacity in its conduits, poles, and other rights-of-way facilities. On the other hand, AT&T, through witness Tamplin, contends that TA96 and Paragraphs 604 and 1170 of the FCC Interconnection Order specifically prohibit BellSouth from favoring itself and discriminating against AT&T by reserving capacity for BellSouth's future needs at the expense of AT&T's current needs.

The Commission agrees with AT&T that Section 251 of TA96 does not allow BellSouth to reserve capacity for itself other than as required for reasons of safety, reliability, and generally applicable engineering purposes. In this regard, neither the FCC Interconnection Order nor 47 U.S.C.A. Section 251(b)(4) provides for an ILEC to reserve five year's capacity as has been requested by BellSouth. As it is impermissible for BellSouth to reserve spare capacity, then it follows that AT&T should not, itself, be permitted to reserve or warehouse spare capacity in BellSouth's facilities. Access to rights-of-way, poles, ducts, and conduits should only be permitted where there

is a bona fide need for such access/capacity. This way, spare capacity will be available to all parties on an "as needed" basis.

In order to streamline the CLPs' access to BellSouth's rights-of-way, conduits, ducts, and poles, the parties should meet and work out guidelines to be followed in handling these requests for access. These guidelines should provide the CLPs with readily available access to unused/spare capacity in BellSouth's rights-of-way, poles, ducts, and conduits provided that such requests by the CLPs are bona fide (do not amount to a warehousing of spare capacity for future needs) and that the requested capacity is available.

CONCLUSIONS

The Commission finds and concludes that BellSouth must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits to AT&T on terms and conditions equal to that which BellSouth provides itself. The Commission further concludes that BellSouth can not reserve any spare capacity unless needed for reasons of safety, reliability, and generally applicable engineering purposes. At the same time, AT&T should only be granted the bona fide capacity that it needs and not be allowed to warehouse BellSouth's capacity to the detriment of BellSouth or any other CLP. The Commission directs BellSouth and AT&T to meet and formulate guidelines to be followed in handling requests by CLPs for access to BellSouth's rights-of-way, poles, ducts, and conduits.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Issue: Must BellSouth provide interim number portability solutions, including remote call forwarding (RCF), flex-direct inward dialing (DID), route index-portability hub (RI-PH) and local exchange routing guide assignment (LERG)?

POSITIONS OF PARTIES

AT&T: Yes. Use of all options is necessary to assure that AT&T customers are provided with efficient call routing when they choose to retain their local telephone number.

BELLSOUTH: BellSouth will provide number portability through remote call forwarding (RCF) and direct inward dialing (DID) services. BellSouth also has agreed to the reassignment of entire NXXs through the Local Exchange Routing Guide. Other modifications to the LERG require development of industry guidelines via the ICCF as well as system changes. BellSouth has investigated AT&T's other requests and has found that they are not technically feasible.

ATTORNEY GENERAL: Any feasible methods of interim number portability must be made available to the new entrant and the parties will detail what those are in a report to the Commission to be filed on or before March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Tamplin and BellSouth witnesses Varner and Atherton.

The only option BellSouth has not agreed with is to provide Interim Number Portability through the reassignment of telephone numbers at the NXX-X, or thousands block, level. BellSouth has agreed to provide LERG at the NXX level. BellSouth has some strong testimony in the record on the issue of reassignment at the thousand block level. Witness Atherton states in his prefiled testimony, "BellSouth cannot assign or reassign central office codes below the NXX level, or more specifically, at the NXX-X, or thousands block level, as requested by AT&T, without a change to the industry assignment guidelines." He also states, "National guidelines preclude reassignment of central office codes at the NXX-X level," and "The technical impact and required network modifications to support NXX-X based routing would take such significant time and effort that this is not a viable option for interim number portability."

CONCLUSIONS

The Commission concludes that BellSouth should make available to AT&T all four (4) methods of interim number portability, until such a time that a permanent number portability method is available. However, AT&T's request for LERG at the NXX-X level is denied. There is not sufficient evidence in the record regarding the reciprocity issue that is set forth in AT&T's Proposed Order to allow the Commission to reach an informed, well-reasoned decision in that regard; therefore, such issue is not an issue that can reasonably be addressed by the Commission at this time. Thus, for the foregoing reason, the Commission declines to rule on the issue of reciprocity. In addition, the Commission denies AT&T's request for the Commission to require BellSouth to guarantee a five-minute transitional period for telephone number changes.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

Issue: Must BellSouth negotiate a long-term number portability solution?

POSITIONS OF PARTIES

AT&T: BellSouth must negotiate a long-term number portability solution. The Act requires that such a solution be implemented. 47 U.S.C.A. Section 251(b)(2).

BELLSOUTH: BellSouth is working with the industry, including AT&T, on the long-term number portability issues. This issue is national in nature and is beyond the scope of this arbitration proceeding.

ATTORNEY GENERAL: 47 U.S.C.A. Section 251(b)(2) provides that telecommunications carriers have the duty "to provide to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]." While the statute does not distinguish between interim and long-term number portability, it clearly mandates number portability will happen "if technically

feasible." Long-term solutions to this issue, however, will need national standards. The Commission should order all parties to participate in groups establishing those national standards and request a progress report by March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Tamplin and BellSouth witness Varner.

AT&T witness Tamplin testified that this Commission should require BellSouth to negotiate a permanent number portability solution. On the other hand, BellSouth witness Varner stated that this issue is not appropriate for arbitration at this time. He testified that BellSouth is actively participating in national forums in order to develop and implement a long-term number portability solution.

The Commission believes that the issue of long-term number portability is an industry-wide problem which requires national standards. BellSouth and AT&T should work with the industry to determine a permanent solution and to decide who should pay for implementation.

CONCLUSIONS

The Commission finds and concludes that the implementation and the cost of long-term number portability are issues that are best determined by the industry at large. BellSouth and AT&T should work together with the industry to arrive at solutions to these problems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Issue: Must BellSouth provide AT&T with access to BellSouth's unused transmission media or dark fiber?

POSITIONS OF PARTIES

AT&T: BellSouth must lease to AT&T its unused transmission media also known as "dark fiber." AT&T believes that dark fiber meets the Act's definition of a network element. 47 U.S.C.A. Section 153(29). The fact that it is not currently in use does not change its nature. AT&T will deploy SONET rings in certain market areas to create competitive facilities. Building these rings will require the placement of many miles of fiber, with the attendant difficulties of obtaining rights-of-way, conduit and pole, and building permits. Access to BellSouth's dark fiber will permit AT&T to develop its own network facilities more quickly because it can put to good use an existing but unutilized element in BellSouth's network and will not need to lay its own fiber and obtain rights-of-way, conduits, poles, and building permits.

BELLSOUTH: Unused transmission media or dry fiber is not a telecommunication service nor is it a network element as defined by the Act. Dark fiber is not a network element because it is not

currently in use in BellSouth's network. Therefore, BellSouth need not provide access to new entrants.

ATTORNEY GENERAL: Unused transmission fiber is excess capacity built into a party's network and as such is the proper subject of negotiation and—should that negotiation fail—arbitration. Like the request to unbundle the local loop, access to unused transmission media to provide local telephone service will be needed later rather than sooner. The Commission should hold that if a CLP makes a bona fide request for unused transmission capability, or dark fiber, to provide competing local telephone service, the parties will negotiate terms and conditions of rent at that time. If the parties cannot agree, then the Commission will arbitrate the disagreement.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Tamplin and BellSouth witness Varner.

AT&T's witness Tamplin acknowledged that the FCC Interconnection Order declined to address the unbundling of an ILEC's "dark fiber" as the record before the FCC was insufficient to determine whether "dark fiber" is a network element. He testified, however, that AT&T needs the ability to lease this media to facilitate its ability to efficiently build its own network transmission facility. Without the ability to lease this media, witness Tamplin stated that AT&T will face yet another capital investment barrier to developing its own network.

BellSouth witness Varner testified that the FCC Interconnection Order and Rules do not address dark fiber as an unbundled element. He also testified that Sections 251 and 252 of the Act do not apply to dark fiber since it is neither a retail telecommunications service to be resold nor an unbundled network element. To be an unbundled network element, Varner opined that dark fiber must contain some functionality inherent in BellSouth's network. It was his opinion that dark fiber is no more of a network element than the four walls surrounding a switch.

In order for AT&T or any competing local provider to obtain access to a network element, the item that it wishes to access must, by definition, be a part of the ILEC's network. Unused transmission media or dark fiber is cable that has no electronics connected to it and is not functioning as part of the telephone network. Consequently, the Commission is unconvinced that dark fiber qualifies as a network element used in the provision of a telecommunication service.

In this arbitration proceeding, the Commission is reaching the same conclusion on the dark fiber issue as did the FCC. In Paragraph 450 of the Interconnection Order, the FCC stated:

> We also decline at this time to address the unbundling of the incumbent LECs' "dark fiber." Parties that address this issue do not provide us with information on whether dark fiber qualifies as a network element under sections 251(c)(3) and 251(d)(2). Therefore, we lack sufficient record on which to decide this issue. We will continue to review and revise our rules in this area as necessary.

CONCLUSIONS

The Commission concludes that dark fiber is not a telecommunications service. Based on the record in this proceeding, there is insufficient evidence to conclude that dark fiber is a network element used in the provision of a telecommunications service. BellSouth, therefore, need not provide access to dark fiber to AT&T.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

Issue: Must BellSouth provide copies of records regarding rights-of-way?

POSITIONS OF PARTIES

AT&T: The Act requires BellSouth to provide AT&T access to its engineering records for rights-of-way.

BELLSOUTH: The information contained in engineering records is proprietary information and must be strictly controlled. BellSouth will provide AT&T with structure occupancy information upon request on a timely basis and will allow AT&T personnel access to records or drawings pertaining to the request.

ATTORNEY GENERAL: TA96 and the Interconnection Order do not address engineering records. There is no need for the Commission to decide this issue at the present time. To the extent the parties have problems negotiating bona fide requests to access records regarding rights-of-way, the Commission will arbitrate the dispute at that time.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Tamplin and BellSouth witnesses Varner and Milner.

Paragraph 1223 of the FCC Interconnection Order provides that a utility receiving a request for access must make its maps, plats, and other relevant data available for inspection and copying, subject to reasonable conditions to protect proprietary information.

As this Commission has found and concluded in the Evidence and Conclusions for Finding of Fact No. 16 that BellSouth must make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions equal to that it provides itself, then it follows that BellSouth should be required to provide the needed records necessary for access to these facilities.

BellSouth witness Milner testified that BellSouth has agreed to provide AT&T with structural occupancy information regarding conduits, poles, and other rights-of-way requested by AT&T within a reasonable time frame. In addition, BellSouth has agreed to allow designated AT&T personnel, or agents acting on behalf of AT&T, to examine engineering records or drawings pertaining to such requests.

Both BellSouth and AT&T recognized that the information contained in BellSouth's records regarding its rights-of-way is of a confidential nature and that this confidentiality should be protected. In this regard, it is appropriate for BellSouth to require AT&T to enter into a confidentiality agreement with BellSouth prior to being permitted to examine BellSouth's records and engineering plans regarding BellSouth's rights-of-way.

CONCLUSIONS

The Commission finds and concludes that BellSouth must provide AT&T with copies of records regarding rights-of-way provided that AT&T has a bona fide engineering need for such information and agrees to protect the confidentiality of such information by entering into a confidentiality agreement with BellSouth.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

Issue: Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions?

POSITIONS OF PARTIES

AT&T: Wholesale rates must exclude all direct and indirect costs related to retail functions pursuant to 47 U.S.C.A. Section 252(d)(3) and the need to foster competition by leveling costs at the wholesale level.

BELLSOUTH: BellSouth's proposed wholesale discounts accurately reflect the costs avoided by BellSouth when selling a telecommunications service at wholesale, the cost standard required by the Act.

ATTORNEY GENERAL: The Commission should find that the approach used by the FCC is orderly and reasonable and can properly be used under the terms of the Act.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillan, Kaserman, and Lerma and BellSouth witnesses Varner, Scheye, and Reid.

Section 252(d)(3) of the Act provides that State Commissions shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any costs that will be avoided by the local exchange carrier.

AT&T's avoided cost study is based on the premise that the FCC Interconnection Order requires that BellSouth should be viewed as operating in a pure wholesale environment where it has no retail operations. AT&T interprets the FCC Interconnection Order to specify that BellSouth's costs that could be avoided, whether or not they are actually avoided, should be reflected in the

determination of the wholesale discount. BellSouth's avoided cost study is based on the premise that the Act specifies that BellSouth would continue to be a retail provider of services and simply add-on wholesale functions. BellSouth believes the Act contemplates costs that are actually avoided when providing wholesale services.

AT&T used combined (interstate and intrastate regulated) North Carolina amounts from BellSouth's ARMIS Reports 43-03 and 43-04 for 1995 in determining which costs are avoided. ARMIS data is filed with the FCC and is publicly available. BellSouth used amounts for 1995 from its internal accounting system that identifies the major work functions of the Company. BellSouth's numbers are derived internally and, therefore, are not verifiable.

The FCC Interconnection Order specifically identifies costs by the Uniform System of Accounts (USOA) expense accounts that are presumed to be avoided when an incumbent LEC provides a telecommunications service for resale. The provisions of the FCC Interconnection Order relating to the wholesale discount rate have been stayed by the Eighth Federal Circuit Court of Appeals.

The Commission has reviewed the evidence presented by all parties and conducted an avoided cost analysis that is in compliance with the Act. In determining the avoided costs to be used in calculating the wholesale discount rate, the Commission used BellSouth's 1995 combined North Carolina financial data as reflected in its 1995 ARMIS Report 43-03. The avoided cost analysis performed by the Commission incorporates parts of BellSouth's and AT&T's positions, and agrees with the basic methodology used by the FCC in determining its proxy ranges with some exceptions.

The analysis reflects Uncollectibles-Telecommunications (Account 5301) as all being directly avoided based on AT&T's avoided cost study. The Commission concludes that AT&T's argument for its classification of uncollectibles as 100% avoided is reasonable. AT&T testified that "in a resale environment, the liability for end user uncollectibles transfers in total to the reseller." BellSouth witness Reid stated in his testimony that uncollectibles from customers who buy from resellers will be avoided by BellSouth.

The Commission concludes that 90% of Marketing Expenses, which include Accounts 6611 Product Management, 6612 - Sales, and 6613 - Product Advertising, should be reflected as avoided costs. Customer Services Expenses, Account 6623, is also reflected as 90% avoided. The 90% avoided factor is supported by the FCC Interconnection Order, Paragraph 928, where it concludes, based on lack of evidence and varying estimates by several states concerning the level of wholesale-related expenses in these accounts, that for purposes of determining a default range of wholesale discount rates, 10% of the costs in Accounts 6611, 6612, 6613, and 6623 are not avoided by selling services at wholesale.

The avoided costs determined above for uncollectibles, marketing and customer services expenses are directly avoided costs. The Commission also concludes that it is appropriate to determine a level of indirectly avoided costs as proposed by AT&T and the FCC Interconnection Order (Paragraph 912). The Commission calculated the indirect allocation of avoided costs based on the ratio of directly avoided costs to total operating expenses. The indirectly avoided cost factor

determined to be reasonable is 12.97%. This factor is applied to the balances in Accounts 6120 - General Support, 6710 - Executive & Planning, and 6720 - General & Administrative. This treatment is consistent with the FCC Interconnection Order (Paragraph 918), except for the treatment of uncollectibles discussed earlier. The Commission concludes that uncollectibles are a directly avoided cost instead of an indirectly avoided cost.

AT&T and BellSouth disagree on the avoidance of operator services and directory assistance costs which are recorded in Accounts 6220 - Operators Systems, 6621 - Call Completion, and 6622 - Number Services. The Commission concludes that operator services and directory assistance costs should not be reflected as avoided costs for purposes of calculating the wholesale discount rate.

The Commission's avoided cost analysis results in directly avoided costs of $127,564,000, indirectly avoided costs of $23,539,000, and total avoided costs for BellSouth of $151,103,000.

CONCLUSIONS

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Issue: What are the appropriate wholesale rates for BellSouth to charge when a competitor purchases BellSouth's retail services for resale?

POSITIONS OF PARTIES

AT&T: BellSouth's wholesale discount rate should be set at 29.85%.

BELLSOUTH: BellSouth's proposed wholesale discount rates are 12.4% for residential service and 10.1% for business service.

ATTORNEY GENERAL: The Attorney General does not have the analytical ability to review numbers. AT&T's study appears excessive; however, BellSouth's methodology appears to be below the discount decided by other State Commissions. We merely refer the Commission to the experience of other states. The Attorney General believes that the judgment of the appropriate discount rate is made on the best information available today. Better information may become available in the future and the Commission should reserve the right to adjust the discount rate based on future information.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillan, Kaserman, and Lerma and BellSouth witnesses Scheye and Reid.

In determining the appropriate amount of revenues subject to resale for purposes of calculating the wholesale discount rate, the Commission utilized the total 1995 Basic Local Service

Revenues and Long Distance Service Revenues per the 1995 ARMIS Report 43-03, less $23,481,000 in public telephone revenues. BellSouth's 1995 Annual Report (Form M) filed with this Commission provides the detail necessary to determine the amount of public telephone revenues to exclude. Exclusion of public telephone revenues is consistent with the Commission's Order which states that public telephone service should not be resold. Therefore, the revenues subject to resale included in the wholesale discount rate calculation are $775,726,000.

To calculate the wholesale discount rate, the Commission divided total avoided costs (direct and indirect) as determined by its avoided cost analysis by the total revenues subject to resale. This calculation produces a composite wholesale discount rate of 19.5%. The Commission agrees with BellSouth that a separate wholesale discount rate should be established for residential and business services. Since AT&T's cost study does not produce separate discount rates, the Commission relied upon certain amounts in BellSouth witness Reid's avoided cost study to determine separate wholesale discount rates for residential and business services. The Commission allocated the revenues and avoided costs reflected in its avoided cost analysis based on BellSouth witness Reid's determination of these items for residential and business categories. The Commission's calculations result in a wholesale discount rate of 21.5% for residential services and a wholesale discount rate of 17.6% for business services.

CONCLUSIONS

Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 21, the Commission concludes that BellSouth's appropriate wholesale discount rates are 21.5% for residential services and 17.6% for business services.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

Issue: What is the appropriate price for each unbundled network element?

POSITIONS OF PARTIES

AT&T: The appropriate price equals total element long run incremental cost (TELRIC), plus a reasonable allocation of forward-looking joint and common costs, divided by total units associated with the element. BellSouth must establish the appropriate price for each element based upon appropriate cost studies. Absent cost studies, prices should reflect the best data available, but may not exceed price ceilings set by the FCC.

BELLSOUTH: The price of each unbundled network element should be, as set forth in 47 U.S.C.A. Section 252(d), based on cost plus a reasonable profit to the incumbent local exchange carrier. BellSouth's proposals regarding price reflect the legal standard.

ATTORNEY GENERAL: The Commission should adopt interim rates until it has had sufficient time to fully investigate the costing models provided it by the parties to the record or until it has had sufficient time to carefully do its own cost study and present same in a rulemaking proceeding open to all interested parties.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillian, Ellison, Kaserman, and Wood and BellSouth witnesses Varner, Scheye, Caldwell, and Emmerson.

BellSouth performed TELRIC studies for the following unbundled network elements:

- 2-wire Analog Loop
- 4-wire Analog Loop
- 2-wire ISDN Digital Loop

BellSouth also performed long run incremental cost (LRIC) studies or total service long run incremental cost (TSLRIC) studies for the following unbundled network elements:

- 4-wire DS1 Digital Loop
- Channelization Systems and Central Office Channel Interfaces (located in the BellSouth central office buildings)
- Operator Provided and Fully Automated Call Handling Service
- Emergency Call Trace
- Directory Assistance Database Service
- Directory Assistance Call Completion Access Service
- Number Services Intercept Access Service
- 800 Access Ten Digit Screening Service
- Ports and Associated Local Usage
- Special Access Voice Grade Service Interoffice Channel Voice-Unbundled Exchange Access
- Verification and Emergency Interrupt
- Directory Assistance Access Service
- Direct Access to Directory Assistance Service
- Directory Transport
- Common Channel Signaling/Signaling System 7 Transport Service
- Line Identification Database

Additionally, BellSouth "approximated" TELRIC results for certain of the unbundled network elements for which TELRIC studies were not completed by increasing its LRIC or TSLRIC studies results by 20%. BellSouth stated that it was not suggesting that TELRIC studies should be performed in such a manner or that the appropriate markup was 20%, but rather that such adjustment was "to illustrate directionality of how TSLRIC and TELRIC can be different."

BellSouth asserted that unbundled elements that are currently tariffed should be priced at BellSouth's existing tariffed rates, contending that those existing tariffed rates are based upon TSLRIC studies that used BellSouth's costs, have been approved by this Commission, include a

reasonable profit, and, therefore, meet the requirements under Section 252 of the Act. For unbundled network elements where there are no existing tariffed rates, BellSouth contended that the appropriate rates were those set forth in Scheye Cross-Examination Exhibit 2. BellSouth also contended that two-wire and four-wire analog loops and the two-wire ISDN digital loop should be priced at the rates set forth in Scheye Exhibit 2.

AT&T's proposed rates for unbundled network elements were largely based on the "Hatfield Model", which is publicly available and which was characterized as easily examined. BellSouth used its own proprietary costing models, which AT&T characterized as "black box" cost models not subject to public scrutiny. AT&T contended that BellSouth's cost studies were flawed because they overstated costs in critical areas and contained insufficient documentation to support model inputs and outputs. AT&T argued that the Commission should set unbundled network element prices at the costs generated by the Hatfield Model, that those prices were necessary to permit efficient competition as intended by the 1996 Telecommunications Act, and that such prices would fully compensate BellSouth for its forward-looking economic costs. Further, AT&T asserted that new entrants will be unable to remain in the market using unbundled network elements if the price new entrants must pay BellSouth does not reflect BellSouth's incremental, economic costs. Similarly, AT&T contended that knowledge of economic costs is critical to the initial market entry decision of potential entrants, because the subject costs determine whether the use of unbundled network elements is a viable form of market entry, along with resale-based or facilities-based entry.

BellSouth contended that the Hatfield Model should not be used to calculate TELRIC prices because it suffers from a number of flaws; for example, it is theoretical, understates cable lengths, has varied over time, has low joint and common costs, and has high plant utilization factors, as well as other flaws. BellSouth contended that costs developed by the Hatfield Model underestimated BellSouth's costs and that use of that model would lead to rates that were too low and would result in North Carolina consumers being denied the benefits of facilities-based competition. BellSouth further contended that, if the TELRIC methodology, as applied by AT&T, is adopted for use by the Commission, it will constitute a taking under the Fifth Amendment of the Constitution because such an approach does not permit the recovery of historical costs.

As stated above, the Attorney General's position, in this regard, is that the Commission should adopt interim rates until it has had sufficient time to fully investigate the costing models provided it by the parties to the record or until it has had sufficient time to carefully do its own cost study and present same in a rulemaking proceeding open to all interested parties.

AT&T and BellSouth both contended that their respective cost studies were forward-looking approaches that reflected economically efficient networks from the viewpoint of both network design and costs. As previously indicated, AT&T offered major criticisms of BellSouth's cost studies as did BellSouth of the cost studies presented by AT&T. In some instances, the criticisms appear to be valid. In others, the propriety of positions taken is not at all clear. Cost studies inherently are complex and complicated. Generally speaking, in order to properly evaluate a cost study, the validity, reasonableness, and appropriateness of the model, including its assumptions, parameters, and variables, must be carefully and completely examined from the standpoint of methodology and with

respect to all of the inputs into and outputs from the model. Literally, every aspect of the model must be scrutinized.

The record in this proceeding does not contain all of the information needed in order for the Commission to fully and effectively analyze and evaluate the propriety of the cost studies presented by the parties for the purpose of establishing permanent rates. Indeed, even if such information was available, given the Commission's resource limitations and the complexity of the issues, such evaluations could not be accomplished within a reasonable time frame from the standpoint of this proceeding.

The FCC in its Interconnection Order recognized that not every state, such as North Carolina in this instance, will have the resources to implement pricing based on fully-developed and thoroughly-evaluated cost studies for interconnection and unbundled elements within the statutory time frame for arbitration[1]. It, therefore, provided proxy rate guidelines or "default proxies", i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's TELRIC-based pricing methodology.

CONCLUSIONS

The Commission has carefully reviewed the FCC's explanation of the bases of its proxies, as set forth in its Interconnection Order. From such review and based upon the entire evidence of record, the Commission finds and concludes that, for purposes of this proceeding, establishing interim rates based on consideration of the FCC's proxies is a reasonable and appropriate course of action for the Commission to follow at this time.

In adopting rates based on consideration of the FCC's proxies, the Commission is fully aware of the fact that the Eighth Federal Circuit Court of Appeals, has stayed the pricing provisions of the FCC Interconnection Order. However, as stated above, based upon our review of the Interconnection Order, of which the Commission takes judicial notice, and in consideration of the entire evidence of record, the Commission believes, and so finds and concludes, that it is not unreasonable to adopt, nor is the Commission legally prohibited from adopting, interim rates based on consideration of the FCC's proxies, pending final resolution of the subject appeal. Further, by having a true-up, as discussed subsequently, the Commission does not believe that any party will suffer irreparable harm as a result of the interim rates adopted for purposes of this proceeding.

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[1] Specifically, the FCC stated in Paragraph 768 of its Interconnection Order that "[w]e recognize, however, that, in some cases, it may not be possible for carriers to prepare, or the state commission to review, economic cost studies within the statutory time frame for arbitration and thus here first address situations in which a state has not approved a cost study. ... States that do not complete their review of a forward-looking economic cost study within the statutory time periods, but must render pricing decisions, will be able to establish interim arbitrated rates based on the proxies we provide in this Order. A proxy approach might provide a faster, administratively simpler, and less costly approach to establishing prices on an interim basis than a detailed forward-looking cost study."

AT&T, through its witness Ellison, recommended that, pending the completion of conforming cost studies, the Commission set proxy-based rates for operator systems based on estimated costs provided by BellSouth[1]. BellSouth made TSLRIC studies for some operator systems components and LRIC studies for other components. The Commission has also reviewed relevant interstate tariffed rates and has compared such rates to the costs determined by BellSouth. To the extent that interstate tariffed rates approximate the costs of the related services, the Commission has adopted those rates for use herein, otherwise the interim rates for operator systems were developed using BellSouth's LRIC/TSLRIC studies and adding 20% to reflect joint and common costs. We conclude that this approach reasonably approximates the proxy rate provisions for "other elements" in FCC Rule Section 51.513(c)(7) and is appropriate for use in setting interim rates for operator systems in this proceeding.

As discussed elsewhere herein, the Commission has concluded that the NID should be made available as an unbundled network element. The FCC Interconnection Order does not provide a proxy for the NID. BellSouth, having argued that CLPs should not be allowed access to its NID, did not perform a study for the purpose of identifying the cost of the NID on a stand-alone basis. AT&T, based on its study, argued that the NID rate should be set at $0.52 per line-per month. Thus, the only rate before the Commission with respect to the NID is that offered by AT&T.

The Commission, as indicated previously, has been unable, due to resource and evidentiary limitations present in this record, to fully and effectively analyze and evaluate the cost models presented by the parties, including that utilized by AT&T in arriving at its recommended rate for the NID. However, based upon the entire evidence of record, it does not appear to be unreasonable, as an interim measure, for the Commission to adopt the position advocated by AT&T in this regard. Accordingly, the Commission finds and concludes that the interim rate for the NID should be set at $0.52 per NID-per month.

Therefore, based upon the foregoing and the entire evidence of record, the Commission finds and concludes that the following interim rates for unbundled network elements should be adopted for use herein:

[1] See Ellison Exhibit WER1.

SCHEDULE OF INTERIM RATES FOR UNBUNDLED NETWORK ELEMENTS AND SERVICES

Description	Unit Cost/Definition	
Network interface device (NID)	$ 0.52	per NID-per month
2-wire analog voice grade loop, incl. NID	$ 16.71	per loop-per month
End office switching:		
2-wire analog voice grade port	$ 2.00	per line-per month
Usage	$ 0.004	per minute
CCS7 Signaling links	FCC Rule Section 51.513(c)(7)	
Signal transfer points	FCC Rule Section 51.513(c)(7)	
Signal control points/databases (requires access through BellSouth's signal transfer points)	FCC Rule Section 51.513(c)(7)	
Dedicated transport	Interstate Tariffed Rates	
Common transport	Interstate Tariffed Rates	
Tandem switching	$ 0.0015	per minute
Operator Systems		
Operator Call Processing Access Service		
Operator Provided	$ 1.06	per minute
Fully Automated	$ 0.09	per call
Inward Operator Services Access Service		
Verification	$ 0.54	per call
Emergency Interrupt	$ 0.65	per call

SCHEDULE OF INTERIM RATES
FOR UNBUNDLED NETWORK ELEMENTS AND SERVICES — continued

Description	Unit Cost/Definition	
Directory Assistance		
Directory Assistance Access Service	Interstate Tariffed Rates	
Directory Assistance Database Serv.		
Use fee, per request/listing	$ 0.00072	per listing
Recurring	$97.39	per month
Direct Access to Dir. Assist. Service	Interstate Tariffed Rates	
Directory Assistance Call Completion	$ 0.036	per call attempt
Number Services Intercept Access Service		
Query	$ 0.0077	per intercept query

In order to ensure that no carrier is disadvantaged by the interim rates herein approved, the Commission finds and concludes that those rates should be subject to true-up provisions, at such time as the Commission establishes final rates based on appropriate cost studies. Accordingly, the Commission further finds and concludes that the arbitrating parties should be ordered to meet and jointly develop the necessary mechanisms and otherwise establish and implement the appropriate administrative arrangements as will be needed in order to accomplish the aforesaid true-up.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

Issue: What is the appropriate price for call transport and termination?

POSITIONS OF PARTIES

AT&T: The price should equal the economic cost or default proxy of the network element used to transport and terminate the call, or bill and keep.

BELLSOUTH: BellSouth has offered interconnection at the switched access rate less the carrier common line charge and the interconnection rate. Regionally, the average rate is approximately 1.0¢/minute. The interconnection rate proposed satisfies the Act's requirements and has been agreed to by many CLPs.

ATTORNEY GENERAL: As an interim solution pending final resolution of the FCC Interconnection Order now on appeal, interconnection should be provided at forward-looking incremental costs, including a reasonable share of joint and common costs of the elements used to transport and terminate the call.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillan, Ellison, and Kaserman and BellSouth witnesses Varner and Scheye.

According to BellSouth witness Varner, no cost studies are currently available with respect to transport and termination services. As discussed subsequently, bill and keep is not an option available to the Commission in this instance.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that it should adopt interim rates, subject to the true-up provisions previously discussed, for transport and termination services based on consideration of the FCC's proxy pricing provisions, pending resolution of the appeal of the FCC Interconnection Order and the establishment of final rates by this Commission. This decision has been reached generally for the same reasons as those previously set forth herein by the Commission in ruling on the appropriate interim prices for unbundled network elements. The interim rates adopted for transport and termination services are as follows:

End office switching	$0.004 per minute
Tandem switching	$0.0015 per minute.
Transport:	
Dedicated	Interstate Tariffed Rates
Common	Interstate Tariffed Rates

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

Issue: Is "bill and keep" an appropriate alternative to the terminating carrier charging TSLRIC rates?

POSITIONS OF PARTIES

AT&T: "Bill and keep" is appropriate in the short-term while appropriate cost studies are performed. 47 U.S.C.A. Section 252(d)(2)(B).

BELLSOUTH: "Bill and keep" may be negotiated between the parties. However, compensation at a particular rate more adequately reflects the intent of the Act to allow the interconnecting companies to recover the costs associated with the transport and termination of calls.

ATTORNEY GENERAL: The FCC Interconnection Order, now stayed, provides that a State Commission can provide for "bill and keep" if it determines that traffic from one network to another is balanced and that there is no showing that the rates would be asymmetrical. Whatever method the Commission chooses should fairly compensate the arbitrating parties based on the best estimate of actual costs, periodically adjusted to take into account new information. This issue is best left to the judgment of the negotiating parties, and the Commission should request a report by March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillan, Ellison, and Kaserman as well as BellSouth witnesses Varner and Scheye.

AT&T witness Gillan testified that the FCC requires that transport and termination be cost-based but that State Commissions may, however, implement "bill and keep" compensation if neither party can demonstrate that traffic will be out of balance. In this regard, Section 252(d)(2)(B) of the Act does not preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as "bill and keep" arrangements). The FCC Interconnection Order at Paragraph 1111 provides that states may order "bill and keep" arrangements provided that neither carrier has rebutted the presumption that traffic is roughly balanced at both directions.

BellSouth witnesses Varner and Scheye testified that "bill and keep" is not an appropriate arrangement for the recovery of costs because it allows neither carrier to recover its costs. For example, if it costs BellSouth three cents a minute to terminate a local call and it costs a new entrant five cents a minute, then "bill and keep" will result in neither party recovering its exact costs. At best, the carrier with the lower cost might be able to conclude that "bill and keep" was somehow acceptable if the traffic was balanced because the payments it avoided making to the other carrier exceeded its own cost. The other carrier, however, would not be recovering its cost. Any traffic imbalance would exacerbate this problem.

The Commission agrees with BellSouth that "bill and keep" is not an appropriate alternative at this time for transport and termination charges given the probable traffic and cost imbalances between BellSouth and AT&T. Since BellSouth as the ILEC will have the largest customer base, the majority of traffic between BellSouth and AT&T will be terminated at AT&T. Under "bill and keep," AT&T would, thereby, be able to keep all revenues and make no payment to BellSouth for terminating these customers' calls. Given the great likelihood of an imbalance in traffic between BellSouth and AT&T, "bill and keep" does not appear to be an equitable method for cost recovery for transport and termination of calls between BellSouth and AT&T.

CONCLUSIONS

The Commission finds and concludes that BellSouth should not be required to accept "bill and keep" as an alternative to each party charging its own transport and termination charges.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

Issue: What is the appropriate price for certain support elements relating to interconnection and network elements?

POSITIONS OF PARTIES

AT&T: No appropriate cost studies exist regarding rights-of-way, poles, conduits and ducts, collocation, number portability, AIN and unused transmission media. The Commission should order BellSouth to develop and produce appropriate cost studies. In the interim, prices should reflect any appropriate FCC default prices.

BELLSOUTH: BellSouth has proposed reasonable and non-discriminatory rates for support functions such as access to rights-of-way and collocation. BellSouth's rates are based on costs and provide reasonable profit to BellSouth.

ATTORNEY GENERAL: The Commission should require the parties to file cost studies with appropriate documentation which provides their best estimates of the costs of certain support elements (e.g., rights-of-way, poles, conduits, ducts, collocation, number portability, advanced intelligent network, and unused transmission media) by June 30, 1997. Consistent with the Attorney General's position with respect to all pricing other than resale, the appropriate costing methodology should be based on forward-looking incremental costs plus a reasonable share of joint and common costs.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Ellison, Gillan, and Kaserman and BellSouth witness Varner.

Regarding this issue, BellSouth sets forth the following language in its Proposed Order:

> "After reviewing all of the evidence in the record, we conclude that AT&T has relied upon the now-stayed FCC pricing rules, arguing that in the absence of BellSouth-conducted TELRIC studies, this Commission should adopt for these support functions the proxy rates set forth in the FCC rules. With the exception of collocation, however, it is not readily apparent that the FCC ever established proxy rates for these services. . . .BellSouth advocates existing tariffed rates for existing services, such as virtual collocation. For new services, BellSouth proposes setting rates based upon TA96. Neither matrix provides any more specificity.

"The rates for the following services are in question: poles, ducts, conduit, rights-of-way, collocation (both virtual and physical), unused transmission media (dry fiber), and number portability. We have already addressed dry fiber. In addition, we find that BellSouth's virtual collocation service has existing tariffed rates set forth in BellSouth's Interstate Access Service Tariff, F.C.C. No. 1. See, e.g., Attachment C-13 to Intermedia Communications, Inc. Agreement, Tab 7, Scheye Cross-Examination Exhibit 1. We, therefore, find that those rates meet the requirements of TA96, and accordingly, order the parties to adopt those rates for virtual collocation.

"We note that the agreement that BellSouth has negotiated with Intermedia Communications, Inc. which was included in AT&T's Scheye Cross-Examination Exhibit 1, Tab 7, contains rates for physical collocation and interim number portability. In addition, poles, ducts, and conduit are to be provided pursuant to standard licensing agreements. Although the record is insufficient to support a finding that those rates are just, reasonable, and nondiscriminatory, those rates are available to AT&T pursuant to Section 252(i) of the Act and constitute, we believe, a reasonable starting point for the parties' negotiations in this regard.

"Therefore, we order the parties to renegotiate these issues, especially in light of the stay of the FCC's pricing rules, and to submit the results of those negotiations to the Commission in the Composite Agreement required by paragraph 4 of Appendix A to the Commission's Order of August 19, 1996. In conducting these negotiations, the parties are to be guided by the express terms of § 252(d)(1)(A)."

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes, with respect to the subject support elements, that it is reasonable and appropriate to establish interim rates, subject to the true-up provisions previously discussed, based on interstate tariffed rates, where such rates exist, pending resolution of the appeal of the FCC Interconnection Order and the establishment of final rates by this Commission. Where rates cannot be so established, the Commission finds and concludes that the parties should be called upon to renegotiate these issues. In these negotiations, the Commission further concludes that BellSouth should not be required to develop and produce cost studies in this regard, at this time. Regarding issues of national concern, such as permanent number portability and AIN, the arbitrating parties are encouraged to pursue resolution of any dispute of such a nature on a national level, through the appropriate industry forum or at the FCC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

Issue: Must BellSouth price both local and long distance access at cost?

POSITIONS OF PARTIES

AT&T: The Act requires access to be priced at cost. 47 U.S.C.A. Sections 251(c)(2) and 252(d)(1).

BELLSOUTH: The Act does not envision BellSouth negotiating the rate for access services with interexchange carriers. The prices for access are outside the scope of the Act.

ATTORNEY GENERAL: Access charges are not a subject of the 1996 Telecommunications Act and are not subject to arbitration in this docket.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Ellison, Gillan, and Kaserman and BellSouth witness Varner.

The Commission, after having carefully considered the entire evidence of record in this regard, agrees with the position taken by BellSouth and the Attorney General — i.e., that the prices for access are beyond the scope of the Act and this proceeding.

CONCLUSIONS

The Commission, therefore, finds and concludes that the subject access charges do not represent an issue subject to arbitration in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

Issue: What rates apply to collect and third party intraLATA calls?

POSITIONS OF PARTIES

AT&T: The Company states in its Proposed Order that this is not an issue.

BELLSOUTH: The operator services at issue are sold at retail as a part of residential or business services. Therefore, it is appropriate for BellSouth to bill its charges to its end users. It is also appropriate to bill resold services to AT&T at the appropriate discount for the purposes of AT&T billing its end-users utilizing the resold BellSouth service.

ATTORNEY GENERAL: End-users should pay the rates of their local service provider for these operator assisted calls. If operator services are provided as part of resold services, then the incumbent should not bill the new entrant any extra for these calls. If operator services are provided as a separate wholesale service, then wholesale service rates should apply.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witnesses Scheye and Varner.

This is an issue which AT&T included in its pre-hearing matrix. However, it was not included in AT&T's post-hearing matrix. The original issue addressed the matter of which local exchange company's rates should be charged to the end-users for these calls. For example, if an AT&T

customer calls a BellSouth customer collect, do AT&T's or BellSouth's rates apply? In its Proposed Order, AT&T stated that this is no longer an issue. Therefore, there does not appear to be any need to address this matter further here.

CONCLUSIONS

Based upon the foregoing, the Commission finds and concludes that the foregoing matter does not represent an issue in need of arbitration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

Issue: What are the appropriate general contractual terms and conditions that should govern the interconnection agreement (e.g., resolution of disputes, performance requirements, and liability/indemnity)?

POSITIONS OF PARTIES

AT&T: The Act requires BellSouth to provide interconnection, unbundled elements and services at terms and conditions that are just, reasonable and nondiscriminatory. 47 U.S.C.A. Section 251(c)(2)-(4). The terms and conditions in AT&T's proposed Interconnection Agreement should constitute the "General Terms and Conditions" that the parties should resolve. The Commission should require BellSouth to negotiate specific contractual terms, e.g., quality of service standards with penalties for nonperformance, that will enable competitors to enter the market. The interconnection agreement should have terms addressing alternative dispute resolution, liability, and indemnity.

BELLSOUTH: BellSouth has negotiated with AT&T regarding the issues AT&T has identified in accordance with the Act. Issues that should be included in a negotiated or arbitrated agreement should be limited to those that are identified in the Act.

ATTORNEY GENERAL: The parties should be required to submit disputes to mediation, followed by binding arbitration if the Commission concludes that is necessary, by certified mediators appointed by the Commission and acceptable to the mediating parties.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and BellSouth witness Varner.

Performance standards and penalties and liquidated damage provisions are addressed in the Evidence and Conclusions for Findings of Fact Nos. 3 and 4, where the Commission declined to prescribe specific contractual terms and conditions. Except as otherwise outlined in this Recommended Arbitration Order, the Commission believes that the parties, negotiating in good faith, can reach agreement on general contractual terms and conditions without further Commission guidance or intervention.

CONCLUSIONS

The Commission declines to prescribe general contractual terms and conditions. The parties may, of course, negotiate contractual provisions that are not required by the Act or by the FCC's rules, provided that such provisions are consistent with the Act.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

Issue: Should BellSouth's proposal for a cost-recovery mechanism for dialing parity be decided in this proceeding?

POSITIONS OF PARTIES

AT&T: AT&T states in its Proposed Order that this is not an issue in this proceeding.

BELLSOUTH: BellSouth contends that it should be allowed to recover its costs pursuant to a mechanism similar to that initially used to recover the cost of equal access.

ATTORNEY GENERAL: Dialing parity and the attendant cost-recovery mechanisms will affect all carriers, both local and long distance. The parties should be ordered to participate in an industry group and report to the Commission by March 31, 1997, as to the course of the discussions and probable solutions to this issue.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witness Scheye.

As indicated above, AT&T has stated in its Proposed Order that the matter here under review is not an issue that AT&T and BellSouth require the Commission to decide in this proceeding. BellSouth has also indicated in its Proposed Order that the issue of a cost recovery mechanism for dialing parity is not an appropriate issue for this arbitration.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that the development of a cost-recovery mechanism for dialing parity is beyond the scope of this proceeding. However, the Commission encourages the parties to pursue resolution of any dispute in this regard on a national level, through the appropriate industry forum or at the FCC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

Issue: Should the costs of conversion from existing virtual collocation to physical collocations be borne by BellSouth or AT&T and what are the appropriate prices of collocation?

POSITIONS OF PARTIES

AT&T: The Act specifies that collocation rates, terms and conditions be just, reasonable and non-discriminatory.

BELLSOUTH: The price for collocation should be set to recover its associated costs, contribute to joint and common costs, and provide a reasonable profit.

ATTORNEY GENERAL: The Attorney General did not address this issue.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Ellison and BellSouth witness Scheye.

The issue of pricing with respect to collocation, in all but the following respect, has been addressed previously and need not be repeated here. Regarding who should be required to pay the costs of conversion from existing virtual collocation to physical collocation, the Commission concludes that it is not unreasonable to require that the requesting CLP bear such costs.

CONCLUSIONS

Therefore, based upon the entire evidence of record, the Commission finds and concludes that AT&T should be required to bear the costs of conversion from existing virtual collocation to physical collocation.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth and AT&T shall prepare and file a Composite Agreement in conformity with the conclusions of this Order not later than 45 days after the date of issuance of this Order. Such Composite Agreement shall be in the form specified in paragraph 4 of Appendix A in the Commission's August 19, 1996, Order in Docket Nos. P-140, Sub 50, and P-100, Sub 133, concerning arbitration procedure (Arbitration Procedure Order).

2. That, not later than 30 days from the date of issuance of this Order, a party to the arbitration may file objections to this Order consistent with paragraph 3 of the Arbitration Procedure Order.

3. That, not later than 30 days from the date of issuance of this Order, any interested person not a party to this proceeding may file comments concerning this Order consistent with paragraphs 5 and 6, as applicable, of the Arbitration Procedure Order.

4. That, with respect to objections or comments filed pursuant to decretal paragraphs 2 or 3 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages single-spaced or three pages double-

spaced containing a clear and concise statement of all material objections or comments. The Commission will not consider the objections or comments of a party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

5. That parties or interested persons submitting Composite Agreements, objections or comments shall also file those Composite Agreements, objections or comments, including the executive summary required in decretal paragraph 4 above, on an MS-DOS formatted 3.5-inch computer diskette containing noncompressed files created or saved in WordPerfect format.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-141, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of MCI Telecommunications Corporation	)	RECOMMENDED
for Arbitration of Interconnection with BellSouth	)	ARBITRATION
Telecommunications, Inc.	)	ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, September 30, 1996, Tuesday, October 1, 1996, through Thursday, October 3, 1996, and Monday, October 7, 1996, through Wednesday, October 9, 1996

BEFORE: Commissioner Jo Anne Sanford, Presiding; and Commissioners Allyson K. Duncan and Ralph A. Hunt

APPEARANCES:

For MCI Telecommunications Corporation:

Ralph McDonald, Bailey & Dixon, LLP, Post Office Box 1351, Raleigh, North Carolina 27602-1351

Marsha Ward, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342

For BellSouth Telecommunications, Inc.:

A.S. Povall, Jr., General Counsel; Leon H. Lee, Jr., General Attorney; William J. Ellenberg, Jr., General Attorney; and R. Douglas Lackey, Associate General Counsel, BellSouth Telecommunications, Inc., 300 South Brevard Street, Room 1521, Charlotte, North Carolina 28202

For the Attorney General:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For: The Using and Consuming Public

BY THE COMMISSION: This arbitration proceeding is pending before the North Carolina Utilities Commission pursuant to Section 252(b) of the Telecommunications Act of 1996 (TA96 or the Act) and G.S. 62-110(f1) of the North Carolina General Statutes. This proceeding was initiated by a petition filed by MCI Telecommunications Corporation (MCI) on August 23, 1996, in Docket No. P-141, Sub 29. The petition requested that the Commission arbitrate certain terms and conditions with respect to interconnection between MCI, as the petitioning party, and BellSouth Telecommunications, Inc. (BellSouth).

By Order entered in Docket Nos. P-140, Sub 50 and P-100, Sub 133, on August 19, 1996, the Commission adopted certain procedures governing arbitration proceedings, excluded intervenors other than the Attorney General from participating in arbitration proceedings and scheduled the AT&T/BellSouth arbitration proceeding for hearing beginning Monday, September 30, 1996, at 1:30 p.m. in Commission Hearing Room 2115. By Order of August 28, 1996, the Commission consolidated the AT&T/BellSouth arbitration in Docket No. P-140, Sub 50, with the MCI/BellSouth arbitration proceeding in Docket No. P-141, Sub 29. Numerous other motions and pleadings have been filed in the consolidated dockets and various Orders have been issued by the Commission addressing those motions and pleadings. All of those motions, pleadings and Commission Orders are a matter of public record and are contained in the official files maintained by the Chief Clerk of the Commission.

The purpose of this arbitration proceeding is for the Commission to resolve the issues set forth in the petition and responses. 47 U.S.C.A. Section 252(b)(4)(C). Under the Act, the Commission shall ensure that its arbitration decision meets the requirements of Section 251 and any valid Federal Communications Commission (FCC) regulations pursuant to Section 252, shall establish rates according to the provisions in 47 U.S.C.A. Section 252(d) for interconnection, services, or network elements, and shall provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 U.S.C.A. Section 252(c).

Pursuant to Section 252 of TA96, the FCC issued a First Report and Order in CC Docket Nos. 96-98 and 95-185 on August 8, 1996 (the Interconnection Order). The Interconnection Order adopted a forward-looking incremental costing methodology for pricing unbundled telephone network elements which an incumbent local exchange company (ILEC) must sell new entrants,

adopted certain pricing methodologies for calculating wholesale rates on resold telephone service, and provided proxy rates for State Commissions that did not have appropriate costing studies for unbundled elements or wholesale service. Several parties, including this Commission, appealed from the Interconnection Order and on October 15, 1996, the Eighth Federal Circuit Court of Appeals issued a stay of the FCC's pricing provisions and its "pick and choose" rule pending outcome of the appeals.

At the evidentiary hearings, which began as scheduled on September 30, 1996, MCI offered the testimony of Ronald Martinez, an employee in MCI's Carrier Relations Department; Sarah J. Goodfriend, Executive Staff Member in Regulatory and Public Policy Analysis Section; Jerry W. Murphy, Director of Technical Planning and Development; Don Price, Senior Regional Manager-Competition Policy; and Don J. Wood, consultant. BellSouth offered the testimony of Alphonso J. Varner, Senior Director-Regulatory Policy and Planning; Robert C. Scheye, Senior Director-Strategic Management; Keith Milner, Director-Strategic Management; William Victor Atherton, Jr., Manager-Infrastructure Planning; Anthony V. Pecoraro, a telecommunications consultant; Richard D. Emmerson, an economist; Gloria Calhoun, Manager-Strategic Management Unit; D. Daonne Caldwell, Manager-Finance Department; and Walter S. Reid, Senior Director-Finance Department.

Based upon a careful consideration of the entire record in this arbitration proceeding, the Commission now makes the following

FINDINGS OF FACT

1. BellSouth is obligated to offer for resale at wholesale rates any telecommunications services that it provides at retail to subscribers who are not telecommunications carriers with certain exceptions set out in the Evidence and Conclusions for Finding of Fact No. 1.

2. Use and user restrictions currently in BellSouth's tariffs will carry forward into resold services with the exception of such prohibitions and restrictions as have been or will be specifically prohibited.

3. The Commission declines to enact specific performance standards and instructs the parties to negotiate mutually agreeable terms.

4. BellSouth must diligently pursue the development of real-time and interactive access via electronic interfaces for unbundled network elements as requested by MCI to perform pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. The electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards.

5. BellSouth does not have to provide customized routing to MCI's operators, directory assistance operators, or repair centers using the same dialing patterns currently employed by BellSouth, until customized routing becomes technically feasible. Customized routing is not technically feasible at this time.

6. BellSouth does not have to brand services sold or information provided on behalf of MCI.

7. The issue of what billing system and what format should be used to render bills to MCI for services purchased from BellSouth is no longer in need of arbitration. BellSouth has agreed that within 180 days from the effective date of its interconnection agreement with MCI, it will have modified its Customer Record Information System (CRIS) billing system to allow it to bill for resold services in a Carrier Access Billing System (CABS) billing format requested by MCI.

8. Neither the Act nor the FCC's interconnection rules require BellSouth to include the name/logo of MCI on its directory covers.

9. The issue of whether BellSouth must provide MCI with access to BellSouth's directory assistance databases has been resolved between MCI and BellSouth.

10. BellSouth must give advance notice to MCI of any changes in the network or services either 30 days before such changes or at the time of internal notification, whichever is earlier.

11. BellSouth should be allowed to handle Presubscribed Interexchange Carrier (PIC) changes from resold lines through BellSouth's mechanized Customer Account Record Exchange (CARE) interface. BellSouth should continue analyzing the feasibility of a separate electronic process that would notify a competing local provider (CLP) that a PIC change has occurred on a resold line.

12. BellSouth must file with the Commission all interconnection agreements with CLPs to which it is a party within 30 days after the conclusion of negotiations or within 30 days after the date of this Order, as applicable. BellSouth must file all interconnection agreements with Class A carriers on or before June 30, 1997. All such agreements shall be available for public inspection when filed.

13. BellSouth must provide the following network elements identified and required by the FCC to be provided on an unbundled basis:

- Local Loop,
- Network Interface Device (NID) (connection to be established through an adjoining NID deployed by the requesting carrier, i.e., NID to NID),
- Switching Capability (local switching capability and tandem switching capability including vertical services),
- Interoffice Transmission Facilities (dedicated to a particular customer or carrier, or shared by more than one customer or carrier),
- Signaling Networks and Call-Related Databases (including signaling links, signaling transfer points, and access to Advanced Intelligent Network databases through signaling transfer points), and
- Operator Services and Directory Assistance.

The Commission declines to enact a specific unbundling requirement for the disaggregation of the local loop into three unbundled subelements: Loop Distribution, Loop Concentrator/Multiplexer, and Loop Feeder. Therefore, at this time, BellSouth is not required to unbundle the local loop.

Further, BellSouth is not required to allow interconnection of MCI's call-related databases to BellSouth's signaling system until a mediated access mechanism such as the Open Network Access Point (ONAP), has been developed on an industry-wide basis. A mediated access mechanism needs to be promptly addressed and should be developed through BellSouth's participation in an industry-wide forum.

14. MCI should be allowed to combine unbundled network elements in any manner it chooses. When local switching is purchased as an unbundled network element, vertical services should be included in the price of that element at no additional charge, but when vertical services are obtained through resale, the discounted resale rate should apply. BellSouth should submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements, if any, which constitute resold services for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This information should be filed within 30 days of the date of this Order.

15. BellSouth must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits to MCI on terms and conditions equal to that which it provides itself. BellSouth cannot reserve any spare capacity unless needed for reasons of safety, reliability, and generally applicable engineering purposes. MCI will only be granted the capacity it needs and cannot warehouse BellSouth's capacity to the detriment of BellSouth or any other CLP.

16. BellSouth must make available to MCI all four (4) methods of interim number portability, until such time as a permanent number portability method is available.

17. The implementation and the responsibility for the cost of long-term number portability are issues that are best resolved by the industry at large.

18. There is insufficient evidence to find and conclude that dark fiber is a network element; therefore, BellSouth is not required to make available dark fiber to MCI.

19. Section III. E(2) of the Interim Agreement between MCI and BellSouth resolves any interconnection issue regarding two-way trunking.

20. BellSouth must provide MCI with copies of BellSouth's records regarding rights-of-way, provided that MCI has a bona fide engineering need for such information and agrees to protect the confidentiality of such information by entering into a confidentiality agreement with BellSouth.

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

22. Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 21, the wholesale discount rates which are appropriate for BellSouth are 21.5% for residential services and 17.6% for business services.

23. The establishment of interim rates, based on consideration of the FCC's proxies, for unbundled network elements is a reasonable and appropriate course of action for the Commission to follow at this time, pending resolution of the appeal of the FCC Interconnection Order and pending establishment of final rates by this Commission. To ensure that no carrier is disadvantaged by the interim rates, those rates should be subject to true-up provisions, at such time as the Commission establishes final rates based on appropriate cost studies. The arbitrating parties shall meet and jointly develop the necessary mechanisms and otherwise establish and implement the appropriate administrative arrangements as will be needed in order to accomplish the aforesaid true-up.

24. The Commission declines to address the appropriate cost-recovery mechanism to be used to reimburse BellSouth for remote call forwarding to provide interim number portability, as this matter has been resolved in MCI's prior interconnection agreement with BellSouth.

25. The Commission declines to address the issue raised by BellSouth as to what intrastate access charges, if any, should be collected from carriers who purchase BellSouth's unbundled local switching element and for how long, as this matter is not an issue for arbitration in this proceeding.

26. The appropriate price for call transport and termination is not an issue in this proceeding.

27. There is no issue in this proceeding as to whether "bill and keep" is an appropriate alternative to the terminating carrier charging total service long-run incremental cost (TSLRIC).

28. The establishment of interim rates for certain interconnection support elements based on the methodology set forth herein, including true-up provisions, is reasonable and appropriate for purposes of this proceeding.

29. The pricing of local and long distance access at cost is not an issue subject to arbitration in this proceeding.

30. The pricing issues addressed by MCI regarding the issue of what rates apply to collect and third party intraLATA calls have been addressed and resolved in the pricing issues discussed elsewhere in this Order.

31. The general contractual terms and conditions, other than those outlined elsewhere in this Order, should be negotiated between BellSouth and MCI.

32. The development of a cost-recovery mechanism for dialing parity is beyond the scope of this proceeding.

33. The cost of conversion from existing virtual collocation to physical collocation should be borne by MCI.

34. The arbitration procedures adopted by Commission Orders issued August 19, 1996, in Docket Nos. P-100, Sub 133, and P-140, Sub 50, and October 31, 1996, in Docket No. P-141, Sub 29, set forth the implementation process to be followed to comply with this Recommended Arbitration Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Issue: What services provided by BellSouth, if any, should be excluded from resale?

POSITIONS OF PARTIES

MCI: The Act and FCC Competition Rules require BellSouth to offer all retail telecommunications services including obsolete/grandfathered services, trials and promotions, contract service arrangements, volume and term discounts, and Lifeline and LinkUp services for resale. Each of these is a telecommunications service offered to subscribers on a retail basis. There is no basis under the Act or FCC Competition Rules for BellSouth to refuse to offer any of these services for resale. BellSouth is permitted, however, to base the wholesale price for resold short-term promotions on the ordinary retail rate rather than the promotional rate.

BELLSOUTH: BellSouth will offer all of its telecommunications services available at retail to subscribers who are not telecommunications carriers, except for grandfathered or obsolete services, Lifeline or LinkUp services, contract service arrangements (CSAs), and promotions. BellSouth's independent pay phone provider access line services are available for resale by MCI. Resolution of 911 and E911 services was achieved in the interim agreement.

ATTORNEY GENERAL: N11 is clearly not a retail service. The resale of grandfathered or obsolete services, Lifeline or LinkUp, 911 and E911 should be permitted, but only to the subset of subscribers who are retail customers currently of such services. Contract service arrangements should not be resold for the time being, but if it can be shown that contract services are being used to defeat competition, then the Commission should reconsider.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Varner and Scheye.

Section 251(c)(4) of TA96 requires the incumbent local exchange company (ILEC) to offer for resale at wholesale rates any telecommunications services that it offers at retail to subscribers who are not telecommunications carriers. ILECs are also forbidden to prohibit or to impose unreasonable or discriminatory conditions or limits on resale. State Commissions are authorized, however, to prohibit cross-class resale.

Rule 51.613(a) of the FCC Interconnection Order explicitly authorizes prohibition of cross-class resale and addresses an aspect of short-term promotions. Subparagraph (b) of Rule 51.613 allows the ILEC to impose restrictions not permitted under Rule 51.613(a) if it can prove to the State Commission that the proposed restriction is reasonable and nondiscriminatory.

The FCC Interconnection Order clearly disfavors restrictions on resale. Resale restrictions are deemed to be presumptively unreasonable. ILECs can rebut this presumption only if the restrictions are narrowly tailored. FCC Interconnection Order, Paragraph 939.

CONCLUSIONS

The Commission concludes that BellSouth should not be allowed to prohibit or restrict resale except as set out below:

1. Cross-class resale. There is a specific provision in TA96, Section 251(c)(4), noted above, that allows a State Commission, consistent with FCC rules, to prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail to a specific category of subscribers from offering such service to a different category of subscribers. The most often cited example is resale of residential service to business customers. The Commission will not allow such cross-class resale.

2. Grandfathered or obsolete services. The Commission finds these to be retail telecommunications subject to resale, but only as to existing customers of such service. See Paragraph 968 of the FCC Interconnection Order.

3. Lifeline or LinkUp. The Commission finds these to be retail telecommunications services subject to resale, but only as to eligible subscribers. (See FCC Interconnection Order, Paragraph 962.)

4. CSAs. The Commission finds these to be retail telecommunications service subject to resale. See FCC Interconnection Order, Paragraph 948, where the FCC concluded that there was no basis for creating a general exemption from the resale requirement.

5. Promotions. The Commission finds these to be retail telecommunications services subject to resale if the promotion is over 90 days. If the promotion is under 90 days, then the Commission concludes that it is reasonable to consider it not subject to resale. See FCC Interconnection Order, Paragraph 949ff. However, the ILEC should not utilize promotions in such a way as to evade its wholesale rate obligation, as for example with sequential less-than-90-day promotions.

6. N11. The Commission finds this not subject to resale since it is not a retail service offering pursuant to Commission Order. If, however, it should become a retail service offering, it will be subject to resale.

7. Other. Concerning the provision of pay phone lines by ILECs, the Commission observes that the FCC Interconnection Order, Paragraph 876, has provided that "the services independent

public pay phone providers obtain from incumbent LECs are telecommunications services that incumbent LECs provide 'at retail to subscribers who are not telecommunications carriers' and that such services should be available to telecommunications carriers". Moreover, the FCC further concluded that, because independent pay phone providers are not "telecommunications carriers," ILECs need not make available service to independent public pay phone providers at wholesale rates." The FCC continued, saying that this was "consistent with our finding that wholesale offerings must be purchased for the purpose of resale by "telecommunications carriers." In essence, Paragraph 876 means that telecommunications carriers would be eligible for a discounted wholesale pay phone rate but independent pay phone providers would not. Moreover, the purchase of a discounted wholesale pay phone line by a telecommunications carrier would only be allowed if the telecommunications carrier turned around and resold it to someone else. In other words, the telecommunications carrier could not buy the discounted line to provide service to its own payphones.

Lastly, the Commission observes that the ILEC's own public pay phone service is not subject to resale because it is not per se a retail service, since no end users presubscribe to it.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: What terms and conditions, including use and user restrictions, if any, should be applied to the resale of BellSouth services?

POSITIONS OF PARTIES

MCI: Restrictions on resale are prohibited. BellSouth should be ordered to impose no use, user or other restrictions that restrict or limit the resale of any of its services.

BELLSOUTH: For any service not otherwise exempted from resale, any terms and conditions contained in the retail tariff shall apply. The Act does not require BellSouth to enhance or alter its retail offerings for the purposes of resale.

ATTORNEY GENERAL: The statutory language strongly suggests that current tariffed restrictions on individual services should apply to their resale. Probably the most important of those restrictions are those which limit certain services and rates to either residential or business customers of the ILEC.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Varner and Scheye.

There are two major considerations concerning this issue. First, any use and user restrictions in the ILEC tariffs that do not apply to the reseller would be discriminatory vis-a-vis the ILEC. While this can be remedied by modifying the ILEC tariff, there are also practical considerations. There are a myriad of ILEC services potentially subject to resale. It is impossible at this time to know comprehensively the use and user restrictions that are in each and every one of them. Many of these

restrictions may in fact be reasonable. Rather than eliminate the restrictions in a summary and unexamined fashion, it would be better to require a CLP that believes itself aggrieved by a specific use and user restriction first to approach the ILEC with its concerns and, if they are not allayed, to approach the Commission for resolution of the conflict. The CLP should prevail if it can be shown that the restriction is unreasonable or discriminatory. Furthermore, there is nothing to prevent an ILEC from moving forward to delete such tariff restrictions that it believes to be unreasonable and violative of the FCC Interconnection Order. ILECs should be encouraged to do so.

CONCLUSIONS

The Commission concludes that the use and user restrictions which are currently in ILEC tariffs should carry forward into resold services, with the exception of such prohibitions or restrictions which have themselves been specifically prohibited. For example, an ILEC may not enforce and should delete outright prohibitions on resale from applicable tariffs but may maintain restrictions on cross-class resale.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth for resale and for network elements provided to MCI by BellSouth?

POSITIONS OF PARTIES

MCI: The Act and FCC Interconnection Rules require that, to the extent technically feasible, the quality of unbundled network elements, as well as the quality of access to such unbundled elements, provided to MCI must be at least equal in quality to that which BellSouth provides to itself. Similar quality of service obligations should be imposed on BellSouth with respect to the provision of resold services. BellSouth should be ordered to adhere to performance metrics, installation intervals, repair intervals, and other standards that are equal to the higher of the standards that BellSouth is required to provide, or actually provides, to its own customers or to customers of any other carrier.

BELLSOUTH: BellSouth will provide the same quality for services provided to MCI and other CLPs that it provides to its own customers for comparable services. The current Commission rules for service quality and monitoring procedures should be used to address any concerns. BellSouth in its testimony suggested with respect to AT&T that the parties negotiate "mutually agreeable specific quality standards" and develop "mutually agreeable incentives for maintaining compliance" with the quality measurements within 180 days after the approval of the agreement.

ATTORNEY GENERAL: The same level of quality must exist between BellSouth and new entrants. Both the Act and the FCC Interconnection Order define service quality from the point of view of the end users. The parties should be instructed to negotiate reasonable service standards and report back by March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Goodfriend and Martinez and by BellSouth witnesses Scheye and Varner.

The Commission believes that it is neither appropriate nor practical for it to become involved, at least at this stage, in the minutiae of performance standards. These are quintessentially matters for negotiation between the parties concerned, who possess superior knowledge about the processes involved. It would be premature for the Commission to impose either a "one size fits all" approach, or an approach which would lead to different sets of performance standards applicable to each ILEC with respect to each CLP. This may be an area where the experience that the companies have had in interexchange services will lead to industry-wide consensus on appropriate standards, with minor variations perhaps to accommodate specific concerns and expectations.

BellSouth has indicated a willingness to negotiate performance standard terms, which may include "incentives." The Commission believes that parties negotiating in good faith can resolve this question without further need of Commission intervention.

CONCLUSIONS

The Commission concludes that it should decline to enact specific performance standards and instead instruct the parties to negotiate mutually agreeable terms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Should BellSouth be required to provide real-time and interactive access via electronic interfaces for unbundled network elements as requested by MCI to perform the following:

- **Pre-ordering,**
- **Ordering,**
- **Provisioning,**
- **Maintenance/repair, and**
- **Billing?**

POSITIONS OF PARTIES

MCI: BellSouth must provide real-time electronic interfaces to MCI as quickly as possible, but in any event by January 1, 1997, as required by the FCC Interconnection Order. Such interfaces are necessary to permit MCI to offer customer service at least equal in quality to what BellSouth provides to its customers. The FCC defines "operations support system functions" as an unbundled network element which must be made available "as expeditiously as possible, but, in any event no later than January 1, 1997." 47 C.F.R. Section 51.319(e).

BELLSOUTH: BellSouth has prepared for the entry of competitors into the local exchange marketplace by making available a number of electronic interfaces. It is continuing to enhance those

interfaces currently available as well as create new ones. Further, AT&T and MCI have been intimately involved, as partners, with some of this development. The development of additional electronic interfaces is complex, costly, and time consuming and should be developed based on a clear understanding of the need, specifications, and cost-recovery mechanisms to be used.

ATTORNEY GENERAL: The FCC Interconnection Order provides that nondiscriminatory access to operations support systems functions is technically feasible and must be provided no later than January 1, 1997. Thus, a real-time electronic interface between BellSouth and its competitors must be available to competitors in a matter of weeks. The Commission should require that a firm plan to implement automated interfaces with commitments to deadlines which are mutually satisfactory must be in place by March 31, 1997, with the interfaces developed and in place promptly thereafter. If the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Martinez and BellSouth witnesses Varner and Calhoun.

The FCC Interconnection Order requires BellSouth to provide nondiscriminatory access to operational support systems, and any relevant internal gateway access, in the same time and manner in which BellSouth provides such functions to itself. The parties were unable to agree on the types of interfaces for particular unbundled network elements. BellSouth is presently working to enhance its currently available interfaces and pursuing the development of new ones. BellSouth plans to provide Electronic Data Interchange (EDI) on an interim basis for unbundled network elements. Under EDI, there is a manual element whereby BellSouth technicians will take data transmitted electronically by MCI and use it to manually input orders to BellSouth's service order system. MCI argues that such manual processing, as proposed by BellSouth, is inherently inferior to electronic interfaces. For example, in the case of trouble reporting, the lack of real-time, interactive electronic interface will adversely affect the timeliness of making necessary repairs. Such electronic bonding is required to prevent the ILEC from having an unfair competitive advantage by controlling databases and information. The requested electronic interfaces will indeed have to be provided and they should preferably be uniform, industry-developed interfaces. MCI requested that the electronic interfaces be made available as expeditiously as possible, but, in any event no later than January 1, 1997.

CONCLUSIONS

The Commission encourages BellSouth to diligently pursue the development of real-time and interactive access via electronic interfaces for unbundled network elements, specifically the operations support systems consisting of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions supported by BellSouth's databases and information. The requested electronic interfaces are required and they should be provided promptly. All parties should work together to accomplish such electronic bonding through the development of uniform, industry-wide standards.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Must BellSouth route calls for operator services and directory assistance (OS/DA) services to MCI's platform?

POSITIONS OF PARTIES

MCI: MCI believes the FCC's rules require BellSouth to unbundle "any technically feasible customized routing functions" provided by a local switch. 47 C.F.R. Section 51.319(c)(1)(i)(C)(2). BellSouth's definition of technical feasibility does not comport with the FCC's definition. Line Class Codes (LCCs) are only one of the available methods to implement customized routing. BellAtlantic-Pennsylvania has agreed to implement customized routing by June 30,1997, using Advanced Intelligent Network (AIN) capability. BellSouth could use LCCs for an interim period while it is developing AIN for this purpose. Parity could be achieved by requiring all customers -- BellSouth's and MCI's -- to dial a 7-digit or 1-800 number for repair calls.

BELLSOUTH: BellSouth believes that customized routing is not required under the Act for the provision of BellSouth retail services to MCI for resale purposes. The Act requires BellSouth to make its retail services available to MCI as those services are offered to BellSouth's end users. As for customized routing through unbundling, BellSouth has thoroughly investigated the technical issues and found such routing not to be technically feasible. Further, MCI has the ability to route calls by simply using a different set of access codes; e.g., MCI already uses 00 to reach its operator. The use of LCCs is not technically feasible, because its switches lack sufficient capacity.

ATTORNEY GENERAL: Fairness to the parties, especially the end user, requires customized routing. The parties should be ordered to report to the Commission by March 31, 1997, what form the long-term technical solution will be, a schedule for implementation of the long-term solution, and an explanation of the interim solution to direct routing requests. If the arbitrating parties are unable to agree on the technical solution and scheduling, the Commission should order compliance.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Goodfriend, Murphy and Price and BellSouth witnesses Varner, Scheye, Milner, and Pecoraro.

As for customized routing for the provision of BellSouth retail services to MCI for *resale* purposes, we agree with BellSouth that customized routing is not required under the Act. In the case of unbundled network elements, customized routing is desirable; however, it is uncertain whether customized routing is technically feasible with Line Class Codes. As was demonstrated by the witnesses for both parties, Line Class Codes are a finite resource in central offices, and a sufficient number of available Line Class Codes to accommodate the number of competing local providers who have applied for certificates of public convenience and necessity does not exist. MCI has suggested several alternative means by which selective routing could be provided, in addition to the use of LCCs and AIN solutions. On this latter point, even though MCI supplied evidence regarding the proposal of two other local exchange companies, the specifics of how the solution would work were not

offered by MCI. BellSouth's evidence was that it does not currently have an AIN capability that would accommodate MCI's request.

After reviewing the testimony of both BellSouth and MCI, we conclude that the provision of selective routing is neither technically feasible nor can it be achieved on a reasonable and nondiscriminatory basis at this time. Instead of seizing on an interim approach, we believe it is better to seek an industry-wide, long-term solution.

CONCLUSIONS

The Commission declines to require customized routing at this time. The Commission encourages all parties to work to develop a long-term, industry-wide solution to technical problems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: Must BellSouth brand services sold or information provided to customers on behalf of MCI?

POSITIONS OF PARTIES

MCI: BellSouth should be ordered to brand, as MCI, any operator services, directory assistance services, and any other like services provided to end users who use BellSouth local exchange services that are being resold by MCI. Such branding is required by the Act and FCC rules unless BellSouth proves a particular restriction is reasonable and nondiscriminatory. Customized routing for OS/DA is technically feasible. Otherwise, BellSouth should unbrand until branding can be made available. BellSouth should also be required to provide branding in all situations where BellSouth employees or agents interact with MCI customers with respect to the provision of resold BellSouth services or unbundled network elements on behalf of MCI. BellSouth should be required to use MCI-provided "leave behind" cards and other written materials.

BELLSOUTH: Using the identical dialing digits is not feasible nor is it appropriate for a resale offering. The selective routing of calls to MCI's platform would be such an enhancement or alteration to BellSouth's resold services. BellSouth has agreed that its service technicians will represent themselves as employees of BellSouth providing services on behalf of the CLP. BellSouth employees have or will have received training to conduct themselves appropriately while interfacing with the CLP's customers. If the customer is not on the premises, BellSouth will leave a generic "no access" card with the appropriate CLP name filled in.

ATTORNEY GENERAL: The insistence on branding of services has the potential to confuse the using and consuming public. OS/DA should not be branded by any arbitrating party until customized routing is in place and working. BellSouth repairmen should be required to indicate either verbally or with written notices or both that they are performing work on behalf of the CLP.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Varner, Scheye, and Calhoun.

The FCC has ruled that failure to comply with reseller unbranding or rebranding requests where OS/DA is part of a service offered for resale constitutes a restriction on resale which may be imposed only if the ILEC proves to the State Commission that it is reasonable and nondiscriminatory, such as that the ILEC lacks the capability to comply with the request. 47 C.F.R. Section 51.613(c)(1). Until customized routing is implemented, however, BellSouth lacks the capability to rebrand OS/DA. In the meantime, the Commission believes that providing operator services with the BellSouth name is neither unreasonable nor discriminatory. We agree that unbranding would discriminate against BellSouth, because BellSouth could never brand its operator services, even to its own customers, while MCI could brand its operator services when its customers use unique dialing patterns to reach MCI operators. Furthermore, we recognize the administrative burden on BellSouth of managing an array of branded customer information provided by MCI and other CLPs and the potential for error in performing this function. Therefore, we believe it is reasonable and nondiscriminatory for BellSouth employees providing either resold services or unbundled elements to make premises visits without providing MCI branded information but using generic "leave behind" cards.

CONCLUSIONS

The Commission concludes that BellSouth should not be required to unbrand services provided to its customers but should be required to rebrand resold OS/DA when customized routing is implemented. Furthermore, BellSouth should not be required to unbrand or rebrand its uniforms or vehicles nor should BellSouth employees be required to use branded materials provided by MCI but should be allowed to use generic "leave behind" cards. The Commission expects BellSouth to train its employees to conduct themselves appropriately when providing services on behalf of MCI. Problems and complaints will be addressed by the Commission on a case-by-case basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Issue: What billing system and what format should be used to render bills to MCI for services purchased from BellSouth?

POSITIONS OF PARTIES

MCI: MCI has requested BellSouth to provide billing for resold services in a Carrier Access Billing System (CABS) format to facilitate standard industry auditing practices. BellSouth has agreed to provide billing in the requested format for access-like services, but will only agree to provide billing from the Customer Record Information System (CRIS) for other resold services. The use of the CRIS billing is unacceptable, because it does not involve a standardized billing format and makes the bills virtually non-auditable.

BELLSOUTH: The Act does not define the requirements for billing between the incumbent and the CLP. BellSouth will use its present billing systems to assure the issuance of accurate and timely bills. BellSouth has a quality assurance process available for unbundled elements and has agreed to develop a similar process for resale.

ATTORNEY GENERAL: The dispute over bill formats begs for national standards which the evidence at the hearing indicated were being developed. All parties should participate in good faith in establishing national standards and report to the Commission by March 31, 1997, on the progress of establishing these standards.

DISCUSSION

In the Joint Negotiations Report filed December 13, 1996, by BellSouth and MCI, the Commission was advised that this issue has been resolved to the mutual satisfaction of the parties and should be removed from the arbitration. BellSouth has agreed that within 180 days from the effective date of its interconnection agreement with MCI, it will have modified its CRIS billing system to allow it to bill for resold services in a CABS billing format.

CONCLUSIONS

As indicated above, this issue has been mutually resolved and is no longer in need of arbitration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: Should BellSouth be required to allow MCI to have an appearance (e.g., name, logo) on the cover of its white and yellow page directories?

POSITIONS OF PARTIES

MCI: MCI is entitled to have an appearance on the cover of BellSouth directories.

BELLSOUTH: The resolution of this issue is between BellSouth Advertising and Publishing Corporation (BAPCO) and MCI and is not an issue for arbitration.

ATTORNEY GENERAL: BAPCO has signed two-year contracts with several major new local telephone providers for BAPCO to provide paper directory service including white page listings, yellow page listings, customer guide pages, and informational pages to the CLP. These contracts do not provide for the printing of the CLP's logo on the cover. The cover should have some indication that the directory includes listings for all local service providers. The Attorney General requests the issue be deferred until reconsideration of the issue upon petition after August 1, 1997, and strongly encourages the parties to negotiate this matter before the deadline so that the arbitration will not be necessary.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witness Scheye.

The Commission agrees with MCI that this matter is properly subject to arbitration because BAPCO is a wholly-owned subsidiary of BellSouth. The Commission, however, finds nothing in the Act or the FCC's interconnection rules which requires an ILEC to include the logo of a CLP on a directory cover. The logo is not a part of any resold service. That is to say, local service presently sold at retail includes a listing in the directory but not a logo on the front cover.

CONCLUSIONS

The Commission concludes that neither the Act nor the FCC's interconnection rules require BellSouth to include the name/logo of MCI on a directory cover. MCI is free to enter into a contract for any services it needs with BAPCO.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: Must BellSouth provide MCI access to BellSouth's directory assistance databases?

POSITIONS OF PARTIES

MCI: MCI did not address this issue.

BELLSOUTH: BellSouth has proposed that CLPs add, delete, or modify directory listings in the DA database through the most efficient process available presently, the service order process.

ATTORNEY GENERAL: If the parties cannot assure each other of their mutual goodwill in answering directory queries and cannot cooperate in good faith, then the intermediary step for access to the directory database should be imposed on all local exchange telephone companies, both the incumbent and the new entrants, to insure that the privacy of end users is protected.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witnesses Varner and Calhoun. MCI did not address the issue.

BellSouth currently offers three services which would be offered to all CLPs under the same terms as any other resold service:

1) Directory Assistance (DA) Access Service which is currently provided to IXCs,
2) Direct Access Directory Assistance Service (DADAS) provides direct on-line access to BellSouth's directory assistance database, and

3) Direct Access Database Service (DADS) which provides a copy of the BellSouth DA database.

CONCLUSIONS

The Commission considers this issue to have been resolved between MCI and BellSouth. The Commission has adopted BellSouth's position to allow access to directory assistance databases through Directory Assistance Access Service, Direct Access Directory Assistance Service and Direct Access Database Service in the AT&T/BellSouth arbitration proceeding, Docket No. P-140, Sub 50.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Issue: Should BellSouth be required to provide advance notice to its wholesale customers of service and network changes?

POSITIONS OF PARTIES

MCI: Notice is required under the Act in such a way so as to allow MCI to compete on an equal basis. Inadequate notice will greatly advantage BellSouth at the expense of MCI.

BELLSOUTH: BellSouth will provide notice of new services, price changes, etc. when the tariffs are filed with the North Carolina Utilities Commission.

ATTORNEY GENERAL: If BellSouth intends to make a network change which will affect a new entrants' ability to deliver resold service to its end users; BellSouth should provide notice well in advance of the change and certainly in advance of the very short tariff or price list notice filing required by BellSouth's price cap plan. If, however, the matter is a new service which the new entrant will want to resell, then reasonable notice does not need to be nearly so lengthy.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witnesses Varner and Scheye. Further evidence is found in MCI's "MCImetro/ILEC Interconnection Agreement, 1996" (Exhibit RM-1).

The Act requires in Section 251(c)(5) that reasonable notice be given for changes in the network; however, this probably does not cover changes to services, tariffs, etc. The FCC Interconnection Order does not specifically address this issue. Therefore, the issue focuses on parity. Under the Act, an ILEC must provide parity which can be defined as "a new entrant's capability to provide its customers the same experience as BellSouth provides its own customers". In effect, the ILEC must be considered separately in its roles of wholesaler and retailer and prevented from giving its retail operation any preferable treatment.

CONCLUSIONS

The Commission concludes that BellSouth should be required to give advance notice of any changes in the network or services either 30 days before such changes or at the time of internal notification, whichever is earlier.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Issue: How should BellSouth treat a PIC change request received from an Interexchange Carrier (IXC) (other than the CLP) for a CLP's local customer?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

BELLSOUTH: The local service to be resold includes the capability for IXCs to change the carrier PIC via BellSouth's mechanized CARE interface. There is no justification for treating PIC changes from resold lines differently from PIC changes as currently processed.

ATTORNEY GENERAL: BellSouth should be required to notify a new entrant of the request for a PIC change a reasonable time before BellSouth makes the change. This will give the new entrant time to check and verify the change with its end user if it so desires and hopefully may avert some of the slamming. Section 258 of TA96 appears consistent with this suggestion in that it provides that ". . . no telecommunications carrier shall submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the [FCC] shall prescribe."

DISCUSSION

Testimony regarding this issue was presented by BellSouth witness Scheye.

BellSouth believes that the local service offered by the Company for resale includes the capability for IXCs, with proper end user authorization, to change the PIC on the resold line via the industry's mechanized interface, known as CARE. Further, BellSouth believes that the continued use of the mechanized CARE process is the appropriate vehicle for processing PIC changes in a local resale environment. However, to accommodate MCI's concerns about maintaining current information about its end users' accounts, including PIC information, BellSouth is analyzing the feasibility of a separate electronic process that would notify a CLP that a PIC change has occurred on a resold line.

CONCLUSIONS

The Commission accepts BellSouth's position that it should be allowed to handle PIC changes from resold lines through BellSouth's mechanized CARE interface. Further, the Commission

encourages BellSouth to continue analyzing the feasibility of a separate electronic process that would notify a CLP that a PIC change has occurred on a resold line.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: Must BellSouth produce all interconnection agreements to which BellSouth is a party, including those with other ILECs, executed prior to the effective date of the Act?

POSITIONS OF PARTIES

MCI: Provision of copies of all interconnection agreements is required by Section 252(a)(1) of the Act, the North Carolina Public Records Law (G.S. 132-1 et seq.), and the Commission's Order of August 7, 1996, in Docket No. P-100, Sub 133.

BELLSOUTH: All interconnection agreements negotiated pursuant to the Act will be made available within 15 days of the filing of the agreement with the Commission. The Act does not require BellSouth to make available any agreements negotiated prior to the passage of the Act. Sections 251 and 252 of TA96 apply only to agreements resulting from requests for interconnection under the Act. BellSouth will make available all agreements with Class A carriers on or before June 30, 1997, as prescribed by the FCC Interconnection Order. The Commission should set a date for providing agreements with other carriers at a later time.

ATTORNEY GENERAL: Both sides have distorted the intent of the Act. Section 252(a)(1) clearly requires that interconnection agreements negotiated prior to the date of enactment be submitted to State Commissions. On the other hand, the legislative history of Section 252 speaks only of interconnection agreements between competing local service providers and not interconnection agreements between peer ILECs. BellSouth must file all interconnection agreements with CLPs but need not at this point file interconnection agreements with peer ILECs.

DISCUSSION

This is essentially a legal issue. Under the plain language of the Act, agreements for interconnection, services or network elements that were negotiated prior to the passage of the Act must be submitted to State Commissions for approval. 47 U.S.C.A. Section 252(a)(1). Arguments that this requirement applies only to agreements negotiated pursuant to Section 251 of the Act have not been found persuasive by the FCC. Interconnection Order, Paragraphs 165-169. The Commission agrees with the FCC that there are no exceptions. The FCC has left the procedures for filing of preexisting agreements largely to the states but has established June 30, 1997, as the outer time limit for such agreements between Class A carriers. 47 C.F.R. Section 303(b).

Although Section 252(h) of the Act provides that interconnection agreements become available for public inspection and copying 10 days after they are approved by a State Commission, the Act is silent on the availability of agreements for inspection prior to approval. The Act does, however, require that any interconnection, service, or network element provided under an agreement approved under Section 252 be made available to any other requesting telecommunications carrier

upon the same terms and conditions. 47 U.S.C.A. Section 252(i). Moreover, we note that in our Order of June 18, 1996, in Docket No. P-100, Sub 133, we allowed interim operation under interconnection agreements filed as public records pending Commission action, and, in our Order of August 7, 1996, in the same docket, we affirmed our earlier decision that a paging interconnection agreement with an ILEC filed prior to the Act should be made available for inspection under the Public Records Law, G.S. 132-1. Finally, we note that our Rule R17-4(d) requires that all negotiated interconnection agreements "be filed for approval as soon as practicable but in no event later than 30 days from the date of conclusion of negotiations."

CONCLUSIONS

The Commission will require BellSouth to file all agreements for interconnection, services, or network elements with CLPs to which it is a party within 30 days after negotiations have concluded or within 30 days after the date of this Order, as applicable. The Commission will require BellSouth to file all interconnection agreements with Class A carriers on or before June 30, 1997. Such agreements will be available for inspection under the North Carolina Public Records Law, G.S. 132-1, the Commission's Orders of June 18 and August 7, 1996, in Docket No. P-100, Sub 133, and Sections 252(h) and (i) of the Act.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Issue: Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for BellSouth to provide MCI with these elements?

- **Network Interface Device**
- **Loop Distribution**
- **Loop Concentrator/Multiplexer**
- **Loop Feeder**
- **Local Switching**
- **Operator Systems**
- **Dedicated Transport**
- **Common Transport**
- **Tandem Switching**
- **Signaling Link Transport**
- **Signal Transfer Points**
- **Service Control Points/Databases**

POSITIONS OF PARTIES

MCI: BellSouth should be ordered to make available each of the unbundled loop elements, local transport elements, switching elements, and other elements requested by MCI. The unbundling of many of the requested elements has been required by the Act and the FCC Interconnection Rules. The unbundling of the remaining requested elements is technically feasible and is not proprietary. BellSouth's failure to provide access to those additional requested network elements would decrease the quality of the telecommunications services MCI seeks to offer and/or would increase the financial

or administrative cost of offering such services. The complete list of elements which must be unbundled is contained in MCI's Petition and the exhibits attached thereto.

BELLSOUTH: BellSouth agrees generally that unbundled network elements must be provided unless not technically feasible or if it is already provided pursuant to tariff. BellSouth believes that, of the requested elements by MCI, at least four cannot be provided due to technical non-feasibility: Network Interface Device, Loop Distribution, Loop Concentrator/Multiplexer, and Loop Feeder. BellSouth has agreed to provide all other requested capabilities; however, in some instances BellSouth's service definitions may differ from MCI's.

ATTORNEY GENERAL: MCI is requesting the ability to buy elements out of an unbundled loop. In the arbitration proceeding with AT&T in Docket No. P-140, Sub 50, AT&T and BellSouth agreed to negotiate unbundled loop elements when AT&T had a bona fide request for unbundled loop elements. The Commission should find this approach entirely reasonable and should resolve this issue by concluding that while the local loop will eventually have to be unbundled, final resolution of this issue should be deferred until a new entrant has a bona fide request for an unbundled loop.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Goodfriend and Murphy and BellSouth witnesses Varner and Milner.

The FCC Rules require the following network elements to be provided on an unbundled basis:

- Local Loop,
- Network Interface Device (NID) (connection to be established through an adjoining NID deployed by the requesting carrier),
- Switching Capability (local switching capability and tandem switching capability including vertical services),
- Interoffice Transmission Facilities (dedicated to a particular customer or carrier, or shared by more than one customer or carrier),
- Signaling Networks and Call-Related Databases (including signaling links, signaling transfer points, and access to Advanced Intelligent Network (AIN) databases through signaling transfer points), and
- Operator Services and Directory Assistance.

BellSouth argues that four of MCI's requested unbundled network elements: the NID, the loop distribution, the loop concentrator/multiplexer, and the loop feeder cannot be provided due to technical unfeasibility. MCI argues that in addition to the elements specified in the FCC Rules, MCI has asked BellSouth to unbundle loop distribution and the multiplexing/digital cross-connect. Further, MCI states in its Proposed Order that the multiplexing/digital cross-connect element is not now in dispute except for price. MCI's Proposed Order makes no mention of any request to directly connect into BellSouth's NID instead of installing its own NID and then making a NID-to-NID connection. Furthermore, MCI's Proposed Order specifically states that one of the elements required to be unbundled is the NID on a NID-to-NID basis.

Network Interface Device: Initially, MCI requested that the NID be unbundled. The NID serves two purposes. It connects BellSouth's network to the customer's inside wiring, and it is a standard test access point that BellSouth uses to test its loop to determine if trouble exists in BellSouth's loop or in the customer's inside wiring. BellSouth argues that the direct connection of a CLP to BellSouth's existing NID would result in improper grounding of BellSouth's loop resulting in an electrical hazard which could cause personal injury or damage to BellSouth's network. MCI's Proposed Order reflects agreement with the NID-to-NID connection.

Loop Distribution: MCI is requesting that the loop distribution, a subelement of the local loop, be unbundled. MCI believes that such unbundling is technically feasible. The loop distribution is from a customer's premises to a cross-connect point, such as a feeder distribution interface or a loop concentrator/multiplexer. MCI argues that loop distribution is necessary to give MCI flexibility to use its own loop feeder plant where available. For example, MCI has deployed Synchronous Optical Network (SONET) fiber rings in many metropolitan areas and by interconnecting its fiber with Bell's unbundled loop distribution at existing cross-connect points, MCI could carry traffic from a customer directly to MCI's local switch. BellSouth's witness Varner testified that the loop distribution element is not included in the FCC's list of unbundled elements. However, Section 51.317 of 47 C.F.R. establishes standards for the states to follow to identify what additional network elements must be made available depending on technical feasibility and the proprietary nature of the requested element. BellSouth's witnesses Varner and Milner argue that MCI's request for the unbundling of the loop distribution element does not meet the criteria specified in Section 51.317 of 47 C.F.R., because it is not technically feasible. BellSouth generally considered the following technical concerns in its evaluation: the ability to provision, track, and maintain the element; the ability to deliver discrete, stand-alone facilities, equipment, or logical functions; the ability to maintain network integrity without undue risk; and the ability to provide physical or logical operational interfaces between the ILEC and the requesting company. MCI argues that the FCC explicitly rejected the lack of ordering and tracking systems as an indication of technical unfeasibility. Further, MCI states that the requested loop distribution unbundling will not create network security or reliability concerns. MCI argues that there is no basis to conclude that the unbundling of loop distribution is in any way technically infeasible.

Local Loop Using Integrated Digital Loop Carrier Facilities: MCI requests that BellSouth be required to unbundle the local loop where the loop is provided via a type of concentrator/multiplexer referred to as an Integrated Digital Loop Carrier (IDLC). The FCC Interconnection Order requires BellSouth to unbundle IDLC-delivered loops. If they are not unbundled, MCI will not be able to serve all of BellSouth's customers via unbundled loops. The FCC states that if these loops are not unbundled it will encourage the ILECs to hide loops from competitors through the use of IDLC technology. MCI argues that it is technically feasible to provide these IDLC-delivered loops through the use of preexisting copper pair facilities, preexisting universal digital loop carrier facilities, next generation digital loop carrier systems, or where sufficient demand is available through the purchase by a new entrant of the entire IDLC's complement of contiguous loops. In its Proposed Order, BellSouth states that it has agreed to offer access to such unbundled loops. Further, BellSouth states that where BellSouth provides access to unbundled loops which are currently provided over IDLC, the cost of separating the loop from the switch, or the equivalent function, shall be included as a cost

of providing access to unbundled loops because the request for access to unbundled loops is not limited to non-integrated loops.

Advanced Intelligent Network: Today, MCI's AIN platform is connected to BellSouth's platform by signaling system 7 links. BellSouth states that unbundled access to BellSouth's AIN need not be provided until a mediated access mechanism, the Open Network Access Point, has been developed by the industry. If unmediated access occurs it could result in disruptions to BellSouth's network in a manner similar to how a computer virus disrupts the functioning of a personal computer. MCI witness Murphy agreed with BellSouth that the industry should resolve this concern.

CONCLUSIONS

The Commission finds that the following network elements identified and required by the FCC to be provided on an unbundled basis should be so provided:

- Local Loop,
- NID (connection to be established through an adjoining NID deployed by the requesting carrier, i.e., NID to NID),
- Switching Capability (local switching capability and tandem switching capability including vertical services),
- Interoffice Transmission Facilities (dedicated to a particular customer or carrier, or shared by more than one customer or carrier),
- Signaling Networks and Call-Related Databases (including signaling links, signaling transfer points, and access to AIN databases through signaling transfer points), and
- Operator Services and Directory Assistance.

Further, the Commission makes the following additional findings and conclusions on these matters:

(1) The FCC did not require that the local loop be disaggregated into its subelements. Therefore, the Commission concludes that BellSouth should not be required at this time to unbundle the local loop— i.e., the requested unbundled loop distribution subelement should not be required to be provided to MCI.

(2) BellSouth has agreed to provide IDLC-delivered loops as an unbundled network element. Therefore, the Commission considers this issue resolved and encourages the parties to further negotiate the rates, terms, and conditions of providing unbundled loops from IDLC facilities.

(3) The Commission concludes that BellSouth should not be required to allow interconnection of MCI's call related databases to BellSouth's signaling system until a mediated access mechanism such as the Open Network Access Point has been developed on an industry-wide basis. Thus, the Commission agrees with BellSouth's position in this regard. The Commission encourages BellSouth to actively participate in an industry-wide forum to promptly address this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Issue: Should MCI be allowed to combine unbundled network elements in any manner it chooses?

POSITIONS OF PARTIES

MCI: The Act and the FCC's rule require BellSouth to allow MCI to use unbundled network elements in any combination. There are limited exceptions only where BellSouth proves that it is not technically feasible to combine elements or that the combination of elements would impair other carriers' ability to obtain access to unbundled elements.

BELLSOUTH: MCI should not be permitted to combine unbundled network elements in order to recreate existing BellSouth services that are already available on a resale basis. Congress did not intend for major loopholes in the Act to be created, which would occur if unbundling and resale were identical. Recombinations of unbundled elements that are the equivalent of existing BellSouth retail services should be priced at the wholesale rate rather than the sum of unbundled network element prices. Payment of access charges, use and user restrictions, and the joint marketing prohibition should also apply.

In a related matter, the Commission should require CLPs to pay the discounted resale rate for vertical services that they purchase from BellSouth rather than only the rate for local switching. Software features, while technically provided in the central office, are not local switching features but are retail services.

ATTORNEY GENERAL: The FCC Interconnection Order favors the AT&T and MCI position, which BellSouth asserts is contrary to the intent of the Act. The issue is arbitrage, and arbitrage does not encourage the innovation and new services that competition is supposed to bring to end users. If a CLP buys all seven of the current unbundled elements and reassembles them into services identical to BellSouth's, the elements are essentially resale and should be priced as wholesale services.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and BellSouth witnesses Varner and Scheye.

A plain reading of the Act, reinforced by the FCC Interconnection Order, leads to the inescapable conclusion that to prohibit a CLP from recombining unbundled network elements as it chooses would be both legally impermissible and practically impossible. The Act imposes on ILECs the duty to provide unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." 47 U.S.C.A. Section 251(c)(3). Since the Act does not provide for any restrictions on combining the unbundled elements, it appears that a CLP must be allowed to recombine unbundled network elements in any manner it chooses. The FCC concluded in its rulemaking that Congress did not intend Section 251(c)(3) to be read to contain a requirement that CLPs own or control some of their own facilities before purchasing

and using unbundled network elements to provide telecommunications services. Interconnection Order, Paragraphs 328, 329. The FCC further concluded that to impose a requirement that in order to obtain access to unbundled network elements CLPs must own and use their own facilities, in combination with unbundled network elements, for the purpose of providing local services, would be administratively impossible. Interconnection Order, Paragraph 339.

The Commission notes that, in a case involving LDDS and Ameritech, the Illinois Commission rejected Ameritech's argument that allowing a CLP to combine network elements to provide end-to-end service is redundant of the requirement that LECs make their retail services available for resale. Illinois also rejected Ameritech's position that the CLP should not retain access revenues provided through network elements and Centel's request to exclude custom calling and CLASS features from the network element.[1]

BellSouth, however, is not urging this Commission to prohibit the recombination of unbundled network elements per se. BellSouth proposes that the Commission recognize certain combinations of unbundled network elements as resold services and require that they be treated accordingly. BellSouth argues that, while the Act clearly permits CLPs to use both resale and purchase of unbundled network elements to provide services to their customers, there is nothing in the Act to suggest that rebundling of network elements can be used to recreate a retail service that could be resold. Allowing CLPs to combine unbundled local loops and local switching, in BellSouth's view, would render the provision for resale at wholesale prices meaningless. It would also result in unreasonable and discriminatory impacts on BellSouth's ability to compete, because CLPs could avoid the joint marketing restrictions in the Act, use and user restrictions in BellSouth's tariffs for resold services, and access and subscriber line charges associated with resold services. BellSouth asserts that when a CLP rebundles a BellSouth loop and switch, it has essentially recreated a 1FR or 1FB (one flat rate residential phone line or business phone line), and even if it uses its own operator services, the recombination should be treated as resale and priced at the appropriate tariff rate less the retail discount. BellSouth also asserts that software features, while technically provided in the central office, are not local switching features but are retail services and, therefore, the Commission should require CLPs to pay the discounted resale rate for vertical services that they purchase from BellSouth rather than only the rate for local switching.

The Commission finds merit in BellSouth's proposal, assuming that it is consistent with the Act. However, we are unable on the record before us to identify the combinations of unbundled network elements that would constitute resold services. BellSouth itself refers both to recombinations of unbundled network elements that are "the equivalent" of BellSouth retail services and to recombinations that are "substantially identical" to BellSouth retail services as well as to rebundling "a BellSouth loop and switch." The Attorney General, on the other hand, refers to combining all seven unbundled elements into services that are "identical" to BellSouth services. We do not find these terms to be synonymous.

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[1] Nos. 95-0458 and 95-0531 (consol.) at 63-65 (Illinois Commerce Commission June 26, 1996).

We are aware that two of our neighboring states, Tennessee and Georgia, have recently sided with BellSouth on this issue. Under the Tennessee decision, AT&T and MCI may purchase unbundled network elements, capabilities, and/or functions but may not combine them in any manner they choose; they must combine them to provide a new or different service from those being provided by BellSouth with the same combination of network elements, capabilities, and functions. These requirements are effective until universal service and access charge issues are resolved or until BellSouth has been authorized to enter the interLATA market, whichever is earlier. BellSouth may ask the Regulatory Authority to investigate if it believes AT&T or MCI has violated the rebundling restriction and, if necessary, impose the wholesale rate.[1]

In a decision involving AT&T, the Georgia Commission found that, under the Act and the FCC rules, AT&T clearly may purchase unbundled elements and recombine them in any manner it chooses. The Georgia Commission further found that the ability to purchase unbundled elements and recombine them, without adding any additional capability, to recreate services identical to BellSouth retail offerings would allow AT&T to avoid the Act's pricing standard for resale as well as the Act's joint marketing restrictions and charge requirements. The Georgia Commission, therefore, determined that it should conduct a generic proceeding on the appropriate long-term pricing policy regarding rebundled network elements. On an interim basis, the Georgia Commission ordered that, when AT&T recombines unbundled elements to create services identical to BellSouth's retail offerings, rates for those rebundled services should be computed as BellSouth's retail price less the wholesale discount and offered under the same terms and conditions, including the same application of access charges and joint marketing restrictions. In this situation, the Georgia Commission ruled, "identical" means that AT&T is not using its own switching or other functionality or capability together with the unbundled elements to produce its service; operator services is not considered a functionality or capability for this purpose.[2] We understand that a similar decision has been reached in a case involving MCI, but the written Order has not yet been issued.

Apart from the overall principle adopted, however, these decisions contain little detail regarding implementation, and this Commission has identified a significant number of serious obstacles to feasible administration of such a provision. Thus, even if we conclude that treating certain combinations of unbundled network elements as resold services is legally permissible under the Act, we are nevertheless without sufficient information to determine whether and how a decision to this effect could be implemented. The Commission, therefore, will leave this issue open for further consideration upon receipt of additional information.

We are, however, able to address the provision of vertical services as part of the local switching element. This is clearly required by the Act. The definition of "network element" includes features, functions, and capabilities that are provided by means of the facility or equipment. 47 U.S.C.A. Section 153(29). The FCC has ruled that the local switching element includes all vertical features that the switch is capable of providing and has refused to classify vertical switching features exclusively as retail services. According to the FCC, the availability of vertical switching features through resale does not remove such features from the definition of network element.

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[1] Nos. 96-01152 and 96-01271 (consol.) at 26-27 (Tennessee Regulatory Authority November 25, 1996).
[2] No. 6801-U at 51-52, 93 (Georgia Public Service Commission December 3, 1996).

Interconnection Order, Paragraphs 412-14. We are compelled to agree with the FCC on this issue. Therefore, when local switching is purchased as an unbundled network element under Section 251(c)(3) of the Act, vertical services should be included in the price of that element at no additional charge, but when vertical services are obtained through the resale provision of Section 251(c)(4), they should be priced at the retail rate less the wholesale discount.

CONCLUSIONS

The Commission concludes that MCI should be allowed to combine unbundled network elements in any manner it chooses. The Commission further concludes when local switching is purchased as an unbundled network element, vertical services should be included in the price of that at no additional charge, but when vertical services are obtained through resale, the discounted resale rate should apply. Finally, the Commission concludes that BellSouth should be allowed to submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements that constitute resold services for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This information should be filed within 30 days of the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Issue: Must BellSouth make rights-of-way, poles, ducts, and conduits available to CLPs on terms and conditions equal to that it provides itself?

POSITIONS OF PARTIES

MCI: Section 251 of the Act requires BellSouth to afford MCI nondiscriminatory access to its rights-of-way, poles, ducts, and conduits. MCI should have access to all capacity which is currently available or which can be made available. BellSouth should be required to provide information on the location and availability of access to poles, ducts, and conduits on request so that MCI can identify whether or not they are full and plan accordingly.

BELLSOUTH: BellSouth shall make access to its poles, ducts, conduits, and rights-of-way available to MCI on nondiscriminatory rates, terms, and conditions as BellSouth has been doing for cable television providers pursuant to 47 U.S.C.A. Section 224.

ATTORNEY GENERAL: This is an issue where common sense and good faith can produce better results than the Commission itself. The Commission, therefore, should order the parties to work out capacity reservation procedures and schedules on these facilities that treat all players equally and to report back to the Commission by March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Varner and Milner.

The Act provides that local telephone providers have the duty to afford access to poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions on a nondiscriminatory basis. The Act, therefore, supports MCI's position that BellSouth must make rights-of-way, poles, ducts, and conduits available to MCI on terms and conditions equal to that it provides itself. The Act also makes it clear that an ILEC can deny access where there is insufficient capacity and/or for reasons of safety, reliability, and generally applicable engineering purposes. Section 224(h) referenced in Section 251(b)(4). The question is then raised as to how much spare capacity BellSouth can reserve ("warehouse") to the detriment of MCI. Paragraph 1170 of the FCC Interconnection Order does not allow BellSouth to reserve spare capacity.

CONCLUSIONS

The Commission concludes that BellSouth must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits to MCI on terms and conditions equal to that it provides itself. BellSouth cannot reserve any spare capacity unless needed for reasons of safety, reliability, and generally applicable engineering purposes. MCI will only be granted the capacity it needs and not be allowed to warehouse BellSouth's capacity to the detriment of BellSouth or any other CLP. BellSouth and MCI are required to meet and formulate guidelines to be followed in handling bona fide requests by MCI for access to BellSouth's rights-of-way, poles, ducts, and conduits.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Issue: Must BellSouth provide interim number portability solutions, including remote call forwarding (RCF), flex-direct inward dialing (DID), route index-portability hub (RI-PH) and local exchange routing guide assignment (LERG)?

POSITIONS OF PARTIES

MCI: Immediate implementation of interim solutions is required to permit customers to change to MCI without changing their telephone numbers. Such interim solutions would include RCF, Flexible DID, or Route Indexing. These solutions must be offered in a manner that results in no impairment of function, quality, reliability, or convenience. DID must be provided with Signaling System 7 (SS7). (The Interim Agreement, Section I.D. provides that MCI may elect to amend the Agreement to reflect all the terms of the FCC's Telephone Number Portability Order.)

BELLSOUTH: This issue was resolved in the MCI/BellSouth Interim Agreement.

ATTORNEY GENERAL: Any feasible methods of interim number portability must be made available to the new entrant and the parties will detail what those are in a report to the Commission to be filed on or before March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Varner and Scheye.

The evidence available to the Commission suggests that the four interim solutions noted are feasible and that implementation of these solutions in the short-term would provide number portability with a minimum of impairment of function and a maximum of quality and convenience.

CONCLUSIONS

The Commission concludes that BellSouth should make available to MCI all four (4) methods (RCF, DID, RI-PH, and LERG) of interim number portability, until such time that a permanent number portability method is available.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Issue: Must BellSouth negotiate a long-term number portability solution?

POSITIONS OF PARTIES

MCI: The Act requires that such a solution be implemented. (The Interim Agreement, Section I.D. provides that MCI may elect to amend the Agreement to reflect all the terms of the FCC's Telephone Number Portability Order.)

BELLSOUTH: This issue has been resolved in the Interim Agreement with MCI.

ATTORNEY GENERAL: 47 U.S.C.A. Section 251(b)(2) provides that telecommunications carriers have the duty "to provide to the extent technically feasible, number portability in accordance with the requirements prescribed by the [FCC]." While the statute does not distinguish between interim and long-term number portability, it clearly mandates number portability will happen "if technically feasible." Long-term solutions to the issue, however, will need national standards. The Commission should order all parties to participate in groups establishing those national standards and request a progress report on March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witness Varner.

The issue is whether the particular method advocated by MCI, the local routing number (LRN) method, would be selected and implemented immediately or whether a uniform national solution (which presumably could be the LRN method) should be found.

CONCLUSIONS

The Commission finds and concludes that the implementation and the cost of long-term number portability are issues that are best determined by the industry at large. BellSouth and MCI should work together with the industry to arrive at solutions to these problems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

Issue: Must BellSouth provide MCI with access to BellSouth's dark fiber?

POSITIONS OF PARTIES

MCI: MCI requires the ability to obtain interoffice transport in whatever manner is most efficient, given the number and location of its customers and the amount of traffic interchanged with BellSouth. This includes the use of both common and dedicated transport facilities, and the use of both dark and dim fiber. Such facilities are subject to the Act's unbundling requirements, and it is technically feasible to provide them on an unbundled basis.

BELLSOUTH: Unused transmission media or dry fiber is not a telecommunication service nor is it a network element as defined by the Act. Dark fiber is not a network element because it is not currently in use in BellSouth's network. Therefore, BellSouth need not provide access to new entrants.

ATTORNEY GENERAL: The Attorney General takes the position that unused transmission fiber is excess capacity built into a party's network and as such is the proper subject of negotiation and--should that negotiation fail--arbitration. However, the Attorney General states that like the request to unbundle the local loop, access to unused transmission media to provide local telephone service will be needed later rather than sooner. Therefore, the Attorney General recommends that the Commission hold that if a competing LEC makes a bona fide request for unused transmission capability, or dark fiber, to provide competing local telephone service, the parties will negotiate terms and conditions of rent at that time. If they cannot agree, then the Commission will arbitrate the disagreement.

DISCUSSION

The testimony regarding this issue was presented by MCI witness Murphy and BellSouth witness Varner.

MCI witness Murphy acknowledged that the FCC Interconnection Order does not require that the ILECs make available unbundled dark fiber, but contended that dedicated transport must include dark fiber. In his opinion, dark fiber is simply another level in the transmission hierarchy from an engineering perspective. He testified that without dark fiber, MCI's only choices would be to undertake the timely and expensive construction effort to place its own fiber or to purchase the use of fiber with electronics from BellSouth.

BellSouth witness Varner testified that the FCC Interconnection Order and Rules do not address dark fiber as an unbundled network element. He also testified that Sections 251 and 252 of the Act do not apply to dark fiber since it is neither a retail telecommunications service to be resold nor an unbundled network element. To be an unbundled network element, Varner opined that dark fiber must contain some functionality inherent in BellSouth's network. It was his opinion that dark fiber is no more a network element than the four walls surrounding a switch.

In order for MCI or any competing local provider to obtain access to a network element, the item that it wishes to access must, by definition, be a part of the ILEC's network. Unused transmission media or dark fiber is cable that has no electronics connected to it and is not functioning as part of the telephone network. Consequently, the Commission is unconvinced that dark fiber qualifies as a network element used in the provision of a telecommunication service.

In this arbitration proceeding, the Commission is reaching the same conclusion on the dark fiber issue as did the FCC. In paragraph 450 of the FCC Interconnection Order, the FCC stated:

> We also decline at this time to address the unbundling of the incumbent LECs' "dark fiber." Parties that address this issue do not provide us with information on whether dark fiber qualifies as a network element under sections 251(c)(3) and 251(d)(2). Therefore, we lack a sufficient record on which to decide this issue. We will continue to review and revise our rules in this area as necessary.

CONCLUSIONS

The Commission finds and concludes that dark fiber is not a telecommunications service. Based on the record in this proceeding, there is insufficient evidence to conclude that dark fiber is a network element used in the provision of a telecommunications service. BellSouth, therefore, need not provide access to dark fiber to MCI.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Issue: Must BellSouth provide two-way trunking on request?

POSITIONS OF PARTIES

MCI: BellSouth is required to provide two-way trunking on request. The Interim Agreement, Section III. E(2), is not dispositive of this issue because MCI and BellSouth have not agreed on trunking.

BELLSOUTH: This is not an issue properly before the Commission since two-way trunking was resolved in the Interim Agreement.

ATTORNEY GENERAL: Two-way trunking should be part of any efficient interconnection agreement and the parties should work towards mutually agreeable one-way and two-way trunking arrangements and report to the Commission by March 31, 1997 about the progress of that work.

DISCUSSION

The testimony regarding this issue was presented by MCI witness Murphy and BellSouth witness Varner.

Section III. E(2) of the Interim Agreement between MCI and BellSouth states that "the parties may use either one way or two way trunking or a combination, as mutually agreeable". Section 51.305(f) of the FCC's Rules states that an incumbent LEC shall provide two-way trunking on request, if technically feasible.

CONCLUSIONS

The Commission finds and concludes that Section III. E(2) of the Interim Agreement between MCI and BellSouth resolves any interconnection issue regarding two-way trunking. If MCI has problems obtaining two-way trunking after making a reasonable request, it may bring a complaint before the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

Issue: Must BellSouth provide copies of records regarding rights-of-way?

POSITIONS OF PARTIES

MCI: BellSouth should provide this information on request. MCI is willing to negotiate appropriate nondisclosure agreements in those instances where access to customer proprietary information is required.

BELLSOUTH: The information contained in engineering records is proprietary information and must be strictly controlled. BellSouth will provide AT&T with structure occupancy information upon request on a timely basis and will allow AT&T personnel access to records or drawings pertaining to the request.

ATTORNEY GENERAL: TA96 and the Interconnection Order do not address engineering records. There is no need for the Commission to decide this issue at the present time. To the extent the parties have problems negotiating bona fide requests to access records regarding rights-of-way, the Commission will arbitrate the dispute at that time.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witness Milner.

Paragraph 1223 of the FCC Interconnection Order provides that a utility receiving a request for access must make its maps, plats, and other relevant data available for inspection and copying, subject to reasonable conditions to protect proprietary information.

Since the Commission has ordered BellSouth to make rights-of-way, poles, and conduits available to CLPs, then it follows that BellSouth should be required to provide the needed records. The confidentiality of such information can be protected by the parties entering into proprietary agreements.

CONCLUSIONS

The Commission concludes that BellSouth should be required to provide MCI with copies of records regarding rights-of-way provided that MCI has a bona fide engineering need for such information and agrees to protect the confidentiality of such information by entering into a confidentiality agreement with BellSouth.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

Issue: Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions?

POSITIONS OF PARTIES

MCI: Costs which are reasonably avoided when BellSouth sells its services at wholesale must be excluded.

BELLSOUTH: BellSouth's proposed wholesale discounts accurately reflect the costs avoided by BellSouth when selling a telecommunications service at wholesale, the cost standard required by the Act.

ATTORNEY GENERAL: The Commission should find that the approach used by the FCC is orderly and reasonable and can properly be used under the terms of the Act.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Varner, Scheye, and Reid.

Section 252(d)(3) of the Act provides that State Commissions shall determine wholesale rates on the basis of retail rates charged to subscribers for the telecommunications service requested, excluding the portion thereof attributable to any costs that will be avoided by the local exchange carrier.

MCI's avoided cost study is based on the premise that the FCC Interconnection Order requires that BellSouth should be viewed as operating in a pure wholesale environment where it has no retail operations. MCI interprets the FCC Interconnection Order to specify that BellSouth's costs that could be avoided, whether or not they are actually avoided, should be reflected in the determination of the wholesale discount. BellSouth's avoided cost study is based on the premise that the Act specifies that BellSouth would continue to be a retail provider of services and simply add-on

wholesale functions. BellSouth believes the Act contemplates costs that are actually avoided when providing wholesale services.

MCI used intrastate North Carolina amounts from BellSouth's 1995 ARMIS Report 43-04. BellSouth used amounts for 1995 from its internal accounting system that identifies the major work functions of the Company. BellSouth's numbers are derived internally and, therefore, are not verifiable.

The FCC Interconnection Order specifically identifies costs by the Uniform System of Accounts (USOA) expense accounts that are presumed to be avoided when an ILEC provides a telecommunications service for resale. The provisions of the FCC Interconnection Order relating to the wholesale discount rate have been stayed by the Eighth Federal Circuit Court of Appeals.

The Commission has reviewed the evidence presented by all parties and conducted an avoided cost analysis that is in compliance with the Act. In determining the avoided costs to be used in calculating the wholesale discount rate, the Commission used BellSouth's 1995 combined North Carolina financial data as reflected in its 1995 ARMIS Report 43-03. The Commission used Report 43-03 because it represents total North Carolina amounts for BellSouth, not intrastate amounts. The avoided cost analysis performed by the Commission incorporates parts of BellSouth's and MCI's positions, and agrees with the basic methodology used by the FCC in determining its proxy ranges with some exceptions.

The analysis reflects Uncollectibles - Telecommunications (Account 5301) as all being directly avoided. BellSouth witness Reid stated in his testimony that uncollectibles from customers who buy from resellers will be avoided by BellSouth.

The Commission concludes that 90% of Marketing Expenses, which include Accounts 6611 - Product Management, 6612 - Sales, and 6613 - Product Advertising, should be reflected as avoided costs. Customer Services Expenses, Account 6623, is also reflected as 90% avoided. The 90% avoided factor is supported by the FCC Interconnection Order, Paragraph 928, where it concludes, based on lack of evidence and varying estimates by several states concerning the level of wholesale-related expenses in these accounts, that for purposes of determining a default range of wholesale discount rates, 10% of the costs in Accounts 6611, 6612, 6613, and 6623 are not avoided by selling services at wholesale.

The avoided costs determined above for uncollectibles, marketing, and customer services expenses are directly avoided costs. The Commission also concludes that it is appropriate to determine a level of indirectly avoided costs as proposed by MCI and the FCC Interconnection Order (Paragraph 912). The Commission calculated the indirect allocation of avoided costs based on the ratio of directly avoided costs to total operating expenses. The indirectly avoided cost factor determined to be reasonable is 12.97%. This factor is applied to the balances in Accounts 6120 - General Support, 6710 - Executive & Planning, and 6720 - General & Administrative. This treatment is consistent with the FCC Interconnection Order (Paragraph 918), except for the treatment of uncollectibles discussed earlier. The Commission concludes that uncollectibles are a directly avoided cost instead of an indirectly avoided cost.

MCI and BellSouth disagree on the avoidance of operator services and directory assistance costs which are recorded in Accounts 6621 - Call Completion and 6622 - Number Services. The Commission concludes that operator services and directory assistance costs should not be reflected as avoided costs for purposes of calculating the wholesale discount rate.

The Commission's avoided cost analysis results in directly avoided costs of $127,564,000, indirectly avoided costs of $23,539,000, and total avoided costs for BellSouth of $151,103,000.

CONCLUSIONS

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

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Issue: What are the appropriate wholesale rates for BellSouth to charge when a competitor purchases BellSouth's retail services for resale?

POSITIONS OF PARTIES

MCI: BellSouth's wholesale discount rate in North Carolina should be 20.35%.

BELLSOUTH: BellSouth's proposed wholesale discount rates are 12.4% for residential service and 10.1% for business service.

ATTORNEY GENERAL: The Attorney General does not have the analytical ability to review numbers. AT&T's study appears excessive; however, BellSouth's methodology appears to be below the discount decided by other State Commissions. We merely refer the Commission to the experience of other states. The Attorney General believes that the judgement of the appropriate discount rate is made on the best information available today. Better information may become available in the future and the Commission should reserve the right to adjust the discount rate based on future information.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Scheye and Reid.

In determining the appropriate amount of revenues subject to resale for purposes of calculating the wholesale discount rate, the Commission utilized the total 1995 Basic Local Service Revenues and Long Distance Service Revenues per the 1995 ARMIS Report 43-03, less $23,481,000 in public telephone revenues. BellSouth's 1995 Annual Report (Form M) filed with this Commission provides the detail necessary to determine the amount of public telephone revenues to exclude. Exclusion of public telephone revenues is consistent with the Commission's Order which states that

public telephone service should not be resold. Therefore, the revenues subject to resale included in the wholesale discount rate calculation are $775,726,000.

To calculate the wholesale discount rate, the Commission divided total avoided costs (direct and indirect) as determined by its avoided cost analysis by the total revenues subject to resale. This calculation produces a composite wholesale discount rate of 19.5%. The Commission agrees with BellSouth that a separate wholesale discount rate should be established for residential and business services. Since MCI's cost study does not produce separate discount rates, the Commission relied upon certain amounts in BellSouth witness Reid's avoided cost study to determine separate wholesale discount rates for residential and business services. The Commission allocated the revenues and avoided costs reflected in its avoided cost analysis based on BellSouth witness Reid's determination of these items for residential and business categories. The Commission's calculations result in a wholesale discount rate of 21.5% for residential services and a wholesale discount rate of 17.6% for business services.

CONCLUSIONS

Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 21, the Commission concludes that BellSouth's appropriate wholesale discount rates are 21.5% for residential services and 17.6% for business services.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

Issue: What is the appropriate price for each unbundled network element?

POSITIONS OF PARTIES

MCI: BellSouth should be ordered to price all unbundled elements in accordance with the forward-looking cost methodology prescribed in the FCC Interconnection rules. This total element long-run incremental costs (TELRIC) costing methodology is consistent with the Act and with the TSLRIC-based pricing that MCI has requested of BellSouth.

BELLSOUTH: The price of each unbundled network element should be, as set forth in 47 U.S.C.A. Section 252(d), based on cost plus a reasonable profit to the incumbent local exchange carrier. BellSouth's proposals regarding price reflect the legal standard.

ATTORNEY GENERAL: The Commission should adopt interim rates until it has had sufficient time to fully investigate the costing models provided it by the parties to the record or until it has had sufficient time to carefully do its own cost study and present same in a rulemaking proceeding open to all interested parties.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Goodfriend and Wood and BellSouth witnesses Varner, Scheye, Caldwell, and Emmerson.

BellSouth performed TELRIC studies for the following unbundled network elements:

- 2-wire Analog Loop
- 4-wire Analog Loop
- 2-wire ISDN Digital Loop

BellSouth also performed long run incremental cost (LRIC) studies or total service long run incremental cost (TSLRIC) studies for the following unbundled network elements:

- 4-wire DS1 Digital Loop
- Channelization Systems and Central Office Channel Interfaces (located in the BellSouth central office buildings)
- Operator Provided and Fully Automated Call Handling Service
- Emergency Call Trace
- Directory Assistance Database Service
- Directory Assistance Call Completion Access Service
- Number Services Intercept Access Service
- 800 Access Ten Digit Screening Service
- Ports and Associated Local Usage
- Special Access Voice Grade Service Interoffice Channel Voice-Unbundled Exchange Access
- Verification and Emergency Interrupt
- Directory Assistance Access Service
- Direct Access to Directory Assistance Service
- Directory Transport
- Common Channel Signaling/Signaling System 7 Transport Service
- Line Identification Database

Additionally, BellSouth "approximated" TELRIC results for certain of the unbundled network elements for which TELRIC studies were not completed by increasing its LRIC or TSLRIC studies results by 20%. BellSouth stated that it was not suggesting that TELRIC studies should be performed in such a manner or that the appropriate markup was 20%, but rather that such adjustment was "to illustrate directionality of how TSLRIC and TELRIC can be different."

BellSouth asserted that unbundled elements that are currently tariffed should be priced at BellSouth's existing tariffed rates, contending that those existing tariffed rates are based upon TSLRIC studies that used BellSouth's costs, have been approved by this Commission, include a

reasonable profit, and, therefore, meet the requirements under Section 252 of the Act. For unbundled network elements where there are no existing tariffed rates, BellSouth contended that the appropriate rates were those set forth in Scheye Cross-Examination Exhibit 2. BellSouth also contended that two-wire and four-wire analog loops and the two-wire ISDN digital loop should be priced at the rates set forth in Scheye Exhibit 2.

MCI's proposed rates for unbundled network elements were largely based on the Hatfield Model which MCI characterizes as an open model that makes use of publicly-available data to estimate the forward-looking costs that a wholesale-only LEC would incur to produce the entire range of outputs that the FCC Interconnection Order requires to be unbundled. MCI referred to BellSouth's proprietary cost studies as a "black-box" approach, under which the relationships used to translate from inputs to outputs are unavailable for critical review. MCI further contended that even BellSouth's TELRIC cost study was flawed because it used embedded ARMIS-type expense data and actual fill factors which caused BellSouth's TELRIC study to resemble an embedded cost study rather than a forward-looking economic cost study. MCI argued that the Commission should set unbundled network element prices equal to the costs that the Hatfield Model reports for each element, and that such pricing would allow BellSouth to recover all of its economic costs, including a reasonable profit, of doing business as a wholesale-only firm engaged in the business of providing network elements. According to MCI, pricing in accordance with the Hatfield Model is both reasonable, and fully consistent with the pricing principles of the Act.

BellSouth contended that the Hatfield Model should not be used to calculate TELRIC prices because it suffers from a number of flaws; for example, it is theoretical, understates cable lengths, has varied over time, has low joint and common costs, and has high plant utilization factors, as well as other flaws. BellSouth contended that costs developed by the Hatfield Model underestimated BellSouth's costs and that use of that model would lead to rates that were too low and would result in North Carolina consumers being denied the benefits of facilities-based competition. BellSouth further contended that, if the TELRIC methodology, as applied by MCI, is adopted for use by the Commission, it will constitute a taking under the Fifth Amendment of the Constitution because such an approach does not permit the recovery of historical costs.

As stated above, the Attorney General's position in this regard is that the Commission should adopt interim rates until it has had sufficient time to fully investigate the costing models provided it by the parties to the record or until it has had sufficient time to carefully do its own cost study and present same in a rulemaking proceeding open to all interested parties.

MCI and BellSouth both contended that their respective cost studies were forward-looking approaches that reflected economically efficient networks from the viewpoint of both network design and costs. As previously indicated, MCI offered major criticisms of BellSouth's cost studies as did BellSouth of the cost studies presented by MCI. In some instances, the criticisms appear to be valid. In others, the propriety of positions taken is not at all clear. Cost studies inherently are complex and complicated. Generally speaking, in order to properly evaluate a cost study, the validity, reasonableness, and appropriateness of the model, including its assumptions, parameters, and variables, must be carefully and completely examined from the standpoint of methodology and with

respect to all of the inputs into and outputs from the model. Literally, every aspect of the model must be scrutinized.

The record in this proceeding does not contain all of the information needed in order for the Commission to fully and effectively analyze and evaluate the propriety of the cost studies presented by the parties for the purpose of establishing permanent rates. Indeed, even if such information was available, given the Commission's resource limitations and the complexity of the issues, such evaluations could not be accomplished within a reasonable time frame from the standpoint of this proceeding.

The FCC in its Interconnection Order recognized that not every state, such as North Carolina in this instance, will have the resources to implement pricing based on fully-developed and thoroughly-evaluated cost studies for interconnection and unbundled elements within the statutory time frame for arbitration[1]. It, therefore, provided proxy rate guidelines or "default proxies", i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's TELRIC-based pricing methodology.

CONCLUSIONS

The Commission has carefully reviewed the FCC's explanation of the bases of its proxies, as set forth in its Interconnection Order. From such review and based upon the entire evidence of record, the Commission finds and concludes that, for purposes of this proceeding, establishing interim rates based on consideration of the FCC's proxies is a reasonable and appropriate course of action for the Commission to follow at this time.

In adopting rates based on consideration of the FCC's proxies, the Commission is fully aware of the fact that the Eighth Circuit Court of Appeals, has stayed the pricing provisions of the FCC Interconnection Order. However, as stated above, based upon our review of the Interconnection Order, of which the Commission takes judicial notice, and in consideration of the entire evidence of record, the Commission believes and so finds and concludes, that it is not unreasonable to adopt, nor is the Commission legally prohibited from adopting, interim rates based on consideration of the FCC's proxies, pending resolution of the subject appeal. Further, by having a true-up, as discussed subsequently, the Commission does not believe that any party will suffer irreparable harm as a result of the interim rates adopted for purposes of this proceeding.

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[1] Specifically, the FCC stated in Paragraph 768 of its Interconnection Order that "[w]e recognize, however, that in some cases it may not be possible for carriers to prepare, or the state commission to review, economic cost studies within the statutory timeframe for arbitration, and thus here first address situations in which a state has not approved a cost study. . . States that do not complete their review of a forward-looking economic cost study within the statutory time periods, but must render pricing decisions, will be able to establish interim arbitrated rates based on the proxies we provide in this Order. A proxy approach might provide a faster, administratively simpler and less costly approach to establishing prices on an interim basis, than a detailed forward-looking cost study."

MCI requested that BellSouth be required to provide operator services and directory assistance services on an unbundled basis. In its Proposed Order, MCI requested that BellSouth be required to price all unbundled network elements in accordance with the forward-looking TELRIC methodology incorporated in the Hatfield Model and that the specific rates should be as shown on Exhibit DJW-5. However, the Commission's review of Exhibit DJW-5 reveals that no specific operator services or directory assistance services are reflected on this exhibit. In addition, the negotiated interconnection agreement between BellSouth and MCI, previously referred to herein as the Interim Agreement, which was filed with MCI's Petition and identified as Exhibit 2, shows that MCI and BellSouth have agreed to provide certain operator services and directory assistance services to each other pursuant to each party's published tariffs.

BellSouth proposed unbundled element prices for a number of operator services and directory access services as shown on Attachment 1 to its Brief. However, it appears that the pricing for some, if not all, of the operator services and directory assistance services shown on Attachment 1 to BellSouth's Brief was addressed in the negotiated interconnection agreement with MCI. Given the Commission's interpretation of this evidence, as well as the Commission's prior decision in this docket not to arbitrate issues which have been addressed in negotiated agreements, the Commission declines to establish rates at this time for operator services and directory assistance services. If the negotiated interconnection agreement does not include pricing for a particular operator or directory assistance service desired by MCI, the parties should make a good faith effort to negotiate a rate.

As also discussed elsewhere herein, the Commission has concluded that the NID should be made available as an unbundled network element. The FCC Interconnection Order does not provide a proxy rate for the NID. BellSouth, having argued that CLPs should not be allowed access to its NID, did not perform a study for the purpose of identifying the cost of the NID on a stand-alone basis. MCI, based on its study, argued that the NID rate should be set at $0.52 per NID-per month. Thus, the only rate before the Commission with respect to the NID is that offered by MCI.

The Commission, as indicated previously, has been unable, due to resource and evidentiary limitations present in this record, to fully analyze and evaluate the cost models presented by the parties, including that utilized by MCI in arriving at its recommended rate for the NID. However, based upon the entire evidence of record, it does not appear to be unreasonable, as an interim measure, for the Commission to adopt the position advocated by MCI in this regard. Accordingly, the Commission finds and concludes that the rate for the NID should be set at $0.52 per NID-per month.

Therefore, based upon the foregoing and the entire evidence of record, the Commission finds and concludes that the following interim rates for unbundled network elements should be adopted for use herein:

SCHEDULE OF INTERIM RATES
FOR UNBUNDLED NETWORK ELEMENTS AND SERVICES

Description	Unit Cost/Definition	
Network interface device (NID)	$ 0.52	per NID-per month
2-wire analog voice grade loop, incl. NID	$ 16.71	per loop-per month
End office switching:		
2-wire analog voice grade port	$. 2.00	per line-per month
Usage	$ 0.004	per minute
CCS7 Signaling links	FCC Rule Section 51.513(c)(7)	
Signal transfer points	FCC Rule Section 51.513(c)(7)	
Signal control points/databases (requires access through BellSouth's signal transfer points)	FCC Rule Section 51.513(c)(7)	
Dedicated transport	Interstate Tariffed Rates	
Common transport	Interstate Tariffed Rates	
Tandem switching	$ 0.0015	per minute

In order to ensure that no carrier is disadvantaged by the interim rates herein approved, the Commission finds and concludes that those rates should be subject to true-up provisions, at such time as the Commission establishes final rates based on appropriate cost studies. Accordingly, the Commission further finds and concludes that the arbitrating parties should be called upon to meet and jointly develop the necessary mechanisms and otherwise establish and implement the appropriate administrative arrangements as will be needed in order to accomplish the aforesaid true-up.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

Issue: What cost-recovery mechanism should be used to reimburse BellSouth for remote call forwarding to provide interim local number portability?

POSITIONS OF PARTIES

MCI: Each carrier should pay for its own costs of currently available number portability measures.

BELLSOUTH: This issue is not applicable for arbitration because a resolution of it would affect more parties than MCI and BellSouth.

ATTORNEY GENERAL: All parties should be participating in groups establishing national standards for number portability and a progress report should be provided to the Commission on or before March 31, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witness Varner. Further evidence supporting this finding of fact is contained in the MCI/BellSouth Interim Agreement.

BellSouth states in its Proposed Order that a cost-recovery mechanism for remote call forwarding was resolved in the parties' previous interconnection agreement.

CONCLUSIONS

The Commission finds that the issue of a cost-recovery mechanism for remote call forwarding was resolved in the parties' previous interconnection agreement. Consistent with the Commission Order issued in Docket Nos. P-141, Sub 29 and P-140, Sub 50, on October 15, 1996, the Commission concludes that it will not arbitrate this issue since it has been approved as part of the parties' prior interconnection agreement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

Issue: What intrastate access charges, if any, should be collected from carriers who purchase BellSouth's unbundled local switching element and for how long?

POSITIONS OF PARTIES

MCI: This issue is not addressed in MCI's matrix or Proposed Order.

BELLSOUTH: The appropriate charge is the carrier common line charge plus 75% of the transport interconnection charge which should be collected through the effective date of a final order regarding Universal Service, but not later than July 1998.

ATTORNEY GENERAL: This issue is not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witness Varner.

The Final Rules as outlined in the FCC Interconnection Order at Section 51.515(b) state that an ILEC may assess upon telecommunications carriers that purchase unbundled local switching elements, for interstate minutes of use traversing such unbundled local switching elements, the carrier common line charge and a charge equal to 75% of the interconnection charge until the earliest of the following, and not thereafter: "(1) June 30, 1997; (2) the later of the effective date of a final Commission decision in CC Docket No. 96-45, *Federal-State Joint Board on Universal Service*, or the effective date of a final Commission decision in a proceeding to consider reform of the interstate access charges described in part 69; or (3) with respect to a Bell operating company only, the date on which that company is authorized to offer in-region interLATA service in a state pursuant to section 271 of the Act."

CONCLUSIONS

The Commission finds and concludes that this matter is not an issue appropriate for arbitration in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

Issue: What is the appropriate price for call transport and termination?

POSITIONS OF PARTIES

MCI: Not an issue in this proceeding.

BELLSOUTH: Covered by interim agreement.

CONCLUSIONS

Both MCI and BellSouth agree that the appropriate price for call transport and termination is not an issue in this proceeding. The Commission concurs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

Issue: Is "bill and keep" an appropriate alternative to the terminating carrier changing TSLRIC?

POSITIONS OF PARTIES

MCI: Not an issue in this proceeding.

BELLSOUTH: Covered by interim agreement.

CONCLUSIONS

Both MCI and BellSouth agree that there is no issue in this proceeding as to whether 'bill and keep" is an appropriate alternative to the terminating carrier charging TSLRIC. The Commission concurs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

ISSUE: What is the appropriate price for certain support elements relating to interconnection and network elements?

POSITIONS OF PARTIES

MCI: Unbundled network elements and related support elements should be priced at TSLRIC.

BELLSOUTH: BellSouth has proposed reasonable and nondiscriminatory rates for support functions such as access to rights-of-way and collocation. BellSouth's rates are based on costs and provide reasonable profit to BellSouth.

ATTORNEY GENERAL: The Commission should require the parties to file cost studies with appropriate documentation which provides their best estimates of the costs of support elements (e.g., rights-of-way, poles, conduits, ducts, collocation, number portability, AIN, and unused transmission media) by June 30, 1997. Consistent with the Attorney General's position with respect to pricing other than resale, the appropriate costing methodology should be based on forward-looking incremental costs plus a reasonable share of joint and common costs.

DISCUSSION

The testimony concerning this issue is found in the testimony of MCI witnesses Goodfriend, Murphy, and Wood and BellSouth witness Varner, Scheye, and Milner.

MCI has requested access to BellSouth's rights-of-way, poles, ducts and conduits. In addition, MCI has requested physical and virtual collocation, access to dark fiber and number portability. MCI recommends that unbundled network elements and related support elements should be priced at TSLRIC or TELRIC.

BellSouth states in its Proposed Order that MCI's request is unclear with respect to this issue, but concludes that the pricing of support elements should be consistent with the pricing which it recommends that the Commission employ for unbundled network elements. BellSouth's recommendations regarding the pricing of unbundled network elements has been previously discussed herein.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes, with respect to the subject support elements, which are not previously addressed herein or resolved in the Interim Agreement, that it is reasonable and appropriate to establish interim rates, subject to the true-up provisions previously discussed, based on interstate tariff rates, where such rates exist, pending resolution of the appeal of the FCC Interconnection Order. Where rates cannot be so established, the Commission finds and concludes that the parties should be called upon to renegotiate these issues. In these negotiations, the Commission further concludes that BellSouth should not be required to develop and produce cost studies in this regard, at this time. Regarding issues of national concern, such as permanent number portability and AIN, the arbitrating parties are encouraged to pursue resolution of any dispute of such a nature on a national level, through the appropriate industry forum or at the FCC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

Issue: Must BellSouth price both local and long distance access at cost?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

BELLSOUTH: This is not an issue in this proceeding.

ATTORNEY GENERAL: Access charges are not a subject of TA96 and are not subject to arbitration in this docket.

CONCLUSIONS

The Commission finds and concludes that the subject access charges do not represent an issue subject to arbitration in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

Issue: What rates apply to collect and third party intraLATA calls?

POSITIONS OF PARTIES

MCI: Unbundled network elements and related support elements should be priced at TSLRIC. Resold services should be priced at wholesale.

BELLSOUTH: The operator services at issue are sold at retail as a part of residential or business services. Therefore, it is appropriate for BellSouth to bill its charges to its end users. It is also appropriate to bill resold services to a CLP at the appropriate discount for the purposes of the CLP billing its end users utilizing the resold BellSouth service.

ATTORNEY GENERAL: End users should pay the rates of their local service provider for these operator assisted calls. If operator services are provided as part of resold services, then the incumbent should not bill the new entrant any extra for these calls. If operator services are provided as a separate wholesale service, then wholesale service rates should apply.

DISCUSSION

Testimony concerning this issue is found in the testimony of MCI witnesses Goodfriend and Price and BellSouth witness Scheye.

The original issue included in the Commission's list of issues in its Order dated October 15, 1996, addressed the matter of which local exchange company's rates should be charged to the end users. For example, if a competing local exchange company customer calls a BellSouth customer collect, do MCI's or BellSouth's rates apply? In its post-hearing matrix, MCI takes the position that unbundled network elements should be priced at TSLRIC, and resold services should be priced at wholesale. MCI appears to be asking that the Commission require BellSouth to unbundle these services and to price such services at TSLRIC and to require that such services, if resold, be priced at wholesale service rates. It does not appear that this issue is any different from pricing issues presented by MCI which have been previously addressed and does not need to be addressed further here.

CONCLUSIONS

The Commission considers that the pricing issues addressed by MCI regarding this issue have been addressed and resolved in pricing issues discussed elsewhere in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

ISSUE: What are the appropriate general contractual terms and conditions that should govern the interconnection agreement (e.g., resolution of disputes, performance requirements, and liability/indemnity)?

POSITIONS OF PARTIES

MCI: The Act requires BellSouth to provide reasonable and non-discriminatory general terms and conditions.

BELLSOUTH: BellSouth has negotiated with MCI regarding the issues MCI has identified in accordance with the Act. Issues that should be included in a negotiated or arbitrated agreement should be limited to those identified in the Act.

ATTORNEY GENERAL: The Parties should be required to submit themselves to mediation followed by binding arbitration if the Commission concludes that is necessary, by certified mediators appointed by the Commission who are, of course, agreeable to the mediating parties.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witness Varner. Further evidence is found in MCI's "MCImetro/ILEC Interconnection Agreement, 1996" (Exhibit RM-1).

CONCLUSIONS

The issues of performance standards and penalties are discussed elsewhere in this Order. The Commission declines to prescribe general terms and conditions. The parties are free to negotiate contractual provisions that are not required by the Act or by the FCC's rules.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

Issue: Should BellSouth's proposal for a cost-recovery mechanism for dialing parity be decided in this proceeding?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

BELLSOUTH: BellSouth contends that BellSouth should be allowed to recover its costs pursuant to a mechanism similar to that initially used to recover the cost of equal access. However, BellSouth states that this issue is not appropriate for arbitration because a resolution of the issue would affect more parties than just MCI, AT&T, and BellSouth.

ATTORNEY GENERAL: Dialing parity and the attendant cost-recovery mechanisms will affect all carriers, both local and long-distance. The parties should be ordered to participate in an industry group and report to the Commission by March 31, 1997, as to the course of the discussions and probable solutions to this issue.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Price and BellSouth witnesses Varner and Scheye.

Witness Price testified that to the extent that BellSouth requests in the future that it be permitted to recover costs associated with dialing parity, the Commission should subject such claims to investigation and review. Witness Varner testified that this issue concerns many more parties than just AT&T, MCI, and BellSouth and should, therefore, not be addressed in an arbitration proceeding of this type.

CONCLUSIONS

The Commission finds and concludes that the development of a cost-recovery mechanism for dialing parity is beyond the scope of this proceeding. However, the Commission encourages the

parties to pursue resolution of any dispute in this regard on a national level, through the appropriate industry forum or at the FCC.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 33

Issue: Should the costs of conversion from existing virtual collocation to physical collocation be borne by BellSouth or MCI and what are the appropriate prices of collocation?

POSITIONS OF PARTIES

MCI : Collocation and all associated services shall be priced at TSLRIC. Costs of conversion from existing virtual collocation to physical collocation must be borne by BellSouth.

BellSouth: BellSouth will agree to offer both virtual and physical collocation. Should MCI wish to convert virtual collocation arrangements to physical, it should reimburse BellSouth for BellSouth's costs to do so.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witness Scheye and MCI witnesses Goodfriend and Murphy.

The issue of pricing with respect to collocation, in all but the following respect, has been addressed previously and need not be repeated here. Regarding who should be required to pay the costs of conversion from existing virtual collocation to physical collocation, the Commission concludes that it is not unreasonable to require that the MCI bear such costs.

CONCLUSIONS

Therefore, based upon the entire evidence of record, the Commission finds and concludes that the requesting CLP should be required to bear the costs of conversion from existing virtual collocation to physical collocation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34

Issue: What actions should the Commission take to supervise the implementation of its decisions?

POSITIONS OF PARTIES

MCI: This is a procedural issue which must necessarily be addressed if the Commission is to carry out its duties under Section 252 of TA96.

BELLSOUTH: This issue is not addressed in BellSouth's matrix; however, in its Proposed Order BellSouth states that after the issuance of a Recommended Arbitration Order (RAO), the petitioning

party and the responding party shall file for final approval or disapproval a document to be known as the Composite Agreement incorporating all the relevant terms and conditions.

ATTORNEY GENERAL: As previously stated under other issues addressed herein, the Attorney General has recommended several dates for implementation of certain matters and has also suggested dates for the provision of various progress reports.

DISCUSSION

Section 252(b)(4)(C) of TA96 provides that the State Commission is to impose appropriate conditions to implement Section 252(c) upon the parties. Section 252(c) in turn requires the State Commission to provide a schedule for implementation of the terms and conditions by the parties to the agreement. The implementation of the agreement covers two categories. First, there is the process by which the RAO is rendered into a Composite Agreement for Commission approval. Second, there are the schedules implicit or explicit in the Commission's resolution of certain issues.

The Commission addressed the first category in its August 19, 1996 Order in Docket Nos. P-100, Sub 133 and P-140, Sub 50, which, among other points, specified an arbitration procedure. In general, the procedure allows for a party to the arbitration to file objections to the RAO within 30 days after issuance of the RAO; it allows any interested person not a party to the arbitration proceeding to file comments within 30 days after issuance of the RAO; and it requires the parties to render the RAO into a Composite Agreement and to file such Composite Agreement between the 30th and the 45th day after the issuance of the RAO. The Commission must approve or reject the Composite Agreement within 30 days of the Composite Agreement submission. In an October 31, 1996 Order in Docket No. P-141, Sub 29, the Commission responded to an MCI query by instructing the parties to submit the Composite Agreement and a joint list of any unresolved issues with recommendations from the parties as to further action.

Concerning the second category, the Commission's RAO may contain some provisions which are self-executing at the time the Composite Agreement is approved and others instructing the parties to conduct further negotiations, often with a view to conformity with an industry-wide consensus. Implicit in this is the right of a party to ask the Commission to revisit the issue through a complaint or other procedure, but in such cases, the timing of such action is under the petitioner's control.

CONCLUSIONS

The Commission finds and concludes that it has already made provisions for the supervision of the implementation of its decisions. Therefore, the Commission will follow its previously approved arbitration procedures as follows:

- A party to the arbitration is allowed to file objections to the RAO within 30 days after issuance of the RAO;

- Any interested person not a party to the arbitration proceeding is allowed to file comments within 30 days after issuance of the RAO; and

- The parties to the arbitration are required to render the RAO into a Composite Agreement and to file such Composite Agreement between the 30th and the 45th day after the issuance of the RAO.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth and MCI shall prepare and file a Composite Agreement in conformity with the conclusions of this Order not later than 45 days after the date of issuance of this Order. Such Composite Agreement shall be in the form specified in paragraph 4 of Appendix A in the Commission's August 19, 1996, Order in Docket Nos. P-140, Sub 50, and P-100, Sub 133, concerning arbitration procedure (Arbitration Procedure Order).

2. That, not later than 30 days from the date of issuance of this Order, a party to the arbitration may file objections to this Order consistent with paragraph 3 of the Arbitration Procedure Order.

3. That, not later than 30 days from the date of issuance of this Order, any interested person not a party to this proceeding may file comments concerning this Order consistent with paragraphs 5 and 6, as applicable, of the Arbitration Procedure Order.

4. That, with respect to objections or comments filed pursuant to decretal paragraphs 2 or 3 above, the party or interested person shall provide with its objections or comments an executive summary of no greater than one and one-half pages single-spaced or three pages double-spaced containing a clear and concise statement of all material objections or comments. The Commission will not consider the objections or comments of a party or person who has not submitted such executive summary or whose executive summary is not in substantial compliance with the requirements above.

5. That parties or interested persons submitting Composite Agreements, objections or comments shall also file those Composite Agreements, objections or comments, including the executive summary required in decretal paragraph 4 above, on an MS-DOS formatted 3.5 inch computer diskette containing noncompressed files created or saved in WordPerfect format.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-7, SUB 825
DOCKET NO. P-10, SUB 479

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plan Pursuant to G.S. 62-133.5	))))	ORDER AUTHORIZING PRICE REGULATION

HEARD: February 13, 1996 - February 23, 1996, Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Jo Anne Sanford, Presiding; and Commissioners Allyson K. Duncan and Judy Hunt

APPEARANCES:

For Carolina Telephone and Telegraph Company and Central Telephone Company:

Dwight W. Allen, Vice President and General Counsel, Robert Carl Voigt, Senior Attorney, and Elizabeth A. Denning, Esq., Sprint Mid-Atlantic Telecom, Inc., 14111 Capital Boulevard, Wake Forest, North Carolina 27587

Edward S. Finley, Jr., Esq., Hunton & Williams, Attorneys at Law, One Hannover Square, Suite 1400, Fayetteville Street Mall, Raleigh, North Carolina 27601

For AT&T Communications of the Southern States, Inc., Time Warner, and North Carolina Payphone Association:

Wade H. Hargrove, Marcus Trathen, and Elizabeth Crabill, Brooks, Pierce, McLendon, Humphrey & Leonard, Attorneys at Law, P.O. Box 1800, Raleigh, North Carolina 27602

For AT&T Communications of the Southern States, Inc.:

Gene V. Coker, and Roxanne Douglas, AT&T Communications of the Southern States, Inc., 1200 Peachtree Street, N.E., Atlanta, Georgia 30309

For Carolina Utility Customers Association, Inc.:

Sam J. Ervin, IV, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Attorneys at Law, P.O. Drawer 1269, Morganton, North Carolina 28680-1269

For MCI Telecommunications Corporation:

Ralph McDonald, and Cathleen Plaut, Bailey & Dixon, L.L.P., Attorneys at Law, P.O. Box 1351, Raleigh, North Carolina 27602

Marsha Ward, Attorney at Law, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342

For North State Telephone Company and the Alliance of North Carolina Independent Telephone Companies:

Russell M. Robinson, III, Amos & Jeffries, L.L.P., Attorneys at Law, Post Office Box 787, Greensboro, North Carolina 27402

For the Department of Defense and All Other Federal Executive Agencies:

Sheryl Anne Butler, Trial Attorney, 901 North Stuart Street, Suite 713, Arlington, Virginia 22203

For the Using and Consuming Public:

Karen E. Long, Assistant Attorney General, and Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, P.O. Box 629, Raleigh, North Carolina 27602

Antoinette R. Wike, Chief Counsel, Robert B. Cauthen, Jr., Staff Attorney, and Paul Lassiter, Staff Attorney, Public Staff, P.O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: During the 1995 Legislative Session, the North Carolina General Assembly enacted House Bill 161, which amended Chapter 62 of the North Carolina General Statutes, to permit local exchange companies subject to rate of return regulation under G.S. 62-133 to elect a form of price regulation in lieu of rate of return regulation. House Bill 161 became effective on July 1, 1995, and on October 23, 1995, Carolina Telephone and Telegraph Company ("Carolina") and Central Telephone Company ("Central") (hereinafter collectively referred to as the "Companies") filed their Petition to Elect Price Regulation with the Commission.

G.S. 62-133.5 requires notice and an opportunity for interested parties to be heard, allows price regulation which may vary by local exchange company, and requires the Commission to approve price regulation upon finding that the Plan as proposed:

(i) protects the affordability of basic local exchange service, as such service is defined by the Commission;

(ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt;

(iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and

(iv) is otherwise consistent with the public interest.

On January 31, 1996, the Companies entered into a "Stipulation and Agreement" with the Public Staff in which those parties agreed to a revised price regulation plan for the Companies. The Public Staff filed this revised plan with the testimony of its witness, Dr. Ben Johnson. Similarly, the Companies filed a Notice of Stipulation on February 6, 1996. On February 9, 1996, the Public Staff filed a second version of the revised plan which incorporated three changes agreed to by those parties. The cover letter which accompanied the February 9, 1996, filing explained that the new filing "...contains language changes for purposes of clarification in three sections of the Stipulated Plan: the definition of Service Price Index (SPI), Section 6.A(1), and Section 12.B." Hereinafter, the Plan filed by the Public Staff on February 9, 1996 is referred to as the "Stipulated Plan." A copy of this version of the Stipulated Plan was attached to the Supplemental and Rebuttal Testimony of the Companies' witness Potter which was filed on February 9, 1996.

In the Stipulated Plan, the Companies' services are classified into four categories: Basic, Interconnection, Non-Basic 1 and Non-Basic 2. The Basic Category was expanded to include a number of services classified in the Original Plan as Non-Basic services and Other services.

The Stipulated Plan includes a three-year cap on residential basic local service rates and an overall price change limit of the change in Gross Domestic Product Price Index (GDP-PI) minus two percent on services in the Basic, Interconnection and Non-Basic 1 Categories, rather than one-half GDP-PI as proposed in the Original Plan. For services in the Non-Basic 2 Category, which contains rates for Centrex and Billing and Collection Services, there are no pricing restrictions. In the Stipulated Plan, the Companies agreed to place limits on individual rate elements, as opposed to individual services. Thus, the Companies agreed to limit increases for rate elements in the Basic Category to the change in GDP-PI plus three percent, for rate elements in the Interconnection Category to the change in GDP-PI plus seven percent, and for rate elements in the Non-Basic 1 Category to the change in GDP-PI plus fifteen percent. The Stipulated Plan includes no constraints for rate elements in the Non-Basic 2 Category.

In the Stipulated Plan, the Companies and the Public Staff agreed to $30 million in rate reductions. The Stipulated Plan calls for an initial reduction in touch-tone and switched access services of $5 million for each service. The remaining $5 million portion of the initial $15 million reduces intraLATA toll and complex business services. Subsequent $5 million revenue reductions on the first, second and third anniversary dates of the Stipulated Plan would be made to toll switched access, touch-tone and complex business services.

In addition, the Stipulated Plan provides for Commission review of the operation of the Plan five years after the effective date of the Stipulated Plan and for the submission of annual financial

surveillance reports by the Companies during the life of the Stipulated Plan. The Stipulated Plan includes a rate restructure provision under which the Commission can subject rate restructures to a public interest standard and can take an additional thirty days to evaluate the proposed changes. The Stipulated Plan also contains a provision under which the Commission can review tariff terms and conditions under a public interest standard, as well as a number of other changes that clarify Commission authority, such as provisions to classify new services and reclassify existing services. Supplemental and rebuttal testimony of both the Public Staff and Companies addressed the Stipulated Plan.

On October 25, 1995, the Commission entered an Order which suspended the Companies' application for a period of 180 days and set this matter for public hearing beginning at 9:30 a.m. on Tuesday, February 13, 1996.

A number of parties intervened, and the Commission granted intervention to AT&T Communications of the Southern States, Inc. (AT&T), Time Warner Communications of North Carolina, L.P. (Time Warner), MCI Telecommunications Corporation (MCI), Carolina Utility Customers Association, Inc. (CUCA), North State Telephone Company (North State), U.S. Department of Defense and All Other Federal Executive Agencies (DOD), the Alliance of North Carolina Independent Telephone Companies (the Alliance), ALLTEL Carolina, Inc. (ALLTEL), and the North Carolina Payphone Association (NCPA).

On November 6, 1995, the Companies filed a Motion for Approval of Proposed Public Notice. Subsequently, on November 21, 1995, the Public Staff filed a Response to the Companies' Motion setting forth a revised Public Notice.

Discovery by various parties was conducted throughout November and December, 1995. The discovery process involved several disputes among the parties over the proper scope of discovery, and the Commission resolved these disputes by Orders entered on December 13, 1995, January 2, 1996, January 10, 1996, January 19, 1996, January 23, 1996, and February 5, 1996.

At the evidentiary hearing, the Companies offered the testimony of the following witnesses: Thomas W. Sokol, Vice President, Human Resources, Sprint Mid-Atlantic Telecom, Inc.; Marcus H. Potter, Manager-Regulatory Affairs-North Carolina, Sprint Mid-Atlantic Telecom, Inc.; and Dr. William E. Taylor, Senior Vice President, National Economic Research Associates, Inc., Cambridge, Massachusetts. Harry Gildea, Senior Consultant, Snavely, King & Associates, Washington, D.C., testified for the DOD. Dr. Ben Johnson, President, Ben Johnson Associates, Inc., Tallahassee, Florida, testified on behalf of the Public Staff. Walter G. Bolter, a communications consultant based in St. Augustine, Florida, testified for CUCA. The following witnesses testified on behalf of AT&T: Dr. David L. Kaserman, Department of Economics, Auburn University, Auburn, Alabama; G. Wayne Ellison, Manager, Government Affairs, AT&T; Matthew I. Kahal, Senior Economist and Principal, Exeter Associates, Inc., Silver Spring, Maryland; Dr. John R. Norsworthy, Professor of Economics and Management, Rensselaer Polytechnic Institute, Troy, New York; Wayne A. King, Manager, Network Services Division, AT&T; and Arthur Lerma, Area Controller, Regional Controller Organization, AT&T. Don J. Wood, Consultant, Alpharetta, Georgia, and Terry L. Murray, Murray & Associates, Piedmont, California, testified for MCI. The Companies offered the rebuttal testimony

of the following witnesses: Mr. Sokol; Mr. Potter; Dr. Taylor; Francis E. Westmeyer, Vice President-Finance, Sprint-Mid Atlantic Telecom, Inc.; and Dr. James H. Vander Weide, Research Professor, Fuquay School of Business, Duke University, and President, Financial Strategy Associates, Durham, North Carolina. Subsequent to the hearing, the Commission entered an Order on March 19, 1996, propounding certain questions to be answered by the parties in their briefs and proposed orders.

Based upon the foregoing, the evidence adduced at the hearings, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicants, Carolina and Central, are public utilities as defined by G.S. 62-3(23)a.6 and local exchange companies as defined by G.S. 62-3(16a). The Companies are subject to rate of return regulation pursuant to G.S. 62-133 and have elected a form of price regulation pursuant to G.S. 62-133.5, as set forth in House Bill 161. Thus, the Companies are properly before the Commission.

2. The Commission-approved Price Regulation Plan, as adopted herein, protects the affordability of basic local exchange service.

3. The Commission-approved Price Regulation Plan, as adopted herein, reasonably assures the continuation of basic local exchange service that meets reasonable service standards.

4. The Commission-approved Price Regulation Plan, as adopted herein, will not unreasonably prejudice any class of telephone customers, including telecommunications companies.

5. The Commission-approved Price Regulation Plan, as adopted herein, is otherwise consistent with the public interest.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 1

The evidence supporting this finding of fact and conclusion of law is set forth in the various filings of the parties, in the Orders of this Commission, and in the record as a whole. This finding and conclusion was not contested by the parties.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 2

The Companies urge the Commission to define "basic local exchange service," as that term is used in G.S. 62-133.5, to mean basic residence local exchange service. CUCA, on the other hand, has submitted that the term "basic local exchange service" should be defined to mean "any service which involves the transmission of local messages or the connection of customers with the local exchange system." The Commission believes, and so finds and concludes, that the Companies' proposed definition is too narrow and that CUCA's proposed definition is overly broad for purposes of this proceeding and that both definitions should be rejected. The Commission defines "basic local

exchange service" for purposes of G.S. 62-133.5 to mean basic residence and business local exchange service. We further conclude that basic local exchange service is currently affordable and the Commission-approved Price Regulation Plan protects the affordability of basic local exchange for the following reasons.

First, no party contested the issue of current affordability and the evidence supporting this finding is overwhelming. Generally, the Commission-approved Price Regulation Plan protects the affordability of basic local exchange service by (1) capping basic residential service rates for the first three years, (2) requiring $30 million in rate reductions over the first three years, and (3) continuing the Lifeline Subscriber Line Charge Waiver and the Link-Up Carolina Connection Assistance Program. Furthermore, the Commission-approved Price Regulation Plan limits future increases for all service categories (except services subject to competition, which at the inception of the Plan includes only Centrex and Billing and Collection Services) to the change in GDP-PI minus 2% per year. Other more specific examples of affordability under the Commission-approved Price Regulation Plan include the following:

- The Commission-approved Price Regulation Plan assures that the Companies' customers will receive, in real terms, rate decreases of at least 16.1% over the life of the Commission-approved Price Regulation Plan.

- Over the past decade, Carolina's rates for R-1 Service have declined by about 15% in real terms.

- The price of Carolina's average R-1 rate, plus the subscriber line charge and touch-tone charge, is $17.82. To put this amount in perspective, it is less than the cost of a large supreme pizza and four cans of Pepsi from Pizza Hut, or two adult and two children's movie tickets, or cable television service for one month.

- Even after five years under the Commission-approved Price Regulation Plan, with the unlikely assumption of maximum allowable increases, the Attorney General's hypothetical "Mama Pots" would be paying less for local service than she was prior to implementation of defined radius calling plans.

- Despite their high cost in predominantly rural service areas, basic local service rates for Carolina and Central are lower than those for BellSouth. This is true with respect to both residential and business local rates. Furthermore, 61% of the former Bell Operating Companies throughout the United States have higher R-1 rates than does Carolina, and 78% have higher R-1 rates than Central. The Companies also have low business rates. Both Companies' rates for B-1 lines are lower than all but one of BellSouth's rates in its states. Further, in the nation as a whole, 64 percent of the states with flat-rate business service have a higher Bell rate than Carolina, and 76 percent have a higher rate than Central.

- Penetration levels are a primary indicator of affordability, and telephone penetration rates are higher than for most other goods and services. Furthermore, economic indicators suggest that penetration levels for telephone service will increase over the next six years.

- Per capita income levels are growing in the areas served by Carolina and Central, providing further assurance of continued affordability of local service.

The Companies have furnished solid evidence that the Companies' local service rates are currently affordable, and that the Stipulated Plan assures continued affordability. No direct evidence has been presented by any party to challenge the Stipulated Plan in terms of protecting the affordability of basic local exchange service. Although an AT&T customer letter claims that the Companies' rates are among the highest in the Southeast, an analysis of that claim shows that AT&T's study did not even look at the rates of Carolina and Central. Instead, AT&T examined rates for ISDN, intraLATA toll, and access for another company. Rates for basic local exchange service were not considered. Thus, AT&T's claim is unfounded.

As discussed elsewhere herein, the Commission has modified the Stipulated Plan. However, any such modification made by the Commission affecting affordability only serves to increase the assurance that basic local exchange service will continue to be affordable. The evidence clearly supports a finding that the Commission-approved Price Regulation Plan satisfies the first criterion of the statute.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 3

The Companies are committed to meet and maintain the service standards prescribed by the Commission, and the Commission-approved Price Regulation Plan specifically states that "The Commission retains oversight for service quality . . . ." The Companies will also continue to provide service in accordance with the uniform service objectives established by this Commission under Rule R9-8, as may be amended from time to time. The Commission also retains statutory authority to compel efficient service pursuant to G.S. 62-42. Thus, in this regard, nothing has changed. The Commission retains the same powers and authority it has always had with respect to the provision of quality service. It can investigate service problems either on its own initiative or upon complaint from another party.

In addition, there are other considerations that provide assurance that the Companies will consistently meet the service standards prescribed by the Commission -- e.g., competitive pressures naturally induce firms to meet service standards; the Companies have an established reputation for high quality service; the Commission-approved Price Regulation Plan encourages continued investment in telecommunications infrastructure that will enable the Companies to upgrade service standards; and, historically, the Companies have consistently provided high standards of service which often exceed Commission prescribed standards.

The evidence clearly supports a conclusion that the Commission-approved Price Regulation Plan satisfies the service standards criterion of the statute.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 4

Intervenors raised a number of issues with respect to the impact of the Stipulated Plan upon particular classes of customers, including telecommunications companies. After careful consideration of all of the evidence of record, the Commission is persuaded that the resulting Commission-approved

Price Regulation Plan does not unreasonably prejudice any class of customers, including telecommunications companies.

First, the Commission must address the meaning of unreasonable prejudice. The language set forth in G.S. 62-133.5(a)(iii) is almost identical to the long-standing language of G.S. 62-140: "No public utility shall. . .make or grant any unreasonable preference or advantage...." Consequently, cases interpreting the language of G.S. 62-140 can be used to interpret the language of G.S. 62-133.5(a)(iii). Where the terms used in a statute have acquired a settled meaning through judicial interpretation, and the same terms are used in a subsequent statute upon the same subject matter, they are to be understood in the same sense, unless, by qualifying or explanatory addition, the contrary intent of the legislation is made clear. Home Security Life Ins Co v. McDonald 277 N.C. 275, 177 S.E.2d 291 (1970).

Accordingly, the Commission concludes that the General Assembly, in drafting G.S. 62-133.5(a)(iii), intended to embody within that statutory enactment the same principles embodied in G.S. 62-140 and did, thereby, invoke the body of case law that has been developed under G.S. 62-140. Therefore, the question is, whether or not the Commission-approved Price Regulation Plan unreasonably prejudices or discriminates against any class of telephone customers, including telecommunications companies, as that term has been construed by the Commission and the courts of North Carolina heretofore under G.S. 62-140. See, e.g., State ex rel Utilities Comm'n v. Bird Oil Co., 301 N.C. 14, 22, 273 S.E.2d 232, 237 (1981) ("The long-established question of law with respect to rate differential is not whether the differential is merely discriminatory or preferential; the question is whether the differential is unreasonable or unjust discrimination.") (Emphasis added.) See also State ex rel Utilities Comm'n v. Public Staff, 323 N.C. 481, 502, 374 S.E.2d 361, 373 (1988) and State ex rel Utilities Comm'n v. Carolina Utility Customers Assoc 323 N.C. 238, 252, 372 S.E.2d 692, 700 (1988).

Three groups of competitors and customers challenged various aspects of the Stipulated Plan as discriminatory: business services customers; interexchange carriers (IXCs), who purchase toll switched access services from the Companies; and customer-owned coin operated telephone service providers (COCOTs).

The Companies' large business customers, represented by CUCA, complained through witness Bolter that rates for business services provide a subsidy for residential service. CUCA argues that all of the Companies' prices, including those for business services, should be based upon cost. Because many of those rates are significantly above cost, CUCA argues that business customers are unreasonably prejudiced. However, Dr. William Taylor, testifying on behalf of the Companies, argued forcefully and persuasively that competition makes further increases in rates for business services unlikely. Thus, the Commission concludes that the Commission-approved Price Regulation Plan does not unreasonably prejudice or discriminate against the Companies' business customers.

Additionally, the two IXCs in this proceeding, MCI and AT&T, complained that the level of toll switched access charges is too high. AT&T witnesses, for example, argue that the Commission should reduce toll switched access charges to cost. MCI witness Don J. Wood took the same position.

The issue presented by these parties is whether the level of toll switched access charges in North Carolina's emerging competitive telecommunications marketplace unreasonably prejudices or discriminates against the IXCs. The IXCs assert that toll switched access is priced at a level that precludes the development of competition in the retail toll market and in the toll switched access market itself. The IXCs also assert that toll switched access is priced at a level that denies North Carolina toll customers the benefits of competition in the retail toll market.

After careful consideration of the entire evidence of record, the Commission finds and concludes that, contrary to the assertions of the IXCs, it should not reduce access rates to the levels advocated by the IXCs. The Commission, however, has determined, and shall so provide in the Commission-approved Price Regulation Plan, as adopted herein, that it is in the public interest to require that the Companies apply $4 million of the $5 million revenue reduction effective on the first anniversary date of the approved price plan and the entire $5 million revenue reduction effective on the second anniversary date to reduce toll switched access services. The remaining $1 million of the $5 million revenue reduction effective on the first anniversary and the $5 million revenue reduction effective on the third anniversary of the Commission-approved Price Regulation Plan will be applied to reduce touch-tone rates. This provision, in conjunction with other provisions in the Commission-approved Price Regulation Plan, will result in a total toll switched access charge reduction of $14 million. There is simply insufficient evidence in this record upon which to base further reductions.

Prior to the passage of the 1995 legislation and the filing of the Companies' price regulation plan, toll switched access charges were lawfully priced above incremental cost. Several witnesses in this proceeding, including witnesses for the Companies, conceded that toll switched access is priced above incremental cost. Historically, the justification for pricing services deemed less essential than basic local exchange service, such as long distance, above incremental cost was to allow local exchange service to be priced lower than it would have been in the absence of higher revenues received from other services. This pricing approach enables the local exchange companies to fulfill their historical responsibility of making local exchange service universally available. In addition, since these other services use the local loop, this pricing approach arguably reflects some support of the joint and common costs of the local loop. The local exchange companies have priced in this fashion as holders of the historical monopoly with the universal service responsibilities.

A justification for retaining existing pricing principles, at this time in telecommunications markets that are becoming increasingly more competitive, is the desire to proceed deliberately and cautiously during the transition period. The Commission recognizes the need to move prices for individual services toward their economic costs; however, caution and deliberation are necessary so that the desire to increase services and reduce costs in the lucrative, highly competitive sectors of the business do not result in an unexpected and socially unacceptable rise in the cost of essential services necessary to everyone. Nothing has changed with passage of the 1995 legislation that justifies, much less requires, abandonment of these principles. Nothing the Legislature said in 1995 may be construed to alter the Commission's role as the protector of those least able to obtain, and most in need of, basic local exchange service.

Based upon the foregoing and the entire evidence of record, the Commission concludes that the current level of toll switched access charges does not "unreasonably prejudice" the IXCs, who are,

of course, "telecommunications companies" under G.S. 62-133.5(a)(iii). The Commission concludes that the passage of G.S. 62-133.5 and the Companies' request for approval of the Stipulated Plan impose no new requirement that access charges be priced not to exceed the Companies' incremental costs. In fact, the evidence confirms that all IXCs are charged the same access charges. With the advent of de jure intraLATA toll competition in 1994, the Commission subsequently imposed an imputation requirement upon the LECs to prevent anticompetitive "price squeeze" pricing strategies. The Commission has, therefore, previously addressed certain aspects of the anticompetitive issues present in this proceeding in Docket No. P-100, Sub 126. Since the level of access charges is the same for all competitors, the Commission concludes that no unreasonable prejudice exists.

The comparisons of toll switched access rates between other companies and other states are not compelling because of differences in rate structures, rate design, and local service rates. In addition, the $14 million toll switched access charge reduction provided for in the Commission-approved Price Regulation Plan will reduce the level of intrastate toll switched access charges. At the federal level, when the subscriber line charges - $3.50 a line for residence and simple business; $6.00 a line for multi-line business - are factored into the interstate per-minute charge, federal interstate access charges are roughly the same as the Companies' North Carolina intrastate access charge. The Commission notes that AT&T witness King acknowledged that even the federal subscriber line charge was phased in over time. There is no clear or definitive evidence in this docket, beyond that related to the Stipulated Plan, as to what the appropriate level of intrastate toll switched access charges should be, what reductions are appropriate, and whether those reductions must be offset with increases in rates for other services. As Dr. Johnson noted, all services should be priced at levels to help recover the provider's common costs unless the service is characterized by zero demand.

In a related issue, AT&T also takes the position that individual rate elements for toll switched access services should be capped on an individual element basis, as opposed to being capped in the aggregate. Essentially, AT&T argues that, if rate elements are not capped on an individual basis, the Companies who are both a competitor at the retail level and a provider of monopoly inputs into its competitors' retail services at the wholesale level, will have the flexibility and the incentive to lower the prices of competitive rate elements and raise the prices of monopoly rate elements.

MCI also takes the position that, for basically the same reasons as AT&T, prices for monopoly services should be capped and that price caps should be applied to each rate element, rather than to collections of rate elements or to the combination of rates for services in baskets.

The Stipulating Parties take the position that the statute contemplates a regulatory regime under which the Commission is required to "permit the local exchange company . . . to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices."

As discussed elsewhere herein, the Commission has incorporated into the Commission-approved Price Regulation Plan specific anticompetitive safeguard language which in conjunction with certain statutory provisions should provide aggrieved parties with a clearly defined avenue for redress in the event

the Companies should engage in anticompetitive conduct. The Commission believes that such language reasonably balances the concerns of AT&T and MCI in this regard with the added benefit of avoiding the imposition of unnecessary constraints on the Companies' pricing flexibility.

Finally, the Stipulated Plan provides that the prices for rate elements in the Basic Services Category, which includes toll switched access services, in effect on the day prior to the effective date of the Stipulated Plan shall be the initial effective prices under the Stipulated Plan. The Stipulated Plan also provides that the initial prices, in the aggregate, for toll switched access services shall be the maximum that the Companies shall charge under the Stipulated Plan. The Commission believes, however, and shall so provide, that those rate elements should be capped in the aggregate, at the levels in effect after implementation of each of the toll switched access charge reductions as provided by the Commission in the price regulation plan herein approved for the Companies.

Regarding the Toll Switched Access charge reductions to be implemented by the Companies as provided under the terms of the price regulation plan approved herein, the IXCs who are parties to this proceeding have indicated that they would flow through reductions to their customers. The Commission believes, and will so direct, that those reductions should be flowed through in a way such that as many of the IXCs' customers as practicably possible would receive some direct benefit therefrom. The Commission believes that the foregoing can best be accomplished by directing the IXCs to flow through these reductions to their basic residential and business subscribers through decreases in intrastate basic message telephone service (MTS) rates on a dollar-for-dollar basis. Therefore, each interexchange carrier which is required to file tariffs in North Carolina shall, under the provisions of this Order, file tariffs in accordance with the foregoing. Those tariffs shall be structured such that the MTS rate reductions will become effective concurrently, to the maximum extent possible, with each of the access charge reductions as required herein. Additionally, AT&T, MCI, and Sprint, will be required to submit, in conjunction with their filings of tariffs, workpapers clearly identifying the details of their proposals in this regard.

Closely related to the issue of unreasonable prejudice or discrimination resulting from the level of the Companies' toll switched access charges is the issue of whether the Commission should adopt rules or modify the Stipulated Plan to prevent anticompetitive behavior in the context of this proceeding. The Companies assert that between the Stipulated Plan and the North Carolina General Statutes, the Commission has ample authority to deal with competition issues as they arise. The Companies also note that their intraLATA toll services continue to be subject to the Commission's imputation requirement as set forth in its Order of May 17, 1994, in Docket No. P-100, Sub 126. The Companies opine that to the extent imputation requirements are needed for other services, the Commission can deal with this issue in the context of the local competition and universal service dockets. The Companies indicated during the hearing that they would not oppose reasonable standards adopted in that context.

The Companies note that the Stipulated Plan requires the Companies to price services at or above their long-run incremental costs (LRIC), and submit that this requirement should prevent predatory pricing. With respect to cross-subsidy, the Companies contend that price regulation breaks the linkage between prices and earnings, thus reducing the incentive to cross-subsidize. The

Companies also contend that the Stipulated Plan eliminates the possibility of most cross-subsidies, because prices in one service category cannot be raised to offset price decreases in another category.

The Companies also cite that the Commission could continue to utilize its authority under G.S. 62-140 to prohibit unreasonable discrimination. Further, the complaint mechanism, pursuant to G.S. 62-73, is available to aggrieved parties, who now have additional statutory recourse in the event of allegations of anticompetitive misconduct, pursuant to G.S. 62-133.5(a).

Several intervenors argue that the Stipulated Plan should be modified by the Commission to include specific anticompetitive safeguard language in the price regulation plan ultimately approved by the Commission. Specifically, the subject intervenors argue that language should be included in the Companies' price regulation plan:

(a) Requiring the Companies not to price certain of its services below total service long run incremental cost (TSLRIC) as opposed to setting LRIC as the pricing floor, as proposed in the Stipulated Plan;

(b) Requiring the Companies in establishing their price for a competitive service which includes a monopoly component, to impute as a component of the cost of such service the price it charges competitors for the monopoly component; and

(c) Prohibiting the Companies from engaging in anticompetitive practices; e.g., anticompetitive bundling of services and tying arrangements, vertical price squeezes, price discrimination, and predatory pricing.

LRIC is defined in the Stipulated Plan as "[t]he cost the Company would incur (save) if it increases (decreases) the level of production of an existing or new service or group of services. LRIC consists of costs associated with adjusting future production capacity that are causally related to the rate elements being studied. These costs reflect forward-looking technology and operational methods."

AT&T defines TSLRIC as "[t]he total cost the company would incur if it were to initially offer a service or network element for the entire current demand, given that the Company already produces all its other services."

The difference between the foregoing costing methodologies, basically, appears to be that TSLRIC would include joint or common cost associated with a service or network element whereas LRIC would not include such costs.

AT&T, MCI, Time Warner, and NCPA, hereafter referred to collectively as the Protesting Parties, either implicitly or explicitly submit that use of LRIC, as proposed in the Stipulated Plan, does not adequately provide anticompetitive pricing safeguards for the Companies potential customers so as to guard against anticompetitive pricing conduct by the Companies.

The Protesting Parties contend that, with respect to most services, the Companies are both a competitor and a monopoly provider of a necessary input to each competitive service. In the absence of anticompetitive constraints, it would be in the Companies' self-interest to utilize its existing monopoly power to exploit the remaining captive ratepayers and frustrate and delay the development of effective competition. AT&T points out that the Public Staff's witness, Dr. Ben Johnson, recognized the potential for such anticompetitive conduct:

> "When a firm is subject to competition in at least one segment of the industry but still enjoys monopoly power in at least one other segment, it has strong incentives to use the revenue from one or more of its quasi-competitive services, thereby allowing the firm to price the latter service(s) "below cost." Whether or not this practice qualifies as "cross-subsidizing" as that term is technically applied in the economics literature, it is certainly disturbing and potentially undesirable."

AT&T argues that LRIC is inadequate because it (1) applies an inappropriate cost measurement, (2) fails to provide any restriction or guidance as to how cost shall be determined, and (3) fails to address a panoply of other potential anticompetitive activities, including the fact that the Stipulated Plan does not require the Companies to impute to its own services the price it charges to its competitors for the same service. Further AT&T contends the Stipulated Plan does not contain safeguards to prevent the Companies from cross-subsidizing its competitive services with revenues from its monopoly services.

The Protesting Parties, in general, take the position that because LRIC measures changes in output at the margin, it does not accurately reflect the cost of providing the service in question. As a result; the application of LRIC as a price floor will still allow the Companies to set its prices for its competitive services below cost and subsidize these prices with monopoly profits. By contrast, TSLRIC more accurately measures the cost of providing the service in question and will prevent the Companies from unfairly cross-subsidizing their competitive services. According to AT&T, TSLRIC sets the appropriate floor below which economists recognize a service to be cross-subsidized.

According to AT&T, it is critical that competitors not only have state law remedies for anticompetitive conduct but also have state regulatory remedies for such conduct. Additionally, AT&T states that inclusion of a provision in the Stipulated Plan barring the Companies from engaging in anticompetitive activity would enable the Commission to discharge its statutory duty to protect the public interest and to provide a regulatory environment in which competition can develop.

In summary, the Protesting Parties contend that the Stipulated Plan, in order to provide adequate anticompetitive protection, must be modified (a) to require that the Companies not price any of its services below TSLRIC, exclusive of basic local service, (b) to require that the Companies impute the price it charges its competitors for monopoly service components (including, but not limited to, access charges) in the price it charges for its own competitive services, and (c) to include specific language barring the Companies from engaging in anticompetitive activity. Regarding the LRIC versus TSLRIC controversy, CUCA takes the position that the Plan should employ both LRIC and TSLRIC—LRIC as the pricing floor benchmark for rate elements and TSLRIC as the pricing floor benchmark for services. Additionally, Time Warner asserts that language should be included

in the Plan requiring the Companies to use consistent costing methods across all services and rate elements, file and make publicly available cost support for all tariffed rates, and demonstrate that it does not shift common costs onto noncompetitive services in its monopolized markets from price reductions in competitive markets.

After having carefully considered the foregoing and the entire evidence of record regarding the need for inclusion of specific anticompetitive safeguard language in the Companies' Price Regulation Plan, the Commission finds and concludes that the subject language should be included in the Commission-approved Price Regulation Plan. Such conclusion has been reached for reasons presented by the intervenors in support of their positions in this regard. The Commission further finds and concludes that the following specific language should be incorporated into the Commission-approved Price Regulation Plan:

(a) Regarding the use of LRIC: "LRIC as used herein shall be construed as presumptively appropriate for use in this Plan; provided, however, such use is without prejudice to the right of any party to challenge the propriety of use of LRIC in any complaint proceeding, including but not limited to complaints brought before the Commission alleging anticompetitive conduct on the part of the Companies."

(b) Regarding imputation: "The Companies shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function."

(c) Regarding anticompetitive practices: "This Plan shall not operate to permit anticompetitive practices. The Companies shall not engage in predatory pricing, price squeezing, price discrimination, or anticompetitive bundling or tying arrangements as those terms are commonly applied in antitrust law. Nor shall the Companies give any preference to the competitive services of affiliated entities."

The Commission is authorized to adopt rules for competition pursuant to G.S. 62-110(f1). While the Commission sees no need to promulgate detailed rules with respect to competition prior to approving price regulation, an Order was issued setting forth rules governing interconnection and other issues on February 23, 1996 in Docket No. P-100, Sub 133. These rules and other issues arising out of the advent of local exchange and exchange access competition are the subject of that proceeding and will be further addressed by the Commission in that docket.

Last, COCOT providers expressed fear of a price-squeeze by Carolina and Central. The NCPA urged the Commission, among other things, to provide for an imputation requirement on the Companies and to include specific language prohibiting anticompetitive practices by the Companies.

Carolina and Central did not address the COCOT issues directly.

While the Commission does not find it necessary at this point to promulgate special rules to protect COCOTs, the Commission does conclude that Carolina and Central should be required to impute to themselves the charges they make to COCOTs as part of the general imputation

requirement discussed elsewhere herein. Furthermore, COCOTs should be able to avail themselves of the protection afforded by the general prohibition on anticompetitive activities by Carolina and Central which is being instituted.

Accordingly, for the reasons set forth herein, the Commission concludes that the Commission-approved Price Regulation Plan does not "unreasonably prejudice any class of telephone customers, including telecommunications companies."

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 5

The record is replete with evidence that the Commission-approved Price Regulation Plan protects and serves the public interest. Among the more significant facts in evidence that support the public interest criterion are the following:

- The General Assembly determined that the public interest requires that the regulatory environment be changed to meet the changed technological and competitive environment.
- The Commission-approved Price Regulation Plan will permit the gradual adjustment of uneconomic rate disparities, and at the same time protect the public against rapid rate increases.
- The Commission-approved Price Regulation Plan encourages continued investment in telecommunications infrastructure which will benefit the public.
- The Commission-approved Price Regulation Plan provides incentives for incumbent providers to become more efficient and introduce new services.
- The Commission-approved Price Regulation Plan offers a better deal for consumers, even if competition is slow to develop.
- The Commission-approved Price Regulation Plan supports the legislative intent by helping to foster the development of a competitive market, while protecting consumers.
- The Commission-approved Price Regulation Plan reduces risks to consumers and distributes benefits to all customer classes.
- The Commission-approved Price Regulation Plan helps assure that incumbents will remain viable competitors.
- Under price regulation companies give up traditional rights to recover costs in the aggregate. Under price regulation there is no assurance that companies will be kept whole.
- Price regulation tends to shift the risks of competition away from the consumer and onto the shareholder.

- Under the Commission-approved Price Regulation Plan more than 70% of revenues are classified as Basic, which is the most restrictive service classification.

- The Public Staff's witness, Dr. Ben Johnson, noted that the Stipulated Plan contains many protections for consumers. The Commission-approved Price Regulation Plan contains those same protections for consumers as well as additional protective measures.

- Dr. Johnson stated that the ability of the Companies to raise rates under the Stipulated Plan is insignificant when compared to the ability it gives the Companies to deal with emerging forces of competition. The same is true of the Commission-approved Price Regulation Plan with the added benefit of anticompetitive safeguard language.

Collectively, these facts all support a finding that the Commission-approved Price Regulation Plan serves the public interest, the fourth criterion under the statute.

The following additional issues should also be addressed by the Commission:

a. **Does this price regulation case require, or necessarily imply, a general rate case for the Companies?**

(1) Law.

AT&T witnesses Ellison and Lerma argue that the Commission should conduct a general rate case for the Companies in connection with this price regulation proceeding but the Commission can find nothing in House Bill 161 that requires the action that AT&T has requested the Commission to take. The General Assembly, of course, also wrote G.S. 62-133, which sets forth a detailed and comprehensive plan for the making and setting of rates for public utilities under rate of return regulation. If the General Assembly had wanted the Commission to conduct the kind of rate proceeding set forth in G.S. 62-133 "going in" to competition and price regulation, as AT&T asserts, it could have done so.

The Commission must interpret and apply House Bill 161 as it is written because it is clear and unambiguous. The bill allows a local exchange company, currently subject to rate of return regulation, to elect to have its rates determined pursuant to "a form of price regulation, rather than rate of return or other form of earnings regulation." G.S. 62-133.5(a). Thus, it is clear that the General Assembly viewed price regulation as a form of regulation entirely distinctive and different from traditional rate of return regulation. This language, coupled with the exclusion of G.S. 62-81, 62-130, 62-131, 62-132, 62-133 and 62-137 from applicability to LECs electing price regulation pursuant to G.S. 62-133.5(g), supports the Commission's conclusion that the General Assembly did not require a traditional general rate case for LECs electing price regulation. We conclude, therefore, that there is nothing in House Bill 161 that requires the action that AT&T has requested the Commission to take. However, the Companies' earnings are relevant to this proceeding and have been considered in developing the Commission-approved Price Regulation Plan for the Companies.

(2) Policy.

We must next consider whether there is some policy reason that requires the Commission to undertake a review of the Companies' prices, costs, and earnings.

The Companies' witnesses argued forcefully that such a review is not only unnecessary, but antithetical to price regulation. Witness Vander Weide, for example, stated that a rate case is neither necessary nor appropriate for a firm leaving a monopoly environment and entering a competitive one. Dr. Taylor also testified that such a rate hearing is neither necessary or desirable. He stated that a rate case presupposes that the appropriate "cost of capital" can be measured. Such measures, while inevitably controversial, can be made as long as the Companies continue to operate in a traditional rate base/rate of return environment. However, he testified the whole purpose of this proceeding is to consider changes in the structure of regulation to a price regulation framework to accommodate changes in the competitiveness of telecommunications markets. In his opinion, those changes - both the increase in competitiveness and the shift to price regulation - will inevitably alter the Companies' required cost of capital because they increase the riskiness of investments in this business, since price regulation eliminates historic assurances of a fair return on the historic cost of capital or even assurances that prudent expenses can be recovered. Therefore, he believed that these changes will increase the cost of capital, but one cannot be sure of the magnitude of the increase. As a consequence, it was his opinion that because the appropriate target cost of capital is unknown, a full-blown hearing to test the initial earning consequences of the price regulation proposal would not be productive and would not correct uneconomic pricing of various services. Dr. Taylor also testified that target rates of return become irrelevant when moving from a rate of return environment into a price regulation environment. Also, with future revenue reductions built into the Stipulated Plan, offsets to earnings are already in place.

Dr. Johnson, the Public Staff witness, did not believe that an earnings review of the Companies was either appropriate or necessary. He testified that this Commission has had the opportunity to revisit those rates during a long past period. Therefore, in its decision-making process, the Commission has accepted this set of rates for a lengthy period of time. In his opinion, the fact that these rates have been in place for a lengthy period of time gives further assurance that they are a reasonable starting point.

The Commission is persuaded, primarily by the testimony of the Companies' and Public Staff's witnesses, that such a review is unnecessary. We conclude, therefore, that there is no legal or policy reason for undertaking a further earnings or rate review -- in other words, a general rate case -- for the Companies at this time.

b. **If so, is the record sufficient to order revenue or rate reductions in addition to the $30 million included in the Stipulated Plan?**

We do not reach this question because we have already concluded that such a review is not necessary. We note, however, that even if a further review were appropriate, the evidence indicates that once appropriate adjustments are made, the Companies' earnings appear to be within a reasonable

range considering current capital market conditions and the fact that the Company is moving into a competitive environment.

In summary, the Commission concludes that intervenor arguments for rate reductions on the basis of a rate of return review prior to approval and implementation of price regulation are unfounded and should be rejected. The record is simply not sufficient to order revenue reductions beyond those reflected in the Stipulated and the Commission-approved Price Regulation Plans.

c. **Does the Stipulated Plan grant the Companies sufficient pricing flexibility, but not excessive pricing freedom?**

Under the Commission-approved Price Regulation Plan, the pricing flexibility afforded the Companies is appropriate for a company about to enter the competitive telecommunications marketplace contemplated by the General Assembly in House Bill 161. G.S. 62-133.5(a) contemplates a regulatory regime under which the Commission is required to "permit the local exchange company. . .to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices."

Clearly then the statute contemplates a regulatory regime under which the Commission is required to "permit the local exchange company . . . to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices." The language is plain and unambiguous; accordingly, statutory interpretation is unnecessary. State ex rel Utilities Comm'n v. Edmisten, 291 N.C. 451, 465, 232 S.E.2d 184, 192 (1977). If the terms of a statute are clear, no judicial or administrative construction of the statute is required, and it is the duty of the courts or agency "to apply the statute so as to carry out the intent of the Legislature." Peele v. Finch, 284 N.C. 375, 382, 200 S.E.2d 635, 640 (1973).

On its face, the Stipulated Plan complies with G.S. 62-133.5. The Stipulated Plan provides a mechanism by which the Companies will adjust their prices for three categories of services in accordance with a formula that is based upon changes in the GDP-PI, a "generally accepted" index "of prices." None of the parties contested the appropriateness of the GDP-PI.

The Stipulated Plan also contains a provision in Section 7 that would permit the Companies, subject to Commission approval, to adjust their prices to reflect the impacts - both positive and negative - "of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the Company, to the extent that such impacts are not measured in the GDP-PI." The Stipulated Plan provides examples of such actions, including separations matters, extended area services or Commission-required technological innovations.

Opposition to this aspect of the Stipulated Plan crystallized around several issues:

(1) Whether the fifteen percent rate element constraint for services in the Non-Basic 1 Category is too high;

(2) How the "governmental action" section will work;

(3) Whether and why the Companies need the ability to increase prices in a competitive marketplace;

(4) Whether the Stipulated Plan permits the Companies to unreasonably increase rates for "monopoly" services while decreasing rates for competitive services;

(5) Whether toll switched access service should remain in the Basic Service category or be moved to form a separate category; and finally,

(6) Whether the Companies' rates must be immediately moved to their economic costs.

We address these issues below:

The attack on the Companies' ability to increase rates for individual price elements by the change in GDP-PI plus fifteen percent came primarily from CUCA through the testimony of its witness, Walter G. Bolter, as well as through cross-examination of other witnesses. Companies' witnesses Taylor and Potter defended the Stipulated Plan's pricing flexibility for Non-Basic 1 Services, as well as the other pricing constraints, arguing specifically in this case that demand elasticity will prevent the Companies from raising rates for most of the Non-Basic 1 Services. Witnesses Taylor and Potter pointed out that those services are discretionary, and that customers for those services will simply drop the services if the Companies raise the rates for those services.

Moreover, there is evidence that many of the services in the Non-Basic 1 Category are, or will be, subject to competitive pressures. Finally, the Commission finds a pricing constraint on each rate element, as set forth in the Stipulated Plan, to be both significant and compelling, a fact either overlooked or misunderstood by intervenors.

Dr. Johnson testified on behalf of the Public Staff that he was not aware of any other state plan with price restrictions on rate elements. He further noted that this change benefits the Companies' ratepayers, rather than its shareholders, a point also made by Dr. Taylor. Dr. Johnson explained that rate increases at a level of the change in GDP-PI plus fifteen percent would quickly invite competition and competitive losses, as large customers would either leave or build their own system.

The Companies' witness Potter testified that the constraints on individual rate elements in the Stipulated Plan are the most restrictive of any price regulation plan authorized for any of the Companies' affiliates.

The fifteen percent rate element constraint for services in the Non-Basic 1 Category is a stipulated, negotiated number. The Companies and the Public Staff have both made a compelling case for this amount of flexibility for services that are either competitive or discretionary and, thus, price-sensitive. The Commission therefore finds and concludes that the foregoing provision should be adopted as a part of the Commission-approved Price Regulation Plan.

There was a considerable degree of concern in the questions raised by the Commission and those of the parties as to how the "governmental actions" provision would operate. As proposed in

the Stipulated Plan, the Companies, with Commission approval, could "adjust the prices of any service(s) due to the financial impacts of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the company, to the extent that such impacts are not measured in the GDP-PI." Such adjustment is mandatory upon a proper showing of a set of four criteria. Most of the intervenors, including the Attorney General, opposed the mandatory nature of the governmental actions provision. The intervenors suggested making the provision permissive and introducing a public interest criterion. Some suggested that impacts of the Telecommunications Act of 1996 should be specifically excluded from pass-through under this provision.

The Commission, too, is concerned about the open-ended and mandatory nature of this provision, given the uncertainty of the nature and extent of future mandates which may be construed to constitute governmental action. The Commission further emphasizes that the governmental actions provision does not provide the Companies' with the right to recover competitive loses. The governmental actions provision is intended to adjust rates up or down as a direct result of costs or benefits flowing from specific governmental action and is not intended to allow recovery of remote or consequential marketplace effects.

Accordingly, the Commission concludes that the governmental actions provision of the Stipulated Plan should be modified by substituting the word "may" in place of the word "will" in the sentence before the criteria in order to make the adjustment permissive, rather than mandatory, and that a public interest standard should be inserted as the fifth criterion. This change will convert the governmental actions provision from one that is more or less automatic upon the satisfaction of certain criteria to one that will allow both scrutiny in the examination of governmental action claims and flexibility for the Commission in the decision-making on them.

Another pricing issue was whether and why the Companies need the ability to raise prices in a competitive marketplace. Again, the evidence here was overwhelming that the Companies, indeed any company, need the ability to both raise and lower prices in a competitive marketplace.

An additional area of concern with respect to pricing flexibility that we will address relates to the issue of whether the Companies will have the ability to raise prices in less competitive markets to offset reductions in more competitive markets. Witnesses Potter, Taylor, and Johnson all pointed out that increases of any magnitude will invite competition and will prevent the Companies from implementing this kind of pricing strategy. The Commission concludes that price elasticity and the threat of competition, coupled with the category and rate element constraints, should prevent "worst case" pricing strategies by the Companies.

Another issue raised by several intervenors regarding pricing flexibility, is the Stipulated Plan's inclusion of toll switched access services in the Basic Services Category. The Basic Services Category also includes basic residential services, basic business services, and the Companies' extended calling plans, among other services.

AT&T recommends that toll switched access services should be placed in a separate basket. According to AT&T, if toll switched access rates are reduced in the future, the Companies can expect

to argue that the reduction triggers the governmental action provision in the Stipulated Plan and that the Commission must permit increases in other services to compensate the Companies for reduced revenues from toll switched access. AT&T submits this would create additional regulatory proceedings before the Commission, submit all parties to wasteful expenditures of resources, and result in unnecessary rate increases for consumers.

The Attorney General stated that by including switched access services in the basic basket, the Stipulated Plan almost guarantees a degree of rate rebalancing when access charges are reduced. Because the overall basket constraint remains stable under the Stipulated Plan while access charges go down, then basic residential and basic business rates will go up as the plan provides. The Attorney General believes that while the possibility for competition in switched access services in the short-term is remote, particularly in the Companies' territory, it is more probable that it will be competitive before basic service is competitive. The Attorney General also believes that access services provide a different functionality from basic services. Because the probable degree of competition is likely to be different and the functionality is different between basic services and access services the Attorney General recommends that toll switched access should be placed in its own basket.

CUCA argues that placing toll switched access services in the Basic Service Category, along with capped basic residential services, was apparently done to finance access charge reductions with increased basic business and extending calling plan rates. In addition, CUCA also points out that when basic residential service rates are capped, they are excluded from the calculation of the Service Price Index (SPI) for the Basic Service Category. However, toll switched access, which is also capped over the life of the plan in the aggregate, is included in the calculation of the SPI for Basic service category. The effect of failing to exclude toll switched access revenues from the Basic Services Category (like basic residential service is treated when it is capped) subjects other services included in the Basic Service Category to a significant risk of rate increases. Therefore, CUCA recommends removing the cap on basic residential service or, in the alternative, capping all services in the Basic Services Category. In order to resolve the problem caused by including toll switched services in the SPI, CUCA also recommends that the Commission should either move toll switched access services to another category or modify the Stipulated Plan so that toll switched access services are excluded from the SPI calculation.

The Companies point out that this provision of the Stipulated Plan will, in time, produce the lower toll switched access charges which the IXCs seek. The Companies take the position that by including toll switched access, a subsidizing service, in the same category as basic local service, a subsidized service, a mechanism is in place which facilitates the gradual elimination of the cross-subsidization embedded in the historical rates for each service. According to the Companies, the elimination of this cross-subsidization over time will help ensure the continued affordability of local service rates, preserve the financial viability of the Companies, and will provide the IXCs with the rate relief they seek.

Public Staff witness Johnson testified the Companies wanted toll switched access services to be in a service category where the Companies could raise other rates as switched access rates are reduced. According to his testimony, the Public Staff preferred a separation of switched access and residential local service rates, but after several considerations decided the practical impact or

consequences of including toll switched access services in the Basic Service Category are minor. Such considerations included: if the Company intends to lower toll switched access service rates and raise residential rates, residential rates are capped for three years and a maximum increase of only GDP-PI plus 3% is allowed for two years; witness Johnson's opinion that the Company will probably find it necessary to lower basic business rates due to competition and lower toll switched access rates; and the ability of the Companies to raise revenue from the Basic Service Category is constrained by the overall category restraint of GDP-PI minus 2%. While witness Johnson viewed universal service funding as a separate issue, he acknowledged that imposition of a universal service fund is another way fair results can be accomplished.

Based on the entire record regarding this issue, particularly the testimony of Public Staff witness Johnson, the Commission concludes that it is not unreasonable for toll switched access services to be included in the Basic Services Category. Furthermore, inclusion of toll switched access services in the Basic Services Category will allow the Commission to gain additional insight into the efficacy of the treatment of toll switched access charges in this manner as compared to the treatment of toll switched access charges as a stand alone category as in the BellSouth Price Regulation Plan approved by the Commission.

Finally, we address one other pricing-related issue: rate rebalancing. G.S. 62-133.5(a) permits the Companies to "rebalance...rates." We believe that the gradual rebalancing that will occur under the Commission-approved Price Regulation Plan is in the public interest. Some parties argue that there are distortions - in an economic sense - in the Companies' prices, distortions that reflect years of pricing decisions designed to foster universal service. If those parties' contentions in this regard are correct, we believe that to do as some parties advocate and immediately move rates to their economic costs would cause both social and economic consequences which should and can be avoided. The Commission is persuaded that the marketplace should gradually correct any distortions that may currently exist by forcing prices toward their economic costs.

d. **Can or should, the Commission consider MCI's "Competition Plus" as a form of price regulation superior to the Companies' Stipulated Plan, and if so, does the evidence supporting "Competition Plus" warrant modifications to the Companies' Stipulated Plan?**

MCI proffered through its witness Don J. Wood a "Competition Plus" price plan. The MCI plan would essentially realign rates with direct economic costs, cap rates for the Companies' "other-than-competitive" services at existing rates, develop a universal service support mechanism, eliminate earnings reviews for the Companies, and eliminate price regulation of competitive services, eschew automatic price adjustments, and eliminate cost studies.

The MCI plan does not provide for indexing and rebalancing as the statute requires. G.S. 62-133.5 states, in regard to a price regulation plan, that "...the Commission shall, among other things permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices." MCI's plan does not provide for indexing of prices, and in fact it attempts to impose an absolute cap on prices for all services except competitive services. The failure of the MCI plan with respect to indexing is compounded by

the fact that the plan is unclear as to what services would be considered competitive. MCI's witness Wood could not identify the specific services of the Companies that would be included in the competitive category. Witness Wood also acknowledged that the MCI plan failed to meet the statutory test by failing to index prices. And just as MCI's plan fails the indexing requirement for a price regulation plan, it also fails the rebalancing requirement. MCI's plan does not permit rate rebalancing for any capped services as subsidies inherent in the rates for such services are eliminated through the forces of competition. The Commission concludes that the MCI plan does not comply with express statutory requirements with respect to either indexing or rebalancing.

The Commission will address the universal service support mechanism in another docket, Docket No. P-100, Sub 133. MCI's recommendation that the Commission avoid automatic price adjustments is also contrary to G.S. 62-133.5. Furthermore, MCI's recommendation to eliminate price regulation of competitive services is, we believe, unnecessary in light of House Bill 161's amendments to G.S. 62-2, which permit the Commission to "exempt from regulation" competitive services. Finally, the requirement for most cost studies will be eliminated as MCI has recommended.

G.S. 62-133.5(a) is silent as to the ability of a party to propose an alternate form of price regulation for a LEC that has elected price regulation pursuant to the statute. We have, nevertheless, considered MCI's proposal in light of the Commission's authority to modify a proposed plan pursuant to G.S. 62-133.5. We are not persuaded, however, that MCI's "Competition Plus" price regulation plan is appropriate in this environment.

e. **Are the productivity offsets included in the Stipulated Plan sufficient or should the Commission set those offsets at different levels?**

Several of the intervenors raised concerns about the reasonableness of the productivity offset of 2% that was reflected in the Stipulated Plan. The Stipulated Plan defines the term offset as "[t]he percentage reduction to the change in GD-PPI which is applied under this Plan." The Stipulating Parties recommended an offset of 2% for the Basic, Interconnection, and Non-Basic 1 Categories.

In the Stipulating Parties' view, the basket offsets of 2% cannot be viewed in a vacuum, but should be viewed as a part of the total Plan. The proposed rate decreases of $30 million have a direct impact on the productivity gains which the Companies will be able to achieve under the Plan. When appropriate consideration is given to the $30 million rate reductions, the effective productivity offset implicit in the Stipulated Plan is 3.8% rather than the 2.0%.

Measurements of productivity generally reflect the difference between outputs - that is, whatever is produced by the firm - and inputs - that is, whatever is consumed by the firm in producing those outputs. Inputs are capital, labor, and material, which must be properly weighted to establish the proper relationship of each input to the other for the particular firm, or firms, being measured. The same is true for outputs. Not only must the calculation reflect the correct relative weightings, the calculations must include the correct outputs themselves.

AT&T's witness, Dr. Norsworthy, calculated that the appropriate productivity offsets for Carolina Telephone are 6.35% for intrastate access, 1.8% for local services, and 4.44% for total

company services. AT&T asserted that the Commission has two options for requiring the Companies to share their productivity gains with their customers. First, it could set the starting prices for the Companies' services at appropriate rates which are based on the cost of providing the services, and then adjust all prices by the appropriate productivity offset factor. However, AT&T considers that the problem with this option is that incorrect starting prices will lead to unwanted results. Therefore, AT&T states that to the extent the Companies are not required to set their initial prices based on the cost of each service, then this option would not be appropriate. The second option offered by AT&T is to identify the total rate reductions that would be required annually to offset normal productivity gains. These reductions should then target the most excessive rates to bring them in line with costs. AT&T stated that at the national level, the Company has elected a price regulation plan based on total company performance that commits it to reduce costs by a 5.3% annual productivity offset; and noted that figures underlying the FCC targets were based on total local exchange company productivity, not just interstate services. Rather than suggest a specific increase to the productivity offset contained in the Stipulated Plan, AT&T recommends that the Companies be required to annually reduce its rates by following specified amounts: $3.5 million on the first anniversary of the plan, and $3.0 million on the second, third, and fourth anniversaries. Therefore, AT&T asserts that there is no justification for electing a lower productivity offset than 5.3%.

On rebuttal, Dr. Taylor sharply disputed the accuracy of Dr. Norsworthy's productivity study. Dr. Taylor testified that Dr. Norsworthy's so-called performance-based Total Factor Productivity study is critically flawed and its Total Factor Productivity results are meaningless. A Total Factor Productivity study, as the name implies, measures the relationship between the growth rates of total inputs and total outputs. Dr. Norsworthy selected only local usage (measured as the number of local calls) and intrastate toll and access (measured as call minutes) to construct his measure of output. He ignored entirely that a local exchange carrier also provides other outputs (e.g., lines, the primary connection between its customers and the network.) Dr. Taylor testified that Dr. Norsworthy's productivity study was fatally flawed because it failed to measure the "relationship between the growth rates of total inputs and total outputs." In addition, Dr. Taylor testified that "the period over which [Dr. Norsworthy] purports to measure productivity is entirely too short to devise a reliable trend" and is inappropriately "based on data solely for Carolina Telephone."

The Attorney General takes the position that a productivity offset of 3.5%, which reflects the average offsets of regional Bell Operating Companies which use the GDI-PI as an inflation factor, is the most appropriate number to use and will allow the Companies flexibility to adjust prices to meet competition while assuring that rates will not rise too quickly for customers with few or no competitive alternatives.

CUCA argued that the use of an unduly low offset will allow the Companies to charge excessive rates. The use of an unduly high offset imposes inappropriate risks upon the Companies. The credible evidence in the present record indicates that the offset included in the stipulated plan is too low and that the most appropriate offset of use in this proceeding is the 5.3% amount which both Carolina and Central adopted at the federal level.

The Commission is not persuaded by Dr. Norsworthy's testimony. Rather, we find the productivity offsets to which the Public Staff and the Companies have stipulated to be consistent with

the evidence in the proceeding. When the proposed rate reductions are considered, the productivity offsets are almost twice the 2% level outlined as basket offsets. Accordingly, we accept the proposed productivity offsets as within the public interest. Such productivity offsets are included in the Commission-approved Price Regulation Plan for the Companies, as adopted herein.

f. **Does the Commission retain sufficient authority under the Companies' Stipulated Plan to protect the public interest and is the Stipulated Plan otherwise consistent with the public interest?**

The Companies have agreed to Commission review of the Stipulated Plan five years from its effective date, and to file annual earnings surveillance reports during the life of the Plan. Both Dr. Johnson and the Companies viewed these two aspects of the Plan as major concessions on the part of the Companies. The Commission believes that the agreement to submit the Stipulated Plan to a five-year review and the agreement to continue financial reporting constitute important factors in the price regulation environment. In those regards, however, the Commission also believes that the Commission-approved Price Regulation Plan needs to provide: 1) that the Commission will undertake a five year review, 2) that such review will be initiated in advance of the approved price plan's fifth anniversary, 3) for the annual filing of earnings surveillance reports, and 4) that any claim of confidentiality with regard to these reports should be made by the Company and determined by the Commission if necessary in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act. Accordingly, the Commission will include such provisions in the approved plan to clearly indicate the Commission's intention with respect to the five year review and to otherwise, to the maximum extent practicable, balance the interests of all concerned.

The Commission, under the Commission-approved Price Regulation Plan, retains other significant authority as well, such as the authority to monitor and maintain service quality, the authority to review rate restructures and the terms and conditions of tariffs against a public interest standard, and oversight over classification and reclassification of services, tariffs, financial impacts of governmental actions, regrouping, complaint resolution, and imputation requirements. In short, currently regulated services remain subject to Commission scrutiny under price regulation. In addition, the Commission has new authority with respect to complaints concerning anticompetitive behavior pursuant to G.S. 62-133.5(e).

This leaves, however, the question of whether the Commission has the power to subsequently modify a price regulation plan during the term of the price plan approved herein. Under G.S. 62-80 and other relevant provisions, we believe that the Commission has this authority.

Last, while we are persuaded that the Commission-approved Price Regulation Plan represents a useful means whereby Carolina and Central can undertake the process of transition to a more competitive environment, where the rigors of competition gradually reduce the need for Commission oversight, the Commission concludes that it should not - indeed, cannot - divest itself of powers and responsibilities which are statutorily conferred, as, for example, under G.S. 62-80. The Commission is, of course, cognizant that changes to the Plan should not be undertaken for light and transient reasons. Nevertheless, especially in view of the fast-changing legal and technological environment of telecommunications in North Carolina and the nation, the Commission must retain the power,

consistent with due process, to make truly needful adjustments in the price plan if changing circumstances and the public interest so require.

In summary, we are convinced that the Commission-approved Price Regulation Plan strikes a balance between the authority that the Commission needs to continue to protect the public interest and the pricing flexibility that the Companies need to move into a competitive environment.

g. **Should the Commission include a public notice requirement in the price plan?**

Both the Attorney General and CUCA noted the absence of public notice requirements in the Plan. The Attorney General argued that consumers should receive clear and conspicuous notice of price changes under the Plan in the form of bill inserts on different colored paper form the rest of the bill. Such notice should include the proposed rate under the Plan and the effective date of the rate increase. CUCA argued that the Plan does not provide intervenors with an adequate opportunity to investigate or oppose tariff filings. Intervenors should be able to receive tariff filings by hand-delivery or facsimile and should have 30 days rather than 14 days in which to challenge a tariff.

The Commission concludes that a public notice requirement is essential to the approved price plan. The tariff provision should be amended to add a new subparagraph that would require customer notice by bill insert or direct mail of any price increase at least 14 days before any public utility rates are increased. The notice would include the effective date of the rate change(s), the existing rate(s), and the new rate(s).

The Commission concludes that the additional changes suggested by CUCA and the Attorney General would be unduly burdensome and are unnecessary in light of this amendment.

h. **What is the appropriate effective date of the price plan?**

Carolina and Central have proposed a May 1, 1996, effective date for the Plan. This does not allow time for the Companies to file needed tariffs, including those to implement rate reductions and to decide whether they wish to accept or reject the Plan as modified. The Commission concludes that an effective date of Monday, June 3, 1996 is more appropriate.

i. **Is the Commission-approved Price Regulation Plan, then, otherwise consistent with the public interest?**

We conclude that it is. First, the productivity offsets require the Companies to share gains in future productivity with their customers. Second, the Stipulated Plan, the provisions of which have been largely adopted by the Commission, represents a major improvement over the Companies' Original Plan and imposes significantly more risk upon the Company. Third, this Commission has a long history of encouraging negotiation, and the two parties that negotiated—the Public Staff and the Companies—represent a broad range of the public interest. In this regard, Chapter 62, expressly provides that:

> In all contested proceedings the Commission . . . shall encourage the parties and their counsel to make and enter stipulations of record . . . [c]larifying the issues of fact and law. The Commission may make informal disposition of any contested proceeding by stipulation, [or] agreed settlement . . . .

G.S. 62-69. Negotiation among the parties to actions before the Commission, in an effort to resolve their differences, advances the public policy of North Carolina as expressed by our Supreme Court. "The law favors the settlement of controversies out of court. It encourages such action by securing to every man the opportunity to negotiate for the purchase of his peace without prejudice to his rights." Penn Dixie Lines Inc. v. Grannick, 238 N.C. 552, 555, 78 S.E.2d 410, 413 (1953).

Consistent with both the law and policy of this State, the Companies and the Public Staff have negotiated a stipulation, and the product of their efforts is largely reflected in the Commission-approved Price Regulation Plan. While other parties to this docket have criticized them for doing that which the law and policy of this State encourage, the Companies and the Public Staff have in good faith resolved their differences and have, as this Order demonstrates, made an exceedingly extensive contribution to the Commission-approved Price Regulation Plan that the Commission believes, and so concludes, meets each of the statutory criteria required by House Bill 161.

Fourth, we view the five-year review and the submission of financial reports as a major concession and a major influence upon the Companies' behavior during the operation of the Plan. Fifth, we believe that the Commission-approved Price Regulation Plan properly shifts the risk of future investment decisions from the Companies' ratepayers to their shareholders, which is where that risk should rest in a competitive marketplace. Sixth, we believe that a competitive marketplace is not only consistent with House Bill 161, but will engender significant benefits for the citizens of this State, through improved services, lower prices, and greater technological innovation. We also believe that competition will force the Companies to become more efficient, and that ultimately the Companies' North Carolina customers will be the beneficiaries of that efficiency. Seventh, we believe that the Commission-approved Price Regulation Plan will avoid the "marginalization" of the Companies because it will permit the Companies to compete effectively, thus maintaining some market share, generating continued support for the maintenance of reasonably affordable local exchange service in North Carolina. We believe that for competition to truly deliver the benefits of the Information Age to all of the citizens of North Carolina, the Companies must be a major participant in the telecommunications marketplace. Otherwise, we conclude that the benefits of competition will be distributed unevenly and inequitably to the people of North Carolina. Finally, we conclude that the Commission-approved Price Regulation Plan protects and retains affordability, and we believe that such plan offers significant potential for enhanced economic development.

IT IS, THEREFORE, ORDERED as follows:

1. That the Price Regulation Plan attached to this Order as Attachment A be, and the same is hereby, approved for implementation by the Companies effective Monday, June 3, 1996, provided that the Companies shall, not later than Monday, May 20, 1996:

A. File a statement in this docket notifying the Commission that the Companies accept and agree to all of the terms, conditions, and provisions of the Commission-approved Price Regulation Plan and indicating their willingness to implement said Plan effective June 3, 1996;

B. Incorporate the modifications reflected in the Commission-approved Price Regulation Plan and refile said Plan with an effective date of June 3, 1996; and

C. File appropriate rate reduction tariffs in conformity with the provisions of this Order and the Commission-approved Price Regulation Plan reflecting an effective date of June 3, 1996.

2. That, if the Companies agree to implement the Commission-approved Price Regulation Plan, all interexchange carriers, other than switchless resellers, certificated by the Commission to provide intrastate long distance service in North Carolina shall, not later than Tuesday, May 28, 1996, file appropriate tariffs designed to reflect a full flow through of the access charge reductions approved as of the effective date of the Plan. This flow though shall be accomplished through reductions to basic residential and business MTS rates on a dollar-for-dollar basis. Such MTS rate reductions shall become effective June 3, 1996. Further, that AT&T, MCI, and Sprint shall, as part of their MTS rate reduction filings, file detailed work papers reflecting how the access charge reductions required by this Order will be flowed though to their MTS customers. All subsequent access charge reductions required by this Order and the Commission-approved Price Regulation Plan for Companies shall also be flowed through by affected interexchange carriers by means of MTS rate reductions.

ISSUED BY ORDER OF THE COMMISSION.
This the 2ND day of May 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

(For Exhibit 2 of Attachment A See Official Copy of Order in Chief Clerk's Office.)

ATTACHMENT A
EXHIBIT - 1

PRICE REGULATION PLAN
FOR
CAROLINA TELEPHONE AND TELEGRAPH COMPANY
AND CENTRAL TELEPHONE COMPANY
EFFECTIVE JUNE 3, 1996

DEFINITIONS

The following definitions will apply to the terms as used in this Price Regulation Plan (the "Plan") for Carolina Telephone and Telegraph Company and Central Telephone Company (herein sometimes collectively referred to as "Companies"; or singularly as "Company").

Contract Service Arrangement (CSA) - An arrangement whereby a Company provides service pursuant to a contract between the Company and a customer. Such arrangements include situations in which the services are not otherwise available through the Company's tariffs, as well as, situations in which the services are available through the Company's tariffs, but in order to meet competition the Company offers those services at rates other than those set forth in its tariffs. CSAs may contain flexible pricing arrangements, and depending upon the particular competitive situation may also contain proprietary information that the Company desires to protect by deleting such information from the copy filed with the Commission.

Gross Domestic Product Price Index (GDPPI) - The GDPPI is a measure of change in the market prices of output in the economy. The final estimate of the Chain-Weighted Gross Domestic Product Price Index as prepared by the United States Department of Commerce and published in the *Survey of Current Business*, or its successor, shall be the measure of price change used in the administration of this Plan.

Interconnection Services - Those services, except Toll Switched Access Services, that provide access to a Company's facilities for the purpose of enabling another telecommunications company or access customer to originate or terminate telecommunications services.

Long Run Incremental Cost (LRIC) - The cost a Company would incur (save) if it increases (decreases) the level of production of an existing or new service or group of services. LRIC consists of costs associated with adjusting future-production capacity that are causally related to the rate elements being studied. These costs reflect forward-looking technology and operational methods. LRIC shall be construed as presumptively appropriate for use in this Plan; provided, however, that such use is without prejudice to the right of any party to challenge the propriety of use of LRIC in any complaint proceeding, including but not limited to complaints brought before the Commission alleging anticompetitive conduct on the part of the Companies

New Service - A regulated and tariffed service that is not offered by a Company as of the effective date of this Plan, but which is subsequently introduced.

Offset - The percentage reduction to the change in GDPPI which is applied under this Plan. The Offset for the Basic Services Category, the Interconnection Services Category, and the Non-Basic 1 Services Category will be 2%.

Price Regulation Index (PRI) - PRI is used to limit or otherwise place a ceiling on price changes, in the aggregate, for the Basic Services Category, the Interconnection Services Category and the Non-Basic 1 Services Category. A PRI is not applicable to the Non-Basic 2 Services Category as there is no limit on the price changes and the prices will not be adjusted for the effects of inflation. The initial PRI for the service categories listed above for the first year of the Plan is one hundred (100). In all subsequent years of the Plan, the PRI will be developed by using the change in the GDPPI minus the Offset applicable to the respective Services Category. The PRI will be developed by: (1) dividing the most recent quarterly GDPPI results available at the time of the annual filing by the GDPPI results for the same quarter for the previous year; (2) dividing the Offset by 100; (3) subtracting the results of Step 2 from the results of Step 1; and (4) multiplying the results of Step 3 by the PRI for the previous year.

Restructure - A modification of the rate structure of an existing service by introducing one or more new rate elements, establishing vintage rates for the service, deleting one or more rate elements or redefining the functions, features or capabilities provided by a rate element so that the service covered by the rate element differs from that furnished prior to the modification. Restructure does not include a change in an existing rate element price when such change is made in accordance with the provisions of Section 6 of this Plan.

Service Price Index (SPI) - An SPI will be developed for the Basic Services Category, the Interconnection Services Category, and the Non-Basic 1 Services Category. An SPI will not be developed for the Non-Basic 2 Services Category as there will be no limit on price changes for the Non-Basic 2 Services Category and the prices will not be adjusted for the effects of inflation. Each SPI is calculated by: (1) Multiplying the existing price for each rate element in the category by the demand for that rate element to produce the existing revenue for each rate element, then by adding together the existing revenues for all of the rate elements in the category to produce the existing revenues for that category (the "existing category revenues"); and (2) Multiplying the proposed price for each rate element in the category by the demand for that rate element to produce the projected revenue for each rate element, then by adding together the projected revenues for all of the rate elements in the category (the "projected category revenues"); and (3) Dividing the projected category revenues obtained in Step 2 by the existing category revenues obtained in Step 1; and (4) Multiplying the result obtained in Step 3, above, by the previous SPI. The annual filing will establish the demand to be utilized in calculating the SPIs for the coming Plan year and will reflect the most current demand available at the time the annual filing is prepared.

PROVISIONS OF THE PLAN

Section 1. Applicability of Plan.

The Price Regulation Plan will apply to all tariffed services offered by Carolina Telephone and Telegraph Company and Central Telephone Company that are regulated by the North Carolina Utilities Commission.

The Companies are sometimes referred to collectively in this Plan, but this does not preclude either Company from seeking individual treatment under the provisions of the Plan.

The effective date of the Plan is ~~July 1, 1996, or such earlier date as may be established by the Commission~~ June 3 1996.

Section 2. Changes to Plan.

Any change to this Plan will be effective on a prospective basis only, and shall be consistent with the provisions of the Plan or such further orders as may be issued by the Commission.

Section 3. Classification of Services.

Each tariffed telecommunications service offered by the Companies and regulated by the Commission will be classified into one of four categories: Basic Services, Interconnection Services, Non-Basic 1 Services and Non-Basic 2 Services.

Basic Services (Basic) See Attachment A, Exhibit-2 for a listing of services within this category by tariff reference.

Interconnection Services (Interconnection) See Attachment A, Exhibit-2 for a listing of services within this category by tariff reference.

Non-Basic 1 Services (Non-Basic 1) See Attachment A, Exhibit-2 for a listing of services within this category by tariff reference.

Non-Basic 2 Services (Non-Basic 2), as of the effective date of this Plan, includes only Digital Centrex Service and Billing & Collection Services. However, existing services may later be reclassified to the Non-Basic 2 Services Category, and new services may be assigned to the Non-Basic 2 Services Category in accordance with the provisions of Section 4 of this Plan.

Section 4. Classification of New Services, and Reclassification of Existing Services.

Fourteen (14) days prior to offering a new tariffed service and thirty (30) days prior to the reclassification of an existing tariffed service, the Companies shall notify, in writing, the Public Staff, the Attorney General, and the Commission. The Companies shall provide the appropriate documentation to the Commission and Public Staff.

(1) Simultaneous with such notification, the Companies will designate the service category into which the service is classified.

(2) Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the new tariffed service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service. The new offering shall be presumed valid and shall become effective fourteen (14) days after the filing, unless otherwise suspended by the Commission for a term not to exceed forty-five (45) days. For the purposes of determining the service classification only, the Commission may extend the term for an additional thirty (30) days; provided, however, such extension shall not result in the further postponement of any new service.

(3) Any interested party shall be afforded an opportunity, by timely petition to the Commission, to oppose the reclassification of an existing tariffed service or propose that the service be reclassified in a category different from that proposed by the Company. The reclassification shall become effective thirty (30) days after the filing, unless otherwise suspended by the Commission for a term not to exceed seventy-five (75) days.

(4) The Commission may modify or disapprove the classification or reclassification proposal at any time prior to the end of the term.

Section 5. Tariff Requirements.

A. General Requirements

The Companies will file tariffs for services included in any of the four service categories. These tariffs will specify the applicable terms and conditions of the services and associated rates.

(1) Any tariff filing will be presumed valid and become effective, unless disapproved, modified or otherwise suspended by the Commission for a term not to exceed forty-five (45) days, fourteen (14) days after filing. In the case of a tariff filing to restructure rates as defined in the Definitions Section of this Plan, the Commission may extend the term for an additional thirty (30) days and may disapprove or modify the tariff filing if it finds that the restructure of the tariff and the resulting effects on new

and existing customers are not in the public interest. The Commission may on its own motion, or in response to a petition from any interested party, investigate whether a tariff is consistent with this Plan and the Commission's rules, and whether the terms and conditions of the services are in the public interest. Provided, however, that a tariff filing limited to a price change in an existing rate element shall only be investigated with regard to whether it is in compliance with Section 6 of this Plan.

(2) Any tariff filing reducing rates will be presumed valid and become effective seven (7) days after filing unless otherwise suspended by the Commission for a term not to exceed forty-five (45) days.

(3) The Companies will provide customer notification by bill insert or direct mail to all affected customers of any price increase at least fourteen (14) days before any public utility rates are increased. Notice of a rate increase shall include at a minimum the effective date of the rate change(s), the existing rate(s), and the new rate(s).

B. The Companies will provide CSAs under the terms, conditions, and rates negotiated between the Companies and the subscribing customer(s). Such terms, conditions, and rates will be set forth in contractual agreements executed by the parties and filed as information with the Commission. When those contracts contain proprietary information, the Companies will delete that information from the copy filed with the Commission. CSAs may be, but are not required to be tariffed.

Section 6. Pricing Rules.

A. General

(1) This Plan establishes a pricing structure that allows the Companies to adjust their prices for rate elements included in all service categories, except the Non-Basic 2 Services Category, to reflect the impacts of inflation less an Offset. The aggregate percentage change in prices for the affected rate elements, however, cannot exceed the percentage change of inflation minus the Offset, as represented by the PRI. The new prices are lawful when the SPI for a service category is less than, or equal to, the PRI for the same service category, and when the prices for the rate elements within that service category have been established in accordance with the rules set forth in this Plan.

(2) Forty-five (45) days prior to each anniversary of the effective date of the Plan, the Companies will make an annual filing. The purpose of this filing is to update the SPI and the PRI for all service categories, except the Non-Basic 2 Services Category, based upon the change in the GDPPI

over the preceding year minus the Offset. These filings may or may not include proposed price changes.

(3) In the event that the annual change in the GDPPI minus the Offset is a negative amount, the Companies will reduce prices except: (1) for any service included in the Non-Basic 2 Services Category, and (2) for any service currently priced below its Long Run Incremental Cost (LRIC), or (3) when such a reduction would result in reducing prices below LRIC for any service currently priced above LRIC, or (4) if the SPI is below the newly-defined PRI. If, because of (2) or (3) above, it is not possible to reduce the SPI to the required level, the Companies will propose equivalent revenue reductions in other categories.

(4) The Companies will file tariffs with documentation demonstrating that all price changes comply with the pricing constraints set forth in this Plan.

(5) If a Company elects not to increase its rates by the full amount allowed under the terms of the Plan in a given year, the Company may increase its rates in future years to reflect the full amount of the allowable increases previously deferred. The Company will not, however, attempt to recover any revenues foregone as a result of deferring the increase in prices.

(6) The price for any individual rate element for any service offered by the Companies shall equal or exceed its LRIC unless: (1) specifically exempted by the Commission based upon public interest considerations, or (2) the Companies in good faith prices the service to meet the equally low price of a competitor for an equivalent service.

(7) In the event that the U.S. Department of Commerce ceases publication of the GDPPI, or significantly modifies the GDPPI, or the GDPPI becomes otherwise unavailable, the Companies may select and recommend to the Commission subject to the Commission's approval, another comparable measurement of inflation to be used in the administration of this Plan.

(8) The Companies shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function

(9) This Plan shall not operate to permit anticompetitve practices The Companies shall not engage in predatory pricing, price squeezing price discrimination or anticompetitive bundling or tying arrangements as those terms are commonly applied in antitrust law Nor shall the Companies give any preference to the competitive services of affiliated entities

B. Basic, Interconnection, and Non-Basic 1 Services

(1) The prices for rate elements in the Basic (except for Toll Switched Access Services), Interconnection and Non-Basic 1 Services Categories in effect on the day prior to the effective date of this Plan shall be the initial effective prices under the Plan.

(2) The establishment of a PRI and SPI for the Basic Services Category, the Interconnection Services Category and the Non-Basic 1 Services Category is required in order to test any change in the aggregate prices for rate elements included in those Categories.

a.) The PRI places an aggregate ceiling on the prices for rate elements within the Basic, Interconnection and Non-Basic 1 Services Categories. At the time the Plan is implemented, the value of the PRI for each of these Services Categories will be set at one hundred (100). In the second and subsequent years of the Plan, the PRI will be adjusted to reflect any change in the GDPPI occurring over the preceding year minus the Offset. For example:

- if the result of dividing the most recent quarterly reported GDPPI by the reported GDPPI for the same quarter for the preceding year is 1.04, and
- the result of dividing the offset (assume 2%) by 100 is .02, and
- the result of subtracting the results of Step 2) is 1.02, and
- the result of multiplying the results of Step 3) by the PRI for the previous year is 102, then
- the PRI for the Category for the second year of the Plan would be 102.

b.) The SPI is an index that reflects the relative change in revenue that would be generated by the new prices as compared to revenue generated by the old prices at equal demand for all the rate elements within the Basic, Interconnection and Non-Basic 1 Services Categories. When the Plan is implemented, the initial value of the SPI will be set at one-hundred (100). In the second and subsequent years of the Plan, the SPI will be adjusted to reflect the amount of change between the new and old prices for all the rate elements within the Category. Except for price changes associated with regrouping of exchanges as set forth in Section 8 and the financial impact of governmental action as set forth in Section 7, as prices for rate elements within the Category are changed, a new SPI is calculated, compared to the PRI and then included with the tariff filing.

The SPI is applied to the entire service category and not individual services or rate elements within the Category. The Companies may increase some rates, while decreasing others, as long as the SPI is less than, or equal to, the PRI and as long as the increase in any individual rate element does not exceed the GDPPI plus the percentage specified in the table set forth in Subparagraph (5) below.

(3) The initial prices for Residence Basic Local Exchange Service shall be the maximum prices charged for a period of three years from the effective date of the Plan (the "cap period"). The specific rates to be capped are the Residence Individual Line Service charges, the Residence Touch-Tone Service charge, the Residence Service Order charge, the Residence Premises Visit charge and the Residence Central Office Work charge (the "capped Basic Local Exchange Services").

The ~~initial~~ prices~~,~~ in effect for the individual rate elements included in ~~the aggregate, for~~ Toll Switched Access Services after each of the reductions described in Sections 12.A and B of the Plan shall in the aggregate be the maximum that the Companies will charge under the Plan.

(4) During the cap period, the capped Residence Basic Local Exchange Services will be excluded from the calculation of the SPI for the Basic Services Category.

(5) During the cap period, prices for individual non-capped rate elements within the Basic Services Category and prices for any rate elements within the Interconnection and Non-Basic 1 Services Categories may be increased or decreased by varying amounts. Price increases for individual rate elements cannot exceed the percent change in the GDPPI over the preceding year, plus the percentages shown in the table below.

Service Category	Change in GDPPI plus
Basic	3%
Interconnection	7%
Non-Basic 1	15%

For example, the price increases for individual rate elements in the Basic Services Category cannot exceed five percent (5%), assuming a plus two percent (+2%) change in the GDPPI for the previous year. Price increases can be made at any time, subject to Commission review and approval; however, only one increase per individual rate element is allowed within the twelve-month period between anniversary dates of the Plan. Price decreases may be made at any time and are not limited as to the number of decreases in the twelve-month period between anniversary dates of the

Plan. This provision shall apply to both capped and non-capped Basic rate elements after the expiration of the cap period and to all rate elements in the Interconnection and Non-Basic 1 Services Categories.

(6) In the annual filing to be effective at the beginning of the fourth year of the Plan, the PRI and the SPI associated with the Basic Services Category will be re-initialized as a result of removing the cap on capped Residence Local Exchange Services. The PRI for the Basic Services Category will be determined by re-initializing the index in a manner which reflects any allowable increases previously deferred for non-capped Basic rate elements only plus an adjustment to reflect the percent change in the GDPPI from the previous year, minus the Offset. In the same annual filing at the beginning of the fourth year, the SPI for the Basic Services Category will also be re-initialized to 100. For example:

- If the PRI = 103 and the SPI = 101 for the Basic Services Category at the end of the third year of the Plan, excluding the capped Residence Local Exchange Services, then
- the PRI and SPI would be re-initialized to 102 and 100, respectively, as the first step.
- Next, the difference between the PRI and SPI would be reduced by the percentage of capped Residence Local Exchange Service revenues to total Basic Services Category revenues. If the percentage is 50%, then
- the PRI would be reduced to 101 and the SPI would remain at 100 and a further adjustment would be made to establish a new PRI for the fourth year based upon the percent change in the GDPPI from the previous year, minus the Offset.

(7) As set forth in Section 7 and Section 8 following, price changes resulting from changes in the PRI will not be impacted, or in any way affected, by changes resulting from governmental action or the regrouping of exchanges.

C. Non-Basic 2 Services

(1) The prices for rate elements in the Non-Basic 2 Services Category in effect on the day prior to the effective date of this Plan will be the initial effective prices under the Plan.

(2) Prices for individual rate elements within the Non-Basic 2 Services Category may be increased or decreased by varying amounts, and the rate

changes are not subject to either a rate element constraint or a Category constraint. Price increases and decreases may be made at any time and are not limited to any specific number of increases or decreases in the twelve-month period between anniversary dates of the Plan.

D. New Services

New tariffed services, excluding those assigned to the Non-Basic 2 Services Category, will be included in the SPI associated with the assigned service category in the first annual filing after the service has been available for six months. As set forth in Section 4 above, the Commission shall make the final determination regarding the classification or reclassification of any service.

Section 7. Financial Impacts of Governmental Actions.

A. With Commission approval, the Companies may adjust the prices of any service(s) due to the financial impacts of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the Company, to the extent that such impacts are not measured in the GDPPI. Such governmental actions would include, by way of illustration and not limitation, general changes such as "separations" matters (involving the separation of investment, expenses, and revenues, between the intrastate and interstate jurisdictions) as well as extended area services or Commission-required technological innovations. In such an event, the Company or another interested party may request the Commission to adjust the rates accordingly. The request shall include a description of the governmental action, the proposed adjustment to prices, the duration of the adjustment, and the estimated revenue impact of the governmental action. The Companies may request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment at any time during each Plan year to reflect the financial impact of governmental actions. A Plan year shall run from an anniversary date of the effective date of the Plan to the next anniversary date of the effective date of the Plan. The Commission ~~will~~ may approve the request if the Commission finds that:

(1) the governmental action causing the financial impact has been correctly identified;

(2) the financial impact of the governmental action has been accurately quantified;

(3) the proposed rates produce revenue covering only the financial impact of governmental actions; ~~and~~

(4) the rates would be applicable to the appropriate class or classes of customers; and

(5) the adjustment in rates is otherwise in the public interest.

B. Price changes resulting from governmental action will not impact or otherwise affect the price changes provided for under the terms of the pricing rules set forth in Section 6 preceding. In addition, any price changes resulting from approved governmental action requests will not be constrained by the pricing rules set forth in Section 6.

C. The Commission may, on request of the Company or another interested party, or on its own initiative, require the Company to adjust prices for circumstances that meet the above criteria.

Section 8. Regrouping of Exchanges.

A. The Companies will not regroup any of their exchanges during the three-year period for which Residence Basic Local Exchange Service rates are capped under the provisions of Section 6 preceding.

B. After the expiration of the cap period, the Companies may regroup exchanges due to growth in access lines. Such regrouping may be proposed in the annual filing referenced in Section 9 following, for any exchange meeting the criteria for the new rate group. Movement of an exchange from one rate group to another is limited to one rate group per year. Price changes resulting from the regrouping of exchanges will not impact or otherwise affect the price changes provided for under the terms of the pricing rules set forth in Section 6 preceding. Additionally, any price changes resulting from the regrouping of exchanges will not be constrained by the pricing rules set forth in Section 6.

Section 9. Annual Filing.

The Companies shall make an annual filing containing the following information:

A. The annual percent change in the GDPPI;

B. The applicable change to the PRI for the Basic, Interconnection and Non-Basic 1 Services Categories based upon the percent change in the GDPPI minus the Offset;

C. The change in the SPI for the Basic, Interconnection and Non-Basic 1 Services Categories; and

D. Complete supporting documentation.

Section 10. Commission Oversight.

A. The Commission retains oversight for service quality, complaint resolution and compliance by the Companies with all elements of this Plan.

B. The Companies will annually file ~~on a proprietary basis~~ the TS-1 financial surveillance reports which are now filed with the Commission. No other periodic financial reports are required to be filed. Any claim of confidentiality with regard to these reports shall be made by the Companies and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act.

C. The Commission ~~may~~ shall undertake a review of the operation of the Plan in advance of five years from the effective date of the Plan, to determine how the operation of the Plan comports with House Bill 161 and specifically how the Plan:

1. Protects the affordability of basic exchange service, as such service is defined by the Commission;

2. Reasonably assures the continuation of basic local exchange service and meets reasonable service standards that the Commission may adopt;

3. Will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and

4. Is otherwise consistent with the public interest.

Following its review, the Commission may make modifications to the Plan consistent with the public interest.

Section 11. Depreciation.

Coincident with the effective date of the Plan, the Companies will determine and set their own depreciation rates.

Section 12. Rate Reductions.

A. The Companies collectively will reduce revenue derived from tariffed services by $30 million through annual rate reductions as follows:

Effective date of the Plan	Approximately $15 million
First anniversary of the Plan	Approximately $5 million
Second anniversary of the Plan	Approximately $5 million
Third anniversary of the Plan	Approximately $5 million

B. The initial revenue reduction referenced in Subparagraph A above, will result from a rate reduction for touch-tone and switched access services to produce an annual revenue reduction of $5 million for each service. The Originating Carrier Common Line Charge will be eliminated as part of the reduction in switched access service rates. The remaining $5 million revenue reduction on the effective date of the Plan will result from a rate reduction for intraLATA toll services (~~$4~~ million) and complex business services (~~$1~~ million). The $5 million revenue reduction on the first~~;~~ anniversary of the Plan will be applied to reduce touch-tone and toll switched access services by $1 million and $4 million, respectively. The $5 million revenue reduction on the second ~~and third~~ anniversary ~~dates~~ of the Plan will be derived from rate reductions in toll switched access~~, touch-tone and complex business~~ services. The $5 million revenue reduction on the third anniversary of the Plan will be derived from rate reductions for touch-tone service. If~~, however,~~ the ~~Company~~ Companies ~~makes~~ make other reductions in rates ~~for toll services, complex business services, or toll switched access services prior to the elimination of the Originating Carrier Common Line Charge,~~ prior to the third anniversary of the Plan, these other rate reductions shall not, unless approved by the Commission, constitute a portion of the $30 million total revenue reductions required by Subparagraph A, above.

C. The Companies will file tariffs to reduce rates for the services set forth in Subparagraph B above, fourteen (14) days prior to the anniversary dates set forth in Subparagraph A, above. Provided, however, that the Companies shall file the tariffs implementing the initial rate reductions as soon as reasonably possible prior to the effective date of the Plan. The tariff filings required by this Subparagraph must indicate that the rate reductions are being made pursuant to Section 12 of the Plan.

D. The rate reductions described in this Section will be in addition to any rate reductions required by the pricing rules set forth in Section 6 of the Plan. Any rate reductions made pursuant to this Section of the Plan will not change the relationship between the SPI and the PRI for the category of the affected services, and the Companies will include in the tariff filing required by Subparagraph C, above, documentation demonstrating that the rate reductions have not affected the relationship between the SPI and the PRI for the category(ies) of the affected service(s).

E. On the effective date of the Plan, that portion of the Commission's Order of April 8, 1988, in Docket Nos. P-100, Sub 65 and 72, requiring annual rate adjustments to the Originating Carrier Common Line Charge, shall no longer apply to the Companies.

TELEPHONE - RATES

DOCKET NO. P-19, SUB 277

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of GTE South Incorporated	)	ORDER AUTHORIZING
For, and Election Of, Price Regulation	)	PRICE REGULATION

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 5-8, 1996

BEFORE: Commissioner Jo Anne Sanford, Presiding, and Commissioners Laurence A. Cobb and Ralph A. Hunt

APPEARANCES:

FOR GTE SOUTH INCORPORATED:

Robert W. Kaylor, Attorney At Law, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27601

Morris L. Sinor, Associate General Counsel, and A. Randall Vogelzang and Joe Foster, Attorneys At Law, 4100 Roxboro Road, Durham, North Carolina 27702

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES INC., TIME WARNER COMMUNICATIONS OF NORTH CAROLINA, L.P., AND NORTH CAROLINA PAYPHONE ASSOCIATION:

Wade Hargrove, Elizabeth Crabill, and Marcus Trathen, Attorneys At Law, Brooks, Pierce, McLendon, Humphrey & Leonard, First Union Capitol Center, Suite 1600, Raleigh, North Carolina 27601

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES INC.:

Robert A. Briney, General Attorney, AT&T Communications of the Southern States Inc., 1200 Peachtree Street, N.E., Room 4040, Atlanta, Georgia 30309

FOR MCI TELECOMMUNICATIONS CORPORATION:

Ralph McDonald and Cathleen Plaut, Attorneys At Law, Bailey & Dixon, LLP, Post Office Box 1351, Raleigh, North Carolina 27602

Marsha Ward, Attorney At Law, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342

FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC.:

Sam J. Ervin, IV, Attorney At Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

FOR THE USING AND CONSUMING PUBLIC:

Karen E. Long, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

Antoinette R. Wike, Chief Counsel, Robert B. Cauthen, Jr. and Paul Lassiter, Staff Attorneys, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On November 1, 1995, GTE South Incorporated (Applicant, GTE South, or Company) filed an Application For, and Election Of, Price Regulation pursuant to G.S. 62-133.5 (included in House Bill 161) and the North Carolina Utilities Commission Rules of Practice and Procedure. The Application seeks to have the rates, terms, and conditions of the regulated services which the Company provides determined pursuant to a form of price regulation in lieu of the current rate base/rate of return regulation, to which it is currently subject. GTE South also filed on November 1, 1995 a proposed customer notice of its Application. On November 20, 1995 the Public Staff filed a response to the proposed customer notice, stating that GTE South and the Public Staff had agreed on a revised public notice. By Order dated November 22, 1995, the Commission ordered that the revised public notice be approved and that GTE South provide public notice by means of a bill insert beginning the week of January 5, 1996, and by newspaper during the week of February 5, 1996, in newspapers having general circulation in GTE South's service area.

By Order dated November 7, 1995, the Commission suspended the Company's Application for a period of 180 days and set the matter for hearing beginning March 5, 1996. The Order also set out the schedule for prefiling testimony, including rebuttal.

Effective July 1, 1995, House Bill 161 provides authority for the Commission to allow competitive "offerings of local exchange [and] exchange access" services as an addition to the Commission's existing authority to allow competition in the long distance telecommunications market.[1] G.S. 62-2.

House Bill 161 also authorized the Commission, after notice and hearing, to deregulate or exempt from regulation (i) a service provided by a public utility providing telecommunications services upon a finding that the service is competitive or (ii) a public utility providing telecommunications services (or a portion of the business of such public utility) upon a finding that the service or the business of that public utility is competitive; provided that in either case the Commission also finds that deregulation or exemption is in the public interest. G.S. 62-2.

[1] A number of companies, including Time Warner, AT&T, MCI, and others, have filed applications to provide competitive local exchange and exchange access, some of which have been approved.

G.S. 62-3 was amended by House Bill 161 to add new definitions of "competing local provider" and "local exchange company".[1] G.S. 62-110 was amended to provide, inter alia, authority for the Commission to issue certificates of public convenience and necessity to competing local providers under specified conditions.

House Bill 161 also amended G.S. 62-133 to add a new section G.S. 62-133.5. Under that new section, inter alia, any local exchange company subject to rate of return regulation [or a form of alternative regulation pursuant to G.S. 62-133.5 (b)] may elect to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation rather than rate of return or other form of regulation. Under an approved form of price regulation, the Commission is required to allow the local exchange company to set its depreciation rates, to rebalance its rates, to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services based upon changes in generally accepted indices of prices.

Upon application, and after notice and an opportunity to be heard, the Commission is required to approve a price regulation plan, subject only to the Commission's finding that the plan meets the following four criteria as stated in G.S. 62-133.5:

(i) protects the affordability of basic local exchange service;

(ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards;

(iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and

(iv) is otherwise consistent with the public interest.

GTE South's Original Price Regulation Plan (Original Plan), as shown in its Application, separated the Company's services into three categories of services: Basic, Interconnection, and Non-Basic Services. As originally filed, the GTE South Plan proposed that Basic and Interconnection Services could be increased in the aggregate by one-half the annual increase in the Gross Domestic Product-Price Index (GDP-PI).[2] Increases in individual Basic Services would have been limited to 6%, and Interconnection Services increases would have been limited to 10% annually. Non-Basic Services increases were not limited because the Company considered these services to be competitive or discretionary. The Original Plan would have also allowed certain other rate changes outside the scope of the annual percentage increase limitations. For example, certain charges could have been temporarily waived for promotional purposes. Additionally, certain price changes associated with

[1] GTE South is a local exchange company since it held "on January 1, 1995, a certificate to provide local exchange services or exchange access services." No party challenges the fact that GTE South is a local exchange company.

[2] The U.S. Department of Commerce, Bureau of Economic Analysis publishes this index, which is a generally recognized indicator of inflation measuring domestic expenditures and expenses.

required Extended Area Service arrangements or rate changes associated with movements due to growth in access lines could have occurred outside the annual price limitations. Price changes would have been effective as required by House Bill 161, i.e., 14 days for increases and 7 days for decreases. The Company also proposed at least 30 days advance notice be given to customers of proposed rate increases. The Original Plan as filed by the Company did not establish a termination date and could have continued indefinitely, subject only to review upon request by the Company or, should events occur that significantly change the market, by the Commission.

On February 12, 1996, GTE South entered into a Stipulation and Agreement with the Public Staff. In the Stipulation and Agreement, the parties agreed to a Revised Price Regulation Plan (the Stipulated Plan). The Public Staff filed the Stipulation and Agreement with the Commission on February 13, 1996.

The Stipulated Plan classifies all services into four categories of services: Basic, Interconnection, Non-Basic 1, and Non-Basic 2 Services. Basic Services have a price cap of inflation (GDP-PI) plus 3%; Interconnection Services have a price cap of GDP-PI plus 7%; Non-Basic 1 Services have a price cap of GDP-PI plus 15%; and Non-Basic 2 Services are not limited. The price caps are applied on a rate element, by rate element basis, and aggregate price changes for all rate elements within each category of service are limited to GDP-PI less 2% (except Non-Basic 2 Services which are limited by the competitive market). In the Stipulated Plan, the Basic Services category was significantly expanded, including reclassifying the switched access and carrier common line services to Basic Services. The Stipulated Plan also prohibits any net increases in revenue during the first year, places a three-year cap on residential local rates, and caps switched access and carrier common line rates in the aggregate for the life of the Stipulated Plan. The Stipulated Plan provides that the Commission may review the Stipulated Plan after five years to determine how the Stipulated Plan comports with House Bill 161 and the four specific criteria specified therein. GTE South is also required to file annual financial reports. The Stipulated Plan also allows additional time during which the Commission may suspend and review certain changes to tariffs.

MCI Telecommunications Corporation (MCI), Time Warner Communications of North Carolina, L.P. (Time Warner), AT&T Communications of the Southern States Inc. (AT&T), the Alliance of North Carolina Independent Telephone Companies, North State Telephone Company, ALLTEL Carolina, Inc., North Carolina Payphone Association (NCPA), and Carolina Utility Customers Association, Inc. (CUCA) all filed timely requests for intervention and each was granted intervention.

On January 3, 1996, the Commission issued an Order specifying discovery procedures and on January 31, 1996, issued an Order granting an extension of time to all intervenors, including the Public Staff, until February 13, 1996 to prefile testimony. On February 6, 1996, GTE South was granted an extension of time until February 27, 1996 to prefile its rebuttal testimony. On February 20, 1996, the Commission ordered that intervenors be allowed to file supplemental testimony, limited solely to the Stipulated Plan, not later than February 27, 1996. GTE South was allowed to file additional rebuttal testimony in response to such supplemental testimony not later than March 1, 1996. On February 23, 1996, the Commission issued an Order specifying the order of witnesses.

At the hearing which began on March 5, 1996, at 9:30 a.m., Thomas J. White, Vice President of Economic Development for the Greater Durham Chamber of Commerce, appeared as a public witness on behalf of GTE South; he was the only public witness appearing in this proceeding. The following witnesses testified for GTE South: Dr. Julius A. Wright; Douglas E. Wellemeyer, and Dr. Edward C. Beauvais. Dr. David Kaserman, Wayne Ellison, and Wayne King testified for AT&T. Dr. Ben Johnson testified for the Public Staff. Terry L. Murray and Don J. Wood testified for MCI.

On March 20, 1996, the Commission issued an Order setting out four questions to be answered by the parties in their briefs and proposed orders.

Based on the foregoing, the testimony and exhibits admitted at the hearings, and the entire record in this docket, the Commission makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant, GTE South is a local exchange company as defined in G.S. 62-3 (16a). GTE South is subject to rate of return regulation pursuant to G.S. 62-133 and has, by its Application, elected to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation in accordance with G.S. 62-133.5. The Commission has jurisdiction over GTE South and the subject matter considered in these proceedings.

2. The Commission-approved Price Regulation Plan, as adopted herein, protects the affordability of basic local exchange service.

3. The Commission-approved Price Regulation Plan, as adopted herein, reasonably assures the continuation of basic local exchange service that meets reasonable service standards.

4. The Commission-approved Price Regulation Plan, as adopted herein, will not unreasonably prejudice any class of telephone customers, including telecommunications companies.

5. The Commission-approved Price Regulation Plan, as adopted herein, is otherwise consistent with the public interest.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 1

The evidence supporting this finding of fact is set forth in House Bill 161, which adopted certain amendments to the statutes governing public utilities providing telecommunications services in North Carolina, in the various pleadings of the parties, particularly the Application of GTE South, and in the record as a whole. No party contested that GTE South is a local exchange company as defined in the statute and no party has contested GTE South's right to elect to have the rates, terms, and conditions of its services determined pursuant to a form of price regulation.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 2

- Affordability -

G.S. 62-133.5 requires the Commission to find that the price regulation plan proposed by a local exchange carrier "protects the affordability of basic local exchange service, as such service is defined by the Commission." The Commission, for purposes of G.S. 62-133.5, finds and concludes that the term "basic local exchange service" should be defined to mean basic residence and business local exchange service. The Commission further finds and concludes for reasons discussed hereafter, that the Commission-approved Price Regulation Plan, as adopted herein, protects the affordability of basic local exchange service.

First, the Commission notes that GTE South has not proposed to increase either the residential or business single party rates (or any rates for that matter). Residential R-1 rates in the Durham area are $12.66 per month, and in the rural exchange of Mars Hill, for example, the R-1 rate is $13.37 per month. Under the Stipulated Plan, these rates are capped and may not increase during the first three years (except pursuant to changes implemented under the governmental action section). Moreover, we note that the residential rate in Mars Hill (and other GTE South exchanges in Western North Carolina) was reduced by $3.00 per month in 1994. Each of the residential rates has been found to be just and reasonable in past proceedings and the rates are not now being changed. The Commission-approved Price Regulation Plan, as adopted herein, does not adversely affect the affordability of these services. The approved price plan protects residential rates by guaranteeing that they may not be increased for at least three years after adoption of such plan, and by controlling the degree to which these rates may be increased after the initial three-year period.

The Commission reaches the same conclusion with respect to business single party rates. The Stipulated Plan proposed no change to these rates. Dr. Beauvais testified that single line business services currently are priced "in the relevant range of [the] cost" of providing those services. These services are in the Basic Services Category and may not be increased more than inflation plus 3% per year, provided that increases in the Basic Services Category are limited in the aggregate to inflation minus 2%. It is apparent, then, that the Business B-1 rate could be increased by inflation plus 3%. However, witness Wellemeyer testified that, notwithstanding that arithmetically the Company could raise the B-1 rates under the Stipulated Plan, "I don't really expect that there's any freedom at all to increase Basic Business service rates . . . because opening the market to competition is going to push those rates in the other direction.''

Dr. Johnson testified for the Public Staff regarding the Stipulated Plan. He indicated that local telephone markets will be opened up to competition in the near future. "As this occurs, competitive pressures will rapidly mount in many of these markets, forcing reductions in some rates (e.g. business rates). . . ." He concluded that the Company ". . .will not have unlimited freedom to increase rates."

Based upon the testimony of these three witnesses and in consideration of the Commission-approved Price Regulation Plan, which incorporates the aforesaid provisions of the Stipulated Plan, the Commission finds and concludes that the evidence of record supports the

conclusion that the Commission-approved Price Regulation Plan protects the affordability of basic local exchange service.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 3

- Service Quality -

Neither GTE South nor any other party in this proceeding has suggested that approval of the Stipulated Plan will adversely affect service provided to the Company's customers or the service standards embodied in the Commission's Rules and Regulations. The Commission-approved Price Regulation Plan is entirely consistent with the Stipulated Plan in this regard. It specifically provides for continuing oversight by the Commission for "service quality, complaint resolution, and compliance by the Company with all elements of the Plan." The Commission retains the same powers and authority that it has always had with respect to the provision of quality service. The Commission can investigate service problems *either* on its own initiative or upon complaint from another party.

Neither House Bill 161 nor the Commission-approved Price Regulation Plan affects the Commission's obligation under G.S. 62-42 to direct the Company to provide adequate service. Rule R9-8 of the Commission's Rules and Regulations continues in effect and the Commission expects GTE South to continue to meet the requirements of that rule. The Commission-approved Price Regulation Plan reasonably assures the continuation of basic local exchange service that meets the reasonable service standards which have been adopted by the Commission and which are currently in effect.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 4

- Prejudice Among Customer Classes -

G.S. 62-133.5 affords local exchange companies the right to request price regulation in lieu of rate of return regulation, subject to the Commission's finding that the price regulation plan meets the four criteria, as specified therein. The third criterion is that the price regulation plan "will not unreasonably prejudice any class of telephone customers, including telecommunications companies." G.S. 62-133.5 (a)(iii).

Much of the evidence which supports the Commission's conclusion that the Commission-approved Price Regulation Plan protects the affordability of basic local exchange service is also relevant here. If residence and business local exchange service continues to be affordable, then clearly those customers are not unreasonably prejudiced.

Unlike the first two of the four specific statutory criteria, the intervenors in this proceeding raised a number of issues with respect to the impact of the Stipulated Plan from the standpoint of prejudicial pricing. Essentially, three groups of competitors and customers challenged various aspects of the Stipulated Plan as discriminatory: business services customers; customer-owned coin operated telephone (COCOT) providers; and interexchange carriers (IXCs), who purchase toll switched access services from GTE South. Issues raised in this regard, stated in question form, were as follows:

(a) Are the Company's present rates the appropriate starting rates under price regulation?

(b) Should individual rate elements within the switched access services category be capped on an individual rate element basis, as opposed to the subject category being capped in the aggregate?

(c) Should the Company be required not to price certain of its services below total service long run incremental cost (TSLRIC)?

(d) Should the Company be required, in establishing its price for a competitive service which includes a monopoly component, to impute as a component of the cost of such service the price it charges competitors for the monopoly component? and

(e) Should the Stipulated Plan be modified to include specific language to safeguard against anticompetitive practices?

The discussion which follows provides a synopsis of the foregoing issues.

First, the Commission will address the meaning of "unreasonably prejudice" as that term is used in the legislation. House Bill 161 did not define the term. One suggestion that was made in this proceeding, as well as in other dockets involving applications for price regulation [BellSouth Telecommunications, Inc. (BellSouth), Docket No. P-55, Sub 1013 and Carolina Telephone and Telegraph Company (Carolina) and Central Telephone and Telegraph Company (Central), Docket No. P-7, Sub 825 and Docket No. P-10, Sub 479, respectively] was that the term should be defined such that it tracks the language in G.S. 62-140. That language provides as follows:

> "(a) No public utility shall, as to rates or services, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference between localities or as between classes of service. . . ." G. S. 62-140.

The Commission is aware, of course, of the manner in which the statutory language in G.S. 62-140 has been interpreted by this Commission and the courts of North Carolina. That language is clearly similar to the "unreasonably prejudice" language in House Bill 161. The Commission has never been required by the legislature or the courts to hold that all customers of public utilities must pay the same price. The Commission has always been able, under common law and under G.S. 62-140 and its predecessors, to reasonably classify customers and to require different classes of customers to pay different rates. This is as it should be or the Commission would not have had the ability to balance competing interests and to pursue, for example, the socially desirable objective of universal service. The test has always been unreasonable preference, unreasonable

advantage, unreasonable prejudice, unreasonable disadvantage, and unreasonable discrimination, and the Commission does not believe the legislature intended to change those tests.[1]

Accordingly, the Commission concludes that the General Assembly, in drafting G.S. 62-133.5(a)(iii), intended to embody within that statutory enactment the same principles embodied in G.S. 62-140 and did, thereby, invoke the body of case law that has been developed under G.S. 62-140. The Commission, therefore, finds and concludes that the price regulation plan approved herein will not unreasonably prejudice or discriminate against any class of telephone customers, including telecommunications companies.

The Commission will next address two somewhat related issues: the proper level of toll switched access charges and the appropriate starting rates for price regulation; (i.e., whether the Commission should conduct a general rate case prior to implementation of price regulation). The latter issue is perhaps more closely related to the discussions included herein under the public interest finding, but due to the connection of this issue with the toll switched access charge reduction issue, it will be addressed at this juncture.

We will address the second matter first. The issue is whether the Commission should make a determination as to the appropriateness of the Company's current overall level of rates, on a specific test-year pro forma basis, under traditional rate base, rate of return regulation, and thereafter make any necessary adjustments thereto with respect to its findings, in conjunction with or as a prerequisite to its approval of a price regulation plan. The Commission does not believe that such a review is necessary or appropriate.

AT&T and MCI assert that an underlying assumption of price regulation is that the starting rates must be "properly" set; i.e., prices should be aligned with cost. AT&T witness King testified that GTE South's access rates, as currently priced, are substantially above their cost and that they should be reduced. AT&T suggested that annual rate reductions should be identified to offset normal productivity gains and recommended that GTE South be required to share its productivity gains with its customers through price reductions to be determined from productivity targets developed from a review of historical productivity gains in comparison to the GDP-PI. However, in its proposed order AT&T did not propose specific levels of revenue reductions.

CUCA also stated that any price regulation plan's starting rates should be based on cost. Specifically, CUCA contended that, since many of GTE South's business customers are already paying rates which substantially exceed a cost-justified level, utilization of existing rates as initial rates going into price regulation violates the prejudice criterion enunciated in G.S. 62-133.5(a).

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[1] The Commission notes that House Bill 161, notwithstanding G.S. 62-140, requires the Commission to allow local exchange companies to offer competitive services with flexible pricing arrangements to business customers pursuant to contract and to permit other flexible pricing options. One might argue that the Legislature intended to allow a relaxation of the traditional "unreasonable discrimination" test. The Commission does not reach that decision, however, since the Commission's conclusion is valid under the stricter test traditionally applied.

GTE South and the Public Staff (the Stipulating Parties) argue that nothing in House Bill 161 requires the Commission to conduct a general rate case for a local exchange company that elects price regulation. They state that the economic standard for evaluating price regulation plans, as contained in House Bill 161, is not whether the rates are "just and reasonable," which is the old rate case standard, but whether the proposed price regulation plan - in this case the Stipulated Plan - "protects the affordability of basic local exchange service." The Stipulating Parties contend that existing rates are not excessive and are a reasonable starting point.

Public Staff witness Dr. Johnson testified that several rate and revenue adjustments were made in conjunction with the merger of GTE South and Contel of North Carolina, Inc.(Contel), in 1994. These adjustments included reductions in Contel's monthly individual line residence and business rates of $3.00 and $7.58 to $7.73, respectively, as well as other reductions in other basic business rates and rates for touch calling service. Contel also upgraded all of its party-line services to individual lines. Both GTE South's and Contel's tariffed local transport rates were restructured, which resulted in an annual revenue reduction of $600,000 for GTE South. Further, Contel reduced its originating carrier common line charge and discontinued receipt of payments from the interLATA high cost fund.

In consideration of GTE South's earnings, and given the relatively recent rate reductions plus the three-year cap on basic residence rates, the Stipulating Parties contend that GTE's existing rate levels are appropriate going into the plan. Consequently, the Stipulating Parties did not propose to adjust GTE South's existing rates.

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that a general rate case review is not required at this time and that GTE South's existing rates are a reasonable starting point for price regulation. GTE's earnings, however, are relevant to this proceeding and have been considered in developing the Commission-approved Price Regulation Plan. Even though AT&T, CUCA, and MCI all argued that the initial starting rates should be based on costs, they did not take the position that GTE South's rates overall were above cost; i.e., that the Company was overearning. Therefore, the Commission further finds and concludes that GTE South should not be required to implement any rate reduction.

Regarding AT&T's and MCI's complaints that the level of toll switched access charges, including carrier common line charges, are too high[1] and should be reduced as a precondition to the approval of a price regulation plan, the Commission does not believe that such action is either required or warranted.

The Commission is aware of no events that have occurred in the evolution from the regulation of telecommunications service as a monopoly to a more competitive industry that require a decision that access charges be priced solely on the basis of incremental cost. Passage of G.S. 62-133.5 and the filing of a price regulation plan by a local exchange company do nothing to require that access

[1]GTE South concedes the switched access rates are too high and has testified that it would reduce these rates by the amount of any net increase in revenues received as a result of Commission approval of a pending request for increases in private line rates which the Company currently has under consideration.

charges be lowered to incremental cost. The statutory framework and regulatory decisions in North Carolina prohibited unreasonable prejudice among customer classes before language in House Bill 161 became effective that likewise prohibited this practice when authorizing price regulation plans. Establishment of the price of access charges above incremental cost passed muster under these preexisting requirements, so a reiteration of the unreasonable prejudice requirement in 1995 in the price regulation context does nothing to render this long-standing practice unlawful.

Generally, it was conceded by all the witnesses, including GTE South's, that toll switched access and carrier common line rates are priced well above incremental cost. This is true, of course, as a consequence of pricing certain services above incremental cost in order that other local exchange service could be priced lower than it would have been in the absence of higher revenues received from these other sources. This pricing approach enables the local exchange company to meet the societal objective of widespread availability of local exchange service and arguably reflects some support of joint and common costs of the local loop. Of course, the local loop is used in providing toll and other custom services as well as for basic local service. The local exchange companies have priced in this fashion as the holders of the historical monopoly with the universal service responsibilities. These responsibilities continue, at this time, to justify the practice of charging for toll switched access on a basis different from that relied upon to establish other local exchange company prices. No party has pointed out any language in House Bill 161 which even remotely suggests that switched access charges which are lawful today become unreasonably prejudicial on the effective date of an approved price regulation plan. Clearly, the amendment to G.S. 62-110 (f1) authorizes the Commission to adopt rules which, inter alia, "provide for the continued development and encouragement of universally available telephone service at reasonably affordable rates." This appears to the Commission to be an explicit recognition by the Legislature of the long-standing policy of pricing telephone services so as to maintain residential rates as low as practically possible. It is fair to say that all witnesses in this case agree that a reduction of switched access and common carrier line charges to the levels advocated by AT&T and MCI would result in either large, immediate increases in residential rates or substantial reductions in revenue to the Company. Therefore, the Commission again finds and concludes that GTE South should not be required to implement any rate reductions as a condition to approval of a price plan.

Another related issue is whether the advent of direct competition in the intraLATA toll market between GTE South and the interexchange carriers sufficiently changes the factual context within which access charges are assessed to invoke the proscription against unreasonable prejudice. Of course, competition between local exchange companies and interexchange carriers in the intraLATA toll market - both unauthorized and authorized - has existed for years, so the context in which the Commission established toll switched access charges significantly above incremental cost has not changed. With the advent of de jure intraLATA toll competition in 1994, the Commission subsequently imposed an imputation requirement upon the local exchange companies to prevent anticompetitive "price squeeze" pricing strategies. The Commission has, therefore, previously addressed certain aspects of the anticompetitive issues present in this proceeding, in Docket No. P-100, Sub 126. However, all such issues will be addressed more fully subsequently.

A further issue is whether the advent of direct competition in the local exchange and exchange access markets between local exchange companies and competitive local providers authorized by the

new legislation somehow changes the factual context so as to make the pricing of toll switched access charges unreasonably prejudicial against the interexchange carriers. While resolution of this issue is perhaps more complex than the others, the same analysis undertaken historically to justify pricing access charges above incremental cost leads to the conclusion that this pricing practice continues to be justified. Even though the local exchange companies will compete with competitive local providers in the post-1995 environment, no unreasonable prejudice is created. The local exchange company uses the above-cost increment in access charges just as it uses the difference between the price of the local exchange company's long distance service and its own cost: to provide support to maintain the price of local exchange service at a reasonably affordable level. This support enables the local exchange company to meet the societal objective of widespread availability of local exchange service and reflects the existence of joint and common costs in the local loop. The local exchange companies have borne these responsibilities as the holders of the historical monopoly. These responsibilities continue, at this time, to justify the practice of charging for toll switched access on a basis different from that relied upon to establish other local exchange company prices.

A justification for retaining existing pricing principles, at this time, in the telecommunications markets that are becoming increasingly more competitive is the desire to proceed deliberately and cautiously during the transition period. The Commission recognizes the need to move prices for individual services toward their economic costs; however, caution and deliberation are necessary so that the desire to increase services and reduce costs in the lucrative, highly-competitive sectors of the business do not result in an unexpected and socially unacceptable rise in the cost of essential services necessary to everyone. Nothing has changed with passage of the 1995 legislation that justifies, much less requires, abandonment of these principles. Nothing the legislature said in 1995 may be construed to alter the Commission's role as the protector of those least able to obtain, and most in need of, basic local exchange service.

Indeed, the 1995 legislation by its own terms reinforces these principles. While one goal is to avoid unreasonably prejudicing classes of telephone customers, other express goals are to "(i) protect the affordability of basic local exchange service, and (ii) reasonably ensure the continuation of basic local exchange service that meets reasonable service standards."

Is there any language, then, in the 1995 legislation that requires the Commission to reduce toll switched access charges to cost-based levels? The Commission concludes that there is not. Applying the principles embodied in State ex rel Utilities Comm'n v. Public Staff, 323 N.C. 481, 502, 374 S.E.2d 361, 373 (1988) and State ex rel Utilities Comm'n v. Carolina Utility Customers Association 323 N.C. 238, 252, 372 S.E.2d 692, 700 (1988), the Commission concludes that the current toll switched access rates do not unreasonably prejudice or discriminate against the interexchange carriers. G.S. 62-133.5(a)(iii), G.S. 62-140.

Regarding CUCA's position that GTE South's large business customers continue to provide a subsidy for residential service and that business rates should be reduced as a precondition to the approval of a price regulation plan, the Commission does not believe that such action is necessary or appropriate.

CUCA argued that all of the Company's prices, including those for business services, should be based upon cost. Because many of those rates are significantly above cost, CUCA argues that business customers are unreasonably prejudiced. However, the Commission believes, as stated by Company witness Wellemeyer, that competition makes further increases in rates for many business services unlikely; i.e., opening the market to competition will push those rates downward. Additionally, the Commission recognizes that under G.S. 62-133.5(a) the Company is permitted to "rebalance its rates." The Commission believes that the gradual rebalancing that will occur under the Commission-approved Price Regulation Plan as adopted herein is in the public interest. Some parties argued that there are distortions - in an economic sense - in the Company's prices, distortions that reflect years of pricing decisions designed to foster universal service. The Commission believes that to do as some parties advocate and immediately move rates to their economic costs would cause both social and economic consequences which should and can be avoided. The Commission believes that a competitive marketplace will gradually correct any distortions that may currently exist by forcing pricing toward economic costs. Thus, based upon the foregoing and the entire evidence of record, the Commission finds and concludes that the Commission-approved Price Regulation Plan does not unreasonably prejudice or discriminate against the Company's business customers.

Another provision of the Stipulated Plan to which some intervenors took exception is the provision in the pricing rules that "[t]he initial prices, in the aggregate, for Toll Switched Access Services shall be the maximum that the Company will charge under the Plan." In this regard, AT&T takes the position that individual rate elements within the switched access services category should be capped on an individual rate element basis, as opposed to the subject category being capped in the aggregate. Essentially, AT&T argues that, if rate elements are not capped on an individual basis, GTE South, who is both a competitor at the retail level and a provider of monopoly inputs into its competitors' retail services at the wholesale level, will have the flexibility and the incentive to lower the prices of competitive rate elements and raise the prices of monopoly rate elements.

MCI also takes the position, for basically the same reasons as AT&T, that prices for monopoly services should be capped, and price caps should be applied to each rate element, rather than to collections of rate elements or to the combination of rates for services in baskets.

The Stipulating Parties take the position that the statute contemplates a regulatory regime under which the Commission is required to "permit the local exchange company . . . to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices."

As discussed below, the Commission has incorporated into the Commission-approved Price Regulation Plan specific anticompetitive safeguard language which in conjunction with certain statutory provisions should provide aggrieved parties with a clearly defined avenue for redress in the event GTE South should engage in anticompetitive conduct. The Commission believes that the foregoing provisions reasonably balance the concerns of AT&T and MCI with the added benefit of avoiding the imposition of unnecessary constraints on GTE South's pricing flexibility.

The next issue to be discussed concerns prejudicial pricing and anticompetitive safeguards. GTE South witnesses have assured the Commission that the Company will not implement predatory

prices or otherwise knowingly engage in anticompetitive conduct. It is GTE South's opinion that if a competing company believes that actions of a local exchange company are anticompetitive, then G.S. 62-133.5 (e) specifically allows a complaint to be filed pursuant to G.S. 62-73. GTE South also notes that under G.S. 62-73 investigations may be undertaken by the Commission upon its own motion or may be initiated by any person having an interest in the subject matter by filing a complaint with the Commission.

Several of the intervenors in this proceeding presented arguments relating to prejudicial pricing and anticompetitive safeguards. Specifically, the subject intervenors argue that language should be included in GTE South's price regulation plan:

(1) Requiring GTE South not to price certain of its services below total service long run incremental cost (TSLRIC);

(2) Requiring GTE South, in establishing its price for a competitive service which includes a monopoly component, to impute as a component of the cost of such service the price it charges competitors for the monopoly component; and

(3) Prohibiting GTE South from engaging in anticompetitive practices; i.e., anticompetitive bundling of services and tying arrangements, vertical price squeezes, price discrimination, and predatory pricing.

Long run incremental cost (LRIC) is defined in the Stipulated Plan as "[t]he cost the Company would incur (save) if it increases (decreases) the level of production of an existing or new service or group of services. LRIC consists of costs associated with adjusting future-production capacity that are causally related to the rate elements being studied. These costs reflect forward-looking technology and operational methods."

AT&T states that TSLRIC ". . . measures the addition to the company's total costs in the long run caused by adding a given service to its existing product mix. TSLRIC includes provision for a normal profit and it also includes the cost of any fixed assets that can be attributed to the service being added."

The basic difference between the foregoing costing methodologies appears to be that TSLRIC would include joint or common cost associated with a service or network element whereas LRIC would not include such costs.

AT&T, MCI, Time Warner, and NCPA, hereafter referred to collectively as the Protesting Parties, either implicitly or explicitly submit that the use of LRIC, as proposed in the Stipulated Plan, does not adequately provide competitive pricing safeguards for GTE South's potential customers so as to guard against anticompetitive pricing conduct by GTE South.

The Protesting Parties contend that, with respect to most services, GTE South is both a competitor and a monopoly provider of a necessary input to each competitive service. In the absence of anticompetitive constraints, it would be in GTE South's self-interest to utilize its existing

monopoly power to exploit the remaining captive ratepayers and frustrate and delay the development of effective competition. AT&T points out that even the Public Staff 's witness, Dr. Johnson, recognized the potential for such anticompetitive conduct:

> "When a firm is subject to competition in at least one segment of the industry but still enjoys monopoly power in at least one other segment, it has strong incentives to use the revenue from one or more of its quasi-monopoly services to offset the cost of one or more of its quasi-competitive services, thereby allowing the firm to price the latter service(s) "below cost." . . . More generally, a problem exists whenever an integrated firm operating in both quasi-monopoly and quasi-competitive markets takes advantage of opportunities to shift costs from the former to the latter category, to overprice its less competitive services, and/or to underprice its more competitive services. . . . The goal may be to deter competitive entry, to gain a competitive advantage, or to maintain dominance in a potentially more competitive market."

AT&T argues that LRIC is inadequate because it (1) applies an inappropriate cost measurement, (2) fails to provide any restriction or guidance as to how cost shall be determined, and (3) fails to address a panoply of other potential anticompetitive activities, including the fact that the Stipulated Plan does not require GTE South to impute to its own services the price it charges to its competitors for the same service; nor does the Stipulated Plan contain safeguards to prevent GTE South from cross-subsidizing its competitive services with revenues from its monopoly services.

The Protesting Parties, in general, take the position that because LRIC measures changes in output at the margin, it does not accurately reflect the cost of providing the service in question. As a result, the application of LRIC as a price floor will still allow GTE South to set its prices for its competitive services below cost and subsidize these prices with monopoly profits. By contrast, TSLRIC more accurately measures the cost of providing the service in question and will prevent GTE South from unfairly cross-subsidizing its competitive services. According to AT&T, TSLRIC sets the appropriate floor below which economists recognize a service to be cross-subsidized.

Additionally, AT&T states that the Stipulated Plan must be modified to include provisions prohibiting GTE South from engaging in other kinds of anticompetitive activity such as tying or bundling its services in an anticompetitive manner. AT&T argues it is critical that competitors not only have state law remedies for anticompetitive conduct but also have state regulatory remedies for such conduct. Finally, AT&T states that inclusion of a provision in the Plan barring GTE South from engaging in anticompetitive activity would enable the Commission to discharge its statutory duty to protect the public interest and to provide a regulatory environment in which competition can develop.

AT&T also contends that the categories of services included in the Stipulated Plan should contain services with the same intensity of competition. Since under the Stipulated Plan both competitive and noncompetitive services are included in the same basket, GTE South is permitted to decrease the price of competitive services (or partially competitive services) which would allow GTE South to increase the prices of noncompetitive services in the same basket even if GTE South's total revenues are otherwise contained.

Further, AT&T's and MCI's witnesses provided evidence that imputation is a fundamental requirement of fairness where a vertically integrated supplier with market power competes with new entrants to the market. These intervenors argue that imputation is necessary to prevent vertically-integrated supplier-retailers such as GTE South from unfairly undercutting the price of its competitors. Therefore, AT&T and MCI state that the price regulation plan must require that GTE South impute the price it charges its competitors for monopoly service components (including but not limited to, access) in the price it charges for its own competitive services.

In summary, the Protesting Parties generally contend that the Stipulated Plan, in order to provide adequate anticompetitive protection, must be modified (a) to require that GTE South not price any of its services below TSLRIC, presumably exclusive of basic local service, (b) to require that GTE South impute the price it charges its competitors for monopoly service components (including, but not limited to, access charges) in the price it charges for its own competitive services, and (c) to include specific language barring GTE South from engaging in anticompetitive activity. Regarding the LRIC versus TSLRIC controversy, CUCA takes the position that the Commission-approved Price Regulation Plan should employ both LRIC and TSLRIC - LRIC as the pricing floor benchmark for rate elements and TSLRIC as the pricing floor benchmark for services. Additionally, Time Warner asserts that language should be included in the Commission-approved Price Regulation Plan requiring GTE South to use consistent costing methods across all services and rate elements, file and make publicly available cost support for all tariffed rates, and demonstrate that it does not shift common costs onto noncompetitive services in its monopolized markets from price reductions in competitive markets.

Last, with respect to COCOTs, the NCPA expressed fears regarding cross-subsidization and other anticompetitive practices by GTE South. The NCPA urged the Commission, among other things, to provide for an imputation requirement on the Company and to include specific language prohibiting anticompetitive practices by the Company.

The Stipulating Parties assert that there is no need to adopt rules concerning anticompetitive behavior. Such parties argue that under existing law and the Stipulated Plan, the Commission has enough authority to address issues with respect to anticompetitive conduct, such as predatory pricing and cross-subsidy, without the necessity of engrafting additional language onto the price regulation plan. These parties further contend that GTE South's competitive intraLATA toll services continue to be subject to the Commission's imputation requirement set forth in its Order of May 17, 1994, in Docket No. P-100, Sub 126. According to the Stipulating Parties, that standard requires, with respect to toll switched access service, that GTE South limit its rates by an imputation standard, and that imputation standard eliminates any possibility of GTE South engaging in price squeezing or predatory pricing strategies.

After having carefully considered the foregoing and the entire evidence of record regarding the need for inclusion of specific anticompetitive safeguard language in GTE South's price regulation plan, the Commission finds and concludes that the subject language should be included therein. Such conclusion has been reached for reasons presented by the intervenors in support of their positions in this regard. While the Commission does not find it necessary at this point to promulgate special rules to protect COCOTs, the Commission does conclude that GTE South should be required to impute

to itself the charges it makes to COCOTs as part of the general imputation requirement being instituted. Furthermore, COCOTs should be able to avail themselves of the protection afforded by the general prohibition on anticompetitive activities by GTE South which is also being incorporated by the Commission into GTE South's price regulation plan. Therefore, the Commission finds and concludes that the Stipulated Plan should be modified to include the following specific language:

(a) Regarding the use of LRIC: "LRIC shall be construed as presumptively appropriate for use in this Plan; provided, however, that such use is without prejudice to the right of any party to challenge the propriety of use of LRIC in any complaint proceeding, including but not limited to complaints brought before the Commission alleging anticompetitive conduct on the part of the Company."

(b) Regarding imputation: "The Company shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function."

(c) Regarding anti-competitive practices: "This Plan shall not operate to permit anticompetitive practices. The Company shall not engage in predatory pricing, price squeezing, price discrimination, or anticompetitive bundling or tying arrangements as those terms are commonly applied in antitrust law. Nor shall the Company give any preference to the competitive services of affiliated entities."

In addition to the foregoing, other questions and discussions were raised during these proceedings relating to the development of general rules to further facilitate competition. The Commission considers that such rules are covered in G.S. 62-110(f1) and are, thus, the subject of a separate regulatory proceeding in Docket No. P-100, Sub 133, currently pending.[1] The Commission believes that price regulation stands, or falls, on its own and recognizes that there will always be other cases, future controversies, and future issues to be resolved. The competition docket is, indeed, evolutionary and ongoing.

The Commission concludes, at this time, that it is unnecessary to address the myriad of issues arising out of the advent of local exchange and exchange access competition in this proceeding.

Accordingly, for the reasons set forth herein, the Commission finds and concludes that the Commission-approved Price Regulation Plan does not "unreasonably prejudice any class of telephone customers, including telecommunications companies."

[1] On February 23, 1996, the Commission entered an Order setting forth detailed rules governing interconnection and other competition issues. Order of February 23, 1996, in Docket No. P-100, Sub 133.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 5

- Public Interest Standard -

The fourth requirement of G.S. 62-133.5 that must be satisfied requires that the Commission find the price regulation plan to be "otherwise consistent with the public interest." The public interest standard is one which is not necessarily characterized by a bright line. It is, and always has been, a flexible standard requiring the application of reasonable judgment. The Commission is qualified by both experience and law to define and to apply the public interest standard.

Implicit in the decision as to whether the Stipulated Plan falls within, and is consistent with, the public interest are several issues, stated in question form, as follows:

(a) Does this price regulation case require, or necessarily imply, a general rate case for the Company?
(b) Does the Stipulated Plan grant sufficient but not excessive pricing flexibility to the Company?
(c) Are the productivity offsets included in the Stipulated Plan sufficient?
(d) Should MCI's Competition Plus Plan be considered in lieu of the Stipulated Plan? and
(e) Does the Commission retain sufficient authority, in the event of unforeseen circumstances, to modify the Price Regulation Plan?

In connection with the last issue, the Commission, by Order issued on March 20, 1996, in this docket, specifically requested the parties to answer a series of questions related to the Commission's ability, should the Commission approve the Stipulated Plan, to protect the public interest.

After reviewing the entire record and the proposed orders and briefs of the parties, the Commission concludes that the Commission-approved Price Regulation Plan, as adopted herein, is in the public interest and that sufficient authority will remain to protect the public interest should unforeseen circumstances require intervention at some future date during the life of the plan.

The intervenors in this proceeding raised several issues with respect to the requirement that the price regulation plan be consistent with the public interest. Upon consideration of such, the Commission finds and concludes that the Stipulated Plan should be modified in part to ensure that the approved price plan is "otherwise consistent with the public interest." The discussion which follows provides a synopsis of the issues raised relating to this last criterion and the Commission findings thereon.

Much of the evidence discussed in the finding that the Stipulated Plan as modified herein does not unreasonably prejudice any class of telephone customers, including telecommunications companies, is also relevant here; i.e., the Commission found therein that a general rate case review is not required at this time. The Commission believes that if the General Assembly had wanted the Commission to conduct a rate case proceeding as set forth in G.S. 62-133 going into competition and price regulation, it could have so required. The General Assembly did not write House Bill 161 to require such a rate case, and, therefore, the Commission finds nothing in House Bill 161 that requires

the Commission to conduct a general rate case for a local exchange company that elects price regulation under G.S. 62-133.5(a).

Indeed, the House Bill 161 economic standard for evaluating price regulation plans is not whether the rates are just and reasonable, which is the rate case standard, but whether the proposed Price Regulation Plan - in this case the Stipulated Plan - protects the affordability of basic local exchange service. G.S. 62-133.5(a)(i). The Commission must interpret and apply House Bill 161 as it is written, because House Bill 161 is clear and unambiguous.[1] It allows a telecommunications public utility, currently subject to rate of return regulation, to elect to have its rates determined pursuant to "a form of price regulation, rather than rate of return or other form of earnings regulation." G.S. 62-133.5(a). Thus, it is clear that the General Assembly viewed price regulation as a form of regulation entirely distinctive and different from traditional rate of return regulation. This language, coupled with the exclusion of G.S. 62-81, -130, -131, -132, -133, and -137 from applicability to local exchange companies electing price regulation pursuant to G.S. 62-133.5(g), supports the conclusion that the General Assembly did not require, or even desire, a general rate case for local exchange companies electing price regulation.

As already noted, the Original Plan proposed by the Company allowed a great deal more flexibility and allowed the Company to rebalance its rates more quickly. If the Company had followed that course, the increases in certain rates that are now alleged to be currently below cost, e.g., largely residential basic rates, would have been much more dramatic.[2]

The Stipulated Plan allows rate rebalancing but at a moderated pace as compared to the Original Plan. Each of the Company witnesses testified that the Stipulated Plan was acceptable and that the Company could achieve its rebalancing objectives, although it would take much longer.

The Original Plan contained only three categories of service whereas the Stipulated Plan contains four. Within the three categories under the Original Plan, the Company could increase prices in the Basic and Interconnection categories by one-half the inflation rate. Price caps within the categories would have applied on a service by service basis and, in the case of Basic and Interconnection rates, the Company could have increased rates by 6% and 10%, respectively. No limits were placed on Non-Basic rates since those services were considered competitive or discretionary.

Under the Stipulated Plan, aggregate increases in the Basic, Interconnection, and Non-Basic 1 categories are limited to the inflation rate less a 2% offset. This should provide incentive for the Company to achieve productivity levels in excess of 2% since additional productivity will allow either

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[1] State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 465, 232 S.E. 2d 184, 192 (1977).

[2] The Commission has reviewed the testimony concerning the cost of providing service. Cost studies in the telephone industry have always been subject to much debate among expert witnesses and the testimony in this case is no exception. Notwithstanding that the witnesses did not agree as to the cost of providing service to residential customers, the Company and the Public Staff support the Stipulated Plan. Considering the moderate increases that might occur in residential rates and the three-year cap on those rates, the Commission believes there is no necessity to resolve those debates about cost in this case.

increased earnings or the ability to decrease prices further to enhance its competitive position. The Stipulated Plan is also much more restrictive in that individual rate elements within the Basic, Interconnection, and Non-Basic 1 categories are constrained by the price cap limitations of inflation plus 3%, 7%, and 15%, respectively. This is much more restrictive than the Original Plan. The Commission, therefore, finds and concludes that the foregoing provisions of the Stipulated Plan are eminently reasonable and entirely appropriate, and accordingly will include such provisions in the Commission-approved Price Regulation Plan, as adopted herein.

Under the Original Plan the Company could have increased prices during the first year the plan is in effect but under the Stipulated Plan, the Company cannot implement price increases that will result in net increases in the categories during the first year. Residential local exchange rates are capped for three years and switched access and carrier common line charges are capped in the aggregate for the life of the Stipulated Plan. There are only two services in the Non-Basic 2 category, Centrex, and Billing and Collection, and these services are clearly provided in a competitive market where price increases, although not limited, will be challenged in the marketplace.

The capping of residential local exchange rates for a three-year period, as provided for in the Stipulated Plan, raised the issue of whether residence local service rates should be capped and, if so, then for how long. The capped Basic Local Exchange Services include Residence Individual Line Service charges, the Residence Touch Calling Service charge, the Residence Service Order charge, the Residence Premises Visit charge, and the Residence Central Office Line Connection Work. The Attorney General and CUCA voiced concerns about the length of time that residence local service rates should be capped.

The Attorney General takes the position that residence local service rates should be capped for the life of the price plan, based on a life of five years. The Attorney General stated that the testimony of many witnesses in this proceeding indicated that residential customers are likely to be captive of their monopoly telephone providers for the life of the plan, particularly if they live in rural areas. During the transition period from earnings regulation to competition, the Attorney General believes that while there is no real competition, i.e., while residential customers have no real choices for telephone service, there should be no increase in basic residential rates without justification. Thus, the Attorney General recommended that residential rates be capped at present levels for the life of the price plan.

CUCA takes the position that caps on residence local service rates are inappropriate and should be removed from the Stipulated Plan since they are already below cost and heavily subsidized by business customers.

Based upon the entire evidence of record, the Commission finds no relevant reason for altering the three-year cap on residential rates as proposed in the Stipulated Plan. The Commission fully recognizes that these capped Basic Local Exchange Services will be subject to possible rate increases beginning in the fourth year, but such rate adjustments will be restricted subject to the rate element constraint on increases of GDP-PI plus 3% and the category constraint on overall increases of GDP-PI minus 2%. The Commission finds and concludes that the three-year cap is reasonable

during the transition to competition and will incorporate such provision into the approved price regulation plan.

Next, CUCA raised the issue of whether the Non-Basic 1 price cap on increases for individual rate elements, i.e., the percentage change over the preceding year in the GDP-PI plus 15%, as reflected in the Stipulated Plan, should be modified.

CUCA argues that the 15% rate element constraint for Non-Basic 1 services in the Stipulated Plan is a particularly egregious violation of sound regulatory policy in that it constitutes prejudicial pricing. The 15% rate element constraint included in the Stipulated Plan would allow the Company to nearly double the price charged for an individual Non-Basic 1 service over the life of the plan. CUCA alleges that the inclusion of this 15% rate element constraint in the Stipulated Plan creates a significant risk that customers subscribing to services in the Non-Basic 1 category will be subjected to large annual rate increases. CUCA argues that the record does not contain any evidence tending to show the appropriateness of this 15% figure and, thus, that it should be modified to a more reasonable rate element constraint which is generally consistent with the similar constraints applicable to the other baskets. CUCA states that although there may well be a range of appropriate rate element constraints for each basket, a reasonable rate element constraint for the basket of Non-Basic 1 services should be in the area of 5%. In concluding in this regard, CUCA takes the position that the Commission should modify the Stipulated Plan by removing the reference to the 15% rate element and inserting in lieu thereof a 5% rate element constraint, which, presumably, would be in addition to the GDP-PI.

The Stipulating Parties assert that GTE South will not inappropriately increase the price of rate elements in the Non-Basic 1 Category. Such parties essentially argue that such services will be subject to significant competition and that such competition will act to ensure that GTE South does not engage in prejudicial pricing with respect to the subject services. Additionally, the Stipulating Parties observe that the Stipulated Plan's overall pricing constraint on the Non-Basic 1 Category of services is GDP-PI minus 2%.

The Commission recognizes that the 15% is a stipulated, negotiated number. It is quite possible that a number other than 15% would be appropriate, as the record provides numbers in the range of GDP-PI plus 5% to 15%, but without credible and convincing evidence supporting an alternative, the Commission believes that it is reasonable to accept the position of the Stipulating Parties as proposed in this regard. The Commission understands that the Company needs flexibility to compete. GDP-PI plus 15% may not be perfect, but we find it to be reasonable given the circumstances that attend this proceeding: the advent of local exchange and exchange access competition under House Bill 161. Accordingly, the Commission accepts the Non-Basic 1 services' rate element constraint of GDP-PI plus 15% for purposes of this proceeding.

Several of the intervenors raised concerns about the reasonableness of the productivity offset of 2% that was reflected in the Stipulated Plan. The Stipulated Plan defines the term offset as "[t]he percentage reduction to the change in GDP-PI which is applied under this Plan. The Offset for the Basic Services Category, the Interconnection Services Category, and the Non-Basic 1 Services Category will be 2%."

Public Staff witness Dr. Johnson explained that a productivity offset such as that included in the Stipulated Plan is intended ". . . to account for the differences between the rate of inflation in input prices within the particular industry and the overall rate of inflation" and ". . . to reflect the benefits of increasing economies of scale and economies of density, and the benefits of increasing productivity within the telecommunications industry." Dr. Johnson, also testified that "[n]umerous different factors affect a firm's productivity. . . ", including ". . . technological improvements; shifts from high to low cost inputs; and increased economies of density and scale." The available evidence also suggests that the telecommunications industry has been substantially more productive than the economy as a whole, particularly in recent years. Thus, the need for some sort of offset should be obvious. The Stipulating Parties recommended an offset of 2%.

AT&T asserted that the Commission has two options for requiring GTE South to share its productivity gains with its customers. First, it could set the starting prices for GTE South's services at appropriate rates which are based on the cost of providing the services, and then adjust all prices by the appropriate productivity offset factor. However, AT&T considers that the problem with this option is that incorrect starting prices will lead to unwanted results. Therefore, AT&T states that to the extent GTE South is not required to set its initial prices based on the cost of each service, then this option would not be appropriate. The second option offered by AT&T is to identify the total rate reductions that would be required annually to offset normal productivity gains. These reductions should then target the most excessive rates to bring them in line with costs. AT&T stated that at the national level, the Company has elected a price regulation plan based on total company performance that commits it to reduce costs by a 5.3% annual productivity offset; and noted that figures underlying the FCC targets were based on total local exchange company productivity, not just interstate services. Therefore, AT&T asserts that there is no justification for electing a lower productivity offset than 5.3%. However, rather than suggest a specific increase to the productivity offset contained in the Stipulated Plan, AT&T recommends that GTE South be required to annually reduce its rates, i.e., to pass along normal productivity gains to its ratepayers.

The Attorney General takes the position that a productivity offset of 3.5% is the most appropriate number to use. Such an offset would, in the Attorney General's opinion, allow the Company flexibility to adjust prices to meet competition while assuring that rates will not rise too quickly for customers with few or no competitive alternatives. The Attorney General notes that the evidence suggests a range from 2% to 5.3% and acknowledges that no one knows what the future brings and thus, any choice will be somewhat arbitrary. In support of the recommendation of 3.5%, the Attorney General stated that Public Staff witness Dr. Johnson testified that the average productivity offset for approved price cap plans for the Bell Operating Companies adjusted for jurisdictions that used the GDP-PI for an inflator is 3.5%.

CUCA stated that the use of an unduly low offset will allow the Company to charge excessive rates, but also acknowledged that the use of an unduly high offset will impose inappropriate risks upon the Company. CUCA asserts that the appropriate offset for use in this proceeding is 5.3% which is the productivity offset the Company elected at the federal level.

The record contains very limited evidence concerning the specific reasoning for the choice of the 2% productivity offset which was included in the Stipulated Plan. Public Staff witness Dr.

Johnson testified that numerous states had approved price cap plans which included an offset from the general inflation rate. He provided a listing in his testimony showing the states that have approved price cap plans for the regional Bell Operating Companies with their respective approved numeric offsets. The average offset of those approved plans is 3.2%, with the lowest offset being 1.0% and the highest offset being 4.5%.

The Commission recognizes that there is wide disagreement about inflation and productivity as it relates to the telecommunications industry. In this proceeding, suggested productivity offsets ranged from 2% in the Stipulated Plan to 5.3%, as proposed by AT&T and CUCA. The Commission recognizes that any choice will be somewhat arbitrary, and is concerned that the choice of an offset not be so high that it would impose inappropriate risks upon the Company during the transition to competition. Based upon the entire evidence of record, the Commission finds and concludes that the productivity offset of 2%, as stipulated to by the Public Staff and GTE South, is reasonable. Accordingly, the Commission accepts the proposed productivity offset of 2% as within the public interest. Such offset has been incorporated into the Commission-approved Price Regulation Plan, as adopted herein.

The next issue to be addressed is the matter of whether or not toll switched access services which are included in the Basic Services Category in the Stipulated Plan should be moved to a separate category. AT&T, CUCA, and the Attorney General all proposed that the toll switched access services should be placed in a separate category; i.e., removed from the Basic Services Category. Under the Stipulated Plan the Basic Services Category includes basic residential and basic business local services, toll switched access services, and the Company's calling plans among other services.

AT&T recommends that switched access services should be placed in a separate basket. AT&T states that if toll switched access rates are reduced at a later date, the Company can be expected to then argue that the reduction triggers the governmental action provision in the Stipulated Plan and that the Commission must permit increases in other services to compensate the Company for reduced toll switched access revenue. Additionally, AT&T noted that this would create additional regulatory proceedings before the Commission, subject all parties to wasteful expenditure of resources, and result in unnecessary rate increases for consumers.

The Attorney General argues that by including toll switched access services in the basic basket, the stipulated plan almost guarantees a degree of rate rebalancing when access charges are reduced. Because the overall basket constraint remains stable under the Stipulated Plan while access charges go down, then basic residential and basic business rates may go up as the Stipulated Plan provides. The Attorney General believes that while the possibility for competition in switched access services in the short-term is remote, particularly in the Company's territory, it is more probable that it will be competitive before basic service is competitive. The Attorney General also believes that access services provide a different functionality from basic services. Therefore, the Attorney General states that because the probable degree of competition is likely to be different and the functionality is different between basic services and access services, access services should be placed in its own basket.

CUCA argues that placing toll switched access services in the Basic Service Category, along with capped basic residential services, was apparently done to finance access charge reductions with increased basic business and extending calling plan rates. In addition, CUCA also points out that when basic residential service rates are capped, they are excluded from the calculation of the Service Price Index (SPI) for the Basic Service Category. However, toll switched access, which is also capped over the life of the plan in the aggregate, is included in the calculation of the SPI for Basic Service Category. The effect of failing to exclude toll switched access revenues from the Basic Service Category (like basic residential service is treated when it is capped) subjects other services included in the Basic Service Category to a significant risk of rate increases. Therefore, CUCA recommends removing the cap on basic residential service or, in the alternative, capping all services in the Basic Service Category. In order to resolve the problem caused by including toll switched access services in the SPI, CUCA recommends that the Commission should either move toll switched access services to another category or modify the Stipulated Plan so that toll switched access services are excluded from the SPI calculation.

The Company believes that the inclusion of toll switched access services in the same category as basic local service will facilitate its long-term goal to lower its charges for switched access services. It is the Company's opinion that certain of the services in the Basic Service Category are dramatically priced at variance with their underlying costs and that in a competitive environment the Company must gradually bring its prices back toward cost at some time in the future.

Public Staff witness Dr. Johnson testified that the Company was very concerned about wanting access charges to be in a location where the Company could raise other rates as switched access rates are reduced. According to his testimony, the Public Staff agreed during the negotiating process that the inclusion of switched access services in the Basic Service Category was an acceptable result considering that there would not be any substantial net impact on residential customers due to the negotiated pricing constraints. The Public Staff noted that: if the Company intends to lower switched access charges and raise residential rates, residential rates are capped for three years and a maximum increase of only GDP-PI plus 3% is possible for two years; that the Company will probably find it necessary to lower basic business rates and toll switched access rates due to competition; and that the overall Basic Service Category constraint was GDP-PI minus 2%. While witness Johnson viewed universal service funding as a separate issue, he acknowledged that imposition of a universal service fund is another way fair results can be accomplished.

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that it is entirely reasonable and appropriate to accept the Stipulating Parties recommendation that toll switched access services be included in the Basic Services Category. Such treatment should facilitate the Company's goal to gradually lower its charges for toll switched access charges. Furthermore, inclusion of toll switched access services in the Basic Services Category will allow the Commission to gain additional insight into the efficacy of the treatment of toll switched access charges in this manner as compared to the treatment of toll switched access charges as a stand-alone category, as in the BellSouth Price Regulation Plan approved by the Commission.

There was a considerable degree of concern in the questions raised by the Commission and those of the parties as to how the governmental actions provision would operate. As proposed in the

Stipulated Plan, the Company, with Commission approval, could "adjust the prices of any service(s) due to the financial impacts of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the Company, to the extent that such impacts are not measured in the GDP-PI." Such adjustment is mandatory upon a proper showing of a set of four criteria. Most of the intervenors, including the Attorney General, opposed the mandatory nature of the governmental actions provision. The intervenors suggested making the provision permissive and introducing a public interest criterion. Some suggested that impacts of the Telecommunications Act of 1996 be specifically excluded from pass-through under this provision.

The Commission, too, is concerned about the open-ended and mandatory nature of this provision, given the uncertainty of the nature and extent of future mandates which may be construed to constitute governmental action. The Commission further emphasizes that the governmental actions provision does not provide the Company with the right to recover competitive losses. The governmental actions provision is intended to adjust rates up or down as a direct result of costs or benefits flowing from specific governmental action and is not intended to allow recovery of remote or consequential marketplace effects.

Accordingly, the Commission concludes that the governmental actions provision should be modified by substituting the word "may" in place of the word "will" in the sentence before the criteria in order to make the adjustment permissive, rather than mandatory, and that a public interest standard should be inserted as the fifth criterion. This change will convert the governmental actions provision from one that is more or less automatic upon the satisfaction of certain criteria to one that will allow both scrutiny in the examination of governmental action claims and flexibility for the Commission in the decision-making on them.

Next, is the issue of MCI's suggestion that GTE South operate under MCI's proposed price regulation plan designated as its Competition Plus Plan which was offered by MCI witness Wood. MCI alleges that its Competition Plus Plan would essentially realign rates with direct economic costs, cap rates for GTE South's other-than-competitive services at existing rates, develop a universal service support mechanism, eliminate earnings reviews for GTE South, provide for price regulation of GTE South's competitive services, avoid adoption of any automatic price adjustment mechanisms, and eliminate the submission of cost studies of GTE South's services.

The Company argued that MCI's Competition Plus Plan should not be considered by the Commission for several reasons. GTE South argues that the election of whether and what type of price regulation plan should be adopted is a decision to made entirely by the Company under House Bill 161. G.S. 62-133.5 expressly allows "[a]ny local exchange company to elect . . . to have the rates, terms and conditions of its services determined pursuant to a form of price regulation . . . . The Commission shall . . . approve such price regulation. . ." upon a finding that the proposed plan meets the specified criteria. Additionally, GTE South asserts that House Bill 161 expressly allows plans which differ between local exchange companies. GTE South states that MCI is not a local exchange company and thus, it has no right to propose a price regulation plan. The Company believes that MCI's rights to be heard are limited by House Bill 161 to the right to argue that a price regulation plan proposed by a local exchange company does not meet one or more of the statutory criteria.

Public Staff witness Dr. Johnson testified that the Competition Plus Plan is a massive reshifting of revenues from access to local markets and that the Company would likely reject the Commission's decision if it adopted the MCI plan. GTE South stated in its brief that if the Commission adopts MCI's Competition Plus Plan, then it will reject it as it has a right to do under the statute. Under the Competition Plus Plan, MCI witness Murray testified that the Company's earnings would drop from a rate of return of 9.63% to 5.72%. GTE South states that this is because the Competition Plus Plan allows no rate rebalancing by arbitrarily reducing some prices while capping all others. Thus, the Company states that the Commission would clearly be remiss if it did not reject MCI's Competition Plus Plan.

The Commission finds and concludes that it would be inappropriate to adopt the Competition Plus Plan. The Commission believes that MCI's proposal to cap all of GTE's noncompetitive services at existing rates would be contrary to the express provisions of G.S. 62-133.5, which requires the Commission to "permit the local exchange company . . . to rebalance its rates." Further, the Commission will be addressing the universal service support mechanism in another docket, Docket No. P-100, Sub 133, and the statute, G.S. 62-133.5(a), requires the Commission, upon approval of a price regulation plan, to thenceforth regulate the company's prices rather than its earnings.

Furthermore, the Commission finds MCI's recommendation that the Commission avoid adoption of automatic price adjustment mechanisms to be contrary to G.S. 62-133.5. The Commission also finds MCI's recommendation to eliminate price regulation of competitive services to be unnecessary in light of House Bill 161, which permits the Commission to exempt from regulation competitive services. G.S. 62-2, as amended by House Bill 161.

Additionally, G.S. 62-133.5(a) is silent as to the ability of a party to propose an alternate form of price regulation for a local exchange company that has elected price regulation pursuant to the statute. Nevertheless, the Commission has considered MCI's proposal in light of the Commission's authority to modify a proposed plan. G.S. 62-133.5. The Commission is not persuaded, however, that MCI's Competition Plus Plan for price regulation is appropriate in the existing environment and the Commission rejects this proposal.

The Commission will next address issues relating to the Commission's monitoring of the approved price regulation plan. Such issues, stated in question form, are as follows:

(a) Is the appropriate time frame for review of the price plan ultimately adopted by the Commission five years from the date of its implementation as proposed in the Stipulated Plan? In this regard the Stipulated Plan provides as follows:

> "The Commission may undertake a review of the operation of the Plan five years from the effective date of the Plan, to determine how the operation of the Plan comports with House Bill 161 . . . ." (emphasis added)

(b) Should the Commission monitor GTE South's earnings annually under the Plan to insure that rates are not getting out of line? and

(c) As provided under the Stipulated Plan, should the annual financial surveillance reports be filed with the Commission by GTE South for the duration of the Plan on a confidential basis?

The Attorney General states that the Commission should anticipate modification of the Stipulated Plan at the end of the five-year period and begin the review process sufficiently in advance of that date. By so doing, the Attorney General believes that a plan consistent with future conditions can be appropriately put in place at the end of the five-year period for review.

AT&T takes the position that the Commission should review GTE South's cost, profit, and productivity performance annually. AT&T argues that unless there is some requirement for GTE South to share with its customers its productivity gains through price reductions, then it is not required and will have absolutely no incentive to reduce its prices. Additionally, AT&T asserts that it is necessary to maintain the correct incentives through sufficient offsets or earnings sharing, monitored and periodically adjusted as necessary through cost and rate of return reporting during the transition to full competition. Furthermore, AT&T states that the surveillance reports that GTE South must continue to file should not be filed on a proprietary basis so long as the Company enjoys a publicly sanctioned monopoly franchise.

The Stipulating Parties do not appear to have addressed the propriety of an earnings review in the context of the Stipulated Plan's provision for a five-year review or with respect to the Attorney General's foregoing proposal; nor do they address the issue regarding the Stipulated Plan's confidentiality requirements with respect to the filing of certain financial information. GTE South, in the Stipulated Plan, has agreed to allow a Commission review of the operation of the Stipulated Plan after five years, if the Commission so chooses, and has agreed to file TS-1 financial surveillance reports annually.

Based upon the foregoing and the entire evidence of record, the Commission finds and concludes that the Commission-approved Price Regulation Plan should provide: (1) that the Commission will undertake a five-year review, (2) that such review will be initiated in advance of the approved price plan's fifth anniversary, (3) for the annual filings of the TS-1 financial surveillance reports, and (4) that any claim of confidentiality with regard to these reports shall be made by the Company and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act. Accordingly, the Commission will include such provisions in the approved plan. Such action is being taken so as to clearly indicate the Commission's intention with respect to the five-year review and to otherwise, to the maximum extent practicable, balance the interests of all concerned.

Another important issue which the Commission must decide is whether, under the approved price regulation plan, the Commission retains sufficient authority to protect the public interest should circumstances dictate. The Commission finds and concludes that it does retain such authority, both statutorily and within the terms of the approved price plan.

G.S. 62-80 provides that the Commission may at any time, upon proper notice to affected parties and opportunity to be heard, "rescind, alter or amend any order or decision made by it".

G.S. 62-80 also provides that any "order rescinding, altering or amending a prior order . . . shall . . . have the same effect as . . . provided for original orders." Upon adoption of the Commission-approved Price Regulation Plan, the Commission will retain its authority under G.S. 62-80.

While the Commission is persuaded that the Commission-approved Price Regulation Plan, as adopted herein, represents a useful means whereby GTE South can undertake the process of transition to a more competitive environment, where the rigors of competition gradually reduce the need for Commission oversight, the Commission concludes that it should not--indeed, cannot--divest itself of powers and responsibilities which are statutorily conferred. The Commission is, of course, cognizant that changes to the Plan should not be undertaken for light and transient reasons. Nevertheless, especially in view of the fast-changing legal and technological environment of telecommunications in North Carolina and the nation, the Commission must retain the power, consistent with due process, to make truly needful adjustments in the price regulation plan if changing circumstances and the public interest so require.

Another issue raised by the intervenors, particularly MCI and AT&T, relates to their request that the Commission recognize that certain provisions of the Telecommunications Act of 1996 may preempt portions of the Stipulated Plan. That Act was passed by Congress and signed into law by the President after GTE South's application was filed. MCI and AT&T allege that just as the Legislature gave this Commission authority to implement rules governing such issues as resale, interconnection, and universal service, the federal legislation requires the Federal Communications Commission to implement rules concerning many of the same issues. This Commission does not know exactly how those issues will be decided and may not know for some time. To the extent any decisions made in this docket are preempted by federal rules, that is a matter over which the Commission has no control. If subsequent actions of the federal government conflict with the Commission-approved Price Regulation Plan, as adopted herein, the Commission has found that it has the statutory power to modify the approved plan.

Finally, there are two further provisions in the approved plan in the area of public interest that need to be addressed: a public notice requirement and an appropriate effective date.

First, the Commission concludes that a public notice requirement should be inserted in the approved plan. Both the Attorney General and CUCA noted the absence of public notice requirements in the Stipulated Plan. The Attorney General argued that consumers should receive clear and conspicuous notice of price changes under the Plan in the form of bill inserts on different colored paper from the rest of the bill. Such notice should include the proposed rate under the approved plan and the effective date of the rate increase. CUCA argued that the Stipulated Plan does not provide intervenors with an adequate opportunity to investigate or oppose tariff filings. The intervenors believe they should be able to receive tariff filings by hand-delivery or facsimile and should have 30 days rather than 14 days in which to challenge a tariff.

The Commission concludes that a public notice requirement is essential to the approved price regulation plan. The tariff provision should include a subparagraph that would require customer notice by bill insert or direct mail of any price increase at least 14 days before any public utility rates

are increased. The notice would include the effective date of the rate change(s), the existing rate(s), and the new rate(s). The Commission concludes that the changes suggested by CUCA and the Attorney General would be unduly burdensome and are unnecessary in light of this amendment.

Second, the Commission concludes that the appropriate effective date for the approved plan is June 3, 1996. GTE South has proposed a May 1, 1996, effective date for the Stipulated Plan. However, in order to give the Company a time period in which it can accept or reject the Commission-approved Price Regulation Plan, as adopted herein, the Commission concludes that an effective date of Monday, June 3, 1996, would be more appropriate.

In summary, the Commission concludes that the Commission-approved Price Regulation Plan, as adopted herein, is "otherwise consistent with the public interest." First, the productivity offsets require the Company to share gains in future productivity with its customers. Second, the Stipulated Plan, the provisions of which have been largely adopted by the Commission, represents a major improvement over the Original Plan and appropriately imposes significantly more risk upon the Company. Third, this Commission has a long history of encouraging negotiation, and the two parties that negotiated - the Public Staff and GTE South - represent a broad range of the public interest. In this regard, Chapter 62 expressly provides that:

> In all contested proceedings the Commission . . . shall encourage the parties and their counsel to make and enter stipulations of record . . . [c]larifying the issues of fact and law. The Commission may make informal disposition of any contested proceeding by stipulation, [or] agreed settlement . . . .

G.S. 62-69. Negotiation between the parties to actions before the Commission, in an effort to resolve their differences, advances the public policy of North Carolina as expressed by our Supreme Court. "The law favors the settlement of controversies out of court. It encourages such action by securing to every man the opportunity to negotiate for the purchase of his peace without prejudice to his rights." Penn Dixie Lines Inc v. Grannick, 238 N.C. 552, 555, 78 S.E.2d 410, 413 (1953).

Consistent with both the law and policy of this State, GTE South and the Public Staff have negotiated a stipulation, and the product of their efforts is largely reflected in the Commission-approved Price Regulation Plan. While other parties to this docket have criticized them for doing that which the law and policy of this State encourage, GTE South and the Public Staff have in good faith resolved their differences and, as this Order demonstrates, have made an exceedingly significant contribution to the Commission-approved Price Regulation Plan that the Commission believes, and so concludes, meets each of the statutory criteria required by House Bill 161.

Fourth, the Commission views the five-year review and the submission of financial reports as a major concession and a major influence upon GTE South's behavior during the operation of the Plan. Fifth, the Commission believes that the Commission-approved Price Regulation Plan properly shifts the risk of future investment decisions from GTE South's ratepayers to its shareholders, which is where that risk should rest in a competitive marketplace. Sixth, the Commission believes that a competitive marketplace is not only consistent with House Bill 161, but will engender significant benefits for the citizens of this State, through improved services, lower prices, and greater

technological innovation. The Commission also believes that competition will force GTE South to become more efficient, and that ultimately, GTE South's North Carolina customers will be the beneficiaries of that efficiency. Seventh, the Commission believes that the Commission-approved Price Regulation Plan will avoid the "marginalization" of GTE South, because it will permit GTE South to compete effectively, thus maintaining some market share, generating continued support for the maintenance of reasonably affordable local exchange service in North Carolina. The Commission believes that for competition to truly deliver the benefits of the Information Age to all of the citizens of North Carolina, GTE South must be a major participant in the telecommunications marketplace. Otherwise, the Commission concludes that the benefits of competition will be distributed unevenly and inequitably to the people of North Carolina, particularly to those individuals and small businesses who do not possess great market power due to size and or location. Finally, the Commission concludes that the Commission-approved Price Regulation Plan protects and retains affordability, and the Commission believes that such plan offers significant potential for enhanced economic development.

IT IS, THEREFORE, ORDERED that the Price Regulation Plan attached to this Order as Appendix A be, and the same is hereby, approved for implementation by GTE South effective Monday, June 3, 1996, provided that the Company shall, not later than Monday, May 20, 1996:

A. File a statement in this docket notifying the Commission that the Company accepts and agrees to all of the terms, conditions, and provisions of the Commission-approved Price Regulation Plan and indicating its willingness to implement said Plan effective June 3, 1996; and

B. Incorporate the modifications reflected in the Commission-approved Price Regulation Plan and refile said Plan with an effective date of June 3, 1996.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of May 1996.

NORTH CAROLINA UTILITIES COMMISSION
(Seal) Geneva S. Thigpen, Chief Clerk

(For Attachment A of Appendix A See Official Copy of Order in Chief Clerk's Office.)

APPENDIX A

GTE SOUTH INCORPORATED
NORTH CAROLINA PRICE REGULATION PLAN
(EFFECTIVE JUNE 3, 1996)

DEFINITIONS

The following definitions will apply to the terms as used in this Price Regulation Plan (the "Plan") for GTE South Incorporated (herein sometimes referred to as the "Company").

Contract Service Arrangement (CSA) - An arrangement whereby the Company provides service pursuant to a contract between the Company and a customer. Such arrangements include situations in which the services are not otherwise available through the Company's tariffs, as well as, situations in which the services are available through the Company's tariffs, but in order to meet competition the Company offers those services at rates other than those set forth in its tariffs. CSAs may contain flexible pricing arrangements, and depending upon the particular competitive situation may also contain proprietary information that the Company desires to protect by deleting such information from the copy filed with the Commission.

Gross Domestic Product Price Index (GDPPI) - The GDPPI is a measure of change in the market prices of output in the economy. The final estimate of the Chain-Weighted Gross Domestic Product Price Index as prepared by the United States Department of Commerce and published in the *Survey of Current Business*, or its successor, shall be the measure of price change used in the administration of this Plan.

Interconnection Services - Those services, except Toll Switched Access Services, that provide access to a Company's facilities for the purpose of enabling another telecommunications company or access customer to originate or terminate telecommunications services.

Long Run Incremental Cost (LRIC) - The cost a Company would incur (save) if it increases (decreases) the level of production of an existing or new service or group of services. LRIC consists of costs associated with adjusting future-production capacity that are causally related to the rate elements being studied. These costs reflect forward-looking technology and operational methods. LRIC shall be construed as presumptively appropriate for use in this Plan; provided however that such use is without prejudice to the right of any party to challenge the propriety of use of LRIC in any complaint proceeding, including but not limited to complaints brought before the Commission alleging anticompetitive conduct on the part of the Company.

New Service - A regulated and tariffed service that is not offered by a Company as of the effective date of this Plan, but which is subsequently introduced.

Offset - The percentage reduction to the change in GDPPI which is applied under this Plan. The Offset for the Basic Services Category, the Interconnection Services Category, and the Non-Basic 1 Services Category will be 2%.

Price Regulation Index (PRI) - PRI is used to limit or otherwise place a ceiling on price changes, in the aggregate, for the Basic Services Category, the Interconnection Services Category and the Non-Basic 1 Services Category. A PRI is not applicable to the Non-Basic 2 Services Category as there is no limit on the price changes and the prices will not be adjusted for the effects of inflation. The initial PRI for the service categories listed above for the first year of the Plan is one hundred (100). In all subsequent years of the Plan, the PRI will be developed by using the change in the GDPPI minus the Offset applicable to the respective Services Category. The PRI will be developed by: (1) dividing the most recent quarterly GDPPI results available at the time of the annual filing by the GDPPI results for the same quarter for the previous year; (2) dividing the Offset by 100; (3) subtracting the results of Step 2 from the results of Step 1; and (4) multiplying the results of Step 3 by the PRI for the previous year.

Restructure - A modification of the rate structure of an existing service by introducing one or more new rate elements, establishing vintage rates for the service, deleting one or more rate elements or redefining the functions, features or capabilities provided by a rate element so that the service covered by the rate element differs from that furnished prior to the modification. Restructure does not include a change in an existing rate element price when such change is made in accordance with the provisions of Section 6 of this Plan.

Service Price Index (SPI) - An SPI will be developed for the Basic Services Category, the Interconnection Services Category, and the Non-Basic 1 Services Category. An SPI will not be developed for the Non-Basic 2 Services Category as there will be no limit on price changes for the Non-Basic 2 Services Category, and the prices will not be adjusted for the effects of inflation. Each SPI is calculated by: (1) Multiplying the existing price for each rate element in the category by the demand for that rate element to produce the existing revenue for each rate element, then adding together the existing revenues for all of the rate elements in the category to produce the existing revenues for that category (the "existing category revenues"); and (2) Multiplying the proposed price for each rate element in the category by the demand for that rate element to produce the projected revenue for each rate element, then adding together the projected revenues for all of the rate elements in the category to produce the projected revenues for the category (the "projected category revenues"); and (3) Dividing the projected category revenues obtained in Step 2 by the existing category revenues obtained in Step 1; and (4) Multiplying the result obtained in Step 3, above, by the previous SPI. The annual filing will establish the demand to be utilized in calculating the SPIs for the coming Plan year and will reflect the most current demand available at the time the annual filing is prepared.

PROVISIONS OF THE PLAN

Section 1. Applicability of Plan.

The Price Regulation Plan will apply to all tariffed services offered by the Company that are regulated by the North Carolina Utilities Commission.

The effective date of the Plan is ~~July 1, 1996, or such earlier date as may be established by the Commission~~ June 3, 1996.

Section 2. Changes to Plan.

Any change to this Plan will be effective on a prospective basis only, and shall be consistent with the provisions of the Plan or such further orders as may be issued by the Commission.

Section 3. Classification of Services.

Each tariffed telecommunications service offered by the Company and regulated by the Commission will be classified into one of four categories: Basic Services, Interconnection Services, Non-Basic 1 Services and Non-Basic 2 Services.

Basic Services (Basic) See Attachment A for a listing of services within this category by tariff reference.

Interconnection Services (Interconnection) See Attachment A for a listing of services within this category by tariff reference.

Non-Basic 1 Services (Non-Basic 1) See Attachment A for a listing of services within this category by tariff reference.

Non-Basic 2 Services (Non-Basic 2). as of the effective date of this Plan, includes only CentraNet/Centrex Services, EDSS and Billing & Collection Services. However, existing services may later be reclassified to the Non-Basic 2 Services Category, and new services may be assigned to the Non-Basic 2 Services Category in accordance with the provisions of Section 4 of this Plan.

Section 4. Classification of New Services, and Reclassification of Existing Services.

Fourteen (14) days prior to offering a new tariffed service and thirty (30) days prior to the reclassification of an existing tariffed service, the Company shall notify, in writing, the Public Staff, the Attorney General, and the Commission. The Company shall provide the appropriate documentation to the Commission and Public Staff.

(1) Simultaneous with such notification, the Company will designate the service category into which the service is classified.

(2) Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that the new tariffed service be classified in a different category; however, the filing of such petition shall not result in the postponement of any new service. The new offering shall be presumed valid and shall become effective fourteen (14) days after the filing, unless otherwise suspended by the Commission for a term not to exceed forty-five (45) days.

For the purposes of determining the service classification only, the Commission may extend the term for an additional thirty (30) days; provided, however, such extension shall not result in the further postponement of any new service.

(3) Any interested party shall be afforded an opportunity, by timely petition to the Commission, to oppose the reclassification of an existing tariffed service or propose that the service be reclassified in a category different from that proposed by the Company. The reclassification shall become effective thirty (30) days after the filing, unless otherwise suspended by the Commission for a term not to exceed seventy-five (75) days.

(4) The Commission may modify or disapprove the classification or reclassification proposal at any time prior to the end of the term.

Section 5. Tariff Requirements.

A. General Requirements

The Company will file tariffs for services included in any of the four service categories. These tariffs will specify the applicable terms and conditions of the services and associated rates.

(1) Any tariff filing will be presumed valid and become effective, unless disapproved, modified or other-wise suspended by the Commission for a term not to exceed forty-five (45) days, fourteen (14) days after filing. In the case of a tariff filing to restructure rates as defined in the Definitions Section of this Plan, the Commission may extend the term for an additional thirty (30) days and may disapprove or modify the tariff filing if it finds that the restructure of the tariff and the resulting effects on new and existing customers are not in the public interest. The Commission may on its own motion, or in response to a petition from any interested party, investigate whether a tariff is consistent with this Plan and the Commission's rules, and whether the terms and conditions of the services are in the public interest. Provided, however, that a tariff filing limited to a price change in an existing rate element shall only be investigated with regard to whether it is in compliance with Section 6 of this Plan.

(2) Any tariff filing reducing rates will be presumed valid and become effective seven (7) days after filing unless otherwise suspended by the Commission for a term not to exceed forty-five (45) days.

(3) The Company will provide customer notification by bill insert or direct mail to all affected customers of any price increase at least fourteen (14) days before any public utility rates are increased. Notice of a rate

increase shall include at a minimum the effective date of the rate change(s), the existing rate(s), and the new rate(s).

B. The Company will provide CSAs under the terms, conditions, and rates negotiated between the Company and the subscribing customer(s). Such terms, conditions, and rates will be set forth in contractual agreements executed by the parties and filed as information with the Commission. When those contracts contain proprietary information, the Company will delete that information from the copy filed with the Commission. CSAs may be, but are not required to be tariffed.

Section 6. Pricing Rules.

A. General

(1) This Plan establishes a pricing structure that allows the Company to adjust their prices for rate elements included in all service categories, except the Non-Basic 2 Services Category, to reflect the impacts of inflation less an Offset. The aggregate percentage change in prices for the affected rate elements, however, cannot exceed the percentage change of inflation minus the Offset, as represented by the PRI. The new prices are lawful when the SPI for a service category is less than, or equal to, the PRI for the same service category, and when the prices for the rate elements within that service category have been established in accordance with the rules set forth in this Plan.

(2) Forty-five (45) days prior to each anniversary of the effective date of the Plan, the Company will make an annual filing. The purpose of this filing is to update the SPI and the PRI for all service categories, except the Non-Basic 2 Services Category, based upon the change in the GDPPI over the preceding year minus the Offset. These filings may or may not include proposed price changes.

(3) In the event that the annual change in the GDPPI minus the Offset is a negative amount, the Company will reduce prices except: (1) for any service included in the Non-Basic 2 Services Category, and (2) for any service currently priced below its Long Run Incremental Cost (LRIC), or (3) when such a reduction would result in reducing prices below LRIC for any service currently priced above LRIC, or (4) if the SPI is below the newly-defined PRI. If, because of (2) or (3) above, it is not possible to reduce the SPI to the required level, the Company will propose equivalent revenue reductions in other categories.

(4) The Company will file tariffs with documentation demonstrating that all price changes comply with the pricing constraints set forth in this Plan.

(5) If the Company elects not to increase its rates by the amount allowed under the terms of the Plan in a given year, the Company may increase its rates in future years to reflect the full amount of the allowable increases previously deferred. The Company will not, however, attempt to recover any revenues foregone as a result of deferring the increase in prices.

(6) The price for any individual rate element for any service offered by the Company shall equal or exceed its LRIC unless: (1) specifically exempted by the Commission based upon public interest considerations, or (2) the Company in good faith prices the service to meet the equally low price of a competitor for an equivalent service.

(7) In the event that the U.S. Department of Commerce ceases publication of the GDPPI, or significantly modifies the GDPPI, or the GDPPI becomes otherwise unavailable, the Company may select and recommend to the Commission subject to the Commission's approval, another comparable measurement of inflation to be used in the administration of this Plan.

(8) The Company shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function.

(9) This Plan shall not operate to permit anticompetitive practices. The Company shall not engage in predatory pricing, price squeezing, price discrimination, or anticompetitive bundling or tying arrangements as those terms are commonly applied in antitrust law. Nor shall the Company give any preference to the competitive services of affiliated entities.

B. Basic, Interconnection, and Non-Basic 1 Services

(1) The prices for rate elements in the Basic, Interconnection and Non-Basic 1 Services Categories in effect on the day prior to the effective date of this Plan shall be the initial effective prices under the Plan.

(2) The establishment of a PRI and SPI for the Basic Services Category, the Interconnection Services Category and the Non-Basic 1 Services Category is required in order to test any change in the aggregate prices for rate elements included in those Categories.

a. The PRI places an aggregate ceiling on the prices for rate elements within the Basic, Interconnection and Non-Basic 1 Services Categories. At the time the Plan is implemented, the value of the PRI

for each of these Services Categories will be set at one hundred (100). In the second and subsequent years of the Plan, the PRI will be adjusted to reflect any change in the GDPPI occurring over the preceding year minus the Offset. For example:

- if the result of dividing the most recent quarterly reported GDPPI by the reported GDPPI for the same quarter for the preceding year is 1.04, and
- the result of dividing the offset (assume 2%) by 100 is .02, and
- the result of subtracting the results of Step 2) is 1.02, and
- the result of multiplying the results of Step 3) by the PRI for the previous year is 102, then
- the PRI for the Category for the second year of the Plan would be 102.

b. The SPI is an index that reflects the relative change in revenue that would be generated by the new prices as compared to revenue generated by the old prices at equal demand for all the rate elements within the Basic, Interconnection and Non-Basic 1 Services Categories. When the Plan is implemented, the initial value of the SPI will be set at one-hundred (100). In the second and subsequent years of the Plan, the SPI will be adjusted to reflect the amount of change between the new and old prices for all the rate elements within the Category. Except for price changes associated with regrouping of exchanges as set forth in Section 8 and the financial impact of governmental action as set forth in Section 7, as prices for rate elements within the Category are changed, a new SPI is calculated, compared to the PRI and then included with the tariff filing. The SPI is applied to the entire service category and not individual services or rate elements within the Category. The Company may increase some rates, while decreasing others, as long as the SPI is less than, or equal to, the PRI and as long as the increase in any individual rate element does not exceed the GDPPI plus the percentage specified in the table set forth in Subparagraph (5) below.

(3) The initial prices for Residence Basic Local Exchange Service shall be the maximum prices charged for a period of three years from the effective date of the Plan (the "cap period"). The specific rates to be capped are the Residence Individual Line Service charges, the Residence Touch Calling Service charge, the Residence Service Order charge, the Residence Premises Visit charge and the Residence Central

Office Line Connection Work charge (the "capped Basic Local Exchange Services").

The initial prices, in the aggregate, for Toll Switched Access Services shall be the maximum that the Company will charge under the Plan.

(4) During the cap period, the capped Residence Basic Local Exchange Services will be excluded from the calculation of the SPI for the Basic Services Category.

(5) During the cap period, prices for individual non-capped rate elements within the Basic Services Category and prices for any rate elements within the Interconnection and Non-Basic 1 Services Categories may be increased or decreased by varying amounts. Price increases for individual rate elements cannot exceed the percent change in the GDPPI over the preceding year, plus the percentages shown in the table below.

Service Category	Change in GDPPI plus
Basic	3%
Interconnection	7%
Non-Basic 1	15%

For example, the price increases for individual rate elements in the Basic Services Category cannot exceed five percent (5%), assuming a plus two percent (+2%) change in the GDPPI for the previous year. Price increases can be made at any time, subject to Commission review and approval; however, only one increase per individual rate element is allowed within the twelve-month period between anniversary dates of the Plan. Price decreases may be made at any time and are not limited as to the number of decreases in the twelve-month period between anniversary dates of the Plan. This provision shall apply to both capped and non-capped Basic rate elements after the expiration of the cap period and to all rate elements in the Interconnection and Non-Basic 1 Services Categories.

(6) In the annual filing to be effective at the beginning of the fourth year of the Plan, the PRI and the SPI associated with the Basic Services Category will be re-initialized as a result of removing the cap on capped Residence Local Exchange Services. The PRI for the Basic Services Category will be determined by re-initializing the index in a manner which reflects any allowable increases previously deferred for non-capped Basic rate elements only plus an adjustment to reflect the percent change in the GDPPI from the previous year, minus the Offset. In the same annual filing at the beginning of the fourth year, the SPI

for the Basic Services Category will also be re-initialized to 100. For example:

- If the PRI = 103 and the SPI = 101 for the Basic Services Category at the end of the third year of the Plan, excluding the capped Residence Local Exchange Services, then
- the PRI and SPI would be re-initialized to 102 and 100, respectively, as the first step.
- Next, the difference between the PRI and SPI would be reduced by the percentage of capped Residence Local Exchange Service revenues to total Basic Services Category revenues. If the percentage is 50%, then
- the PRI would be reduced to 101 and the SPI would remain at 100 and a further adjustment would be made to establish a new PRI for the fourth year based upon the percent change in the GDPPI from the previous year, minus the Offset.

(7) As set forth in Section 7 and Section 8 following, price changes resulting from changes in the PRI will not be impacted, or in any way affected, by changes resulting from governmental action or the regrouping of exchanges.

(8) Section 2.3.14 of the GTE South Access Tariff and Section 2.3.11 of the GTE South Access Tariff for the former Contel of North Carolina service area contains provisions pertaining to Switched Access Credits. The effect of changes in the Switched Access Credits will be reflected in the calculation of the SPI for each category of service causing the credit(s) to change.

C. Non-Basic 2 Services

(1) The prices for rate elements in the Non-Basic 2 Services Category in effect on the day prior to the effective date of this Plan will be the initial effective prices under the Plan.

(2) Prices for individual rate elements within the Non-Basic 2 Services Category may be increased or decreased by varying amounts, and the rate changes are not subject to either a rate element constraint or a Category constraint. Price increases and decreases may be made at any time and are not limited to any specific number of increases or decreases in the twelve-month period between anniversary dates of the Plan.

D. New Services

New tariffed services, excluding those assigned to the Non-Basic 2 Services Category, will be included in the SPI associated with the assigned service category in the first annual filing after the service has been available for six months. As set forth in Section 4 above, the Commission shall make the final determination regarding the classification or reclassification of any service.

Section 7. Financial Impacts of Governmental Actions.

A. With Commission approval, the Company may adjust the prices of any service(s) due to the financial impacts of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the Company, to the extent that such impacts are not measured in the GDPPI. Such governmental actions would include, by way of illustration and not limitation, general changes such as "separations" matters (involving the separation of investment, expenses, and revenues, between the intrastate and interstate jurisdictions) as well as extended area services or Commission-required technological innovations. In such an event, the Company or another interested party may request the Commission to adjust the rates accordingly. The request shall include a description of the governmental action, the proposed adjustment to prices, the duration of the adjustment, and the estimated revenue impact of the governmental action. The Company may request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment at any time during each Plan year to reflect the financial impact of governmental actions. A Plan year shall run from an anniversary date of the effective date of the Plan to the next anniversary date of the effective date of the Plan. The Commission ~~will~~ may approve the request if the Commission finds that:

(1) the governmental action causing the financial impact has been correctly identified;

(2) the financial impact of the governmental action has been accurately quantified;

(3) the proposed rates produce revenue covering only the financial impact of governmental actions; ~~and~~

(4) the rates would be applicable to the appropriate class or classes of customers; and

(5) the adjustment in rates is otherwise in the public interest.

B. Price changes resulting from governmental action will not impact or otherwise affect the price changes provided for under the terms of the pricing rules set forth in Section 6 preceding. In addition, any price changes resulting from approved governmental action requests will not be constrained by the pricing rules set forth in Section 6.

C. The Commission may, on request of the Company or another interested party, or on its own initiative, require the Company to adjust prices for circumstances that meet the above criteria.

Section 8. Regrouping of Exchanges.

A. The Company will not regroup any of its exchanges during the three-year period for which Residence Basic Local Exchange Service rates are capped under the provisions of Section 6 preceding.

B. After the expiration of the cap period, the Company may regroup exchanges due to growth in access lines. Such regrouping may be proposed in the annual filing referenced in Section 9 following, for any exchange meeting the criteria for the new rate group. Movement of an exchange from one rate group to another is limited to one rate group per year except where movement to or toward the proper rate group together with the deletion of the existing EAS additive would not cause an increase greater than the increase caused by a one rate group move. When an exchange is regrouped, any existing EAS additive will be deleted. Price changes resulting from the regrouping of exchanges will not impact or otherwise affect the price changes provided for under the terms of the pricing rules set forth in Section 6 preceding. Additionally, any price changes resulting from the regrouping of exchanges will not be constrained by the pricing rules set forth in Section 6.

Section 9. Annual Filing.

The Company shall make an annual filing containing the following information:

A. The annual percent change in the GDPPI;

B. The applicable change to the PRI for the Basic, Interconnection and Non-Basic 1 Services Categories based upon the percent change in the GDPPI minus the Offset;

C. The change in the SPI for the Basic, Interconnection and Non-Basic 1 Services Categories; and

D. Complete supporting documentation.

Section 10. Commission Oversight.

A. The Commission retains oversight for service quality, complaint resolution and compliance by the Company with all elements of this Plan.

B. The Company will annually file ~~on a proprietary basis~~ the TS-1 financial surveillance reports which are now filed with the Commission. No other periodic financial reports are required to be filed. Any claim of confidentiality with regard to these reports shall be made by the Company and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act.

C. The Commission ~~may~~ shall undertake a review of the operation of the Plan in advance of five years from the effective date of the Plan, to determine how the operation of the Plan comports with House Bill 161 and specifically how the Plan:

1. Protects the affordability of basic exchange service, as such service is defined by the Commission;

2. Reasonably assures the continuation of basic local exchange service and meets reasonable service standards that the Commission may adopt;

3. Will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and

4. Is otherwise consistent with the public interest.

Following its review, the Commission may make modifications to the Plan consistent with the public interest.

Section 11. Depreciation.

Coincident with the effective date of the Plan, the Company will determine and set its own depreciation rates.

TELEPHONE - RATES

DOCKET NO. P-55, SUB 1013

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of BellSouth Telecommunications, Inc. for, and Election of, Price Regulation	))	ORDER AUTHORIZING PRICE REGULATION

HEARD: Tuesday, January 30, 1996 - Tuesday, February 13, 1996, in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Jo Anne Sanford, Presiding, and Commissioners Charles H. Hughes, Allyson K. Duncan, Ralph A. Hunt, and Judy Hunt

APPEARANCES:

FOR BELLSOUTH TELECOMMUNICATIONS, INC.:

A. S. Povall, Jr., Attorney at Law, Leon H. Lee, Jr., Attorney at Law, 1521 BellSouth Plaza, Charlotte, North Carolina 28230

R. Douglas Lackey, Attorney at Law, 675 West Peachtree Street, Atlanta, Georgia 30375

John H. Kerr, Attorney at Law, Warren, Kerr, Walston, Hollowell & Taylor, Post Office Box 1616, Goldsboro, North Carolina 27533

James Y. Kerr, II, Attorney at Law, Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP, Post Office Box 2611, Raleigh, North Carolina 27602-2611

FOR AT&T, TIME WARNER, AND NORTH CAROLINA PAYPHONE ASSOCIATION:

Wade H. Hargrove, Attorney at Law, Marcus Trathen, Attorney at Law, Elizabeth Crabill, Attorney at Law, Brooks, Pierce, McLendon, Humphrey & Leonard, Post Office Box 1800, Raleigh, North Carolina 27602

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.:

Gene V. Coker, General Attorney, AT&T, 1200 Peachtree Street N.E., Atlanta, Georgia 30309

FOR CAROLINA UTILITY CUSTOMERS ASSOCIATION, INC:

Sam J. Ervin, IV, Attorney at Law, Byrd, Byrd, Ervin, Whisnant, McMahon & Ervin, P.A., Post Office Drawer 1269, Morganton, North Carolina 28680-1269

FOR MCI TELECOMMUNICATIONS CORPORATION:

Ralph McDonald, Attorney at Law, Cathy Plaut, Attorney at Law, Bailey & Dixon, LLP, Post Office Box 1351, Raleigh, North Carolina 27602

Marsha Ward, Attorney at Law, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342

FOR NORTH STATE TELEPHONE COMPANY AND THE ALLIANCE OF NORTH CAROLINA INDEPENDENT TELEPHONE COMPANIES:

James H. Jeffries, IV, Attorney at Law, Amos & Jeffries, LLP, Post Office Box 787, Greensboro, North Carolina 27402

FOR THE DEPARTMENT OF DEFENSE AND ALL OTHER FEDERAL EXECUTIVE AGENCIES:

Sheryl Anne Butler, Trial Attorney, 901 North Stuart Street, Arlington, Virginia 22203

FOR THE USING AND CONSUMING PUBLIC:

Karen E. Long, Assistant Attorney General, and Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

Antoinette R. Wike, Chief Counsel, Robert B. Cauthen, Jr., Staff Attorney, and Paul L. Lassiter, Staff Attorney, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: During the 1995 Legislative Session, the North Carolina General Assembly enacted House Bill 161, which amended Chapter 62 of the North Carolina General Statutes to permit telecommunications public utilities subject to rate of return regulation under G.S. 62–133, to elect a form of price regulation in lieu of rate of return regulation. House Bill 161 was effective on July 1, 1995, and on October 4, 1995, BellSouth Telecommunications, Inc. ("BellSouth" or "Company") filed its Application for, and Election of, Price Regulation with the Commission. G.S. 62–133.5, set forth in House Bill 161, requires the Commission to decide price regulation cases within ninety days, subject to an extension by the Commission for an additional ninety days, or a total of 180 days from the filing of the Application.

Under G.S. 62-133.5, price regulation requires the Commission to allow, among other things, an electing local exchange company such as BellSouth to

(1) set and determine its own depreciation rates;
(2) rebalance its rates; and
(3) adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices.

The statute requires notice and a hearing, allows different forms of price regulation as between different local exchange companies, and requires the Commission to approve price regulation upon finding that "the Plan as proposed

(i) protects the affordability of basic local exchange service, as such service is defined by the Commission;

(ii) reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt;

(iii) will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and

(iv) is otherwise consistent with the public interest."

BellSouth's original price regulation plan (the "Original Plan"), which BellSouth filed with the Commission along with its Application for, and Election of, Price Regulation on October 4, 1995, divided BellSouth's services into four categories: Basic, Non-Basic, Interconnection, and Toll Switched Access. Under the Original Plan, residence local service rates were capped for three years, and rates for Toll Switched Access Services were capped indefinitely at the level in effect on the day prior to the effective date of the Plan. BellSouth proposed to limit increases for services within the Basic and Interconnection Categories to one-half the increase in the Gross Domestic Product Price Index ("GDP-PI") and for the Non-Basic Category, by the full amount of GDP-PI. Under the Original Plan, Toll Switched Access charges were to continue to be subject to annual reductions pursuant to the Commission's Order of April 8, 1988, in Docket No. P-100, Sub 65 and Sub 72. BellSouth proposed to limit annual increases for individual services within the Basic Category to GDP-PI plus ten percent, for services in the Interconnection Category to GDP-PI plus fifteen percent, and for services in the Non-Basic Category to GDP-PI plus fifteen percent. BellSouth did not propose any rate reductions, any Commission review after a specified period of time, or any financial reporting. The Original Plan was silent as to the Commission's authority with respect to rate restructures, the classification and reclassification of services, and the standard for Commission review of terms and conditions set forth in tariffs filed by BellSouth.

On January 17, 1996, BellSouth entered into a Stipulation and Agreement with the Public Staff in which those parties agreed to a revised price regulation plan for BellSouth (the "Stipulated Plan" or "Plan"). BellSouth and the Public Staff are hereafter referred to collectively as the "Stipulating Parties." The Public Staff submitted the Stipulated Plan with the testimony of its witness,

Dr. Ben Johnson. In the Stipulated Plan, BellSouth's services were divided into five categories: Basic, Non-Basic 1, Non-Basic 2, Toll Switched Access, and Interconnection. The Basic Category was expanded to include a number of services previously classified as Interconnection and Non-Basic services, including Coin Telephone Service, Rotary Line Service, Directory Assistance Service, Network Access Register Package, Expanded Local Service, Local Usage Detail, and Equipment for Disabled Customers. The Stipulated Plan included the same three-year cap on residence basic local service rates but an overall revenue change limit on services in the Basic Category of GDP-PI minus two percent, rather than one-half GDP-PI. For services in the Interconnection Category, the Stipulated Plan included a limit on the category of GDP-PI minus three percent, again, rather than one-half GDP-PI. The Stipulated Plan included a limit on the Non-Basic 1 Category of GDP-PI minus three percent, as opposed to the full increase in GDP-PI under the Original Plan, and no constraints on the Non-Basic 2 Category, which contains rates for ESSX and billing and collection services. In the Stipulated Plan, BellSouth agreed to place limits on individual rate elements, as opposed to individual services. Thus, BellSouth agreed to limit increases for rate elements in the Basic Category to GDP-PI plus three percent, for rate elements in the Interconnection Category to GDP-PI plus seven percent, and to rate elements in the Non-Basic 1 Category to GDP-PI plus seventeen percent. The Stipulated Plan included no constraints for rate elements in the Non-Basic 2 Category. Rate elements for services in the Toll Switched Access Category are capped in the aggregate at the level in effect on the day prior to the effective date of the Stipulated Plan.

In the Stipulated Plan, BellSouth and the Public Staff proposed some $60 million in rate reductions. BellSouth and the Public Staff specifically proposed to eliminate charges for Touchtone Service by the second anniversary of the Stipulated Plan and to eliminate the Originating Carrier Common Line Charge ("OCCLC") in the Toll Switched Access Services Category, also by the second anniversary of the Plan. BellSouth committed to spread the remaining portion of the $60 million total revenue reduction — approximately $20 million — among additional rate reductions for Toll Switched Access Services, toll services, and complex business services.

In addition, the Stipulated Plan provided for Commission review of the operation of the Stipulated Plan five years after the effective date of the Stipulated Plan and for the submission of annual financial surveillance reports by BellSouth for the duration of the Stipulated Plan. The Stipulated Plan also included a rate restructure provision under which the Commission could subject rate restructures to a public interest standard and could take an additional thirty days to evaluate the proposed changes. It contained a similar provision under which the Commission could review tariff terms and conditions under a public interest standard, as well as a number of other changes that clarified Commission authority, such as with respect to classification of new services and reclassification of existing services. Both the Public Staff's testimony and BellSouth's rebuttal testimony addressed the Stipulated Plan, which became the subject of the hearings which began January 30, 1996.

Earlier, on October 11, 1995, the Commission had entered an Order suspending BellSouth's Application for Price Regulation for a period of 180 days from the filing date of the Application and scheduling a hearing on BellSouth's Application for January 30, 1996. The Order set forth a schedule for the prefiling of testimony by BellSouth on November 10, 1995; for other parties on

January 10, 1996; and for BellSouth rebuttal testimony on January 24, 1996. The Commission also ordered BellSouth to file a proposed public notice for approval not later than October 20, 1995.

Numerous parties intervened, and intervention was granted to AT&T Communications of the Southern States, Inc. ("AT&T"), Time Warner Communications of North Carolina, L.P. ("Time Warner"), MCI Telecommunications Corporation ("MCI"), Carolina Utility Customers Association, Inc. ("CUCA"), Sprint Communications Company L.P. ("Sprint"), North State Telephone Company ("North State"), U.S. Department of Defense and All Other Federal Executive Agencies ("DOD"), the Alliance of North Carolina Independent Telephone Companies ("the Alliance"), the North Carolina Payphone Association ("NCPA"), ICG Access Services, Inc. ("ICG") and Business Telecom, Inc. ("BTI").

On October 20, 1995, BellSouth filed a Motion for Approval of Proposed Public Notice. Subsequently, on November 7, 1995, the Public Staff filed a Response to BellSouth's Motion, setting forth a revised Public Notice that reflected discussions between the Public Staff and BellSouth. The Public Staff noted in its Response that BellSouth had agreed to provide two notices, one by bill insert beginning in December 1995 and another by newspaper publication during the week of January 1, 1996. The Public Staff recommended approval of those two notices.

On November 7, 1995, the Commission granted BellSouth an extension until November 15, 1995, in which to file its testimony, and on November 9, 1995, the Commission entered an Order approving both the form and the method of the revised public notice as set forth in the Public Staff Response of November 7, 1995.

Discovery by various parties commenced on October 20, 1995, and continued throughout November and December, 1995. The discovery process involved several disputes among the parties as to the proper scope of discovery, and the Commission resolved these disputes by Orders entered on December 4, 1995, December 20, 1995, and December 29, 1995.

The Commission's October 11, 1995, Scheduling Order set this matter for public hearing beginning at 9:30 a.m. on Tuesday, January 30, 1996, the first day scheduled for the evidentiary hearings. On January 26, 1996, the Commission first became aware of problems with the public notice. BellSouth had failed to deliver notice by bill inserts to its customers during the month of December, 1995, as the Commission had required. On January 26, 1996, the Commission entered an Order requiring additional public notice by BellSouth, in the form set forth in Appendix A to that Order, and setting an additional public hearing for 7:00 p.m. on Monday, February 12, 1996, at the Commission Hearing Room in Raleigh for the purpose of remedying the defects in BellSouth's provision of notice.

On January 29, 1996, MCI filed a Motion to Dismiss BellSouth's Application, or in the alternative, to continue the hearing in this matter. Accordingly, the Commission scheduled MCI's Motion for oral argument on January 30, 1996, following the public hearing and prior to receiving the testimony of witnesses for the various parties.

At the hearing in Raleigh on January 30, 1996, June Horwitz first appeared as a public witness. Counsel for MCI, AT&T, NCPA, and CUCA, the North Carolina Attorney General, and BellSouth then made arguments with respect to MCI's Motion to Dismiss. Following oral argument, the Commission denied ore tenus MCI's Motion to Dismiss, and on February 1, 1996, the Commission entered a written order denying that Motion.

At the evidentiary hearing BellSouth offered the testimony of the following witnesses: Jerry D. Hendrix, Manager, Pricing and Economics, Regulatory and External Affairs Department, BellSouth; Conrad D. Martin, Director, Operator Services, BellSouth; Pamela C. Sutton, Sales Manager for BellSouth Business Systems, Inc., a subsidiary of BellSouth Telecommunications, Inc.; Dr. Lewis J. Perl, Senior Vice President of National Economic Research Associates, Inc., New York, New York; Alphonso J. Varner, Senior Director for Regulatory Policy and Planning, BellSouth; and J. Billie Ray, Jr., State President - North Carolina Operations, for BellSouth. Harry Gildea, Senior Consultant with Snavely, King & Associates, Washington, D.C., testified for the DOD. Ben Johnson, Ph.D., of Ben Johnson Associates, Inc., testified on behalf of the Public Staff. Walter G. Bolter, a Communications Consultant based in St. Augustine, Florida, testified for CUCA. David L. Kaserman, Ph.D., Department of Economics, Auburn, Alabama; G. Wayne Ellison, Manager, Government Affairs, AT&T; Matthew I. Kahal, Senior Economist and Principal at Exeter Associates, Inc.; Dr. John R. Norsworthy, Professor of Economics and Management at Rensselaer Polytechnic Institute in Troy, New York; Wayne A. King, Manager, Network Services Division, AT&T; Timothy G. Knoblauch, Manager, Regional Controller Organization, AT&T; and Richard Guepe, Manager, Consumer Communications Services (CCS) Strategic Pricing, all testified for AT&T. Don J. Wood, consultant, Alpharetta, Georgia, and Terry L. Murray, Murray & Associates, Piedmont, California, both testified for MCI, and John Vincent Townsend, President of Pay Tel Communications, Inc., testified for NCPA. BellSouth then offered the rebuttal testimony of Walter S. Reid, Assistant Chief Accountant of BellSouth Telecommunications, Inc., Jerry D. Hendrix, and Alphonso J. Varner.

The Commission conducted a second public hearing in this matter on February 12, 1996, as set forth in its Order of January 26, 1996. Appearing as public witnesses at this hearing were the following: Michael B. Fleming, Greensboro; Ann Lombardi, North Carolina Baptist Hospital, Winston-Salem; Debbie Drayer, Charlotte; Jean Cherry, Wilmington; Patty Munns, Raleigh; Tim Helms, President and CEO of Gaston County Chamber of Commerce, Gastonia; Patricia Keane, Wilmington; Martha Drake, immediate past president of the North Carolina Consumers Council, Chapel Hill; Richard Burton, Raleigh; John Howard, Executive Director of the Wayne County Economic Development Commission, Goldsboro; Harvey Schmitt, President of the Greater Raleigh Chamber of Commerce, Raleigh; Kelly Alexander, Jr., Charlotte; Robert L. Davis, Jr., Charlotte; John M. Horton, Wrightsville Beach; Susan Burgess, Charlotte; Woody Woodard, Statesville; Robert Doares, Lumberton; Gerald James, Raleigh; Jim Fain, Raleigh; David Cline, Gastonia; Jeanne Milliken Bonds, Mayor Pro-Tem of Knightdale; and Jay Garner, Asheville. All of the witnesses appearing at the second public hearing supported BellSouth's price regulation plan. No public witnesses spoke in opposition to the Stipulated Plan.

Subsequent to the hearing, the Commission entered an Order on February 19, 1996, propounding certain questions to be answered by the parties in their briefs and proposed orders. On February 22, 1996, the Public Staff filed a Motion requesting the Commission to extend the time for

the issuance of the Commission's Order with respect to BellSouth's Application for Price Regulation from April 1, 1996, to April 29, 1996. The Public Staff stated in its Motion that BellSouth did not oppose the Motion, provided that the Commission did not extend the time for decision of this matter beyond May 1, 1996. In view of the highly compressed time for briefs, proposed orders and entry of a final decision, the Commission entered an Order on February 28, 1996, extending the time for the issuance of the Commission's Order with respect to BellSouth's Price Regulation Application to a date no later than May 1, 1996. The Commission also rescheduled the filing of briefs and proposed orders by the parties to this proceeding.

Based upon the foregoing, the evidence adduced at the hearings, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Applicant, BellSouth, is a public utility as defined in G.S. 62–110(f)(1). BellSouth is subject to rate of return regulation pursuant to G.S. 62–133 and has elected a form of price regulation pursuant to G.S. 62–133.5, as set forth in House Bill 161. Thus, BellSouth is properly before this Commission.

2. The Commission-approved Price Regulation Plan, as adopted herein, protects the affordability of basic local exchange service.

3. The Commission-approved Price Regulation Plan, as adopted herein, reasonably assures the continuation of basic local exchange service that meets reasonable service standards.

4. The Commission-approved Price Regulation Plan, as adopted herein, will not unreasonably prejudice any class of telephone customers, including telecommunications companies.

5. The Commission-approved Price Regulation Plan, as adopted herein, is otherwise consistent with the public interest.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 1

The evidence supporting this finding of fact and conclusion of law is set forth in the various filings of the parties, in the Orders of this Commission, and in the record as a whole. This finding and conclusion was not contested by the parties.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 2

- AFFORDABILITY -

BellSouth urges the Commission to define "basic local exchange service," as that term is used in G.S. 62-133.5, to mean basic residence local exchange service. CUCA, on the other hand, has submitted that the term "basic local exchange service" should be defined to mean "any service which involves the transmission of local messages or the connection of customers with the local exchange

system." The Commission believes, and so finds and concludes, that BellSouth's proposed definition is too narrow and that CUCA's proposed definition is overly broad for purposes of this proceeding and that both definitions should be rejected. The Commission defines "basic local exchange service" for purposes of G.S. 62-133.5 to mean basic residence and business local exchange service. We further conclude that basic local exchange service is currently affordable for the following reasons.

Current basic local exchange service rates are lower than those found just and reasonable and, thus, a fortiori, affordable in 1984. Those rates have not increased since 1984 and have been subject to four decreases since 1984, so that residence rates in BellSouth's highest rate group, which stood at $14.97 in August, 1984, now stand at $12.51, and rates for business service, which stood at $39.63 in August, 1984, now stand at $33.89, about the level those rates were before BellSouth's last general rate case in 1984. Rates for residence service in BellSouth's highest rate group — applicable in BellSouth's largest cities — rank eighteenth lowest in the country out of fifty-one jurisdictions, and rates for business service are also eighteenth lowest out of forty-two jurisdictions nationwide. Moreover, from 1985 to 1993, real per capita personal income rose 15.1% in North Carolina. Over the last decade, real rates for residence service, including both Touchtone service and the federal subscriber line charge, have fallen by 28%. The telephone penetration rate in North Carolina is 92.6%, which is close to the national average. BellSouth's highest residential rate is third lowest among the nine states that BellSouth serves, and its North Carolina business rate is the second lowest among BellSouth states.[1] Compared to business rates in the nation as a whole, 60% of the states with flat-rate business service have a higher business rate.

As BellSouth witness Perl testified, "compared with other goods and services one could buy, telephone service has an extremely modest price." With the federal subscriber line charge of $3.50 and the Touchtone charge of $.50, the highest rate for residence service is $16.51. This monthly rate compares favorably with prices for other goods and services in Raleigh, including, as Dr. Perl noted, a Pizza Hut supreme pizza, with four cans of Pepsi for $20.25, movie tickets for two adults and two children of $20.00, cable television service of $23.00 per month for twenty-five channels, fifteen gallons of 93-octane gasoline from BP for $18.88, and four and one-half video rentals per month, or one per week, for $16.65.

Finally, in this regard, we find compelling the testimony of Public Staff witness Dr. Ben Johnson. With respect to affordability, Dr. Johnson noted that

> [i]f you're starting with a set of prices that regulators have found to be fair, just, and reasonable, then that certainly gives you more comfort than if you were starting with a set of prices such as that advocated by MCI that simply — that's the set of prices

[1]Since 1984, BellSouth's North Carolina nominal residence rates have decreased by 15.3%, the greatest decrease among any of the nine BellSouth states. BellSouth's North Carolina nominal business rates have decreased by 13.3%, also the greatest reduction among BellSouth's nine states. (See Ray Exhibit 6)

> they would like to see and has never been tested or found by a regulator to be an appropriate set of prices. I think the burden is much higher for someone like MCI to try to come forward and say, the right set of prices is this set of numbers with access and certain other wholesale elements at nearly zero than if we're talking about a set of tariffs that withstood the test of time.
>
> That's what I'm basically saying here. These rates are normally based on the same cost of service and rate of return criteria used under traditional regulation. A traditional regulation is what has led to the set of tariffs that are in effect currently.

The evidence — again, basically uncontroverted — is that those rates will remain affordable. There are several factors that support this conclusion. First, the Commission-approved Price Regulation Plan eliminates charges, both business and residence, for Touchtone service on the first anniversary of the Plan. Since well over ninety percent of BellSouth's customers subscribe to Touchtone service, this reduction will benefit most BellSouth subscribers and ensures that nominal local rates will be even lower in the future than the rates that we have already found to be affordable.

Second, residence local service rates are capped for three years from the effective date of the Commission-approved Price Regulation Plan, and those rates, like business rates, are subject to an overall Basic Category cap of GDP-PI minus two percent. This offset ensures that real rates for both business and residence basic local exchange service will continue to decline relative to inflation.[1] In addition, the offset allows BellSouth customers to share in any productivity gains made by BellSouth.

Third, both LifeLine and Link-up will continue to provide targeted assistance to low-income households, thus making basic local exchange service more affordable for those households.

Fourth, BellSouth has not proposed rate rebalancing, even though the statute permits it to do so. The Commission-approved Price Regulation Plan permits only a gradual rebalancing of rates, one that Dr. Johnson characterized as within the public interest.[2]

Fifth, we agree with Dr. Johnson that the three-year cap on residence basic local exchange rates should allow competition to develop for that service and that competition should then operate

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[1]Dr. Perl calculated that BellSouth's Original Plan would have produced real rate reductions for BellSouth's North Carolina customers of "at least 12.7% relative to today's rate levels." Under the Stipulated Plan, Dr. Perl calculated real reductions of "at least 21.5%" over the first six years of the Stipulated Plan.

[2]CUCA witness Dr. Walter G. Bolter advocated a more immediate rate rebalancing, one in which BellSouth would move all rates toward their costs at the outset of the Plan. DOD witness Gildea advocated moving rates for residence basic local exchange service to cost over three years. The Commission prefers, however, the "measured and gradual" approach to rate rebalancing. CUCA's approach would indeed engender "rate shock."

to constrain rate increases for basic local exchange services.[1] Those rates will, in addition, be constrained by the pricing rules in the Commission-approved Price Regulation Plan.

Sixth, as Dr. Perl points out, per capita income in North Carolina is likely to continue to rise, thus making basic local exchange service even more affordable, at least during the initial five-year period of the Plan.

All of these factors support our conclusion that the Commission-approved Price Regulation Plan ensures and protects the continued affordability of basic local exchange service.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 3

- SERVICE QUALITY -

Evidence in support of this conclusion was uncontroverted. First, we note that BellSouth proposes and is required to continue to operate under existing Commission Rule R9-8, which sets forth detailed service objectives for local exchange companies in North Carolina. Second, the Commission retains statutory authority to compel efficient service. G.S. 62–42. Thus, in this regard, nothing has changed. The Commission retains the same powers and authority that it has always had with respect to the provision of quality service. It can investigate service problems *either* on its own initiative or upon complaint from another party.

The record is clear — again, with uncontroverted evidence — that BellSouth has provided, and is providing, excellent service to its North Carolina subscribers. BellSouth witness Ray points out that BellSouth's North Carolina network is, from a technological standpoint, one of the finest in the country. That network, he further notes, has produced for North Carolina the fewest number of Commission complaints over the last five years among all BellSouth states and in 1994, the fewest total trouble reports per one hundred access lines. BellSouth's network is the result of the heavy investments that BellSouth has made in its North Carolina infrastructure.

Finally, in this regard, we believe that competition will work to the continued benefit of BellSouth's North Carolina subscribers. We find compelling Mr. Ray's statement that

> BellSouth is absolutely committed to maintaining its record of outstanding service. Our reputation in this regard, built over the last one hundred-plus years, is not only important to us, it is the most important asset we have going into the competitive marketplace. We will not allow that reputation to suffer.

and further

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[1]Time-Warner, an applicant to enter the local exchange market, currently serves over one million cable subscribers in North Carolina. Whether Time-Warner has installed a telephone switch in this State is unclear.

> I mean nothing has changed as far as quality of service and the service standards and what we are going to do and in fact with competition coming in, we've got to give better service than ever.

Local competition will, as BellSouth witness Varner also states, require BellSouth to meet customer expectations to remain competitive in the telecommunications marketplace.

Thus, we conclude that the Commission-approved Price Regulation Plan reasonably assures the continuation of basic local exchange service that meets the reasonable service standards set forth in existing Commission Rule R9-8.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 4

- PREJUDICE AMONG CUSTOMER CLASSES

Intervenors raised a number of issues with respect to the impact of the Stipulated Plan upon particular classes of customers, including telecommunications companies. After careful consideration of all of the evidence, however, the Commission is persuaded that the Commission-approved Price Regulation Plan will not unreasonably prejudice any class of customers, including telecommunications companies.

First, we must address the issue of the meaning of unreasonable prejudice. BellSouth witnesses Varner and Perl both posited a definition that would include behavior that we have traditionally viewed as unreasonable discrimination under G.S. 62–140, as well as predatory pricing. Witness Varner defined unreasonable discrimination as charging different customers different prices for the same service, in a manner that did not reflect reasonable differences in the classification underlying the different prices. Dr. Perl's definition was similar. Mr. Varner described predatory pricing as "pricing a service below cost in an attempt to monopolize the marketplace", and again, Dr. Perl agreed. No other party or witness proffered a definition of this statutory term, and we accept, therefore, the definition set forth by those witnesses, because it is consistent with the Commission's own view of that issue, our past practice, and the statute.

The language set forth in G.S. 62–133.5(a)(3) is almost identical to the long-standing language of G.S. 62–140: "No public utility shall . . . make or grant any unreasonable prejudice or advantage. . . ." Consequently, cases interpreting the language of G.S. 62–140 can be used to interpret the identical language of G.S. 62–133.5(a). Where the terms used in a statute have acquired a settled meaning through judicial interpretation, and the same terms are used in a subsequent statute upon the same subject matter, they are to be understood in the same sense unless by qualifying or explanatory addition the contrary intent of the legislation is made clear. Home Security Life Ins. Co v. McDonald, 277 N.C. 275, 177 S.E.2d 291 (1970).

Accordingly, we conclude that the General Assembly, in drafting G.S. 62–133.5(a)(iii), intended to embody within that statutory enactment the same principles embodied in G.S. 62–140 and did, thereby, invoke the body of case law that has been developed under G.S. 62–140. Therefore, the question is whether the Commission-approved Price Regulation Plan unreasonably prejudices or

discriminates against any class of telephone customers, including telecommunications companies, as that term has been construed by the Commission and the courts of North Carolina heretofore under G.S. 62–140. See, e.g., State ex rel Utilities Comm'n v. Bird Oil Co., 301 N.C. 14, 22, 273 S.E.2d 232, 237 (1981) ("The long-established question of law with respect to rate differentials is not whether the differential is merely discriminatory or preferential; the question is whether the differential is unreasonable or unjust discrimination.") (Emphasis added.) See also State ex rel Utilities Comm'n v. Public Staff, 323 N.C. 481, 502, 374 S.E.2d 361, 373 (1988) and State ex rel Utilities Comm'n v. Carolina Utility Customers Assoc., 323 N.C. 238, 252, 372 S.E.2d 692, 700 (1988).

Three discrete groups of competitors and customers challenged as discriminatory various aspects of the Stipulated Plan: customer-owned coin operated telephone ("COCOT") providers; business services customers; and interexchange carriers, who purchase Toll Switched Access Services from BellSouth.

COCOT providers expressed fear of a price squeeze by BellSouth. Mr. Vincent Townsend, testifying on behalf of the NCPA, testified that BellSouth's price regulation plan should not permit BellSouth to cross-subsidize its own pay telephone operation and effect a price squeeze on its competitors. Mr. Townsend also testified that he believes BellSouth is currently effecting a price squeeze by offering to pay commissions to the Sheriff of Mecklenburg County that would result in the provision of pay telephone service to the Mecklenburg County jail below BellSouth's own costs.

BellSouth argued that the NCPA could not substantiate its allegations since it does not have access to BellSouth's costs. BellSouth also argued that long run incremental cost ("LRIC") constituted a price floor below which BellSouth could not charge and that the NCPA or any other COCOT have access to the Commission's complaint procedures. Finally, BellSouth observed that COCOTs are hardly being squeezed out of the market, since there are so many of them, and it quoted Dr. Johnson's observation that the payphone market is intensely competitive.

While the Commission does not find it necessary at this point to promulgate special rules to protect COCOTs, the Commission does conclude that BellSouth should be required to impute to itself the charges it makes to COCOTs as part of the general imputation requirement discussed elsewhere. Furthermore, COCOTs should be able to avail themselves of the protection afforded by the general prohibition against anticompetitive activities by BellSouth which is being instituted.

BellSouth's large business customers, represented by CUCA, contended that rates for business services continue to provide a subsidy for basic residence service, arguing that all of BellSouth's prices, including those for business services, should be based upon cost. Because many of those rates are significantly above cost, CUCA argued that business customers are unreasonably prejudiced.

Additionally, regarding prejudicial pricing, CUCA argued that the various categories of services as proposed in the Stipulated Plan should not include both competitive and noncompetitive services within one category or basket. CUCA contends, for example, that, since a significant number of the discretionary residential services included in the Non-Basic 1 Category (call waiting, call forwarding, or similar services) have a relatively elastic demand, BellSouth risks pricing itself out of

the market if it charges excessive rates for such services. As a result, the subscribers to the complex business services included in the Non-Basic 1 Category face a risk of paying increased rates to finance the Company's competitive efforts in other markets, including the toll market. CUCA takes the position that the evidence does not show that BellSouth faces substantial competition in the market for complex business services.

CUCA argued that the foregoing creates an unreasonable risk of prejudice to the Company's complex business customers. As a result, CUCA asserted that the Commission should require that categories of services included in any price regulation plan adopted for use by BellSouth in this proceeding consist exclusively of services facing a similar degree of competition.

Dr. Lewis J. Perl, however, testifying on behalf of BellSouth, argued persuasively on cross-examination that competition makes further increases in rates for business service unlikely. Price regulation, he pointed out, offers BellSouth the opportunity to reverse a historical pattern:

> In a way I think I candidly find myself surprised at where all these questions are coming from because it seems to me the history of not just regulation in North Carolina but regulation in the country has been a tendency for Commissions to favor the residential customer at the expense of the business customer. It seems to be very reasonable to anticipate that as a result of price caps regulation in so far as it is feasible, those patterns will be reversed. Not because the company happens to love business customers and dislike residence customers but because the companies are in general much more afraid of competition in their business market than they are in their residence market.
>
> And secondly, they're much more sensitive to high volume business customers and what those business customers can do to them. So again, I thought in coming here to testify that I'd find somebody in your shoes who was the protector of rural low volume customers complaining about this plan. But, of course, and I do think that the plan has lots of protections for them, but I do think that the benefits to business customers in this plan is that the forces of the market are much more likely [to] play the predominant role in how rates are set rather than the forces if you like of populism.

CUCA also repeatedly expressed concerns about BellSouth's ability to increase rates for individual non-basic rate elements by GDP-PI plus seventeen percent.

> Q. Can you see though, however, Dr. Perl, why a business customer might be concerned about a plan that gives the company the discretion to raise rates for a particular service, each rate element in that service by 17 percent each year for the plan period. Can you see why someone might be concerned about that?
>
> A. Truthfully, Mr. Ervin, I think knowing the history of regulation over the last ten years in this state and other states I confess I am surprised. And I'm

surprised for two reasons, one, I think that it's true that they have the right to raise individual services by as much as 17, but that has to be viewed in the context of the overall cap on the service which really makes that ability I think somewhat illusory.

And secondly, I think that, you know, if we look at the place in which you were talking earlier, business line service, currently the price of business lines in North Carolina run about $34 a month. And it's true that over the next five or six years this plan gives the companies the ability to raise the real price of that service by as much as 30 cents a month, that is they can raise it by, the monthly rate by 30 cents a year under the cap. That doesn't sound to me like a huge threat.

And it seems to me that on the, the one consequence of this plan which I would have thought business customers in the state would be very sensitive to is that the other rates that constitute such a large part of what businesses are really concerned about, the price they pay for toll service, both intrastate and interstate, this plan is much more likely to drive those rates down in response to competitive pressures than the absence of this plan would. And so, I would think in net most business customers would see this as not a problem, but an opportunity.

Q. Well, if, as I understand you to say, Dr. Perl, there is no reason for a business customer to believe that the 17 percent figure had any real world application to them which is what I understood you to say. Then why do you understand that it's even in this plan to begin with?

A. Well, I think what I'm saying is that the 17 percent is in there to make flexibility a real, a reality, some, that is to give the company the ability to raise some services and lower others. I think the notion, and indeed, some business services might rise while other business' service fell. But I think that a business customer who thinks that his welfare over the next four or five years is going to be determined by that flexibility and that he's likely to find himself paying 17 percent more for the telephone services that vitally affect his business, I think it's just being insensitive to the basic forces that are working in the economy.

Large business customers are very likely to see dramatic declines in their telephone rates over the next four or five years. And what this plan does for them which I think is not, I don't think that particular aspect of it, this plan has much to do with. Those business customers are likely to get those kinds of rate decreases regardless of what plan is in place. What this plan does do is make it more likely that Bell of North Carolina will be a participant in that plan, and less likely that the customers who are going to be on the network five years from now are going to find themselves absorbing stranded

> investment. In that sense it seems to me this plan is a great protection for business customers who as you pointed out earlier are going to be subscribers to the network probably under any set of circumstances.

and further

> But I also think that the directions in which the company is likely to move most of its rates in response to those pressures are that that is they're going to move it in response to market forces, and it seems to me business customers should view that as a great improvement over the status quo.

Based upon the foregoing, the Commission finds and concludes that the Commission-approved Price Regulation Plan, which reflects incorporation of the foregoing provisions of the Stipulated Plan, does not unreasonably prejudice or discriminate against BellSouth's business customers.

Finally, the two interexchange carriers ("IXCs") in this proceeding, MCI and AT&T, expressed concern about the level of Toll Switched Access charges. AT&T witnesses Ellison and King, for example, argue that the Commission should reduce Toll Switched Access charges to cost. MCI witness Don J. Wood took the same position.

The issue presented by these parties and their witnesses was essentially this: Does the level of Toll Switched Access charges in North Carolina's emerging competitive telecommunications marketplace unreasonably prejudice or discriminate against the IXCs? In other words, is Toll Switched Access priced at such a level as to preclude the development of competition in the downstream toll market or in the Toll Switched Access market itself? Is Toll Switched Access priced at a level so as to deny North Carolina toll customers the benefits of competition in the downstream toll market? And if the Commission accepts the IXC argument that Toll Switched Access charges are set at a rate significantly above cost, what should the Commission do in this proceeding? Should the Commission reduce those rates beyond those reductions agreed to by BellSouth and the Public Staff? If so, by how much? Is there sufficient evidence in this record upon which to base such a decision, and if there is, what is the financial impact upon BellSouth? Should the Commission even consider the financial impact upon BellSouth, and if so, against what standard? Should the Commission accept BellSouth's argument that relatively high Toll Switched Access rates have been used to support lower-than-cost local service rates? If so, should the Commission offset any Toll Switched Access reductions that it orders with rate increases for other services? Is there sufficient evidence in this record to support such a decision? And finally, are these issues better left to the universal service proceeding, in which the Commission will presumably examine the entire question of local service subsidies in the context of a universal service fund that might become the source of any subsidies instead of Toll Switched Access rates, intraLATA toll rates, and the other subsidy-producing services that are alleged to be the source now?

These questions are, we believe, only illustrative of the issues that arise out of the IXC contention that the Commission should order additional Toll Switched Access reductions in this proceeding. Another issue is, of course, the very nature of this proceeding itself. AT&T has alleged

from the inception of this case — indeed long before the beginning of this case[1] — that the Commission should conduct a full cost-of-service and earnings review of BellSouth (in other words, a general rate case) in conjunction with BellSouth's price regulation case. AT&T's argument is that Toll Switched Access charges can be reduced significantly without any offsetting increases in other rates. That argument is due largely to AT&T's belief that BellSouth is currently overearning.

With respect to the rate case issue, the Commission shall address that issue in the context of the fourth statutory finding that the Commission is required to make — the public interest finding — because that is where it seems to fit most easily, although the Commission recognizes its connection to the Toll Switched Access charge issue.

The latter issue — the proper level of Toll Switched Access charges — we see as a separate issue arising under the third finding that we are required to make; that is, we see this issue as whether the current level of Toll Switched Access charges "unreasonably prejudices" the IXCs, who are, of course, "telecommunications companies" under G.S. 62–133.5(iv). In this regard, we must ask whether passage of G.S. 62–133.5(a) and BellSouth's request for approval of its Price Regulation Plan impose a new requirement that access charges be priced not to exceed BellSouth's incremental costs.

Prior to the passage of the 1995 legislation and the filing of the price regulation plan, access charges lawfully were priced well above the LECs' incremental cost. The justification for pricing access charges at this level was that, historically, services deemed less essential than basic local exchange service, such as long distance, should be priced well above incremental cost to permit the LEC to price local exchange service closer to, or below cost. This pricing approach enabled the LEC to fulfill its historical responsibility of making local exchange service universally available, and of course reflected the fact that the local loop was used in providing toll and other custom services as well as for basic local service. Toll Switched Access charges fell into the category of services priced well above incremental costs, so that basic local exchange services could be priced at lower levels. The Commission is aware of no events that have occurred in the evolution from the regulation of telecommunications service as a monopoly to a more competitive industry that require a decision that access charges be priced solely on the basis of incremental cost.

Passage of G.S. 62–133.5 and the filing of LEC price regulation plans do nothing to require that access charges be lowered to incremental cost. The statutory framework and regulatory decisions in North Carolina which prohibited unreasonable prejudice among customer classes before language in House Bill 161 became effective likewise prohibit this practice when authorizing price regulation plans. Establishment of the price of access charges above incremental cost passed muster under these preexisting requirements, so a reiteration of the requirement in 1995 in the price plan context does nothing to render the long-standing practice unlawful.

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[1]AT&T Emergency Petition and Complaint, Docket No. P-55, Sub 1010, filed April 19, 1995.

The second issue is whether the advent of direct competition in the intraLATA toll market between BellSouth and the IXCs sufficiently changes the factual context within which access charges are assessed to invoke the proscription against unreasonable prejudice. Of course, competition between LECs and IXCs in the intraLATA toll market — both unauthorized and authorized — has existed for years, so the context in which the Commission established Toll Switched Access charges significantly above incremental cost has not changed. With the advent of de jure intraLATA toll competition in 1994, the Commission subsequently imposed an imputation requirement upon the LECs to prevent anticompetitive "price squeeze" pricing strategies. The Commission has, therefore, previously addressed certain aspects of the anticompetitive issues present in this proceeding in Docket No. P-100, Sub 126. However, all such issues will be further addressed subsequently in conjunction with this Finding of Fact and Conclusion of Law.

A third issue is whether the advent of direct competition in the local exchange and exchange access markets between LECs and competing local providers (CLPs) authorized by the new legislation somehow changes the factual context so as to make the pricing of Toll Switched Access charges unreasonably prejudicial against the IXCs. While resolution of this issue is perhaps more complex than the others, the same analysis undertaken historically to justify pricing access charges above incremental cost leads to the conclusion that justification of this pricing practice remains. Even though the LECs will compete with CLPs in the post-1995 environment, no unreasonable prejudice is created. The LEC uses the above-cost increment in the access charge just as it uses the difference between the price of the LEC's long distance service and its own cost: to provide support to maintain the price of local exchange service at a reasonably affordable level. This support enables the LEC to meet the societal objective of widespread availability of local exchange service and arguably reflects some support of joint and common costs in the local loop. The LECs have priced in this fashion as the holders of the historical monopoly with the universal service responsibilities. These responsibilities continue, at this time, to justify the practice of charging for Toll Switched Access on a basis different from that relied upon to establish other LEC prices.

BellSouth argues that other factual justifications make reasonable any disparity in treatment between IXCs and the LEC that makes Toll Switched Access available to those IXCs. BellSouth submits that the IXCs can provide a much broader range of long distance services than can BellSouth, because the IXCs are not foreclosed from the interexchange, interstate, and international market, as is BellSouth. Further, BellSouth contends that the IXCs have the powerful competitive advantage of offering one-stop shopping.

BellSouth argues that the IXCs have already competed successfully with the LECs in the intraLATA toll markets, where BellSouth charges those same IXCs Toll Switched Access rates significantly above cost. BellSouth contends that the IXCs, as a result of offsetting advantages of their own, arising from historical as opposed to purely economic considerations, have established a record of competing quite effectively and successfully.

A justification for retaining existing pricing principles, at this time in telecommunications markets that are becoming increasingly more competitive, is the desire to proceed deliberately and cautiously during the transition period. The Commission recognizes the need to move prices for individual services toward their economic costs; however, caution and deliberation are necessary so

that the desire to increase services and reduce costs in the lucrative, highly competitive sectors of the business do not result in an unexpected and socially unacceptable rise in the cost of essential services necessary to everyone. Nothing has changed with passage of the 1995 legislation that justifies, much less requires, abandonment of these principles. Nothing the Legislature said in 1995 may be construed to alter the Commission's role as the protector of those least able to obtain, and most in need of, basic local exchange service.

Indeed, the 1995 legislation by its own terms reinforces these principles. While one goal is to avoid unreasonably prejudicing classes of telephone customers, other express goals are to "(i) protect the affordability of basic local exchange service, and (ii) reasonably ensure the continuation of basic local exchange service that meets reasonable service standards."

Is there any language, then, in the 1995 legislation that requires the Commission to reduce Toll Switched Access charges to cost-based levels? We conclude that there is not. Applying the principles embodied in State ex rel. Utilities Comm'n v. Public Staff and State ex rel. Utilities Comm'n v. Carolina Utility Customers Association, supra, p. 26, we conclude that the current Toll Switched Access rates do not unreasonably prejudice or discriminate against the IXCs. G.S. 62–133.5(a)(iii), G.S. 62–140. However, the Commission has determined, based upon the entire evidence of record, and shall so provide in the Commission-approved Price Regulation Plan that it is in the public interest to require that BellSouth apply that portion of its proposed $60 million revenue reduction, in excess of that needed to eliminate charges for Touchtone service and the Originating Carrier Common Line Charge ("OCCLC"), to further reduce Toll Switch Access charges. This provision in conjunction with other provisions of the Stipulated Plan adopted for use herein will result in a total Toll Switched Access charge reduction of approximately $45 million under the Commission-approved Price Regulation Plan.

The evidence in this record fully supports the foregoing conclusion. First, there is no evidence that IXCs are unreasonably prejudiced. Second, there was substantial evidence that competition will develop in the Toll Switched Access market and that competition will drive BellSouth's rates gradually toward cost. Third, the $45 million Toll Switched Access charge reduction which has been incorporated into the Commission-approved Price Regulation Plan, as discussed above, will significantly reduce the existing level of intrastate Toll Switched Access charges.

Finally, BellSouth proposes to cap Toll Switched Access Charges at the level "effective on the day prior to the effective date of the Plan." Section V.D. The Commission believes, however, and shall so provide, that those rate elements should be capped in the aggregate, at the levels in effect after implementation of each of the Toll Switched Access charge reductions as provided by the Commission in the price regulation plan herein approved for BellSouth.

Regarding this issue, AT&T takes the position that individual rate elements within the Switched Access Services Category should be capped on an individual element basis, as opposed to the subject category being capped in the aggregate. Essentially, AT&T argues that, if rate elements are not capped on an individual basis, BellSouth, who is both a competitor at the retail level and a provider of monopoly inputs into its competitors' retail services at the wholesale level, will have the

flexibility and the incentive to lower the prices of competitive rate elements and raise the prices of monopoly rate elements.

MCI also takes the position, for basically the same reasons as AT&T, that prices for monopoly services should be capped, and price caps should be applied to each rate element, rather than to collections of rate elements or to the combination of rates for services in baskets.

The Stipulating Parties take the position that the statute contemplates a regulatory regime under which the Commission is required to "permit the local exchange company ... to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices."

As discussed elsewhere herein, the Commission has incorporated into the Commission-approved Price Regulation Plan specific anticompetitive safeguard language which in conjunction with certain statutory provisions should provide aggrieved parties with a clearly defined avenue for redress in the event BellSouth should engage in anticompetitive conduct in this regard. The Commission believes that the foregoing reasonably balances the concerns of AT&T and MCI in this regard with the added benefit of avoiding the imposition of unnecessary constraints on BellSouth's pricing flexibility.

Regarding the Toll Switched Access charge reductions to be implemented by BellSouth as provided under the terms of the price regulation plan approved herein, the IXCs who are parties to this proceeding have stated unequivocally that they would flow through such reductions to their customers. The Commission believes, and shall so direct, that those reductions should be flowed through in a way such that as many of the IXCs' customers as practicably possible would receive some direct benefit therefrom. The Commission believes that the foregoing can best be accomplished by directing the IXCs to flow through these reductions to their basic residential and business subscribers through decreases in intrastate basic message telephone service (MTS) rates on a dollar-for-dollar basis. Therefore, each interexchange carrier which is required to file tariffs in North Carolina shall, under the provisions of this Order, file tariffs in accordance with the foregoing. Those tariffs shall be structured such that the MTS rate reductions will become effective concurrently, to the maximum extent possible, with each of the access charge reductions as required herein. Additionally, AT&T, MCI, and Sprint will be required to submit, in conjunction with their filings of tariffs, workpapers clearly identifying the details of their proposals in this regard.

Closely related to the issue of unreasonable prejudice or discrimination resulting from the current level of BellSouth's Toll Switched Access charges is the issue of whether the Commission should adopt rules concerning anticompetitive behavior in this price regulation proceeding. In this regard, BellSouth observes that Dr. Johnson, testifying on behalf of the Public Staff, stated at least twice that the Commission, in his opinion, has enough authority under existing law and the provisions of the Stipulated Plan to address issues with respect to anticompetitive conduct, such as predatory pricing and cross-subsidies, without the necessity of engrafting additional language onto the Plan. BellSouth also observed that competitive intraLATA toll services continue to be subject to the Commission's imputation requirement set forth in its Order of May 17, 1994, in Docket No. P-100, Sub 126. Dr. Perl, a BellSouth witness, explained that that imputation standard requires, with respect

to Toll Switched Access Service, "an essential input that is only produced by Bell . . . that Bell limit its rates by an imputation standard. And that imputation standard eliminates any possibility of Bell engaging in price squeeze or predatory pricing strategies." In other words, interexchange carriers compete with BellSouth's intraLATA toll service. They buy at least some Toll Switched Access Service from BellSouth. The Commission's imputation standard ensures that BellSouth's intraLATA toll rates reflect the Toll Switched Access rates that it charges to its competitors.

BellSouth argues that the Stipulated Plan requires it to price its services at or above its LRIC, a requirement that will prevent predatory pricing. BellSouth observes that it will continue to be subject to certain cost allocation requirements and that price regulation reduces the incentive to cross-subsidize by breaking the linkage between prices and earnings. BellSouth further contends that by grouping services in separate, discrete categories, the Stipulated Plan prevents the possibility of most cross-subsidies, because prices in one category cannot be raised to offset price decreases in another category. In this regard, BellSouth states that Dr. Johnson testified that "there are very few cross-subsidies in this industry as it's technically defined."

Finally, BellSouth states that, if cross subsidy is a problem at all, it is one that the Commission can well address under current rules and complaint procedures. In addition, with respect to unreasonable discrimination, BellSouth states that the Commission can continue to utilize the same powers under G.S. 62-140 that it has always had. With respect to service quality, BellSouth submits that nothing with regard to unreasonable discrimination has changed. Further, BellSouth asserts that the complaint mechanism, G.S. 62–73, is still available to aggrieved parties, who, in addition, now have specific recourse in the event of allegations of anticompetitive misconduct. G.S. 62–133.5(e).

Regarding BellSouth's position that there is no need for inclusion of specific anticompetitive safeguard language in the price regulation plan ultimately approved by the Commission, certain intervenors argue that BellSouth is incorrect in that regard. Those intervenors assert that such language is necessary and should be included in any price regulation plan approved for BellSouth. Specifically, the subject intervenors argue that language should be included in BellSouth's price regulation plan:

(a) Requiring BellSouth not to price certain of its services below total service long run incremental cost ("TSLRIC") as opposed to setting LRIC as the pricing floor, as proposed in the Stipulated Plan;

(b) Requiring BellSouth, in establishing its price for a competitive service which includes a monopoly component, to impute as a component of the cost of such service the price it charges competitors for the monopoly component; and

(c) Prohibiting BellSouth from engaging in anticompetitive practices; e.g., anticompetitive bundling of services and tying arrangements, vertical price squeezes, price discrimination, and predatory pricing.

LRIC is defined in the Stipulated Plan as "[t]he cost the Company would incur (save) if it increases (decreases) the level of production of an existing or new service or group of services. LRIC

consists of costs associated with adjusting future production capacity that are causally related to the rate elements being studied. These costs reflect forward-looking technology and operational methods."

AT&T defines TSLRIC as "[t]he total cost the company would incur if it were to initially offer a service or network element for the entire current demand, given that the Company already produces all its other services."

The basic difference between the foregoing costing methodologies appears to be that TSLRIC would include joint or common cost associated with a service or network element whereas LRIC would not include such costs.

AT&T, MCI, Time Warner, and NCPA, hereafter referred to collectively as the Protesting Parties, either implicitly or explicitly submit that use of LRIC, as proposed in the Stipulated Plan, does not adequately provide competitive pricing safeguards for BellSouth's potential customers so as to guard against anticompetitive pricing conduct by BellSouth.

The Protesting Parties contend that, with respect to most services, BellSouth is both a competitor and a monopoly provider of a necessary input to each competitive service. In the absence of anticompetitive constraints, it would be in BellSouth's self-interest to utilize its existing monopoly power to exploit the remaining captive ratepayers and frustrate and delay the development of effective competition. AT&T points out that even the Public Staff 's witness, Dr. Ben Johnson, recognized the potential for such anticompetitive conduct:

> When a firm is subject to competition in at least one segment of the industry but still enjoys monopoly power in at least one other segment, it has strong incentives to use the revenue from one or more of its quasi-monopoly services to offset the cost of one or more of its quasi-competitive services, thereby allowing the firm to price the latter service(s) "below cost." . . . More generally, a problem exists whenever an integrated firm operating in both quasi-monopoly and quasi-competitive markets takes advantage of opportunities to shift costs from the former to the latter category, to overprice its less competitive services, and/or to underprice its more competitive services. . . . The goal may be to deter competitive entry, to gain a competitive advantage, or to maintain dominance in a potentially more competitive market."

AT&T argues that LRIC is inadequate because it (1) applies an inappropriate cost measurement, (2) fails to provide any restriction or guidance as to how cost shall be determined, and (3) fails to address a panoply of other potential anticompetitive activities, including the fact that the Plan does not require BellSouth to impute to its own services the price it charges to its competitors for the same service, as acknowledged by BellSouth witness Varner with respect to BellSouth's payphone operations; nor does the Plan contain safeguards to prevent BellSouth from cross-subsidizing its competitive services with revenues from its monopoly services.

The Protesting Parties, in general, take the position that, distilled to its essence, because LRIC measures changes in output at the margin, it does not accurately reflect the cost of providing the

service in question. As a result, the application of LRIC as a price floor will still allow BellSouth to set its prices for its competitive services below cost and subsidize these prices with monopoly profits. By contrast, TSLRIC more accurately measures the cost of providing the service in question and will prevent BellSouth from unfairly cross-subsidizing its competitive services. According to AT&T, TSLRIC sets the appropriate floor below which economists recognize a service to be cross-subsidized.

Regarding BellSouth's contention that federal antitrust law will provide adequate protection, AT&T states that such argument is disingenuous given the fact that in other jurisdictions BellSouth has argued that federal antitrust laws are preempted by state regulation of telecommunications. More importantly, according to AT&T, it is critical that competitors not only have state law remedies for anticompetitive conduct but also have state regulatory remedies for such conduct. Finally, AT&T states that inclusion of a provision in the Commission-approved Price Plan barring BellSouth from engaging in anticompetitive activity would enable the Commission to discharge its statutory duty to protect the public interest and to provide a regulatory environment in which competition can develop.

AT&T also contends that the categories of services included in the Stipulated Plan should contain services with the same intensity of competition. Since under the Stipulated Plan both competitive and noncompetitive services are included in the same basket, BellSouth is permitted to decrease the price of competitive services (or partially competitive services) which would allow BellSouth to increase the prices of noncompetitive services in the same basket even if BellSouth's total revenues are otherwise contained.

AT&T submits under the subject arrangement, for example, that BellSouth could increase the prices for numerous residential line features to finance reductions in private line and other business services. According to AT&T, BellSouth has strong incentives to take these types of prejudicial pricing actions because they would foreclose competition and enhance BellSouth's earnings without reducing overall rates. Therefore, AT&T argues, for reasons including the foregoing, that the Stipulated Plan must require that BellSouth impute the price it charges its competitors for monopoly service components (including but not limited to, access) in the price it charges for its own competitive services.

In summary, the Protesting Parties generally contend that the Stipulated Plan, in order to provide adequate anticompetitive protection, must be modified (a) to require that BellSouth not price any of its services below TSLRIC, presumably exclusive of basic local service, (b) to require that BellSouth impute the price it charges its competitors for monopoly service components (including, but not limited to, access charges) in the price it charges for its own competitive services, and (c) to include specific language barring BellSouth from engaging in anticompetitive activity. Regarding the LRIC verses TSLRIC controversy, CUCA takes the position that the Commission-approved Price Plan should employ both LRIC and TSLRIC— LRIC as the pricing floor benchmark for rate elements and TSLRIC as the pricing floor benchmark for services. Additionally, Time Warner asserts that language should be included in the Commission-approved Price Plan requiring BellSouth to use consistent costing methods across all services and rate elements, file and make publicly available cost support for all tariffed rates, and demonstrate that it does not shift common costs onto noncompetitive services in its monopolized markets from price reductions in competitive markets.

After having carefully considered the foregoing and the entire evidence of record regarding the need for inclusion of specific anticompetitive safeguard language in the Commission-approved Price Regulation Plan for BellSouth, the Commission finds and concludes that the subject language should be included therein. Such conclusion has been reached for reasons presented by the intervenors in support of their positions in this regard. The Commission further finds and concludes that the Commission-approved Price Regulation Plan should include the following specific language:

(a) Regarding the use of LRIC: "LRIC shall be construed as presumptively appropriate for use in this Plan; provided, however, such use is without prejudice to the right of any party to challenge the propriety of use of LRIC in any complaint proceeding, including but not limited to complaints brought before the Commission alleging anticompetitive conduct on the part of BellSouth."

(b) Regarding imputation: "The Company shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function."

(c) Regarding anticompetitive practices: "This Plan shall not operate to permit anticompetitive practices. The Company shall not engage in predatory pricing, price squeezing, price discrimination, or anticompetitive bundling or tying arrangements as those terms are commonly applied in antitrust law. Nor shall the Company give any preference to the competitive services of affiliated entities."

MCI and AT&T assert that the Commission must develop detailed rules governing competition before approving a price regulation plan. There are at least three responses to this argument: First, the statute does not require it. Price regulation is set forth in G.S. 62–133.5, and that statutory section does not even mention rules for local exchange and exchange access competition. Those rules are covered in G.S. 62–110(f1) and are, thus, the subject of a separate regulatory proceeding, Docket No. P-100, Sub 133, in which both AT&T and MCI are currently participating.

The second response is that as a practical matter, we see no requirement to promulgate detailed rules with respect to competition prior to approving price regulation, although, indeed, we have already done so.[1] As BellSouth witness Varner stated, price regulation stands or falls on its own. There will always be other cases, future controversies, and future issues to be resolved. The competition docket is, indeed, evolutionary and ongoing. In this regard, Dr. Johnson testified:

> There's a local competition docket that's going on. There's going to be other opportunities to sort of set forth specific rules that more clearly set out the ground

[1] On February 23, 1996, the Commission entered an Order setting forth detailed rules governing interconnection and other competition issues. Order of February 23, 1996, in Docket No. P-100, Sub 133.

rules so the company isn't in danger of having its hand slapped constantly because it understands what is or isn't allowed and I think that can be done outside the context of this docket and can be done outside the context of this stipulation.

A third response is that the Commission retains its jurisdiction under the terms of the Plan to respond to competitive or other issues as they arise.

We find this testimony and reasoning compelling and find further that it is unnecessary to address the myriad of issues arising out of the advent of local exchange and exchange access competition in this proceeding.

Accordingly, for the reasons set forth herein, the Commission finds and concludes that the Commission-approved Price Regulation Plan does not "unreasonably prejudice any class of telephone customers, including telecommunications companies."

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 5

- PUBLIC INTEREST STANDARD

The public interest standard is one that the Commission has employed in its deliberations for many years. See, e.g., G.S. 62-2; 62-110(b), (c) and (d); 62-133.3 (repealed by 62-133.5, House Bill 161, 1995 Regular Session); and 62-134(h)(8). It is a broad and flexible standard that the Commission is qualified by both experience and law to define and to apply.

In this regard, a number of issues arise that we will address under this particular standard:

a. Does this price regulation case require, or necessarily imply, a general rate case for BellSouth?

b. If so, is the record sufficient to order further revenue or rate reductions in addition to the $60 million included in the Stipulated Plan?

c. Does the Stipulated Plan grant BellSouth sufficient pricing flexibility, but not excessive pricing freedom?

d. Can, or should, the Commission consider MCI's "Competition Plus" as a form of price regulation superior to BellSouth's Stipulated Plan and if so, does the evidence supporting "Competition Plus" warrant modifications to BellSouth's Stipulated Plan?

e. Are the productivity offsets to which BellSouth and the Public Staff have stipulated sufficient, or should those offsets be set at different levels?

f. Does the Commission retain sufficient authority under BellSouth's Stipulated Plan to protect the public interest, and is the Stipulated Plan otherwise consistent with the public interest?

g. Should the Commission include a public notice requirement in the price plan?

h. What is the appropriate effective date of the price plan? and

i. Is the Commission-approved Price Plan, then, otherwise consistent with the public interest?

We will address these issues in order:

a. Does this price regulation case require, or necessarily imply, a general rate case for BellSouth?

(1) Law.

AT&T witnesses Ellison and Knoblauch argue that the Commission should conduct a general rate case for BellSouth in connection with this price regulation proceeding, but the Commission can find nothing in House Bill 161 that requires the action that AT&T has requested the Commission to take. The General Assembly, of course, also wrote G.S. 62-133, which sets forth a detailed and comprehensive plan for the making and setting of rates for public utilities under rate of return regulation. If the General Assembly had wanted the Commission to conduct the kind of rate proceeding set forth in G.S. 62-133 "going in" to competition and price regulation, as AT&T asserts, it could have required it.

The Commission must interpret and apply House Bill 161 as it is written, because House Bill 161 is clear and unambiguous.[1] It allows a telecommunications public utility, currently subject to rate of return regulation, to elect to have its rates determined pursuant to "a form of price regulation, rather than rate of return or other form of earnings regulation." G.S. 62–133.5(a). Thus, it is clear that the General Assembly viewed price regulation as a form of regulation entirely distinctive and different from traditional rate of return regulation. This language, coupled with the exclusion of G.S. 62–81, -130, -131, -132, -133, and -137 from applicability to LECs electing price regulation pursuant to G.S. 62–133.5(g), supports the Commission's conclusion that the General Assembly neither required nor desired a general rate case for LECs electing price regulation. We conclude, therefore, that there is nothing in House Bill 161 that requires the action that AT&T has requested the Commission to take. However, BellSouth's earnings are relevant to this proceeding and have been considered in developing the Commission-approved Price Regulation Plan for the Company.

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[1]State ex rel. Utilities Commission v. Edmisten, 291 N.C. 451, 465, 232 S.E. 2d 184, 192 (1977).

(2) Policy.

If there is no legal[1] requirement for a general rate case, we must next consider whether there is some policy reason that requires the Commission to undertake such a review of BellSouth's prices, costs, and earnings. BellSouth's witnesses argued forcefully that such a review is not only unnecessary, it is antithetical to price regulation. Witness Varner, for example, stated that "a rate case is neither necessary nor appropriate for a firm leaving a monopoly environment and entering a competitive one." He went on to say that

> [t]he rate of return mechanism was designed for a monopoly environment. The conditions that allowed rate of return regulation to work are no longer sustainable in today's market. In a monopoly environment, the regulator established a rate of return and a revenue requirement which provided the opportunity for the utility to recover its investment over the life of such investment. Today, with the changes in technology and accelerating competition, the regulator can no longer reasonably predict or provide this opportunity.
>
> A rate case is a look in the rearview mirror, a snapshot of a firm's financial situation, taken at a moment in time. It reflects a large number of assumptions about the firm, one of the main ones being that the conditions that engendered the result reflected in the snapshot will continue. Of course, for BellSouth, they will not. The new competitive environment will lead to higher risks for BellSouth, and higher risks create a need for a greater return for shareholders. Yet, at this precise moment, AT&T recommends a general rate case to determine the appropriate level of earnings based upon a monopoly, less-risky environment that will no longer exist.
>
> The General Assembly specifically changed the regulatory structure in recognition of this changing environment. The Assembly enacted legislation authorizing local and access competition within the franchise and allowing the local exchange company to elect price regulation. The legislation specifies four criteria that the electing company's plan must meet. These criteria do not include a rate case or other earnings determinations.

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[1] Under G.S. 62-137 the Commission is required to "declare the scope of the hearing by determining whether it is to be a general rate case, under G.S. 62–133, or whether it is to be a case confined to a reasonableness of a specific single rate . . . ." In this price regulation case, the Commission did neither, and indeed, was not requested to do either by any of the parties. Accordingly, the Commission's decision that the procedures set forth in G.S. 62–133 are inapplicable to this price regulation proceeding is buttressed by the behavior of the parties to this price regulation proceeding.

Dr. Perl's approach was different. He stated that a rate case presupposes

> that the appropriate "cost of capital" can be measured. As long as BellSouth continues to operate in a traditional rate base/rate of return environment, such measures, while inevitably controversial, can be made. However, the whole purpose of this proceeding is to consider changes in the structure of regulation to a price caps framework which is needed to accommodate changes in the competitiveness of telecommunications markets. Those changes — both the increase in competitiveness and the shift to price caps — will inevitably alter BellSouth's required cost of capital because they increase the riskiness of investments in this business. After all, price caps eliminate historic assurances of a fair return on the historic cost of capital or even assurances that prudent expense can be recovered. While we can be sure that these changes will increase the cost of capital, we cannot be sure as to the magnitude of the increase. As a consequence, because the appropriate target cost of capital is unknown, a full-blown hearing to test the initial earnings consequences of the price caps proposal would not be productive.

and further

> First, a number of critics of the plan argue that before you put it into place you ought to have a full blown rate hearing to assure that the initial rates are not affording Bell a rate of return higher than its cost of capital.
>
> In my view, such a review would be a waste of time. One of the fundamental effects of the plan is to change Bell's cost of capital. It can't possibly be the same in the new price caps environment that the plan creates as it was under the rate of return environment. And while we know that the cost of capital must be higher nobody knows what it's going to be. We're only going to find out over time. To have a full blown hearing to try to see whether rates are in line with a target that is unknown seems like a waste of time.

In addition, witness Varner testified that regulatory commissions in other BellSouth states have implemented price regulation plans without conducting general rate cases.[1]

Moreover, Dr. Johnson, the Public Staff witness, did not believe that an earnings review of BellSouth was either appropriate or necessary.

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[1] Some parties sought to demonstrate that BellSouth had made revenue reductions in other jurisdictions, either in connection with "incentive regulation" plans or other requirements. Although the purpose of this testimony is clear — to persuade the Commission to order further reductions in this jurisdiction — the meaning of that evidence with respect to its relevance to North Carolina is unclear. Revenue comparisons alone among jurisdictions are meaningless because of size differentials, different regulatory circumstances, and different laws.

Q. All right, sir. If you would -- now, you've also mentioned there that the company has not had a rate increase since 1984?

A. Yes.

Q. What is the significance of that fact relative to the starting prices?

A. Well, I think it gives some further assurance that there's a reasonable set of starting prices. Obviously, this Commission has had the opportunity to revisit those rates during that period. The company could have come in and asked for increases, other parties may have asked for decreases. The Commission, in its decision-making process, has accepted this set of rates for a lengthy period of time. There have been, obviously, some reductions taking place during that period in specific areas but there has not been, to my knowledge, any significant across-the-board or substantial increases in any areas. So I think the fact that these rates have been in place for a lengthy period of time gives further assurance that it's a reasonable starting point.

We conclude, therefore, that there is no legal or policy reason for undertaking a further earnings review — in other words, a traditional general rate case — for BellSouth at this time.

b. If so, is the record sufficient to order further revenue or rate reductions in addition to the $60 million included in the Stipulated Plan?

While it is not necessary to address this question, we note that even if further review were appropriate, the evidence presented indicates that once appropriate adjustments[1] are made, BellSouth's earnings are below even what AT&T's expert witness has posited as the appropriate cost of capital.

In this regard for the foregoing reasons, the Commission finds and concludes that further revenue or rate reductions in addition to the $60 million included in the Stipulated and Commission-approved Price Regulation Plans are not justified.

c. Does the Stipulated Plan grant BellSouth sufficient pricing flexibility, but not excessive pricing freedom?

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[1] We do not find convincing the testimony of AT&T witnesses Knoblauch. Mr. Knoblauch failed to include in his calculations net income adjustments to reflect the $15 million revenue reduction proposed in the Stipulated Plan and the additional depreciation that BellSouth will take pursuant to G.S. 62–133.5 and price regulation. North Carolina law recognizes the appropriateness of these adjustments. G.S. 62–133, State ex rel. Utilities Comm'n v. Edmisten, 291 N.C. 327, 230 S.E.2d 651, 660 (1976). See also State ex rel. Utilities Comm'n v. Morgan, 278 N.C. 235, 179 S.E.2d 419, 420 (1971).

We move next to the issue of pricing flexibility and whether the pricing flexibility afforded BellSouth in the Stipulated Plan is appropriate for a company about to enter the competitive telecommunications marketplace contemplated by the General Assembly in House Bill 161, or whether that pricing flexibility is greater than what is necessary for BellSouth to compete successfully.

We begin our analysis with the statute, G.S. 62–133.5(a), which provides that

> [u]nder this form of price regulation, the Commission shall, among other things, permit the local exchange company to determine and set its own depreciation rates, to rebalance its rates, and to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices.

Clearly then the statute contemplates a regulatory regime under which the Commission is required to "permit the local exchange company . . . to adjust its prices in the aggregate, or to adjust its prices for various aggregated categories of services, based upon changes in generally accepted indices of prices." The language is plain and unambiguous; accordingly, statutory interpretation is unnecessary. State ex rel Utilities Comm'n v. Edmisten, 291 N.C. 451, 465, 232 S.E.2d 184, 192 (1977). If the terms of a statute are clear, no judicial or administrative construction of the statute is required, and it is the duty of the courts or agency "to apply the statute so as to carry out the intent of the Legislature." Peele v. Finch, 284 N.C. 375, 382, 200 S.E.2d 635, 640 (1973).

On its face, the Stipulated Plan complies with G.S. 62–133.5(a). The Stipulated Plan provides a mechanism by which BellSouth will adjust its prices for three categories of services in accordance with a formula that is based upon changes in the GDP-PI, a "generally accepted" index "of prices." None of the parties contested the appropriateness of the GDP-PI.

Under the Stipulated Plan, as set forth in Section V, BellSouth can increase prices for services in the Basic Category as long as the aggregated increases do not exceed the increase in the GDP-PI, minus an offset of two percent. BellSouth cannot increase any rate element in the Basic Category by more than GDP-PI plus three percent, again subject to the overall cap on the Basic Category.

For services in the Non-Basic 1 and Interconnection Categories, BellSouth can increase rates for those services as long as the aggregated increases do not exceed the percent change in the GDP-PI, minus an offset of three percent. Rate elements in the Non-Basic 1 Category are subject to a price change constraint of GDP-PI plus seventeen percent, and services and rate elements in the Interconnection Category are subject to a pricing constraint of GDP-PI plus seven percent. Services in the Non-Basic 2 Category are subject to no pricing constraints, and Toll Switched Access Services are capped at the "prices for the individual rate elements . . . effective on the date prior to the effective date of the Plan . . . ." Stipulated Plan, Section V.D.

The Stipulated Plan also contains a provision (Section VI) that would permit BellSouth, subject to Commission approval, to adjust its prices to reflect the impacts — both positive and negative — "of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the Company, to the extent that such impacts are

not measured by the GDP-PI." The Stipulated Plan provides examples of such actions, including "separations' matters," "extended area services or Commission-required technological innovations."

Opposition to this aspect of the Stipulated Plan crystallized around several issues:

(1) Whether the seventeen percent rate element constraint for services in the Non-Basic 1[1] Category is too high;

(2) Whether and why BellSouth needs the ability to increase prices in a competitive marketplace;

(3) How the governmental action section works; and finally,

(4) Whether the Stipulated Plan permits BellSouth to unreasonably increase rates for "monopoly" services while decreasing rates for competitive services.

We address these issues below:

The attack on BellSouth's ability to increase rates for individual price elements by the change in GDP-PI plus seventeen percent came primarily from CUCA through the testimony of its witness, Walter G. Bolter, as well as through cross-examination of other witnesses. BellSouth witnesses Perl, Hendrix, and Varner defended the Stipulated Plan's pricing flexibility for Non-Basic 1 Services, as well as the other pricing constraints, arguing specifically in this case that demand elasticity will prevent BellSouth from raising rates for most of the Non-Basic 1 Services because those services are discretionary, and the customers for these services will simply drop the services if BellSouth raises the rates for those services.

Moreover, there is evidence that many of the services in the Non-Basic 1 Category are, or will be, subject to competitive pressures. Finally, we find the shift from a pricing constraint on a service in the Original Plan to a pricing constraint on each rate element, as set forth in the Stipulated Plan, to be both significant and compelling, a fact either overlooked or misunderstood by intervenors.

First, a rate element is a specific component, the lowest common denominator of a service. For example, whereas Custom Calling is a service, Call Waiting is a separate rate element. Private Line is a service; the Voice Grade Loop and Interoffice Mileage have separate rate elements. In the Basic Category each rate group has a separate rate element.

Under the Original Plan, BellSouth could have increased rates for the service — in this case, Private Line — by GDP-PI plus fifteen percent, but could have increased one element — perhaps the mileage rate element — by 100 percent, while reducing the other rate element — perhaps the Voice Grade Loop — in an amount necessary to offset the mileage increase, so that the increase in the price for the service still fell under the service cap. As Dr. Johnson noted, BellSouth could have increased some rate

[1]There was little, if any, concern expressed over BellSouth's ability to change prices in the Non-Basic 2 Category services which, the evidence showed, are "fully competitive."

elements by 100 percent as long as the service price met the cap, and customers using only the rate elements that increased would receive no offsetting decreases, so that their bottom line would be a significant, perhaps dramatic, increase.

Dr. Johnson testified that he was not aware of any other state plan with price restrictions on rate elements:

> So this, in my mind, is breaking new ground that the Public Staff has done in the stipulation and yet I think it's valuable ground, particularly as we're going into this competitive era where ensuring some smoothness of a transition and some protection for customers while trying to keep hands off is desirable. Obviously if you had a restriction on services and no restriction on elements, at least theoretically you could come in and say, well, that particular rate element is going up just too much and you use your general authority to deny it, it is not being in the public interest. The problem with that is it's forcing you to be more active regulating than it would be really desirable. It's much better if the Commission can stay out of it and let the company do what it wants most of the time and so by restricting the rate elements in my mind is a better solution than always falling back on the general right to reject tariffs.

He further noted that this change benefits BellSouth's ratepayers, rather than its shareholders, a point also made by Dr. Perl. Finally, Dr. Johnson addressed negotiation by the Public Staff of the seventeen percent constraint on services in the Non-Basic 1 basket, noting that

> I'm sure Bell would be surprised if it sensed that somehow a number they thought they were involved in negotiating was actually the one we planned in advance but to some degree that may have happened.
>
> I suggested a number of abut 20% on a group of miscellaneous services. I said, exactly what's in that basket is somewhat up to you and up to the negotiating process but unless the company can see it's got a group where it's got quite a bit of flexibility, they're probably not going to buy it.
>
> The final figure of 17, when added to inflation happens to be very close to the number that I had suggested.

Dr. Johnson then explained the effect of moving the cap from 15% on services to 17% on rate elements:

> Q. In the Non-Basic Category, aside from the movement of services both in the Basic and into Non-Basic 2, went from 15% to 17%, didn't it?
>
> A. Well, it went down from 15% to 17%. I want to be sure you understand. I know you don't want to get into rate elements but it is a tightening in every category because we went from services to rate elements. One of the pieces of advice I gave them is, I said, try to fight to the very end to get this rate element restriction.

> I said, it's subtle, it's something that's going to be hard to sell to the Commission if we don't have a stipulation because it is a very subtle issue and they might say, well, what's the difference. But the truth is, that's the greatest protection that consumers now have, is you have a ceiling on individual rate elements so you can be assured that the most obscure customer in the most obscure town will never see an increase in their bill greater than the percentages you see in the Plan because you simply can't there. Even if they buy nothing but one rate element, which no customer does, that's still the ceiling, and if they buy a cluster of rate elements, the highest any one of the items on their bill can go up is the rate element ceiling.
>
> That's very different than a cap on a service. A cap on a service -- you could define a service as MTS. If one customer is only buying in the night weekend, and the night weekend goes up double while the day rate goes down 40% and it cancels out, the customer who is always calling at night sees their bill go up dramatically. So there's a very significant difference and that was a very high priority to the Staff.

Dr. Johnson explained that rate increases of GDP-PI plus seventeen percent will quickly invite competition and competitive losses, as large customers either leave or build their own systems. "So I don't think they're (the Company) that foolish."

BellSouth witness Varner testified that the constraints on individual rate elements in the Stipulated Plan are the most restrictive of any price plan in the BellSouth region. The Commission has also reviewed orders from the other BellSouth jurisdictions and finds difficult the process of comparing these plans. The number of categories in each plan varies from state-to-state, the services within the various categories are different, the productivity offsets are different, the caps on individual categories differ, and finally, the pricing constraints on individual services within the service categories differ from plan-to-plan. We conclude, nevertheless, that the Stipulated Plan differs from the plans of other states in two important respects, both of which result in less price flexibility for BellSouth under the Stipulated Plan. First the Stipulated Plan divides BellSouth's services into five categories, rather than three, the number of categories used in the majority of the price regulation plans adopted in the BellSouth states.

Second, while all of the plans limit price increases in certain categories in the aggregate, the Stipulated Plan takes the unusual step of also limiting price increases for individual service elements within certain categories. Only Mississippi places limits on rate elements and there, an individual rate element constraint of twenty percent is applicable solely to the "other" category. At the other extreme, neither Alabama, Florida, nor Georgia places limits on increases for either rate elements or individual services in the Basic and Non-Basic Categories. After reviewing all of the plans, it appears that the Stipulated Plan is the most restrictive, from the standpoint of pricing flexibility, of any price plan in the BellSouth region.

It is also possible, of course, to pick and choose various components from different plans and construct any kind of plan one desires. One can, for example, construct a plan that is more favorable to BellSouth than the Stipulated Plan or one that is more favorable to the consumer. We believe that approach misses the essential point: each of these plans must be viewed in its totality. Each plan, then,

stands alone as a whole and must be evaluated that way. Each plan is a function of unique state laws and complex regulatory circumstances that are simply beyond this Commission's ability to evaluate. Comparing the North Carolina Stipulated Plan with those other plans is, we conclude, of limited value. Some have more relaxed pricing constraints — and in some cases, no constraints on price changes — and higher productivity offsets. Others have different pricing constraints, and similar productivity offsets. We can only guess why, and guessing is not good enough. We must evaluate the Stipulated Plan in total and on its own merits under our particular statute, G.S. 62–133.5. The evidence, on the whole, supports our conclusion that the pricing rules of the Stipulated Plan are the most restrictive of any plan in BellSouth's nine states. Such rules have been incorporated into the Commission-approved Price Regulation Plan, as adopted herein.

Is seventeen percent the right number for Non-Basic 1? It clearly is a stipulated, negotiated number. Would eighteen percent or sixteen percent work as well? Perhaps, but no party has put forth any credible evidence with respect to an alternative. BellSouth and the Public Staff both have made a compelling case for this amount of flexibility for services that are either competitive or discretionary and, thus, price-sensitive.

With price regulation, we enter uncharted waters. As Dr. Perl warned, we must not let "the perfect be the enemy of the good." We do not know at this point — cannot know at this point — what the perfect Non-Basic 1 rate element constraint is, but we are persuaded that the shift from service to rate element is a significant, perhaps unprecedented, concession on BellSouth's part, and are further persuaded by the testimony of Public Staff witness Dr. Johnson that the Company needs this flexibility to compete. GDP-PI plus seventeen percent may not be perfect, but we find it to be sufficient given the circumstances that attend this proceeding: the advent of local exchange and exchange access competition under House Bill 161. Accordingly, we accept that constraint.

There was a considerable degree of concern in the questions raised by the Commission and those of the parties as to how the "governmental actions" provision would operate. As proposed in the Stipulated Plan, the Company, with Commission approval, could "adjust the prices of any service(s) due to the financial impacts of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the company, to the extend that such impacts are not measured in the GDP-PI." Such adjustment is mandatory upon a proper showing of a set of four criteria. Most of the intervenors, including the Attorney General, opposed the mandatory nature of the governmental actions provision. The intervenors suggested making the provision permissive and introducing a public interest criterion. Some suggested that impacts of the Telecommunications Act of 1996 should be specifically excluded from pass-through under this provision.

The Commission, too, is concerned about the open-ended and mandatory nature of this provision, given the uncertainty of the nature and extent of future mandates which may be construed to constitute governmental action. The Commission does concur with BellSouth's view on the provision as expressed in its Brief in this respect: the governmental actions provision does not provide the Company with the right to recover competitive losses. The governmental actions provision is intended to adjust rates up or down as a direct result of costs or benefits flowing from specific governmental action and is not intended to allow recovery of remote or consequential marketplace effects.

Accordingly, the Commission concludes that the governmental actions provision should be modified by substituting the word "may" in place of the word "will" in the sentence before the criteria in order to make the adjustment permissive, rather than mandatory, and that a public interest standard should be inserted as the fifth criterion. This change will convert the governmental actions provision from one that is more or less automatic upon the satisfaction of certain criteria to one that will allow both scrutiny in the examination of governmental action claims and flexibility for the Commission in the decision-making on them.

Another pricing issue was whether and why BellSouth needs the ability to raise prices in a competitive marketplace but, again, the evidence here was overwhelming that BellSouth — indeed, any company — needs the ability to both raise and lower prices in a competitive market. In this regard, BellSouth has committed to provide the same notice to customers of rate increases that it has always provided. Both the statute and the Stipulated Plan were silent on this issue, which we consider significant. Therefore, the Commission will incorporate language into the Commission-approved Price Regulation Plan requiring BellSouth to provide fourteen days' notice to any customers affected by an increase in rates.

The final area of concern with respect to pricing flexibility that we will address relates to the issue of whether BellSouth will have the ability to raise prices in less competitive markets to offset reductions in more competitive markets. This concern was expressed primarily through the Attorney General's cross-examination relating to hypothetical customers Ed and Millie and Al and George. Varner Exhibit 3 demonstrated that, however, accepting all of the Attorney General's assumptions — and BellSouth asserted repeatedly that the assumptions were unreasonable and, thus, unacceptable — the rural customer would pay $1,220.28 over five years in a "worst case scenario" versus $1,141.80 for the same period in a status quo situation. The difference, witness Varner pointed out is $78.48 over five years, or about $1.31 a month. Mr. Varner also noted that in the hypothetical, the Company had placed most of the rate increases on Call Waiting, an optional, discretionary service that the customer might well disconnect. If the customer did so in year five of the Stipulated Plan, the increase over five years would be only $6.00, total. If the customer disconnected Call Waiting in the fourth year, the customer would actually pay less under the Stipulated plan than under the status quo.

Witness Varner emphasized, as had Dr. Perl earlier, the price elasticity associated with discretionary services:

> Customers buy them because they believe that they are a good value for the price they are paying for them.
>
> Q. And when they stop becoming of good value, what do customers do?
>
> A. They disconnect them .... And there is an elasticity. As the price goes up, fewer and fewer customers are willing to pay that price for the service.

Witnesses Varner, Ray, and Johnson all pointed out that increases of this magnitude will invite competition and will prevent BellSouth from implementing this kind of pricing strategy. Finally, Dr. Johnson noted that with respect to a pricing strategy based upon increasing rates in less-competitive areas to offset rate decreases in competitive areas:

> You're really trying to overstate a very complex issue and one that literally would vary based on judgments made by executives over very subtle issues as to their long-term strategy, their planning, many, many different issues. So, yes, they might choose to lower rates in Knightdale. They might choose to leave them constant. There's a variety of ways they might react to the federal bill that just passed and other variables that are coming down the pike.

We agree that price elasticity and the threat of competition, coupled with the category and rate element constraints, will prevent "worst case" pricing strategies by BellSouth.

Finally, we address one other pricing-related issue: rate rebalancing. The statute, as we have noted, permitted BellSouth to "rebalance its rates." G.S. 62–133.5(a). BellSouth has not proposed rebalancing as a part of the Stipulated Plan, and we believe that the gradual rebalancing that will occur under the Stipulated Plan is in the public interest. Some parties argue that there are distortions — in an economic sense — in BellSouth's prices, distortions that reflect years of pricing decisions designed to foster universal service. We believe, at this time, that to do as some parties advocate (See, e.g. testimony of AT&T witness Kaserman and MCI witness Wood; see especially testimony of AT&T witness Ellison, AT&T witness King, and DOD witness Gildea) and immediately move rates to their economic costs would be deleterious from both a social as well as an economic standpoint. The Commission is persuaded that transition to a competitive marketplace will gradually correct any distortions that may currently exist by forcing prices toward their economic costs.

d. Can or should the Commission consider MCI's "Competition Plus" as a form of price regulation superior to BellSouth's Stipulated Plan and if so does the evidence supporting "Competition Plus" warrant modifications to BellSouth's Stipulated Plan?

MCI proffered through its witness Don J. Wood a "Competition Plus" price plan. The MCI plan would essentially realign rates with direct economic costs, cap rates for BellSouth's "other-than-competitive" services at existing rates, develop a universal service support mechanism, eliminate earnings reviews for BellSouth and price regulation of competitive services, eschew automatic price adjustments, and eliminate cost studies.

In addition to the problems associated with MCI's price realignment recommendation already discussed, the Commission believes that the proposal to cap all of BellSouth's "noncompetitive" services would be contrary to the express provisions of G. S. 62-133.5, which require the Commission to "permit the local exchange company. . . to rebalance its rates."

The Commission will address the universal service support mechanism in another docket, Docket No. P-100, Sub 133, and the statute, G.S. 62–133.5(a), requires the Commission, upon approval of a price regulation plan, to thenceforth regulate the company's prices rather than its earnings. MCI's recommendation that the Commission avoid automatic price adjustments is also contrary to G.S. 62–133.5, and its recommendation to eliminate price regulation of competitive services is also, we believe, unnecessary in the light of House Bill 161, which permits the Commission to "exempt from regulation" competitive services. G.S. 62–2, as amended by House Bill 161. Finally, the requirement for most cost studies will be eliminated as MCI has recommended.

G.S. 62–133.5(a) is silent as to the ability of a party to propose an alternate form of price regulation for a LEC that has elected price regulation pursuant to the statute. We have, nevertheless, considered MCI's proposal in light of the Commission's authority to modify a proposed plan. G.S. 62–133.5. We are not persuaded, however, that MCI's "Competition Plus" price regulation plan is appropriate in this environment.

e. Are the productivity offsets to which BellSouth and the Public Staff have stipulated sufficient or should the Commission set those offsets at different levels?

Under the Original Plan, BellSouth proposed to limit increases to rates for Basic Services and Interconnection Services by one-half the amount of the increase in the GDP-PI, and for services in the Non-Basic basket, by the full amount of GDP-PI. The Stipulated Plan, however, reflects different pricing constraints on these categories. For services in the Basic basket, BellSouth proposes to limit increases to its rates by the amount of increase in the GDP-PI minus a productivity offset of two percent, and for services in the Interconnection and Non-Basic 1 Categories, by the amount of the increase in GDP-PI minus three percent. There are no constraints on the Non-Basic 2 Category, and the Toll Switched Access Category remains the same, except for the rate reductions to which BellSouth agreed in the Stipulated Plan. The issue sub judice is whether the productivity offsets set forth in the Stipulated Plan are appropriate.

The major attack[1] on the proposed productivity offsets came from AT&T witness Dr. Norsworthy who recommended a 5.4% offset for the Basic and Non-Basic Service Categories, and the Interconnection Services Category and an 8.4% offset for the Intrastate Access Services Category. Dr. Norsworthy's study was based upon BellSouth's historical productivity performance in North Carolina and each offset included a 0.5% "customer productivity dividend." Dr. Norsworthy rejected the so-called Christensen study, because he concluded that in that study, Dr. Christensen had used "outmoded methods that the principle (sic) author himself (Dr. L. R. Christensen) argued against as long ago as 1981."

Essentially, measurements of productivity reflect the difference between outputs — that is, whatever is produced by the firm — and inputs — that is, whatever is consumed by the firm in producing those outputs. Inputs are capital, labor, and material, which must be weighted properly to establish the proper relationship of each input to the other for the particular firm, or firms, being measured. The same is true for outputs. Not only must the calculation reflect the correct relative weightings, the calculations must include the correct outputs themselves. Dr. Norsworthy acknowledged that instead of using actual BellSouth outputs, he used two surrogates — the increase in intraLATA access minutes-of-use to represent both toll and access, and the growth in local minutes-of-use, to represent all local services, including the growth in access lines. Dr. Norsworthy acknowledged, however, that it is important to use as outputs "what consumers buy, what customers pay for." Consumers, of course, do not pay directly for

[1]The Attorney General sought to submit productivity information in Attorney General's Johnson Cross-Examination Exhibits 1 and 2; however, Dr. Johnson explained that these exhibits did not address "total factor" productivity, with which we are here concerned, but only certain narrow aspects of total factor productivity.

intraLATA access, nor, in the case of flat-rate local service, for additional minutes-of-use. They do, however, pay for additional access lines, for various miscellaneous services, and for intrastate toll service, none of which Dr. Norsworthy used in his calculation.

Dr. Norsworthy acknowledged that there is no empirical support for inclusion of a "customer productivity dividend" in a productivity offset, and that the 0.5% that he recommends is a "judgment." He testified that as an economist, he would never criticize a particular methodology, then use that methodology for the very purpose for which he had criticized its use. That is, nevertheless, what he contends Dr. Christensen, a highly regarded expert in the field of productivity, did in the Christensen study.

Moreover, Dr. Norsworthy acknowledged the validity of several Christensen studies, as well as his own study, all of which indicate that overall productivity for Regional Bell Operating Companies is in the 2.8% annual growth range. These studies involved a number of different entities evaluated over long periods of time. Dr. Norsworthy, however, attempted to measure only BellSouth's historical productivity over only seven years. After acknowledging that one of the purposes of price regulation is to create incentives for greater efficiency and that the purpose of a productivity factor is to allow the "target company" to retain earnings in excess of the productivity factor, Dr. Norsworthy still contended that measuring BellSouth against its own historical productivity performance was appropriate. He stated that he would have used BellSouth's historical productivity as a standard, even if BellSouth had been only one-half as productive as the industry as a whole. This approach, it seems to the Commission, would reward bad management, just as using a company's productivity when it is higher than the industry norm, penalizes good management.

Dr. Perl, on rebuttal, attacked both Dr. Norsworthy's methodology and his conclusions, pointing out that Dr. Norsworthy had failed to include all of the appropriate outputs, and that Dr. Norsworthy's inputs were heavily skewed by declining interest rates. Dr. Perl rejected arguments about the FCC's 5.3% productivity offset, arguing that the 5.3% productivity offset was a "tradeoff" in that a LEC that elected anything less did not receive price regulation from the FCC, but rather, remained under rate of return regulation.

Dr. Perl testified that with respect to the FCC's productivity offsets, no one knows how those figures were derived. Dr. Perl also attacked the use by Dr. Norsworthy of only BellSouth's alleged historical productivity in North Carolina as a guide. Using BellSouth's, or in other words, the "target company's" productivity as a guide, he contended amounts to rate of return regulation by another name, because ratepayers end up with any productivity gains that the firm makes — a disincentive to higher productivity. Dr. Perl argued forcefully and persuasively that the target company ought to be allowed to retain savings resulting from its own productivity gains over and above the industry norm.

Other witnesses tended to support Dr. Perl. For example, DOD witness Gildea stated that his 5.3% FCC-type productivity offset is very similar to those offsets set forth in the Stipulated Plan, the difference between them being "negligible" because of the $60 million in rate reductions also contained in the Stipulated Plan.

The Attorney General takes the position that a productivity offset of 3.5%, which reflects the average offsets of regional Bell Operating Companies which use the GDI-PI as an inflation factor, is the

most appropriate number to use and will allow the Company flexibility to adjust prices to meet competition while assuring that rates will not rise too quickly for customers with few or no competitive alternatives.

CUCA argues that the appropriate offset for use in this proceeding is the 5.3% "X-factor" which BellSouth elected at the federal level. In order to incorporate such an increased productivity offset into the Stipulated Plan, the Commission should revise Section II.I to provide that the offset to the GDP-PI for the Basic Services Category, the Non-Basic I Services Category, and the Interconnection Services Category is 5.3%.

Finally, in this regard, Dr. Johnson testified that total factor productivity studies must include appropriate outputs in calculating total LEC outputs, including access, long distance, and the growth in access lines, which constituted, in his opinion, "a major portion of the Company's operation or production process." Like Mr. Gildea, Dr. Johnson noted that the $60 million rate reductions and the three-year cap on residence basic local service constitute implicit offsets that produce significantly higher offsets — two to four percent — than those set forth in the Stipulated Plan.

We are not persuaded by Dr. Norsworthy's testimony. Rather, we find the productivity offsets to which the Public Staff and BellSouth have stipulated to be consistent with the evidence in the proceeding concerning both historical productivity in the telecommunications industry, as testified to by both Dr. Perl and Dr. Norsworthy, and as set forth in Perl Exhibit 2, as well as with productivity offsets set forth in the other BellSouth plans. Moreover, unlike a productivity offset of one-half GDP-PI, as set forth in the Original Plan, these specific productivity offsets provide for price decreases in periods of low inflation. Accordingly, we accept the proposed productivity offsets as within the public interest. Such offsets have been incorporated into the Commission-approved Price Regulation Plan, as adopted herein.

f. Does the Commission contain sufficient authority under BellSouth's Stipulated Plan to protect the public interest and is the Stipulated Plan otherwise consistent with the public interest?

BellSouth, in the Stipulated Plan, has agreed to a Commission review of the operation of the Stipulated Plan after five years and has agreed to file earnings surveillance reports annually (Section IX). Both Dr. Johnson and BellSouth viewed these two aspects of the Stipulated Plan as major concessions on the part of BellSouth. In those regards, however, the Commission also believes that the Commission-approved Price Plan needs to provide (1) that the Commission will undertake a five year review, (2) that such review will be initiated in advance of the approved price plan's fifth anniversary, (3) for the annual filings of earnings surveillance reports, and (4) that any claim of confidentiality with regard to these reports shall be made by the Company and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act. Accordingly, the Commission will include such provisions in the approved plan. Such action is being taken so as to clearly indicate the Commission's intention with respect to the five year review and to otherwise, to the maximum extent practicable, balance the interests of all concerned.

The Commission retains other significant authority, as well, such as the authority to monitor and maintain service quality, the authority to review rate restructures and the terms and conditions of tariffs against a public interest standard, and oversight over classification and reclassification of services, tariffs, financial impacts of governmental actions, regrouping, and imputation requirements. In short, currently

regulated services remain subject to Commission scrutiny under price regulation. In addition, the Commission has new authority with respect to complaints concerning anticompetitive behavior. G.S. 62–133.5(e). We are, therefore, persuaded that the Commission-approved Price Regulation Plan strikes a balance between the authority that the Commission needs to continue to protect the public interest and the pricing flexibility that the Company needs to move into a competitive environment.

This leaves, however, the question of whether the Commission has the power to subsequently modify a price regulation plan during the term of the price plan that it has approved herein. Under G.S. 62–80 and other relevant provisions, we believe that the Commission has this authority.

While we are persuaded that the Commission-approved Price Regulation Plan represents a useful means whereby BellSouth can undertake the process of transition to a more competitive environment, where the rigors of competition gradually reduce the need for Commission oversight, the Commission concludes that it should not--indeed, cannot--divest itself of powers and responsibilities which are statutorily conferred. The Commission is, of course, cognizant that changes to the price plan should not be undertaken for light and transient reasons. Nevertheless, especially in view of the fast-changing legal and technological environment of telecommunications in North Carolina and the nation, the Commission must retain the power, consistent with due process, to make truly needful adjustments in the price plan, if changing circumstances and the public interest so require.

g. Should the Commission include a public notice requirement in the price plan?

Both the Attorney General and CUCA noted the absence of public notice requirements in the Stipulated Plan. The Attorney General argued that consumers should receive clear and conspicuous notice of price changes under the price plan in the form of bill inserts on different colored paper from the rest of the bill. Such notice should include the proposed rate under the price plan and the effective date of the rate increase. CUCA argued that the Plan does not provide intervenors with an adequate opportunity to investigate or oppose tariff filings. Intervenors should be able to receive tariff filings by hand-delivery or facsimile and should have 30 days rather than 14 in which to challenge a tariff.

BellSouth, however, in its Proposed Order recommended that the tariff's provision be amended to add a new subparagraph that would require customer notice by bill insert of any price increase at least 14 days before any public utility rates are increased. The notice would include the effective date of the rate change, the existing rates, and the new rates.

The Commission concludes that it should incorporate the public notice requirement suggested by BellSouth in the Commission-approved Price Plan with the additional proviso that such notice may be rendered either through bill insert or by direct mail. The Commission concludes that the changes suggested by CUCA and the Attorney General would be unduly burdensome and are unnecessary in light of this amendment.

h. What is the appropriate effective date of the price plan?

BellSouth has proposed a May 1, 1996, effective date for the price plan. However, in light of the time needed to file tariffs, including those to implement rate reductions, and also in order to give the

Company a time period in which it can accept or reject the price plan as modified, the Commission concludes that an effective date of Monday, June 3, 1996, would be appropriate.

i. Is the Commission-approved Price Regulation Plan then otherwise consistent with the public interest?

We conclude that it is. First, the productivity offsets require the Company to share gains in future productivity with its customers. Second, the Stipulated Plan, the provisions of which have been largely adopted by the Commission, represents a major improvement over the Original Plan and imposes more risk upon the Company. Third, this Commission has a long history of encouraging negotiation, and the two parties that negotiated — the Public Staff and BellSouth — represent a broad range of the public interest. In this regard, Chapter 62 expressly provides that:

> In all contested proceedings the Commission . . . shall encourage the parties and their counsel to make and enter stipulations of record . . . [c]larifying the issues of fact and law. The Commission may make informal disposition of any contested proceeding by stipulation, [or] agreed settlement . . . .

G.S. 62-69. Negotiation among the parties to actions before the Commission, in an effort to resolve their differences, advances the public policy of North Carolina as expressed by our Supreme Court. "The law favors the settlement of controversies out of court. It encourages such action by securing to every man the opportunity to negotiate for the purchase of his peace without prejudice to his rights." Penn Dixie Lines Inc v. Grannick, 238 N.C. 552, 555, 78 S.E.2d 410, 413 (1953).

Consistent with both the law and policy of this State, BellSouth and the Public Staff have negotiated a stipulation, and the product of their efforts is largely reflected in the Commission-approved Price Regulation Plan. While other parties to this docket have criticized them for doing that which the law and policy of this State encourage, BellSouth and the Public Staff have in good faith resolved their differences and have, as this Order demonstrates, made an exceedingly extensive contribution to a price plan, the Commission-approved Price Regulation Plan, that the Commission believes, and so concludes, meets each of the statutory criteria required by House Bill 161.

Fourth, we view the five-year review and the submission of financial reports as a major concession and a major influence upon BellSouth's behavior during the operation of the Plan. Fifth, we believe that the Commission-approved Price Regulation Plan properly shifts the risk of future investment decisions from BellSouth's ratepayers to its shareowners, which is where that risk must rest in a competitive marketplace. Sixth, we believe that a competitive marketplace is not only consistent with the goals of House Bill 161, but will engender significant benefits for the citizens of this State through improved services, lower prices, and greater technological innovation. We also believe that competition will force BellSouth to become more efficient, and that ultimately, BellSouth's North Carolina customers will be the beneficiaries of that efficiency. Seventh, we believe that the Commission-approved Price Regulation Plan will avoid the "marginalization" of BellSouth, because it will permit BellSouth to compete effectively, thus maintaining and attracting market share, generating continued support for the maintenance of reasonably affordable local exchange service in North Carolina. We believe that for competition to truly deliver the benefits of the Information Age to all of the citizens of North Carolina, BellSouth must be a major

participant in the telecommunications marketplace. Otherwise, we conclude that the benefits of competition will be distributed unevenly and inequitably to the people of North Carolina, particularly to those individuals and small businesses who do not possess great market power due to size and or location. Finally, we conclude that the Commission-approved Price Regulation Plan protects and retains affordability, and we believe that such plan offers significant potential for enhanced economic development.

IT IS, THEREFORE, ORDERED as follows:

1. That the Price Regulation Plan attached to this Order as Appendix A be, and the same is hereby, approved for implementation by BellSouth effective Monday, June 3, 1996, provided that the Company shall, not later than Monday, May 20, 1996:

A. File a statement in this docket notifying the Commission that the Company accepts and agrees to all of the terms, conditions, and provisions of the Commission-approved Price Regulation Plan and indicating its willingness to implement said Plan effective June 3, 1996;

B. Incorporate the modifications reflected in the Commission-approved Price Regulation Plan and refile said Plan with an effective date of June 3, 1996; and

C. File appropriate rate reduction tariffs in conformity with the provisions of this Order and the Commission-approved Price Regulation Plan reflecting an effective date of June 3, 1996.

2. That, if the Company agrees to implement the Commission-approved Price Regulation Plan, all interexchange carriers, other than switchless resellers, certificated by the Commission to provide intrastate long distance service in North Carolina shall, not later than Tuesday, May 28, 1996, file appropriate tariffs designed to reflect a full flow through of the access charge reductions approved as of the effective date of the Plan. This flow though shall be accomplished through reductions to basic residential and business MTS rates on a dollar-for-dollar basis. Such MTS rate reductions shall become effective June 3, 1996. Further, that AT&T, MCI, and Sprint shall, as part of their MTS rate reduction filings, file detailed work papers reflecting how the access charge reductions required by this Order will be flowed though to their MTS customers. All subsequent access charge reductions required by this Order and the Commission-approved Price Regulation Plan for BellSouth shall also be flowed through by affected interexchange carriers by means of MTS rate reductions.

This the 2nd day of May 1996.

NORTH CAROLINA UTILITIES COMMISSION

(SEAL) Geneva S. Thigpen, Chief Clerk

(For Attachments A - E of Appendix A See Official Copy of Order in Chief Clerk's Office.)

APPENDIX A

PRICE REGULATION PLAN
FOR
BELLSOUTH TELECOMMUNICATIONS, INC. - NORTH CAROLINA
EFFECTIVE JUNE 3, 1996

I. APPLICABILITY OF PLAN

The Price Regulation Plan (hereinafter referred to as "the Plan") will apply to all services offered by BellSouth Telecommunications, Inc. (hereinafter referred to as "BellSouth" or the "Company") and subject to regulation by the North Carolina Utilities Commission.

II. DEFINITIONS

A. Basic Services - Those services generally required to provide basic local exchange service ~~to residential~~ and business customers for the transmission of two-way interactive switched voice grade communications — i.e., access line, dial tone, and usage — within the basic local calling area.

B. Contract Service Arrangement (CSA) - An arrangement wherein the Company provides service pursuant to a contract between the Company and a customer. Such arrangements include situations in which the services are not otherwise available through BellSouth's tariffs, as well as situations in which the services are available through BellSouth's tariffs, but to meet competition, BellSouth offers those services at rates other than those set forth in its tariffs. CSAs may contain flexible pricing arrangements and, as a result of the specific competitive situation, may also contain proprietary information that BellSouth may protect.

C. Gross Domestic Product Price Index (GDP-PI) - The GDP-PI is a measure of inflation in the market prices of output in the economy. Also known as the Weighted Price Index for the Gross Domestic Product, the GDP-PI is calculated and published quarterly by the U.S. Department of Commerce.

D. Interconnection Services - Those services, except Toll Switched Access Services, that provide access to the Company's facilities for the purpose of enabling another telecommunications company or access customer to originate or terminate telecommunications services. Interconnection Services include, but are not limited to, special access services, local interconnection services and interconnection services for public telephones.

E. Long Run Incremental Cost (LRIC) - The cost the Company would incur (save) if it increases (decreases) the level of production of an existing or new service or group of

services. LRIC consists of costs associated with adjusting future production capacity that are causally related to the rate elements being studied. These costs reflect forward-looking technology and operational methods. LRIC shall be construed as presumptively appropriate for use in this Plan; provided however, that such use is without prejudice to the right of any party to challenge the propriety of use of LRIC in any complaint proceeding including but not limited to complaints brought before the Commission alleging anticompetitive conduct on the part of BellSouth

F. New Service - A regulated function, feature, capability, or combination of these that is not offered by BellSouth as of the effective date of the Plan.

G. Non-Basic 1 Services - All tariffed, regulated services of the Company that are not classified as either Basic, Non-Basic 2, Interconnection or Toll Switched Access Services.

H. Non-Basic 2 Services - Centrex Services and Billing and Collection Services.

I. Offset - The Offset to the GDP-PI for the Basic Services Category is 2%; the Offset for the Non-Basic 1 Services Category is 3%; and the offset for the Interconnection Services Category is 3%.

J. Price Regulation Index (PRI) - A PRI is used to limit or otherwise place a ceiling on price changes, in the aggregate, for the Basic Services Category, the Non-Basic 1 Services Category and the Interconnection Services Category. A PRI is not applicable to the Non-Basic 2 Services Category or the Toll Switched Access Services Category as there is no limit on the price changes in the Non-Basic 2 Category, and the prices in the Toll Switched Access Services Category will not be adjusted for the effects of inflation. The initial PRI for the service categories listed above for the first year of the Plan is one hundred (100). In all subsequent years of the Plan, the PRI will be developed by using the change in the GDP-PI minus the Offset applicable to the respective Services Category. The PRI will be developed by 1) dividing the most recent quarterly GDP-PI results available at the time of the annual filing by the GDP-PI results for the same quarter for the previous year, 2) dividing the Offset by 100, 3) subtracting the results of Step 2 from the results of Step 1, 4) multiplying the results of Step 3 by the PRI for the previous year.

K. Restructure - A modification of the rate structure of an existing service by introducing one or more new rate elements, establishing vintage rates for the service, deleting one or more rate elements or redefining the functions, features or capabilities provided by a rate element so that the service covered by the rate element differs from that furnished prior to the modification. Restructure does not include a change in an existing rate element price when such change is made in accordance with the provisions of Section V of this Plan.

L. Service Category - Groupings of tariffed services for the purposes of applying the specific pricing rules set forth in this Plan.

M. Service Price Index (SPI) - An SPI is will be developed ~~annually~~ for the Basic Services Category, the Non-Basic 1 Services Category and the Interconnection Services Category. An SPI will not be developed for the Non-Basic 2 Category or the Toll Switched Access Services Category as there will be no Category limit on price changes for the Non-Basic 2 Category, and the prices in the Toll Switched Access Services Category will not be adjusted for the effects of inflation.

Each SPI is calculated by:

1. Multiplying the existing price for each rate element in the category by the ~~present~~ demand for that rate element to produce the existing revenue for each rate element, then by adding together the existing revenues for all of the rate elements in the category to produce the existing revenues for that category (the "existing category revenues"), and
2. Multiplying the ~~new~~ proposed price for each rate element in the category by the ~~present~~ demand for that rate element to produce the projected revenue for each rate element, then by adding together the projected revenues for all of the rate elements in the category to produce the projected revenues for that category (the "projected category revenues"), and
3. Dividing the projected category revenues obtained in Step 2 by the existing category revenues obtained in Step 1, and
4. Multiplying the result obtained in Step 3, above, by the previous ~~year's~~ SPI.
5. The annual filing will establish the demand to be utilized in calculating the SPIs for the coming Plan year and will reflect the most current demand available at the time the annual filing is prepared.

N. Telecommunications Service - A service as set forth in G.S. § 62-3(23)a.6.

O. Toll Switched Access Services - Those services that provide access to the Company's switched facilities for the purpose of enabling another telecommunications company or access customer to originate or terminate toll switched telecommunications services.

III. CLASSIFICATION OF SERVICES

A. General

Each tariffed telecommunications service offered by BellSouth and subject to regulation by the Commission will be classified into one of five Service Categories. The five Service Categories are as follows:

1. Basic Services - See Attachment A for a listing of tariff references associated with the services included within this category.
2. Non-Basic 1 Services - See Attachment B for a listing of tariff references ~~associated with the services~~ included within this category.
3. Non-Basic 2 Services - See Attachment C for a listing of tariff references associated with the services included within this category.
4. Interconnection Services - See Attachment D for a listing of tariff references ~~associated with the services~~ included within this category.

5. Toll Switched Access Services - See Attachment E for a listing of tariff references associated with the services included within this category.

B. Classification of New Services and Reclassification of Existing Services; Opportunity of Interested Parties to Oppose.

1. Fourteen (14) days prior to offering a new service, and thirty (30) days prior to reclassifying an existing service, the Company shall make a written filing with the Commission, the Public Staff, and the Attorney General. In all cases the filing shall include a description of the service, the proposed rates for the service, and the proposed classification or reclassification of the service. The filing with the Commission and the Public Staff shall also include the appropriate documentation supporting the proposed classification or reclassification of the service.

2. Any interested party shall be afforded an opportunity, by timely petition to the Commission, to propose that a new service be classified in a category different from that proposed by the Company, or to oppose the reclassification of an existing service, or to propose that the service be reclassified in a category different from that proposed by the Company. However, the filing of such a petition shall not postpone the introduction of any new service. The term ordered by the Commission for consideration of such classification or reclassification shall not exceed forty-five (45) days unless, for good cause, the term is extended to a maximum of seventy-five (75) days. The Commission may modify or disapprove the classification or reclassification proposal at any time prior to the end of the term.

IV. TARIFF REQUIREMENTS

A. BellSouth will file tariffs for services included in any of the five Service Categories. These tariffs will specify the applicable terms and conditions of the services and associated rates.

1. Any tariff filing changing the terms and conditions, increasing rates, restructuring rates or introducing a new service will be presumed valid and become effective, unless disapproved, modified or otherwise suspended by the Commission for a term not to exceed forty-five (45) days, fourteen (14) days after filing. In the case of a tariff filing to restructure rates as defined in paragraph 11.K., the Commission may extend the term for an additional thirty (30) days and may disapprove or modify the tariff filing if it finds that any of the rates, terms or conditions of the tariff are not in the public interest. The Commission may on its own motion, or in response to a petition from any interested party, investigate whether a tariff is consistent with this Plan and the Commission's rules and whether the terms and conditions of the services are in the public interest. Provided however, a tariff filing limited to a price change to an existing rate element shall only be investigated with respect to whether it is in compliance with Section V of this Plan

2. Any tariff filing reducing rates will be presumed valid and become effective seven (7) days after filing unless otherwise suspended by the Commission for a term not to exceed forty-five (45) days.

3. BellSouth will provide customer notification by bill insert or direct mail to all affected customers of any price increase at least fourteen (14) days before any public utility rates are increased. Notice of a rate increase shall include at a minimum the effective date of the rate change(s), the existing rate(s), and the new rate(s).

B. The Company will provide CSA's under the terms, conditions, and rates negotiated between the Company and the subscribing customer(s). Such terms, conditions, and rates will be set forth in contractual agreements executed by the parties and filed as information with the Commission. When those contracts contain proprietary information, the Company will delete that information from the copy filed with the Commission. CSAs may be but are not required to be tariffed.

V. PRICING RULES

A. General

1. The general pricing rules set forth in this section of the Plan are applicable to all service categories in addition to the specific pricing rules for each service category and for new services, as set forth in paragraphs B, C, D, and E, following, unless specifically exempted in this Plan.
2. This Plan establishes a pricing structure that allows the Company to adjust its prices for rate elements included in all service categories, except the Non-Basic 2 and Toll Switched Access Services Categories, to reflect the impacts of inflation less an Offset. The overall percentage change in prices for the affected rate elements, however, cannot exceed the percentage change of inflation (as represented by the PRI) minus the Offset. The new prices are lawful when the SPI for a service category is less than, or equal to, the PRI for the same service category, and when the prices for the rate elements within that service category have been established in accordance with the rules set forth in this Plan.
3. Forty-five (45) days prior to each anniversary of the effective date of the Plan, the Company will make an annual filing. The purpose of this filing is to update the SPI and the PRI for all service categories, except the Non-Basic 2 and Toll Switched Access Services Categories, based upon the change in the GDP-PI over the preceding year minus the Offset. These filings may or may not include price changes.
4. In the event that the annual change in the GDP-PI minus the Offset is a negative amount, the Company will reduce prices except (1) for any service included in the Toll Switched Access or Non-Basic 2 Services Categories, and (2) for any service currently priced below its long run incremental cost (LRIC), or (3) when such a reduction would result in reducing prices below LRIC for any service currently priced above LRIC, or (4) if the SPI is below the newly-defined PRI. If, because of (2) or (3) above, it is not possible to reduce the SPI to the required level, the company will propose equivalent revenue reductions in other categories.
5. The Company will file tariffs with documentation demonstrating that all price changes comply with the pricing constraints set forth in this Plan.

6. If the Company elects not to increase its rates by the full amount allowed under the terms of the Plan in a given year, the Company may increase its rates in future years to reflect the full amount of the allowable increases previously deferred. The Company will not, however, attempt to recover any revenues foregone as a result of deferring the increase in prices.
7. The price for any individual rate element for any service offered by the Company shall equal or exceed its LRIC unless: (1) specifically exempted by the Commission based upon public interest considerations, or (2) BellSouth in good faith prices the service to meet the equally low price of a competitor for an equivalent service.
8. In the event that the U.S. Department of Commerce ceases publication of the GDP-PI, or significantly modifies the GDP-PI, or the GDP-PI becomes otherwise unavailable, the Company may select and recommend to the Commission subject to the Commission's approval, another comparable measurement of inflation to be used in the administration of this Plan.
9. The Company shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function.
10. This Plan shall not operate to permit anticompetitive practices. The Company shall not engage in predatory pricing, price squeezing, price discrimination, or anticompetitive bundling or tying arrangements as those terms are commonly applied in antitrust law. Nor shall the Company give any preference to the competitive services of affiliated entities.

B. Basic, Non-Basic 1 and Interconnection Services

1. The prices for rate elements in the Basic, Non-Basic 1 and Interconnection Services Categories in effect on the day prior to the effective date of this Plan shall be the initial effective prices under the Plan.

2. The establishment of a PRI and SPI for the Basic Services Category, the Non-Basic 1 Services Category and the Interconnection Services Category is required in order to test any change in the aggregate prices for rate elements included in these Categories.
   a) The PRI places an aggregate ceiling on the prices for rate elements within the Basic, Non-Basic 1 and Interconnection Services Categories. At the time the Plan is implemented, the value of the PRI for each of these Services Categories will be set at one hundred (100). In the second and subsequent years of the Plan, the PRI will be adjusted in accordance with Section II.J. of the Plan, to reflect any change in the GDP-PI occurring over the preceding year minus the Offset. For example:
      (1) if the result of dividing the most recent quarterly reported GDP-PI by the reported GDP-PI for the same quarter for the preceding year is 1.04, and
      (2) the result of dividing the offset (assume 2%) by 100 is .02, and
      (3) the result of subtracting the results of Step (2) is 1.02, and

(4) the result of multiplying the results of Step (3) by the PRI for the previous year is 102, then

(5) the PRI for the Category for the second year of the Plan would be 102.

b) The SPI is an index that reflects the relative change in revenue that would be generated by the new prices as compared to revenue generated by the old prices at equal demand for all the rate elements with in the Basic, Non-Basic 1 and Interconnection Services Categories. When the Plan is implemented, the initial value of the SPI will be set at one-hundred (100). In the second and subsequent years of the Plan, the SPI will be adjusted to reflect the amount of change between the new and old prices for all the rate elements within the Category. Except for price changes associated with regrouping of exchanges as set forth in Section VII. and the financial impact of governmental action as set forth in Section VI., as prices for rate elements within the Category are changed, a new SPI is calculated, compared to the PRI and then included with the tariff filing. The SPI is applied to the entire service category and not individual services or rate elements within the Category. The Company may increase some rates, while decreasing others, as long as the SPI is less than, or equal to, the PRI and as long as the increase in any individual rate element does not exceed the GDP-PI plus the percentage specified in the table set forth in subparagraph 5. below.

3. The initial prices for Residence Basic Local Exchange Service shall be the maximum prices charged for a period of three years from the effective date of the Plan (the "cap period"). The specific rates to be capped are the Residence Individual Line Service charges, the Residence Touch-Tone Service charge, the Residence Service Order charge, the Residence Premises Visit charge and the Residence Access Line Connection charge (the "capped Basic Local Exchange Services").

4. During the cap period, the capped Basic Local Exchange Services will be excluded from the calculation of the SPI for the Basic Services Category.

5. During the cap period, prices for individual non-capped rate elements within the Basic Services Category and prices for any rate elements within the Non-Basic 1 and Interconnection Services Categories may be increased or decreased by varying amounts. Price increases for individual rate elements cannot exceed the percent change in the GDP-PI over the preceding year, plus the percentages shown in the table below.

Service Category	Change in GDP-PI plus
Basic	3%
Non-Basic 1	17%
Interconnection	7%

For example, the price increases for individual rate elements in the Basic Services Category cannot exceed five percent (5%), assuming a plus two percent (+2%) change in the GDP-PI for the previous year. Price increases can be made at any time, subject to Commission review and approval; however, only one increase per individual rate element is allowed within the twelve-month period between anniversary dates of the Plan. Price decreases may be made at any time and are not limited as to the number of decreases in the twelve-month period between anniversary dates of the Plan. This provision shall apply to both capped and non-capped Basic rate elements after the expiration of the cap period and to all rate elements in the Non-Basic 1 and Interconnection Services Categories.

6. In the beginning of the fourth year of the Plan, the PRI and the SPI associated with the Basic Services Category will be re-initialized as a result of removing the cap on capped Basic Services. In the annual filing to be effective at the beginning of the fourth year, the PRI for the Basic Services Category will be determined by re-initializing the index to one hundred (100) and calculating a new PRI for the fourth year based upon the percent change in the GDP-PI from the previous year, minus the Offset. In the same annual filing at the beginning of the fourth year, the SPI for the Basic Services Category will also be re-initialized to 100.
7. As set forth in Section VI. and paragraph VII.B. following, price changes resulting from changes in the PRI will not be impacted, or in any way affected, by changes resulting from governmental action or the regrouping of exchanges. Any price changes resulting from governmental action or regrouping of exchanges are independent of, and in addition to, any price changes resulting from changes in the PRI.

C. Non-Basic 2 Services

1. The prices for rate elements in the Non-Basic 2 Services Category in effect on the day prior to the effective date of this Plan will be the initial effective prices under the Plan.
2. Prices for individual rate elements within the Non-Basic 2 Services Category may be increased or decreased by varying amounts, and the rate changes are not subject to either a rate element constraint or a Category constraint. Price increases and decreases may be made at any time and are not limited to any specific number of increases or decreases in the twelve-month period between anniversary dates of the Plan.

D. Toll Switched Access Services

The prices in effect for the individual rate elements included in the Toll Switched Access Services Category ~~effective on the day prior to the effective date~~ after each of the reductions described in Paragraphs XI.A. and B. of the Plan shall, in the aggregate, be the maximum that the Company will charge under the Plan.

E. New Services

1. Prior to offering a new service, except for a new service under the terms of a CSA, the Company will file a tariff with the Commission setting forth the terms, conditions, and rates of the new service. Appropriate documentation and support related to the service category classification will be provided. Supporting documentation shall include detailed information stating the reason for assigning the new service to a particular category, detailed information concerning the LRIC of each rate element and information concerning any applicable public interest concerns. Such documentation may include proprietary information, in which case the Company will designate such information as proprietary, and such information shall be treated as proprietary under G.S. § 132-1.2.
2. As set forth in paragraph IV.A.1., preceding, a tariff for a new service shall be presumed valid and become effective unless modified or disapproved by the Commission or suspended by the Commission for a term not to exceed forty-five (45) days, fourteen (14) days after filing.
3. New services assigned to any category other than the Non-Basic 2 Services Category or the Toll Switched Access Services Category will be included in the SPI associated with the assigned service category in the first annual filing after the service has been available for six months. As set forth in Section III above, the Commission shall make the final determination regarding the classification or reclassification of any service.

VI. FINANCIAL IMPACTS OF GOVERNMENTAL ACTIONS

With Commission approval, the Company may adjust the prices of any service(s) due to the financial impacts of governmental actions that have a specific impact on the telephone industry as a whole or upon any segment of the industry that includes the Company, to the extent that such impacts are not measured in the GDP-PI. Such governmental actions would include, by way of illustration and not limitation, general changes such as "separations" matters (involving the separation of investment, expenses, and revenues between the intrastate and interstate jurisdictions) as well as extended area services or Commission-required technological innovations. In such an event, the Company or another interested party may request the Commission to adjust the rates accordingly. The request shall include a description of the governmental action, the proposed adjustment to prices, the duration of the adjustment, and the estimated revenue impact of the governmental action. The Company may request price adjustments to reflect the financial impact of governmental actions as a part of the annual filing and one additional price adjustment at any time during each Plan year to reflect the financial impact of governmental actions. A Plan year shall run from an anniversary date of the effective date of the Plan to the next anniversary date of the effective date of the Plan. The Commission ~~will~~ may approve the request if the Commission finds that:

1. the governmental action causing the financial impact has been correctly identified;
2. the financial impact of the governmental action has been accurately quantified;
3. the proposed rates produce revenue covering only the financial impact of governmental actions; ~~and~~
4. the rates would be applicable to the appropriate class or classes of customers.; and

5. the adjustment in rates is otherwise in the public interest

Price changes resulting from governmental action will not impact or otherwise affect the price changes provided for under the terms of the pricing rules set forth in Section V. preceding. In addition, any price changes resulting from approved governmental action requests will not be constrained by the pricing rules set forth in Section V. The Commission may, on request of the Company or another interested party, or on its own initiative, require the Company to adjust prices for circumstances that meet the above criteria.

VII. REGROUPING OF EXCHANGES

A. BellSouth will not regroup any of its exchanges during the three-year period for which Residence Basic Local Exchange Service rates are capped under the provisions of paragraph V.B.3. preceding.

B. After the expiration of the cap period, BellSouth may regroup exchanges due to growth in access lines. Such regrouping may be proposed in the annual filing referenced in Section VIII. following, for any exchange meeting the criteria for the new rate group. Movement of an exchange from one rate group to another is limited to one rate group per year except where movement to or toward the proper rate group together with the deletion of the existing EAS additive would not cause an increase greater than the increase caused by a one rate group move. When an exchange is regrouped, any existing EAS additive will be deleted. Price changes resulting from the regrouping of exchanges will not impact or otherwise affect the price changes provided for under the terms of the pricing rules set forth in Section V. preceding. Additionally, any price changes resulting from the regrouping of exchanges will not be constrained by the pricing rules set forth in Section V.

VIII. ANNUAL FILING

The Company shall make an annual filing containing the following information:

A. The annual percent change in the GDP-PI,
B. The applicable change to the PRI for the Basic, Non-Basic 1 and Interconnection Services Categories based upon the percent change in the GDP-PI minus the Offset,
C. The change in the SPI for the Basic, Non-Basic 1 and Interconnection Services Categories, and
D. Complete supporting documentation.

IX. COMMISSION OVERSIGHT

A. The Commission retains oversight for service quality, complaint resolution and compliance by the Company with all elements of this Plan.

B. The Company will annually file ~~on a proprietary basis~~ the TS-1 financial surveillance reports which are now filed with the Commission. Any claim of confidentiality with

regard to these reports shall be made by the Company and shall, if necessary, be determined by the Commission in accordance with Chapter 132 of the North Carolina General Statutes, the Public Records Act.

C. The Commission ~~may~~ shall undertake a review of the operation of the Plan in advance of five years from the effective date of the Plan, to determine how the operation ~~of the Plan~~ comports with House Bill 161 and specifically how the Plan:

1. Protects the affordability of basic exchange service, as such service is defined by the Commission;
2. Reasonably assures the continuation of basic local exchange service that meets reasonable service standards that the Commission may adopt;
3. Will not unreasonably prejudice any class of telephone customers, including telecommunications companies; and
4. Is otherwise consistent with the public interest.

Following its review, the Commission may make modifications to the Plan consistent with the public interest.

X. DEPRECIATION SCHEDULES

The Company will, as of the effective date of this Plan, determine and set its own depreciation rates.

XI. RATE REDUCTIONS

A. The Company will reduce its revenues by $60 million through annual rate reductions as follows:

Effective date of the Plan:	Approximately $15 million
First anniversary of the Plan:	Approximately $15 million
Second anniversary of the Plan:	Approximately $15 million
Third anniversary of the Plan:	Approximately $15 million

B. The rate and revenue reductions set forth in paragraph A., above, will be applied so that the rates for ~~Touch-Tone~~ Touchtone service are reduced by one-half on the effective date of the Plan and eliminated by the ~~second~~ first anniversary of the Plan and so that the Originating Carrier Common Line Charge in the Toll Switched Access Services Category is ~~also~~ eliminated by the second anniversary of the Plan. After the elimination of these two charges is completed, the Company will apply the remaining portion of the $60 million total revenue reduction to rate reductions for ~~toll services, complex business services, and~~ toll switched access services. ~~If, however,~~ the Company makes other reductions in rates ~~for toll services, complex business services, or toll switched access services prior to the elimination of the charges for Touch-Tone service and the Originating Carrier Common Line Charge,~~ prior to the third anniversary of the Plan, these other rate reductions shall

not, unless approved by the Commission, constitute a portion of the $60 million total revenue reductions required by paragraph A., above.

C. The Company will file tariffs to reduce the rates for the services set forth in paragraph B. above, fourteen (14) days prior to the anniversary dates set forth in paragraph A., above. Provided, however, that the Company shall file the tariffs implementing the initial rate reductions as soon as reasonably possible prior to the effective date of the Plan. The tariff filings required by this paragraph must indicate that the rate reductions are being made pursuant to Section XI. of the Plan.

D. The rate reductions described in this Section will be in addition to any rate reductions required by the pricing rules set forth in paragraph V. of the Plan. Any rate reductions made pursuant to this Section of the Plan will not change the relationship between the SPI and the PRI for the category of the affected services, and the Company will include in the tariff filing required by paragraph C., above, documentation demonstrating that the rate reductions have not affected the relationship between the SPI and the PRI for the category(ies) of the affected service(s).

E. On the effective date of the Plan, that portion of the Commission's Order of April 8, 1988, in Docket Nos. P-100, Subs 65 and 72, requiring annual rate adjustments to the Originating Carrier Common Line Charge, shall no longer apply to the Company.

XII. EFFECTIVE DATE

The effective date of this Plan is Monday, June 3, 1996.

DOCKET NO. P-55, SUB 1013
DOCKET NO. P-7, SUB 825
DOCKET NO. P-10, SUB 479
DOCKET NO. P-19, SUB 277

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1013

In the Matter of Application of BellSouth Telecommunications, Inc., for, and Election of, Price Regulation	)	
DOCKET NO. P-7, SUB 825 DOCKET NO. P-10, SUB 479	)	
In the Matter of Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plan Pursuant to G.S. 62-133.5	)	ORDER OF CLARIFICATION
DOCKET NO. P-19, SUB 277	)	
In the Matter of Application of GTE South Incorporated for, and Election of, Price Regulation	)	

BY THE COMMISSION: On May 2, 1996, the Commission entered Orders in these dockets authorizing Commission-approved Price Regulation Plans for BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), and GTE South Incorporated (GTE). By those Orders, the above-referenced local exchange companies (LECs or Companies) were required, not later than Monday, May 20, 1996, to file statements with the Commission stating whether they would accept and agree to all of the terms, conditions, and provisions of the Commission-approved Price Regulation Plans and indicating their willingness to implement those plans effective June 3, 1996.

On May 20, 1996, BellSouth, Carolina, Central, and GTE each filed statements of acceptance regarding their respective price regulation plans. However, each Company set out its understanding regarding the meaning of the imputation and anticompetitive practices provisions of the plans and requested the Commission to advise the Companies if those views were incorrect.

On May 22, 1996, the Presiding Commissioner entered an Order in these dockets allowing interested parties to file comments regarding the statements and understandings filed by each of the Companies. However, due to time constraints, such comments were required to be submitted no later than 2:00 p.m., on Friday, May 24, 1996.

Comments in response to the filings of the LECs were filed by the following parties on May 24, 1996: Public Staff; Attorney General; Carolina Utility Customers Association, Inc. (CUCA); North Carolina Payphone Association (NCPA); AT&T Communications of the Southern States, Inc. (AT&T); MCI Telecommunications Corporation (MCI); Time Warner Communications of North Carolina, L.P. (Time Warner); and BellSouth.

PUBLIC STAFF'S COMMENTS

The **Public Staff** states that in the modified price regulation plans authorized in these dockets, the Commission added a general policy statement on imputation to the pricing rules section of the pricing plans. The Companies have expressed different interpretations of the general policy adopted by the Commission. Previously, the Commission has adopted specific imputation standards only for intraLATA toll and toll-like services, in Docket Nos. P-100, Sub 126, and P-100, Sub 65. Specific imputation requirements for other services should be addressed as part of the resolution of the unbundling/interconnection/local competition negotiations or in other Commission proceedings. However, the Commission should reserve the right to exempt any service from imputation standards based upon public interest considerations, as appropriate.

The Commission concluded in its Orders of May 2, 1996, that the Companies should be required to impute to themselves the charges they make to COCOTs but did not address the details of the payphone imputation test. More importantly, the Commission did not consider the questions of any end-user rate increases that may be proposed by the Companies as a result of applying the imputation test. The Commission should recognize that details of the payphone imputation requirement may need to be addressed in a further proceeding. Whether any end-user rate increase that may be proposed as a result of an imputation requirement is in the public interest is a question which would need to be specifically addressed on a case-by-case basis.

ATTORNEY GENERAL'S COMMENTS

The **Attorney General** states that the language of the imputation standard is much broader than the interpretation of the LECs and requires imputation regardless of whether the Commission has held a proceeding and adopted an amount or a methodology for imputation. The administrative burden of setting imputation amounts for monopoly functions used in bundled services now and in the future is likely to be quite high; the language of the standard does not place such a burden on the Commission.

The approved plans prohibit any kind of preference for affiliates; the LECs' interpretation suggests that the prohibition against preferences is limited to access and interconnection. The language of the plans requires that anticompetitive practices are measured against what the Companies offer their affiliates. The LECs' interpretations measure anticompetitive practices against what the Companies offer their competitors. Such an interpretation can work to the disadvantage of competition if a Company can afford to impute rates well above costs to itself while a competitor with less market share or fewer inelastic customers cannot.

The LECs have not set out the reasons why they seek to narrow the Commission's Price Regulation Orders by reinterpreting the imputation and anticompetitive practices standards. If the LECs

wish to change the substance of the Price Regulation Orders in this manner, they should come forward with sound reasons for doing so. The Commission has the authority to provide for adoption of more specific standards in particular cases or to change or suspend the standards for particular services or monopoly functions if the public interest so requires. The Commission may wish to specifically reserve that authority in its response to the comments in this docket.

CUCA'S COMMENTS

CUCA states that the LECs each seem to interpret the imputation provision as applicable exclusively to the intraLATA toll services covered by the Commission's previous decisions in Docket Nos. P-100, Sub 65 and P-100, Sub 126 and any additional imputation requirements which may be expressly imposed in a future Order. This "understanding" is simply inconsistent with the entire basis for the inclusion of an imputation provision in the LECs' modified plans. The Commission adopted these imputation provisions as a result of arguments advanced by certain intervenors, who contended that the LECs should be required, "in establishing their price for a competitive service which includes a monopoly component, to impute as a component of the cost of such service the price it charges competitors for the monopoly component." The reasoning which led the Commission to adopt an imputation requirement is not limited to LEC services which are already the subject of such a requirement; instead, the logic of the Commission's decision applies to any service which a particular LEC offers in competition with a competing local provider. Acceptance of a narrow interpretation of the imputation provision like that apparently advocated by the LECs would render the Commission's imputation decision essentially meaningless. The inappropriateness of a narrow construction of the imputation requirement is demonstrated by the fact that, under this interpretation, the imputation provision would have no application to any service not already subject to such a requirement. Thus, the Commission should indicate that the imputation provision applies to all services which are offered in competition with other competing providers regardless of the extent to which the Commission has previously adopted or subsequently adopts a specific imputation standard applicable to that service.

CUCA acknowledges that the Commission has yet to adopt a specific imputation standard for many of the services to which the current requirement undoubtedly applies. This fact, standing alone, should have no impact on the Commission's resolution of this issue. As a practical matter, CUCA believes that the existence of the imputation provision means that each LEC which offers a service which is subject to competition must take appropriate action to bring its rates into compliance with this imputation standard on its own initiative. Moreover, CUCA believes that any competitor, customer, or customer representative who suspects that a particular LEC service is priced in a manner which is inconsistent with this imputation provision has the right to file a complaint with the Commission. In such a proceeding, the LEC will have the opportunity to attempt to demonstrate that the price charged for the disputed service passes an appropriate imputation standard. If the affected LEC fails to do so, the Commission should implement an appropriate remedy, which may include repricing the relevant service and compensating the complainant. Any other approach would either eviscerate the imputation provision or force the Commission to engage in an immediate examination of all potentially-competitive services in order to ensure compliance with the imputation provision. Thus, the Commission should not accept the LECs' apparent "understanding" of the imputation provision.

The Commission adopted the anticompetitive practices provision "for the reasons presented by the intervenors in support of their position in this regard." The intervenors who supported the addition of an anticompetitive practices provision to the stipulated plan did so for the purpose of limiting the extent to which the LECs could utilize their existing degree of monopoly control over the local exchange network to inhibit the development of an effectively-competitive local exchange market. The "understanding" of the last sentence in the anticompetitive practices provision suggested by the LECs seems limited to non-price practices which affect competitive interconnection with or access to the LECs' existing network. Although CUCA agrees that the anticompetitive practices provision should be construed to preclude such conduct, the scope of the relevant portion of the modified plans should not be limited to such practices. An incumbent LEC could inhibit the development of an effectively-competitive local exchange market in a number of ways, including the adoption of a pricing structure which discriminates against non-affiliates. As a result of the fact that the LECs' "understanding" of the anticompetitive practices seems to exclude "preference to the competitive services of affiliated entities" implemented through the use of discriminatory pricing practices, the Commission should not accept the LECs' "understanding" of the anticompetitive practices provision without clarifying that the last sentence of this provision applies to any and all ways by which the LECs could "give . . . preference to the competitive services of affiliated entities."

CUCA asserts that the imputation and anticompetitive practices provisions which the Commission included in the price regulation plans approved for BellSouth, Carolina, Central and GTE are critical to the development of meaningful local exchange competition. Any Commission decision to adopt the LECs' apparent "understanding" of these provisions would substantially weaken their impact and make the development of an effectively-competitive exchange market in the near future much less likely. The Commission should respond to the LECs' filings by adopting CUCA's interpretation of the imputation and anticompetitive practices provisions.

NCPA'S COMMENTS

The NCPA asserts that the LECs' proposed interpretations are an inappropriate attempt to narrow the scope of the Commission's Orders. The Companies are attempting to accept those parts of the Commission's Orders they like and "interpret" away the parts which they do not like. This attempt is inappropriate and must be rejected. The Companies' concerns, if any, regarding the requirements of the Commission's Orders, are not properly raised in a Notice of Acceptance. The Companies' options, as established by G.S. 62-133.5, are to accept the plans as approved by the Commission or to reject them. The statute simply does not allow the Companies to accept the plans conditioned on their self-serving "interpretation" of what the Orders require.

The Commission has determined that the plans should include imputation and anticompetitive safeguard requirements and has given explicit guidance concerning the scope of these requirements. These competitive safeguards are absolutely essential if telecommunications competition is to develop in North Carolina. It is perfectly understandable that the LECs would want to weaken those safeguards and, thus, frustrate their competitors and the development of competition. The Commission should not permit this to happen.

The NCPA further asserts that the LECs' proposed interpretations are inconsistent with the plain meaning of the Commission's Orders. The LECs' self-serving "interpretations" are inconsistent with the

requirements of the Commission's price flexibility Orders and must be rejected. The Commission's imputation requirement is clear. The Companies are required to impute the tariffed rate of monopoly-service functions to (1) the rate for any bundled local exchange service that includes that function and (2) to its own provision of competitive services including that function. This requirement could not be clearer. With respect to each Company's provision of a bundled local exchange service, BellSouth, GTE, and Carolina must impute to those services the tariffed rate of monopoly service functions included in the bundled service. With respect to each Company's provision of competitive services, such as pay telephone services, the Companies must impute to their own competitive services the tariffed rate which it charges to its competitors.

The "interpretations" urged by the Companies would stand this provision on its head and would render the imputation requirement surplusage. Carolina and GTE would read the Commission's Orders to require imputation only insofar as imputation is currently required. This is plainly at odds with the intent and plain meaning of the Commission's Orders.

With respect to COCOT service, the Commission clearly intended that LECs would be required to impute the prices which they charge to COCOT providers for necessary monopoly inputs--including, but not limited to, line charge, blocking, billing and collection, directory assistance, touchtone, measured service (local and toll), and validation--to their own competitive offering of pay telephone service. The Commission could not have made this requirement more clear. Carolina's and GTE's "interpretations" of the Commission's Orders would gut this requirement. For example, under Carolina's "interpretation" of the Commission's Order, despite the Commission's clear indication to the contrary, it would only be required to impute with respect to those services listed in the Non-Basis 2 category, which does not include the provision to pay telephone service. GTE's interpretation would have a similar effect.

According to the NCPA, BellSouth and GTE attempt a similar novel "interpretation" of the last sentence of the Commission's anticompetitive safeguard requirement. The Commission's Orders prevents the Companies from "giv[ing] any preference to the competitive services of affiliated entities." BellSouth and GTE would "interpret" the prohibition to apply only to discrimination with respect to interconnection and access to any monopoly unbundled network elements and tariffed service. BellSouth's and GTE's "interpretations" represent a substantial and serious scaling back of the Commission's requirements.

The Commission's Order is unambiguous. It prevents all preferences in favor of affiliated entities. For example, in the event that BellSouth places its pay telephone operations in an affiliated entity, the Commission's Order prohibits BellSouth from offering service or other benefit to that entity on terms which are more beneficial than the terms offered its competitors, Independent Payphone Providers.

Because the LECs' purported "interpretations" of the Commission's Orders authorizing price regulation are patent attempts to redefine, dilute and weaken the explicit requirements of the Commission's Orders, the NCPA submits that these "interpretations" must be rejected. Finally, in the future, if questions of interpretation of the imputation and competitive safeguard requirements should arise in a specific proceeding, the parties will be free to request a clarification of the requirement or to request that a rulemaking proceeding be implemented. In either case, all parties would be afforded adequate time to comment, and the Commission would have adequate time to consider the issue fully. That, rather than the

"backdoor" attempt to redefine and weaken the Commission's Orders (and on an accelerated time basis) would be the appropriate way to proceed.

NCPA requests the Commission to reject the "interpretations" offered by the LECs in their acceptances of the price regulation Orders. The Companies are authorized by statute only to accept or reject the approved plans. They have no authority or ability to condition their acceptance on a specific legal interpretation of the plans, and their attempt to do so is inappropriate and should not be countenanced by the Commission.

AT&T, MCI, AND TIME WARNER JOINT COMMENTS

AT&T, MCI, and **Time Warner** assert that the Orders Authorizing Price Regulation did not offer the respective LECs the option to pick and choose among the provisions of the Commission-approved plans. The LECs were required to accept and agree to "all of the terms and conditions and provisions in the Commission-approved plans." It is disingenuous for BellSouth and GTE to style their filings as acceptances when their acceptances are conditional and are, in effect, requests for reconsideration of portions of the May 2 Orders.

Under G.S. 62-133.5, BellSouth and GTE have the options of accepting any Commission-imposed modifications of their plans, withdrawing their applications and remaining under rate-of-return regulation, filing another price plan or filing a plan for another form of alternative regulation. They should be restricted to these options and not be allowed to reargue their cases before the Commission.

The language of both the imputation requirement and the anticompetitive practices proscription is clear and unambiguous. It was developed after extensive hearings and debate. The May 2 Orders have given these issues considerable treatment. These competitive safeguards go to the heart of the Commission's regulatory plan. Without adequate safeguards, competition will not develop. And without competition, the effect of these plans is the deregulation of a monopoly -- a result not intended by the General Assembly in adopting House Bill 161 and certainly not by the Commission in approving the price regulation plans. The pricing rules are considerable improvements over the stipulated plans filed by the LECs and the Public Staff. They provide consumer and competitive safeguards which were not in the stipulated plans, and they should be allowed to stand. It would be inappropriate and a disservice to the public to allow the LECs to reargue their cases at the eleventh hour and dilute the safeguards that will enable competition to develop.

The LECs should be required to accept or reject the Commission-approved plans immediately. The imputation requirement and the anticompetitive practices proscription should not be modified and weakened. In the event that this proceeding is prolonged to allow additional comment, argument, or other proceedings, the advent of competition should not be delayed. House Bill 161 does not require that price plans be in effect before intraLATA competition is allowed to begin.

BELLSOUTH'S COMMENTS

BellSouth states that imputation is a complicated regulatory device filled with the economic and accounting subtleties and a myriad of public interest implications. The precise manner in which an

imputation standard is designed and implemented can have profound effects upon competitive markets, upon the availability of services, and upon the prices that consumers of those services ultimately pay.

With respect to BellSouth, the Commission has stated a general preference for an imputation standard that would also apply to BellSouth's services that compete with those services provided by COCOT providers. BellSouth accepts the Commission's decision with respect to that issue; however, the Commission has not, as it did with respect to toll and toll-like services, set forth with specificity the details necessary to implement that standard, much less any other imputation standard. Moreover, because there was no record to support the development of any particular imputation standards in BellSouth's price regulation case--in stark contrast to the regulatory effort that underlies the development of the toll and toll-like services imputation standard--BellSouth concluded that the language set forth in paragraph nine of the Modified Plan expressed only a general Commission preference for an imputation standard.

Accordingly, BellSouth, recognizing the continued applicability of the toll and toll-like services standard, and recognizing the Commission's desire for a general COCOT imputation standard, interprets the language of paragraph nine to continue the toll and toll-like services standard, to express a general preference for a COCOT standard--the details of which will, of necessity, be developed in a subsequent proceeding--and to express the Commission's intent to address other specific imputation standards in a forum more appropriate for that purpose, perhaps in future unbundling/interconnection/local competition proceedings.

Otherwise, even with respect to COCOT imputation, the putative standard is marked more by the issues that it raises, than by those it resolves. And if the Commission's imputation standard is read broadly, as some parties undoubtedly will read it, what does it portend for residence service? In other words, if, pursuant to the Telecommunications Act of 1996 (the "1996 Act"), residence service is unbundled into its various elements, and each of those elements is priced at its costs, then, when those elements are recombined, the total of the cost-based rates for the recombined elements would be greater than the rates now being charged for residence service. At that point, strict adherence to an imputation standard will put the Commission in a difficult situation: the Commission will be faced with the dilemma of either pricing the subparts of residence service at rates that are below cost or raising residence rates.

This may be the reason, as the FCC noted in its NPRM in CC Docket No. 96-98, that certain states, including New York, have refused to adopt imputation standards in some circumstances. It certainly appears to be a good reason why the Commission needs to retain the express authority and ability to exempt specific services from any imputation requirement based upon public interest considerations.

This reasoning, then, formed the conceptual underpinnings of BellSouth's interpretation of the Commission's imputation requirement set forth in BellSouth's Statement of Acceptance of Price Regulation filed on May 20, 1996.

BellSouth, in its May 20 Acceptance, did not, and does not, take issue with the "preference" provision. Indeed, BellSouth suggested only that with respect to the underlined portion of this provision, the Commission intended a meaning that would proscribe unreasonable discrimination against non-affiliated entities with respect "to interconnection and access to any monopoly unbundled network elements and tariffed services."

A literal reading of the last sentence of that provision would appear to deny BellSouth some of the joint marketing authority granted to BellSouth by the 1996 Act. For example, under the 1996 Act, once BellSouth is permitted to provide interLATA services, it can market the services of an affiliate that also provides those services. The language, however, of paragraph V.A.10, specifically, the underlined portion, would appear – at least on its face – to prevent this kind of joint marketing. That is, the language would seem to require BellSouth to market the services of any provider, if it also marketed those same services of an affiliate. Such a reading would be entirely contrary to the explicit language, as well as the underlying purposes, of the 1996 Act. BellSouth believes that the Commission did not – could not – have intended such a result.

BellSouth believes that in developing this language, the Commission was not concerned with these kinds of activities; rather, the Commission was attempting to prevent the kinds of unreasonable preferences prohibited by G.S. 62-140 and described in the case law that this State has developed thereunder; case law that is well-established and sets forth a fairly bright line between permitted and proscribed activities. Those proscribed activities, then, would clearly include unreasonably preferential rates for unbundled service elements to an affiliate; they would not include joint marketing arrangements between BellSouth and its affiliates, arrangements that BellSouth might not choose to make available to its competitors.

The General Assembly in House Bill 161 set forth the four statutory findings that the Commission must make with respect to the adoption of a price regulation plan. The third of these four criteria is, of course, that the plan not "unreasonably prejudice any class of telephone customers, including telecommunications companies." G.S. 62-133.5(a)(iii). The Commission, in adopting the Modified Plan, discussed at length both the statutory and case law history of the requirement for unreasonable prejudice or advantage. Surely, in developing so clearly its reasoning with respect to its interpretation of "unreasonable prejudice" in House Bill 161, the Commission did not intend by the inclusion of the language at paragraph V.A.10 to establish a new standard – independent of G.S. 62-140 and House Bill 161 – prohibiting "any preference." Rather, BellSouth believes that the Commission intended that the Company not give an unreasonable preference in violation of G.S. 62-140. That is all that BellSouth sought to establish in its interpretation.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Imputation - In the Orders Authorizing Price Regulation, the Commission included the following general imputation requirement:

> The Company shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function.

The general imputation requirement contained in the Commission-approved Price Regulation Plans requires an LEC subject to price regulation, on its own initiative, to take appropriate action for those services which are subject to competition to comply with the general imputation requirement set forth in

its Commission-approved Price Regulation Plan. Thereafter, the Commission (on its own motion or in a proceeding initiated by the LEC or in a complaint proceeding initiated by a party with standing to file a complaint) may investigate any competitive rate or service to determine a specific imputation requirement and whether the service in question is priced in a manner which is inconsistent with the appropriate imputation standard. In such a proceeding, the LEC will have the opportunity to demonstrate that the price charged for the competitive service is consistent with and meets an appropriate imputation standard. The Commission will decide the matter and adopt the appropriate specific imputation requirement and/or any remedy based upon the facts and circumstances presented by the parties on a case-by-case basis.

To date, the Commission has adopted a specific imputation requirement only for intraLATA toll and toll-like services (in Docket Nos. P-100, Sub 126 and P-100, Sub 65) and announced an imputation requirement for charges made to COCOT providers, without specifying the details of that imputation requirement (pursuant to the Orders entered in these proceedings on May 2, 1996). We agree with the Public Staff that (1) the details of the COCOT imputation requirement may need to be addressed in a further proceeding and that (2) whether to allow any rate increase to end users which the LECs might propose as a result of applying an imputation requirement is a public interest question which will have to be specifically addressed and decided by the Commission on a case-by-case basis. Furthermore, in resolving other issues, including those involving unbundling/interconnection/local competition, the Commission will adopt additional specific imputation requirements on a case-by-case basis. Moreover, the Commission retains the authority under the price regulation plans, where appropriate, to exempt any service from an imputation requirement based upon public interest considerations.

Accordingly, the Commission concludes that the general imputation requirement contained in the Commission-approved Price Regulation Plans should be clarified to read as follows:

> The Company(ies) shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function. The details of specific imputation requirements, if contested, and whether to allow any rate increase to end users which the Company(ies) might propose as a result of applying an imputation requirement are public interest questions which the Commission will address and decide on a case-by-case basis. The Commission retains the authority under this Plan to exempt any service from an imputation requirement based upon public interest considerations.

Anticompetitive Practices - In the Orders Authorizing Price Regulation, the Commission included the following pertinent language:

> ...Nor shall the Company(ies) give any preference to the competitive services of affiliated entities.

By this language, the Commission intended, consistent with Ratified House Bill 161, G.S. 62-140, and relevant case law, that the LECs should not grant any **unreasonable or unlawful** preference or advantage to the services of affiliated entities. This clarification of the preference language in the price regulation plans authorized by the Commission is adopted in lieu of the more limited interpretation offered by the LECs.

Accordingly, the Commission concludes that the relevant portion of the anticompetitive practices provision contained in the Commission-approved Price Regulation Plans should be clarified to read as follows:

> ...Nor shall the Company(ies) give any unreasonable or unlawful preference or advantage to the competitive services of affiliated entities.

On the basis of the foregoing, the Commission finds good cause to enter this Order of Clarification. The LECs have previously filed statements of acceptance of the Commission-approved Price Regulation Plans. BellSouth, Carolina, Central, and GTE shall, not later than Monday, June 3, 1996, review this Order and file statements pursuant to House Bill 161 which either (1) accept the Commission-approved Price Regulation Plans as adopted in these dockets on May 2, 1996, and as clarified by this Order or (2) reject the Commission-approved Price Regulation Plans and withdraw their applications for price regulation. In order to allow additional time for this process and for a thorough regulatory review of the rate reduction tariffs filed by BellSouth, Carolina, and Central, the Commission will, on its own motion, extend the effective date of the price regulation plans and required rate reduction tariffs from June 3, 1996, to June 24, 1996. This same extension of the effective date shall also apply to the tariffs reducing basic residential and business MTS rates which the interexchange carriers are required to file pursuant to the Orders entered in these dockets on May 2, 1996.

IT IS, THEREFORE, ORDERED as follows:

1. That the imputation and anticompetitive practices provisions of the Commission-approved Price Regulation Plans be, and the same are hereby, clarified in conformity with the provisions of this Order. Said provisions shall, in order to reflect such clarification, be amended to read, in pertinent part, as follows:

> **Imputation:**
> The Company(ies) shall impute the tariffed rate of a monopoly-service function to the rate for any bundled local exchange service that includes that function and to its own provision of competitive services including that function. The details of specific imputation requirements, if contested, and whether to allow any rate increases to end users which the Company(ies) might propose as a result of applying an imputation requirement are public interest questions which the Commission will address and decide on a case-by-case basis. The Commission retains the authority under this Plan to exempt any service from an imputation requirement based upon public interest considerations.
>
> **Anticompetitive Practices:**
> ...Nor shall the Company(ies) give any unreasonable or unlawful preference or advantage to the competitive services of affiliated entities.

2. That BellSouth, Carolina, Central, and GTE shall, not later than Monday, June 3, 1996, review this Order and file statements pursuant to House Bill 161 which either (a) accept the Commission-approved Price Regulation Plans as adopted in these dockets on May 2, 1996, and as clarified by this Order or (b) reject the Commission-approved Price Regulation Plans and withdraw their applications for price

regulation. The Plans and rate reduction tariffs shall be refiled by the LECs not later than June 3, 1996, with an effective date of June 24, 1996.

3. That the tariffs and work papers to be filed in these dockets by interexchange carriers reflecting a full flow through of the access charge reductions ordered by the Commission shall be filed not later than Wednesday, June 5, 1996, and shall reflect an effective date of June 24, 1996.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of May 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-55, SUB 1013
DOCKET NO. P-7, SUB 825
DOCKET NO. P- IO, SUB 479

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO, P-55, SUB 1013

In the Matter of Application of BellSouth Telecommunications, Inc., for, and Election of, Price Regulation DOCKET NO. P-7, SUB 825 DOCKET NO. P-10, SUB 479 In the Matter of Petition of Carolina Telephone and Telegraph Company and Central Telephone Company for Approval of Price Regulation Plan Pursuant to G. S. 62-133.5	)	ORDER RULING ON JOINT MOTION FOR RECONSIDERATION REGARDING FLOW THROUGH REQUIREMENTS

BY THE COMMISSION: On May 2, 1996, the Commission entered Orders in these dockets authorizing Commission-approved Price Regulation Plans for BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), and GTE South Incorporated (GTE). On May 29, 1996, the Commission entered an Order of Clarification in these dockets.

On June 3, 1996, AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and Worldcom, Inc. d/b/a LDDS Worldcom (Worldcom) jointly filed certain motions in these dockets, including motions whereby the Commission was requested to (1) reconsider and amend the Orders of May 2, 1996, to allow the interexchange carriers (IXCs) to flow

through access charge reductions to all of their switched access customers and (2) extend the time for the IXCs to file their flow through tariffs until the Commission rules on their motion for reconsideration.

By Order entered in these dockets on June 4, 1996, the Presiding Commissioner found good cause to require AT&T, MCI, and Worldcom to file specific flow through proposals not later than 12:00 noon on Friday, June 7, 1996, in conformity with their joint motion for reconsideration, including detailed justification and work papers in support of those proposals, and the attendant rate reduction tariffs. The IXCs were also required to file rate reduction tariffs in conformity with the Orders previously entered in these dockets on May 2, 1996. In addition, the Order of June 4, 1996, allowed interested parties an opportunity to respond to the joint motion for reconsideration filed by AT&T, MCI, and Worldcom, including the justification and rate reduction tariffs to be filed by the IXCs. Those responses were to be filed not later than Wednesday, June 12, 1996.

On June 7, 1996, MCI filed a motion in these dockets whereby the Commission was requested to grant MCI an extension of time until noon on Wednesday, June 12, 1996, to make the filings required by the Order of June 4, 1996.

On June 7, 1996, AT&T filed a motion in these dockets whereby the Commission was requested to grant a stay of the provisions contained in the Order of June 4, 1996, requiring AT&T to develop and file flow through rate reduction tariffs in conformity with its joint motion for reconsideration. In support of its motion for stay, AT&T states that it filed the tafiffs providing for the flow through of access rate reductions applicable to its MTS rate schedules and that it was continuing to prepare revised tafiffs for other services affected by the access charge reductions as proposed in the joint motion for reconsideration. Nevertheless, AT&T asserts that the "complexity of this project makes it impossible to accomplish in the time allotted." AT&T further asserts that "the Commission's ruling on the joint motion for reconsideration may obviate the need for the filing of such tafiffs." AT&T also committed to making its flow through rate reduction tariffs effective on the same date the access charge reductions become effective.

On June 7, 1996, Worldcom filed a Statement of Position in these dockets. The Commission was requested to accept Worldcom's statement "in lieu of filing of an 'alternative' rate reduction tariff, together with supporting work papers and documents, as called for in [the] Commission's Order of June 4, 1996." In its Statement of Position, Worldcom states that, after consultation with the Public Staff, it previously filed a rate reduction tariff in compliance with the Commission's prior Order of May 2, 1996; that developing and filing the "alternative" flow through tariff will require significant resources and internal procedures which cannot be accomplished within the specified time; and that under the circumstances Worldcom should be excused from having to file the "alternative" flow though tariff at this time.

By Order entered in these dockets on June 10, 1996, the Presiding Commissioner found good cause to grant MCI and AT&T an extension of time until 12:00 noon on Friday, June 14, 1996, to comply in full with the tariff filing requirements, including detailed justification and work papers, specified in the Order previously entered in these dockets on June 4, 1996. In addition, AT&T's motion for stay was denied for the reason that the specific tariff filings would allow the Commission to examine and evaluate the exact flow through proposals being put forward by the IXCs and thereby render a more informed ruling on the motion for reconsideration after receiving comments from interested parties. The Order further stated that the Commission's flow through requirement had been known by the IXCs since May

2, 1996, and that, as a result, the Commission's sympathy for the asserted difficulty of complying with the tariff filing requirement was tempered by the fact that the joint motion for reconsideration was not filed until June 3, 1996. The Order also stated that the IXC flow through rate reduction tariffs ultimately approved by the Commission would become effective on June 24, 1996, to coincide with the access charge reductions and in order to prevent the IXCs from deriving a windfall from those reductions. Worldcom's Statement of Position was accepted by the Commission and Worldcom was relieved from having to make any further filings at that time.

On June 14, 1996, Sprint Communications Company L.P. (Sprint) filed a motion in these dockets requesting that it be relieved from the requirement of filing flow through work papers, as required by the Commission Order dated May 29, 1996, pending further Order of the Commission. Sprint asserts that at this point in time, without the benefit of a final Commission decision on these matters, to require Sprint to develop and file work papers is premature and could be a substantial waste of time and resources, depending upon the Commission's decision on the joint motion for reconsideration. Sprint stated that it will prepare and file the appropriate flow through tariffs and work papers as soon as the Commissions renders its decision and sets out the appropriate methodology for the flow through.

AT&T made filings on June 7, 1996, and June 14, 1996, which included its flow through tariffs. AT&T provided its supporting data under separate cover. On June 17, 1996, AT&T submitted corrected tariff pages for the tariff pages filed on June 7, 1996. AT&T stated that its position remains that this reduction should properly benefit all of its switched access customers and not just a portion of them.

In its June 7, 1996 filing, AT&T proposed the introduction of a separate Commercial Long Distance schedule for small business customers. The filing also introduced separate intraLATA Card and Operator Services schedules. In support of a separate business schedule, AT&T stated that the business market is separate and distinct from the residence market, is very competitive, and that residential and business customers have different needs. Under one schedule, AT&T is not able to adequately address those distinct needs. As an example, business customers have predominant usage during the day while residential customers have predominant usage during the evening. The adoption of separate schedules would prevent "subsidies" between these classes of customers. AT&T further stated that separate commercial long distance schedules have been implemented in all of its other Southern Region states and that only two other states in the nation, New York and Massachusetts, have a shared Long Distance schedule. In addition, separate schedules do not present any unreasonable discrimination between classes of customers. Most recently, this was recognized with the implementation of the Defined Radius and Defined Area Calling Plans in which certain provisions of the plans were restricted from business customers.

On June 14, 1996, MCI filed its response to the Commission's June 4, 1996 Order requiring flow though proposals and tariff filings, submitting illustrative tariffs and work papers. MCI requested that the Commission reconsider and amend the Orders previously entered in these dockets on May 2, 1996, to provide that IXCs should flow switched access charge reductions through to all of their switched access customers and that the time for filing the final flow through tafiffs should be extended until the joint motion for reconsideration is determined. MCI filed a supplemental response in these dockets on June 17, 1996.

Comments in response to the IXCs' joint motion for reconsideration and flow through rate reduction tariffs were filed by the Carolina Utility Customers Association, Inc. (CUCA), GTE, the Public Staff, the Attorney General, Sprint, and AT&T.

In comments filed on June 12, 1996, CUCA stated that it believes that limiting these access charge reductions to MTS customers would defeat the Commission's stated goal of lowering rates for as many customers as "practicably possible." The record evidence in these proceedings suggests that all customers, including those customers using non-MTS switched access services, should receive the benefit of the access charge reductions which have resulted from these proceedings. The customers utilizing the non-MTS switched access services are, in many instances, large businesses which employ many North Carolina citizens. Depriving such businesses and other large toll users of the lower rates made available to MTS customers would hurt the North Carolina economy and would be unfair. CUCA stated that the outcome described in the joint motion for reconsideration and apparently required by the ordering clauses in the Commission's Orders is contrary to the Commission's apparent intent, the record evidence, and regulatory policy. CUCA asserted that the Commission should reconsider the final orders in these proceedings in order to ensure that the required access charge "flow through" will benefit all customers using the interexchange carriers' switched access services.

In a response filed on June 19, 1996, the Attorney General indicated that in light of the need to work out arrangements to see the work papers supporting the flow through proposals, the complexity of those papers, and the very short time available, the Attorney General has not yet been able to form an opinion about the proposals. However, absent a showing of impossibility, the Attorney General believes that the IXCs should abide by the Commission Orders in the various price cap dockets and flow this current access charge reduction through to basic MTS-tariffed long distance rates.

In comments filed on June 19, 1996, GTE stated that it takes no position with regard to flow through of access charge reductions and noted that this matter is not an issue and should not be addressed in its price regulation plan docket.

In comments filed in these dockets on June 19, 1996, Sprint stated that it does not believe that the Commission intended to limit the benefit of the access charge reductions only to basic residential and business MTS customers, thereby denying non-MTS customers of IXC switched access services the opportunity to participate in the flow through of the access charge reductions. Sprint stated that it has found nothing in the record that would support, or suggest, the proposition that the flow through should be limited only to the narrow group of MTS IXC customers and that non-MTS IXC customers should be deprived of the flow though reductions. According to Sprint, such an interpretation is contrary to the Commission's stated intent in ordering the flow through. Sprint stated it supported the joint motion for reconsideration and concurred in the arguments set forth therein. Sprint urged the Commission to reconsider its Orders in these proceedings and issue further Orders clarifying that the access charge reductions will be flowed through in such a manner so as to benefit as many IXC customers as practically possible, and will not be limited only to MTS customers.

In comments filed on June 19, 1996, AT&T stated that if the Commission's primary concern is that residential customers receive a fair and equitable share of the reduction clearly the flow through methodology urged by the joint motion accomplishes just that. Over 75% of AT&T's reductions would

go to the MTS customers. The remaining 25% goes to the business customers in North Carolina which employ thousands of North Carolina citizens. AT&T stated it does not believe that the intent of the Commission was to deprive such businesses of the lower rates. AT&T requested that the Commission reconsider its May 2, 1996 Orders and allow the IXCs to reduce the rates of more North Carolina consumers.

The Public Staff, in comments filed in these dockets on June 19, 1996, stated that it believes that the decision by the Commission to require the IXCs to flow through the access charge rate reductions to specific IXC services is wholly within the jurisdiction of the Commission. Further, the Public Staff believes that the record in the instant dockets provides sufficient support for the Commission's actions. The Commission has shown it is concerned about small users benefitting from access charge reductions. Further, actions by the IXCs to increase rates to these small users immediately after receiving earlier reductions in access charges shows this concern is well-founded. The flow through ordered by the Commission is one way to ensure that such users receive the benefits of access charge reductions.

Nevertheless, the Public Staff further stated that it does not oppose a flow through of the access charge reductions to all IXC services utilizing switched access. If the Commission wishes to reconsider its decision on flowing through access charge reductions, the Public Staff believes it is within its jurisdiction to do so. However, the Commission should not be persuaded by claims that a 100% flow through to MTS will skew rate relationships or drive MTS rates below switched access costs. In addition, the MTS rate schedules have ample room for rate reductions to be implemented without requiring a particular rate to be reduced below switched access costs.

If the Commission does decide to depart from the access charge rate reduction flow through provided for in its May 2, 1996 Orders, the Public Staff believes that certain precautions should be taken to ensure that the access charge reductions are flowed through evenly to all services. The IXCs should not be permitted to decrease some switched access services while making no change in other services. According to the Public Staff, the alternate flow through tariff proposals filed by AT&T and MCI do not reflect decreases in all of the services offered by the two companies which utilize switched access.

The Public Staff stated that after review of AT&T's tariff filings and associated work papers, it is unable to conclude that either set of proposed tariffs flows through the access charge reductions on a dollar-for-dollar basis. The Public Staff stated that it has been able to verify the change in revenues resulting from AT&T's proposed tariffs which flow through the access charge reductions only to its basic MTS residential and commercial customers. However, the Public Staff has been unable to verify all of the changes in revenues for the proposed tariffs reflecting AT&T's alternate flow through proposal. In addition, AT&T has not provided any support for the access charge reduction it states it will receive. Thus, the Public Staff states that it is unable to conclude that either set of proposed tariffs accomplishes the flow through of access charge reductions on a dollar-for-dollar basis as required by the Commission's Orders of May 2, 1996, and June 10, 1996.

In its review of AT&T's proposed tariffs, the Public Staff stated it has identified an area of concern which should be brought to the Commission's attention. Both sets of proposed tariffs split AT&T's current MTS rate schedule into separate residential and commercial rate schedules. AT&T's tariff filing of June 7, 1996, indicates that the Commission's May 2, 1996 Orders recognize separate residence and

business MTS customers and implies that the separate rate schedules are necessary in order to comply with the Commission's Orders. A review of the rates for the Commercial MTS rate schedule indicates that they differ from those proposed for AT&T's Residence MTS rate schedule.

The Public Staff pointed out that it has long opposed practices by IXCs which impose long distance charges on customers solely on the basis of the type of local exchange service received by the customer. In an Order issued in Docket No. P-140, Sub 49 on May 15, 1996, the Commission concurred with the Public Staff's position and concluded that "AT&T's tariffs should not discriminate between residential and business lines." The Public Staff also disagrees with AT&T's implication that compliance with the Commission's May 2, 1996 Orders requires separate residential and commercial MTS rate schedules.

In addition to having separate MTS rate schedules for business customers, the Public Staff stated that AT&T also proposes to impose usage rates for operator assisted calls which exceed the basic direct dial rate in some instances and thus, are not in accordance with the Commission's conclusions in its Order in Docket Nos. P-100, Sub 72 and P-140, Sub 36 issued on June 14, 1993, which stated that "...the Public Staff's recommendations that AT&T may not increase operator/calling card usage rates above the rate in effect for AT&T's MTS 1+ direct dial calls has considerable merit and should be promulgated in both Docket No. P-140, Sub 36 and Docket No. P-100, Sub 72."

The Public Staff stated that, in its review of the tariffs filed by AT&T to reflect its alternate flow through proposal, AT&T has not proposed to reduce the rates for all services utilizing switched access. The services offered by AT&T which utilize switched access with no reductions proposed to reflect the flow through are: WATS Service, One Line WATS, Optimum, Hospitality Network, PRO WATS North Carolina, State Calling Service, 800 Service, MultiQuest, 500 Personal Number, Small Business Option, Commercial Calling Card, 56-64 Switched Digital, NEGACOM WATS, 800 Plan K, 800 Plan P, Conference Service, Government International Calling Service, and Clear Advantage.

The Public Staff stated that, based upon its review of MCI's tariff filings and associated work papers, either set of MCI's proposed tariffs flows through the access charge reductions on a dollar-for-dollar basis,

The Public Staff stated that the proposed tafiffs reflecting MCI's alternate flow through proposal do not include rate reductions for all switched customers. Of the 17 services included in MCI's tariff which utilize switched access, MCI has proposed to reduce rates for only seven of those services.

The Public Staff stated that Sprint filed tariffs flowing through the access charge reductions to its Sprint service and the associated operator call service. In addition, Sprint proposed to reduce the rates for its FONCARD, Ultra WATS, Ultra 800, and FONLINE 800 services. Sprint has not provided any work papers to the Public Staff. (As noted previously, Sprint has filed a motion on June 14, 1996, asking that it be relieved from filing work papers pending further Order of the Commission.) Therefore, the Public Staff stated that it is unable to determine whether Sprint has complied with the requirement to flow through the access charge reductions on a dollar-for-dollar basis. In addition, Sprint has not complied with the Commission's May 2, 1996 Orders requiring that the access charge reductions be flowed through entirely through Sprint's basic residential and business MTS schedule.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

In the Orders Authorizing Price Regulation for BellSouth, Carolina, and Central entered in these dockets on May 2, 1996, the Commission reached the following conclusions regarding flow through of access charge reductions:

> Regarding the Toll Switched Access charge reductions to be implemented by BellSouth [and Carolina and Central] as provided under the terms of the price regulation plan approved herein, the IXCs who are parties to this proceeding have stated unequivocally that they would flow through such reductions to their customers. The Commission believes, and shall so direct, that those reductions should be flowed through in a way such that as many of the IXCs' customers as practicably possible would receive some direct benefit therefrom. The Commission believes that the foregoing can best be accomplished by directing the IXCs to flow through these reductions to their basic residential and business subscribers through decreases in intrastate basic message telephone service (MTS) rates on a dollar-for-dollar basis. Therefore, each interexchange carrier which is required to file tariffs in North Carolina shall, under the provisions of this Order, file tariffs in accordance with the foregoing. Those tariffs shall be structured such that the MTS rate reductions will become effective concurrently, to the maximum extent possible, with each of the access charge reductions as required herein. Additionally, AT&T, MCI, and Sprint will be required to submit, in conjunction with their filings of tafiffs, work papers clearly identifying the details of their proposals in this regard.

The Orders Authorizing Price Regulation for BellSouth, Carolina, and Central further provided that the affected IXCs would also be required to flow through all subsequent access charge reductions required by those Orders and the Commission-approved Price Regulation Plans by means of MTS rate reductions.

On the basis of the entire record in these proceedings, the Commission finds good cause to reaffirm the decision set forth in the Orders Authorizing Price Regulation for BellSouth, Carolina, and Central dated May 2, 1996, to require the IXCs to flow the current access charge reductions through to their basic residential and business subscribers through decreases in intrastate basic MTS rates on a dollar-for-dollar basis. However, the Commission will allow the IXCs to propose alternative rate reduction proposals, if they desire to do so, with regard to future access charge reductions required by the Orders Authorizing Price Regulation and the Price Regulation Plans approved by the Commission for BellSouth, Carolina, and Central. AT&T and MCI have not convinced the Commission that there is a compelling need to approve their alternative flow through proposals at this late juncture in these proceedings. That being the case, the Commission concludes that it is entirely appropriate to require MTS rate reductions at this time in recognition of the fact that our original intent was to insure that those residential and business customers least likely to benefit from competition and with the least amount of market power would derive a direct benefit from the access charge reductions in question. This action was part of the balance of interests employed by the Commission in crafting the original Orders and it remains entirely appropriate under the facts presented in these dockets.

Support for the original decision is further found in the complexity of trying to fashion another equitable flow through mechanism at this late stage of these proceedings and by the fact that the IXCs, in particular AT&T and MCI, have made differing alternative flow through proposals which do not reduce rates for all switched access services and which provide for differing MTS rate reductions. In addition, the IXCs have failed to provide the Commission with sufficient information to either justify approval of their alternative proposals or to allow the Commission to itself develop an acceptable alternative way to spread the reductions. Support for the original decision is also contained in the comments filed by the Public Staff and the Attorney General. For instance, the Public Staff and the Attorney General correctly note that the testimony given by witnesses for AT&T and MCI, at a minimum, indicated that the companies were willing during the hearings to flow through the access charge reductions to their basic MTS rate schedules if ordered to do so by the Commission. The Public Staff also asserts that the decision by the Commission to require the IXCs to flow through the access charge rate reductions to specific IXC services is wholly within the jurisdiction of the Commission; that the record in the instant dockets provides sufficient support for the Commission's action; that the concern shown by the Commission about small users benefitting from access charge reductions appears to be well-founded in view of the actions by the IXCs to increase rates to those small users immediately after receiving earlier reductions in access charges; and that the MTS rate reduction flow through ordered by the Commission is one way to ensure that such users receive the benefits of access charge reductions.

With regard to AT&T's proposal to split its current MTS rate schedule into separate residential and commercial rate schedules, the Commission concludes that AT&T has clearly misinterpreted the intent and meaning of the language in the May 2, 1996 Orders requiring MTS rate reductions to basic residence and business subscribers. The Public Staff has offered convincing arguments against allowing AT&T to split its MTS rate schedules and the Commission concludes that such proposal should be rejected and denied. In addition, AT&T is further directed to design its MTS rate reduction tafiffs so that the usage rates for operator assisted calls do not exceed the usage rates for direct dialed calls.

Accordingly, AT&T, MCI, and Sprint will be required, to the extent they have not already done so, to file appropriate MTS tariffs and work papers in conformity with the provisions of this Order and in sufficient detail to allow the Public Staff to verify that the tafiffs reflect a flow through of the access charge reductions on a dollar-for-dollar basis.

IT IS, THEREFORE, ORDERED as follows:

1. That all interexchange carriers, other than switchless resellers, certificated by the Commission to provide intrastate long distance service in North Carolina shall, not later than Friday, June 28, 1996, either file (a) appropriate tariffs designed to reflect a full flow through of the access charge reductions approved as of the effective date of the Price Regulation Plans for BellSouth, Carolina, and Central or (b) statements indicating they will receive no reductions in switched access charges. A list of those long distance carriers which are required to file tariffs in North Carolina and which to date have not filed flow through rate reduction tariffs is attached to this Order as Appendix A. The flow through required by this Order shall be accomplished through reductions to basic residential and business MTS rates on a dollar-for-dollar basis. The MTS rate reduction tariffs to be filed pursuant to this Order shall become effective June 24, 1996. Further, that AT&T, MCI, and Sprint shall, to the extent they have not

already done so, file detailed work papers reflecting how the access charge reductions required by this Order will be flowed though to their MTS customers.

2. That all interexchange carriers, other than switchless resellers, certificated by the Commission to provide long distance service in North Carolina may, if they choose to do so, propose alternative flow through rate reduction proposals in these dockets with regard to future access charge reductions required by the Orders Authorizing Price Regulation and the Price Regulation Plans approved by the Commission for BellSouth, Carolina, and Central. Such alternative flow through rate reduction proposals, including tariffs, justification, and detailed work papers, shall be filed not later than sixty (60) days prior to the date the future access charge reductions are scheduled to become effective. Any interexchange carrier which chooses not to file an alternative flow through rate reduction proposal for consideration by the Commission shall implement all future access charge reductions by means of MTS rate reductions as required by the Orders Authorizing Price Regulation entered in these dockets on May 2, 1996.

3. That the flow through rate reduction tariffs filed by Allnet Communications Services, Inc., Capital Network Systems, Inc., Century Telecommunications, Inc., Frontier Communications International, Inc., One Call Communications, Inc., WorldCom, Inc., and WorldCom Network Services, Inc. are approved effective June 24, 1996.

ISSUED BY ORDER OF THE COMMISSION.
This the 25th day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION
Gail Lambert Mount, Deputy Clerk

Chairman Hugh A. Wells and Commissioner Laurence A. Cobb did not participate in this decision.

Appendix A

LONG DISTANCE CARRIERS REQUIRED TO FILE TARIFFS
WHICH HAVE NOT MADE FLOW THROUGH TARIFF FILINGS

ACC National Long Distance Corporation
Access/ON Interexchange Services, Inc.
Bottom Line Telecommunications, Inc.
Business Telecom, Inc.
Cable & Wireless, Inc.
Carolina Telephone Long Distance, Inc.
Commonwealth Long Distance Company
ConQuest Long Distance Corporation
Dial & Save of North Carolina Inc.
Eastern Telecom Corporation
Gulf Long Distance, Inc.
ICG Telecom Services, Inc.
Interlink Telecommunications, Inc.
LCI International Telecom Corporation
LCI Telemanagement Corporation
MFS Intelenet of North Carolina, Inc.
Mid Atlantic Telephone
MIDCOM Communications, Inc.
Midwest Fibernet, Inc.
OneStar Long Distance, Inc.
Premiere Communications, Inc.
Qwest Communications Corporation
RD&J Communications, Inc.
SouthernNet, Inc.
Switched Services Communications, LLC
Thrifty Call, Inc.
U.S. Long Distance, Inc.
VarTec Telecom, Inc.
Westinghouse Electric Corporation
Wynn Communications Group, Inc.

DOCKET NO. W-1063
DOCKET NO. W-100, SUB 27

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. W-1063

In the Matter of Application by C&P Enterprises, Inc., Post Office Box 31563, Raleigh, North Carolina for a Certificate of Public Convenience and Necessity to Furnish Sewer Utility Service in Ocean Glen and Ocean Bay Villas Condominiums in Carteret County, North Carolina and for Approval of Rates and Docket No. W-100, Sub 27 Ocean Glen Townhouse Condominium Owners Association Phase I, Inc., and Ocean Bay Villas Owners Association, Inc., Petitioners v. The State of North Carolina ex rel the North Carolina Utilities Commission, Respondent	)	ORDER DENYING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, MOTION FOR PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, AND GRANTING TRANSFER OF SYSTEM, CONTINUING TEMPORARY OPERATING AUTHORITY AND PROVISIONAL EXEMPTION FROM REGULATION

HEARD: October 25 & 26, 1995, Town Hall Meeting Room, 100 Municipal Circle, Pine Knoll Shores, North Carolina

BEFORE: Commissioner Laurence A. Cobb, presiding, and Commissioners Allyson K. Duncan and Ralph A. Hunt

APPEARANCES:

For C&P Enterprises, Inc.:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For Ocean Glen Towne House Condominiums Owners Association, Phase I, Inc., and Ocean Bay Villas Owners' Association, Inc.:

Neil B. Whitford, Kirkman & Whitford, P. A., Post Office Drawer 1347, Morehead City, North Carolina 28557

For the Public Staff:

James D. Little, Staff Attorney, Public Staff-North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On April 25, 1995, C&P Enterprises, Inc. (C&P) filed an application for a Certificate of Public Convenience and Necessity to provide sewer utility service to the Ocean Glen and Ocean Bay Villas Condominiums in Carteret County, North Carolina. The Commission issued an order on May 17, 1995, setting hearing and requiring customer notice for 7:00 p.m., Tuesday, June 20, 1995, in Pine Knoll Shores, North Carolina.

On June 9, 1995, motions to continue the public hearing were filed on behalf of Ocean Glen Towne House Condominium Owners' Association, Phase I, Inc. (Ocean Glen) and Ocean Bay Villas Owners Association, Inc. (Ocean Bay). On June 14, 1995, C&P filed a response to the Ocean Bay and Ocean Glen's (collectively, the "Associations") motion to continue hearing and to dismiss C&P's application for certificate.

On June 14, 1995, C&P filed a motion for preliminary and permanent injunctive relief, and a motion for temporary operating authority. On June 15, 1995, the Commission issued an order continuing the previously scheduled public hearing, and rescheduling the hearing for Wednesday, July 12, 1995, at 7:00 p.m., in Pine Knoll Shores, North Carolina.

On June 30, 1995, Ocean Glen and Ocean Bay, by and through their attorney, filed a petition to intervene, protest and prayer for dismissal of C&P's application. Also, on June 30, 1995, a motion to continue the public hearing was filed on behalf of Ocean Glen and Ocean Bay. In addition, on June 30, 1995, Ocean Glen and Ocean Bay filed a response to C&P's motion for temporary operating authority and a response to C&P's motion for preliminary and permanent injunctive relief.

On July 6, 1995, C&P filed a Response to the pleadings of the Homeowners' Associations dated June 29, 1995. By order issued July 7, 1995, the Commission Hearing Examiner found that there was good cause to grant the request for intervention, and issued an order granting the Associations' motion to intervene, canceling the public hearing, and scheduling oral arguments on the motions for Wednesday, July 12, 1995, at 10:00 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

On August 3, 1995, the Commission issued an order granting C&P's motion for temporary operating authority to provide sewer utility service to the Ocean Glen and Ocean Bay Condominiums in Carteret County, North Carolina. The Commission also approved a temporary schedule of rates for such service. The Commission issued an Errata Order on August 7, 1995.

On August 24, 1995, the Commission issued an Order Denying the Motion of the Homeowners' Association to dismiss, denied C&P's Motion for a Preliminary Injunction and issued an Order in response to a Motion to Schedule a Public Hearing. On August 24, 1995, the Commission issued an Order combining Docket No. W-1063 with Docket No. W-100, Sub 27, and scheduling a public hearing for 7:00 p.m., on Wednesday, October 25, 1995, in the Town Hall Meeting Room, 100 Municipal Circle, Pine Knoll Shores, North Carolina.

This proceeding came on for hearing as scheduled on October 25, 1995, at which time the Commission heard evidence from a number of public witnesses. A number of witnesses testified in opposition to C&P's application and in favor of the position of the Homeowners' Associations. The public witnesses testifying were Harold Hoke, Fran Hoke, Glen Whisler, Bill Scales, Ben Fountain, Jim Clark, Andy Sobel, Huey Johnson, Margaret Ginger, Richard Klugh, Gene Jensen, John Ginger, Raymond F. Keisling, Linus Dohm, John Flynn, and Darlene Siegel.

C&P offered the testimony of John Pittari, a principal in the Company.

The Homeowners' Associations offered the testimony of Paula Petteson, Edmond C. Alheit, Bradley McIntosh, David Adkins, Lee Caroll, William Michael DuPriest, and John C. Keisling.

Based on the pleadings and the entire record in this proceeding to date, the Commission makes the following:

FINDINGS OF FACT

1. John Pittari and William Cannon formed, and were the stockholders, directors, and officers of three corporations relevant to this case. They are C&P Enterprises, Inc., Ocean Glen Development Company, Inc., and Ocean Bay Villas Development Company, Inc.

2. In May of 1980 Mr. Pittari and Mr. Cannon, through their Ocean Glen Development Corporation, established Ocean Glen Condominiums by filing a Declaration Creating Unit Ownership which was recorded in Book UO-8, Page 184, Carteret County Registry. There are 38 condominium units within this project. Ocean Glen Development Corporation owned a strip of property between the Atlantic Ocean and Bogue Sound in the Town of Pine Knoll Shores separated by the Salter Path Road. The Ocean Glen project was built on the ocean side of Salter Path Road. On the sound side of Salter Path Road, as a part of the development of Ocean Glen Condominiums, the development corporation constructed the sewage and waste water treatment plant now in question. Article 13 of the Ocean Glen Declaration provided for sewage treatment for the Ocean Glen project.

3. By a deed dated October 6, 1980, Ocean Glen Development Corporation conveyed its property on the sound side of Salter Path Road, including the sewage treatment plant site, to C&P Enterprises, Inc. The deed of conveyance was made expressly subject to the agreement for the provision of waste treatment services to the Ocean Glen condominium project pursuant to the condominium documents.

4. In 1982, by a deed recorded in Book 473, Page 261, Carteret County Registry, C&P transferred property south of the sewage treatment plant and adjacent to Bogue Sound to Ocean Bay Villas Development Corporation. The deed specifically granted the right to connect to and expand and utilize the waste treatment facilities pursuant to Article 13 of the Ocean Glen Declaration.

5. Pittari and Mr. Cannon, through their corporation, built Ocean Bay Villas Condominiums and established the same by Declaration Creating Unit Ownership dated June 16, 1983, and recorded in Book UO-20, Page 51 Carteret County Registry. Ocean Bay consists of 51 individual condominium units and is located adjacent to Bogue Sound.

6. Paragraph 13 of the Ocean Bay Declaration contains the terms by which sewer and waste treatment facilities were to be provided to Ocean Bay Villas Condominiums.

7. In 1979 a permit from the Division of Environmental Management (DEM) of the North Carolina Department of Natural Resources and Community Development was issued to Ocean Glen Development Corporation for the operation of the waste water treatment plant.

8. In 1980, C&P began operating the plant, but the DEM permit remained in Ocean Glen Development Corporation until 1983.

9. C&P's operation of the facility established it as a public utility under G.S. 62-3. However, at no time before April of 1995 did C&P, or either of the two development corporations, apply for or receive a Certificate of Public Convenience and Necessity from the Commission.

10. C&P's operation of the plant without a certificate violated the Public Utilities Act.

11. On April 27, 1983, DEM issued to Ocean Bay Villas Development Corporation the permit to operate the sewage treatment facility. However, the plant continued to be owned and operated by C&P Enterprises, Inc., in violation of G.S 143-215.1 (operating a sewage and waste treatment facility without a permit issued by the Environmental Management Commission).

12. Since late 1989 there has been an ongoing legal dispute before the Carteret County Superior Court between the applicant C&P and the intervenor Associations. The dispute involves (1) the quality of service provided by C&P, (2) whether C&P is entitled to reimbursement for capital expenditures, and (3) whether C&P or the Associations are to operate the sewer utility system.

13. The dispute in the Superior Court does not involve the ownership of the sewer utility facilities. All sewer utility facilities and adjacent land are owned by C&P.

14. The focus of the Superior Court proceedings has been Article XIII (addressing sewer utility service) of the Declarations of Unit Ownership for the condominiums, which were entered into in 1980 and 1983.

15. The court proceedings involving Ocean Bay, Ocean Glen and C&P commenced in November, 1989, when the Associations filed a Complaint in the Superior Court of Carteret County

against C&P. The crux of the Associations' Complaint was that C&P, since the early 1980s, had failed to operate the waste treatment facilities in strict compliance and conformity with North Carolina law as provided by the Declarations of Unit Ownership, and therefore that the Associations were entitled control of the utility facilities.

16. The Associations' Complaint alleged that C&P had been ordered by the North Carolina Department of Environment, Health, and Natural Resources' (DEHNR) Division of Environmental Management (DEM) to make significant improvements to the sewage treatment plant. The Associations alleged that the cost of such repairs would exceed $26,000. The Associations alleged that C&P had informed them that the Associations would be expected to pay for improvements. The Associations alleged that the Associations were not liable for the cost of repairing or improving the sewage treatment facilities.

17. In the 1989 Complaint the Associations asked that C&P be required to bear all costs of repairing and improving the sewage treatment facility.

18. The Associations' Complaint also asked that C&P be ordered to transfer responsibility for operation and maintenance of the facility to the Associations. C&P's answer to the Complaint, filed on January 16, 1990, stated that C&P had operated the sewer plant in an efficient and competent manner, and that C&P had spent large sums maintaining the sewer plant. C&P stated that it was the owner of the sewer plant and that the Associations had no ownership rights in the treatment plant.

19. C&P stated that as the sole owner it was responsible to DEHNR for proper operation of the plant. C&P stated that it had been informed by DEHNR that repairs to the sewer plant were necessary. C&P stated that the costs of the improvements would be in excess of $30,000. C&P stated that under Article XIII of the Declaration of Unit Ownership the Associations were required to pay for the improvements.

20. The Associations' complaint was not tried until more than two and one-half years after it was filed. It was heard at the July 13, 1992, non-jury term of the Carteret County Superior Court.

21. By order dated August 14, 1992, the Superior Court found that C&P was the owner of all sewage treatment facilities serving the condominiums as well as the adjacent lands.

22. Regarding the Associations complaint that C&P had operated contrary to North Carolina law and therefore in violation of the Article XIII of the Declarations of Unit Ownership, the Court found that C&P had operated the facility even though the waste treatment permit for the facility was issued to Ocean Bay Villas Development Corporation, and not C&P.

23. The Court found that C&P's operation without holding the permit in C&P's name was a violation of G.S. § 143-215.1 regarding the operation of discharge facilities without a discharge permit. The Court found that this violation as a matter of "public policy" should prevent C&P from collecting any sums prior to August, 1990.

24. In addressing the rates C&P was allowed to charge subsequent to August, 1990, the Court found that Article XIII of the Declarations allows C&P to charge on a pro rata basis for maintenance, upkeep and other operating costs.

25. The Court held that maintenance, upkeep and other operating costs do not include capital expenditures in the nature of long-lived productive assets, such as the costs of construction made with the expectation of existence for an indefinite period.

26. On August 14, 1992, a Partial Declaratory Judgment by the Carteret County Superior Court held that C&P, for periods subsequent to August 8, 1990, could recover for maintenance, upkeep and other related services which the Court determined to be operating costs. C&P, however, was not entitled to recover capital expenditures for the facilities. Further, C&P was not entitled to recover county and municipal ad valorem taxes on the facilities. The Court left management and control of the facilities with C&P.

27. Almost one year later, on June 28, 1993, the matter was again brought before the Carteret County Superior Court. The primary issue in that proceeding was whether control and management of the facilities would be transferred from C&P to the condominium owners.

28. In its Order dated October 25, 1993, the Court appeared to make its determination regarding control and maintenance of the facilities based on C&P's compliance with its DEM permit. The Court stated that between August, 1990 and October, 1993, C&P had been cited at least eight times by DEM for violations of its permit. The Court concluded that this violated Article XIII of the Declarations of Unit Ownership for Ocean Glen, which required the operator to operate the utility in conformity with North Carolina law.

29. The Court concluded that the Associations were entitled to enforce Article XIII of the Declarations of Unit Ownership providing for the transfer of operation and maintenance of the facilities from C&P to the Associations.

30. In the October 25, 1993 Order the Court stated that C&P was to bring the sewer and waste treatment facilities into full compliance with the DEM permit within 60 days. The Court stated that upon receipt of a certificate of compliance from DEM, C&P should grant to the Associations the right to operate the sewer facilities. The Court stated that the Associations shall promptly apply for a permit from DEM to continue the operation of the facility. Upon receipt of such permit the Associations were to have control of the sewer utility operations.

31. The October 25, 1993 Order did not indicate its relationship to the earlier August, 1992 order. The Court did not specify the financial arrangement that would obtain subsequent to control and operation of the facilities by the Homeowners Associations. Neither did the Court address any issues pertaining to the jurisdiction of this Commission over the matter.

32. Some ten months after the October, 1993 Order, in August, 1994, the Associations moved to compel performance of the October, 1993 judgment. The Associations also moved for an order to C&P to show cause why it should not be held in contempt.

33. The motion was heard in the Carteret County Superior Court on March 13, 1995. The Court's order, dated March 20, 1995, did not change the substance of the October, 1993 judgment. The order stated that C&P shall bring the sewer and waste treatment facilities into compliance, grant the Associations the right to operate the waste treatment facilities, and that the Associations shall promptly apply for a permit from DEM to operate the facility.

34. On June 1, 1995, a Motion for Temporary Stay of the Judgment entered by the Carteret County Superior Court was filed by C&P in the North Carolina Court of Appeals. Also, a "Petition for Writ of Certiorari" and "Petition for Writ of Supersedeas" were filed on the same date, June 1, 1995, by C&P in the North Carolina Court of Appeals.

35. The Motion for Temporary Stay was denied by the North Carolina Court of Appeals on June 1, 1995. The Motion for Temporary Stay was then appealed to and denied by the North Carolina Supreme Court on June 13, 1995.

36. The "Petition for Writ of Certiorari" and for "Writ of Supersedeas" were denied by the North Carolina Court of Appeals on June 15, 1995.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, the Commission makes the following conclusions of law:

1. The Commission has jurisdiction over C&P and the subject matter disposed of by this order. The Carteret County Superior Court also has jurisdiction of certain aspects of this case.

2. C&P is a public utility in connection with its operation of the sewage treatment plant serving Ocean Glen and Ocean Bay Villas condominiums and is subject to the general supervisory powers of the Commission.

3. It would not be in the interest of the public for the Commission to grant a Certificate of Public Convenience and Necessity to C&P.

4. The interest of the public will best be served by the Associations' assuming control of the operation of the facility.

5. The Associations will not be considerated "public utilities" pursuant to the exemption in G. S. 62-3 (23)(d) for homeowners associations, provided a satisfactory arrangement can be worked out between the Associations and C&P for the purchase of the land and facilities or the facilities alone, from C&P, at a mutually agreed upon price to be paid by the Associations to C&P.

6. The Associations do not need a Certificate of Public Convenience and Necessity from the Commission to operate the facility if the Associations are exempted from regulation by the Commission under G. S. 62-3(23)(d).

7. C&P is bound by the condominium declaration for Ocean Glen to transfer authority to operate the facility to the Associations as determined by the Carteret County Superior Court.

8. It is in the public interest for C&P to transfer authority to operate the facility to the Associations in accordance with the Superior Court judgment.

9. The Associations cannot legally operate the facility until a DEM permit is issued to them.

10. It is not in the public interest for C&P to contest the issuance of a DEM permit to the Associations to operate the facility.

11. Pending issuance of a DEM permit to the Associations, the public interest will be served by C&P temporarily continuing to operate the facility pursuant to the Temporary Operating Authority issued by the Commission on August 7, 1995.

12. C&P is not entitled to an injunction restraining the Associations from operating the facility or from applying to DEM for an operating permit.

IT IS, THEREFORE, ORDERED as follows:

1. That C& P's application for a Certificate of Public Convenience and Necessity filed April 25, 1995, be, and the same is hereby, denied.

2. That C&P's Motion for Preliminary and Permanent Injunctive Relief filed June 14, 1995, be, and the same is hereby, denied.

3. That Pursuant to G. S. 62-3(23)(d), an exemption from regulation by the Commission will be granted to the Associations provided a satisfactory arrangement can be worked out between the Associations and C&P for the purchase of the land and facilities or the facilities alone from C&P at a mutually agreed upon price to be paid by the Associations to C&P.

4. That the Associations must provide to the Commission, within thirty (30) days of their receipt of this order, a letter outlining the Associations' plans for the purchase of the land and facilities or the facilities owned by C&P. If the Associations fail to provide the Commission with said plan within thirty (30) days, the Commission will require the Associations to apply for a Certificate of Public Convenience and Necessity, thus subjecting the Associations to regulation by the Commission.

5. That C&P is ordered to transfer authority to operate the plant to the Associations pursuant to the Superior Court Judgment filed October 26, 1993, in 89 CVS 1034 and the Commission order herein within thirty (30) days of C&P's receipt of this order.

6. That pending issuance of a permit by DEM to the Associations to operate the plant, C&P is directed to temporarily continue to operate the facility pursuant to the Temporary Operating Authority issued by the Commission on August 7, 1995. Upon receipt by the Commission of notice from the Associations that they have received their DEM permit and have assumed operation of the plant, the

Temporary Operating Authority certificate will be revoked retroactive to the date the Associations take control of the facility.

7. That C&P is ordered not to contest the Association's application to DEM for a permit to operate the facility.

8. That the Commission retains jurisdiction over this matter for the entry of any additional orders necessary to effectuate this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of February 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-1063
DOCKET NO. W-100, SUB 27

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by C&P Enterprises, Inc, Post Office Box 31563, Raleigh, North Carolina for a Certificate of Public Convenience and Necessity to Furnish Sewer Utility Service in Ocean Glen and Ocean Bay Villas Condominiums in Carteret County, North Carolina and for Approval of Rates and Ocean Glen Townhouse Condominium Owners Association Phase I, Inc., and Ocean Bay Villas Owners Association, Inc., Petitioners v. The State of North Carolina ex rel the North Carolina Utilities Commission, Respondent	)	ORDER DENYING EXCEPTIONS OF C & P ENTERPRISES AND REQUEST FOR ADDITIONAL HEARING AND GRANTING AN EXTENSION OF TIME WITHIN WHICH TO FILE RECORD ON APPEAL

WATER AND SEWER - DENYING APPLICATION

BY THE COMMISSION HEARING PANEL: On February 13, 1996, the Commission's three (3) member panel issued an Order Denying Certificate of Public Convenience and Necessity, Motion for Preliminary and Permanent Injunctive Relief, and Granting Transfer of System, Continuing Temporary Operating Authority and Provisional Exemption from Regulation.

On March 14, 1996, C & P Enterprises, through counsel, filed Exceptions of C & P Enterprises and Request for Oral Argument pursuant to G. S. 62-78. The Commission Hearing Panel concluded that G. S. 62-78 applies to Recommended Orders; the Order entered in these dockets was made unanimously and, therefore, was a final Order pursuant to G. S. 62-60.1(b). Accordingly, on March 26, 1996, an Order Denying Exceptions of C & P Enterprises and Request for Oral Argument was issued finding no basis for the filing of exceptions and request for oral argument.

On April 11, 1996, pursuant to G. S. 62-90(c), C & P Enterprises, through counsel, filed Exceptions – Notice of Appeal, and Request for Additional Hearing. Upon consideration thereof, the Commission Panel is of the opinion that an additional hearing would not serve to expedite the ultimate disposition of these dockets.

On May 13, 1996, C & P Enterprises, through counsel, filed for an extension of time within which to file the record on appeal in these dockets. The Commission Panel finds reasonable grounds to grant such extension.

IT IS, THEREFORE, ORDERED as follows:

(1) That the Request for Additional Hearing filed by C & P Enterprises, Inc., in these dockets on April 11, 1996, be, and the same hereby is, denied.

(2) That the Time For Filing The Record On Appeal in these dockets be, and the same hereby, is extended up to and including June 15, 1996.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of May 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-218, SUB 108

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application by Hydraulics, Ltd., Post Office Box 35047, Greensboro, North Carolina 27425, for Authority to Increase Rates for Water Utility Service in All of Its Service Areas in North Carolina	))))))	ORDER GRANTING RATE INCREASE

HEARD IN: Gaston County Courthouse, Gastonia, North Carolina, on May 2, 1996, at 7:00 p.m.

BEFORE: Commissioner Laurence A. Cobb, Presiding

HEARD IN: Guilford County Courthouse, Greensboro, North Carolina, on May 22, 1996, at 7:00 p.m.

BEFORE: Commissioner Charles H. Hughes, Presiding

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 18, 1996, at 9:30 a.m.

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Laurence A. Cobb and Jo Anne Sanford

APPEARANCES:

For Hydraulics, Ltd.:

William E. Grantmyre, Attorney at Law, Post Office Drawer 4889, Cary, North Carolina 27519

For the Using and Consuming Public:

James D. Little, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On February 9, 1996, Hydraulics, Ltd. (Applicant or Company), filed for authority to increase rates for water utility service in all of its service areas in North Carolina. On February 15, 1996, the Applicant filed a motion for emergency interim rates due to the extreme operating difficulties the Company was experiencing and the need for system improvements for lead and copper compliance as required by the Safe Drinking Water Act. By Orders issued on March 8 and 14, 1996,

public hearings were scheduled in Gastonia and Greensboro. On March 27, 1996, the Applicant filed an affidavit in support of interim rates. On April 10, 1996, the Commission issued an Order approving the interim rates pending final decision by the Commission in this matter. Direct testimony was prefiled by the Public Staff. Direct and rebuttal testimony was filed by the Applicant.

This matter was decided by the three-member Commission Hearing Panel consisting of Commissioners Allyson K. Duncan, Laurence A. Cobb, and Jo Anne Sanford.

FINDINGS OF FACT

1. Hydraulics, Ltd. is a public utility as defined by G.S. 62-3(23) and is before the Commission seeking an increase in its rates and charges pursuant to G.S. 62-133.

2. The test year in this proceeding is the twelve months ended June 30, 1995.

3. Hydraulics' present rates and the rates requested in its application are as follows:

	Present Rates	Proposed Rates
Metered Rates: (Monthly)		
Huntwood and Parkwood		
Base charge (zero usage)	$9.85	$13.13
Usage charge (per 1,000 gal)	$2.55	$ 4.16
Valleydale		
Base charge (zero usage)	$9.70	$13.13
Usage charge (per 1,000 gal)	$2.38	$ 4.16
Hickory Creek		
Base charge (zero usage)	$10.14	$13.13
Usage charge (per 1,000 gal)	$ 2.16	$ 4.16
Mar-Lynn Forrest		
Base charge (zero usage)	$10.14	$13.13
Usage charge (per 1,000 gal)	$ 2.27	$ 4.16
Rolling Hills, South Bourne, Laurel Woods		
Base charge (zero usage)	$10.14	$13.13
Usage charge (per 1,000 gal)	$ 2.75	$ 4.16
All others		
Base charge (zero usage)	$10.14	$13.13
Usage charge (per 1,000 gal)	$ 3.16	$ 4.16

Unmetered Rates: (Monthly)		
Shade Tree Acres	$22.05	$29.05
Reconnection Charge		
If water service cut off by utility for good cause	$25.00	$35.00
If water service cut off at customer's request	$ 2.00	$15.00
New Account Fee:	NA	$15.00
Return Check Charge:	$15.00	$20.00

4. Hydraulics, Ltd., was operating 82 water systems serving 3,803 customers at the end of the test year. Except for 13 flat rate customers at Shade Tree Acres, all customers are metered.

5. The Applicant, in general, is providing adequate water service in its service areas.

6. The annualized water service revenues under the Applicant's present rates are $1,217,947.

7. The annualized miscellaneous revenues under the Applicant's present rates are $14,865.

8. It is inappropriate to increase the reconnection fee when service is cut off by the Company for good cause from $25 to $35.

9. It is appropriate to increase the reconnection fee when service is cut off at the customer's request from $2.00 to $15.00.

10. It is appropriate to increase the returned check charge from $15.00 to $20.00.

11. It is appropriate to charge a new account fee of $15.00.

12. The appropriate level of uncollectibles under present rates for use in this proceeding is $8,506.

13. The reasonable original cost rate base for use in this proceeding is $484,630, comprised of the following components:

Plant in service	$2,144,553
Accumulated depreciation	(299,897)
Contributions in aid of construction	(1,488,770)
Cash working capital	146,916
Average tax accruals	(18,172)
Original cost rate base	$ 484,630

14. The appropriate level of operating and maintenance expenses for use in this proceeding is $627,520, which consists of the following.

Operations and maintenance	$ 15,972
Salaries and wages	214,086
Purchased water	2,631
Purchased power	113,361
Chemicals	14,725
Supplies - tools	3,694
Maintenance and repair	50,084
Gas - vehicles	31,565
Testing	83,250
Outside services	82,144
Dues, permits, and other fees	16,008
Total operating and maintenance expenses	$627,520

15. The appropriate level of general and administrative expenses for use in this proceeding is $547,806, which consists of the following:

Job travel	$ 26,201
Salaries and wages	264,023
Advertising	796
Bank charges	3,037
Filing fees	1,800
Insurance	105,336
Licenses - auto	1,799
Licenses - other	186
Utility maint. repair - office	4,888
Maintenance - trash collection grounds	2,727
Maintenance agreements	8,465
Miscellaneous expense	533
Office and warehouse rent	29,640
Office supplies	12,055
Postage	15,009
Professional service	10,613
Professional development	4,066
Rental of equipment	2,356
Telephone	27,068
401(k) expense	4,505
Rate case expense	18,206
Non-utility adjustment	(1,174)
Capitalized expenses	0
Annualization adjustment	5,671
Total general and administrative expenses	$547,806

16. The appropriate administrative and general non-utility allocation factor to include in this proceeding is .44%.

17. It is inappropriate to use the average capitalized salaries of other water and sewer utilities in the State of North Carolina to determine a capitalization factor for purposes of this proceeding.

18. The appropriate total customer growth factor is 1.02604.

19. It is appropriate to apply the customer growth factor to the following expense categories: operations and maintenance, purchased power, chemicals, outside services, supplies expense(tools), maintenance and repairs - trencher, repairs - buildings, repairs - water plant, repairs - tanks, repairs - water mains, bank charges, office supplies, postage, and telephone.

20. The appropriate level of depreciation and taxes under present rates for use in this proceeding is $203,395, which consists of the following:

Depreciation	$108,257
Property taxes	7,560
Payroll taxes	37,382
Regulatory fee	1,224
Gross receipts tax	48,972
State income tax	0
Federal income taxes	0
Total depreciation and taxes	$203,395

21. The operating ratio method, which allows a margin on operating revenue deductions requiring a return, is the proper method for determining Hydraulics' revenue requirement.

22. A margin of 10.9% on operating revenue deductions requiring a return is just and reasonable for Hydraulics.

23. The annual total revenues necessary to allow the Applicant the opportunity to earn the 10.9% return found just and reasonable are $1,612,871 for water operations which is an increase of $388,565.

24. The following rates will produce the annual level of revenues as approved herein for water operations:

Metered Rates:

Base charge per month (no usage included)	$ 13.75
Usage charge (per 1,000 gallons)	$ 4.00

Unmetered Rates: (per month) $ 28.75

25. The Company should file a complete W-1 filing for all future rate proceedings.

26. The Company should file a complete application for all future rate proceedings.

27. The Company's administrative personnel should begin using daily time sheets to track the amount of time spent on non-utility functions.

28. The Company's personnel should begin coding their daily time sheets to reflect the amount of time spent on capital projects. In addition, the Company should also post the necessary journal entries on its books to recognize capitalization of salary and salary-related expenses.

29. The Company should cease recording Mr. Perkins' personal expenses on its books and records and no longer make payments for these expenses from Company funds.

30. The Company should categorize plant in service according to the NARUC Uniform System of Accounts (USOA) for Class A water utilities.

31. The Company should comply with the Commission's gross-up requirements as they pertain to the collection of gross-up on contributions in aid of construction (CIAC) received before June 12, 1996.

32. The Company has collected varying amounts of gross-up for income taxes associated with CIAC since its last rate case.

33. The Company's gross-up multiplier for 1993 and 1994 should be calculated based on the actual taxes paid. Taxes paid on CIAC should be calculated as the difference between the taxes paid including CIAC and taxes paid excluding CIAC.

34. The Company should refund, with interest at 10% compounded annually, all amounts collected above the actual gross-up multiplier for 1993 and 1994.

35. The undertaking by the Company with respect to its interim rates should be rescinded.

36. The Public Staff's request for an audit on the financial viability of the Company is not warranted at this time.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 3

The evidence for these findings of fact is contained in the application, the testimony of witnesses Perkins, Henry, and Furr and the evidence of record. This evidence is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence for this finding of fact is contained in the testimony of witness Furr and has been agreed to by the Company. It includes the River Run water system and customers which the Company originally opposed in the rebuttal testimony of Manual Perkins, pages 49 and 50. The Public Staff and

Company have stipulated that the system and customers should be included, and some of the associated expenses that had been omitted have also been included.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding of fact is contained in the testimony of witnesses Furr and Perkins and customers.

Witness Furr testified that Hydraulics, in general, is providing adequate water service in its service areas. It is evident from information in North Carolina Division of Environmental Health (DEH) records that the Company usually makes necessary repairs and improvements when they are brought to their attention. In most instances, Hydraulics has corrected the problems or is actively working to eliminate the problems. Improvements that are in process and proposed in the near future are expected to add to the reliability, consistency, and quality of water service. Issues on some specific systems are as follows:

Hickory Creek

The Hickory Creek water system was found to be in good condition at the time of the of transfer to Hydraulics. By letter, a customer questioned the water pressure and number of connections vs. DEH approved connections for the water system. It appears that production from the wells is adequate to support complete build out of the subdivision. Witness Perkins testified that Hydraulics is working with the developer's engineer to submit plans to DEH for approval of additional connections.

Huntwood

Extensive improvements required for Huntwood at the time of acquisition by Hydraulics have been completed. Statements made at the Gastonia hearing by customer witness W. W. Gilmore were in regards to the previous owner.

Parkwood and Laurel Woods

All improvements required for these systems at the time of acquisition by Hydraulics have been completed.

Valleydale

Numerous improvements have been made at Valleydale by Hydraulics, but DEH approval has not been obtained. Witness Perkins testified that Hydraulics plans to submit the revised plans to DEH for approval. Completion of plumbing and electrical work are needed to complete installation of the chlorine chemical feed pump.

Rolling Hills/South Borne

Rolling Hills and South Borne are separate systems but contiguous to one another. Neither met plan approval for number of connections when acquired by Hydraulics. The previous owner of these

systems installed a second well at Rolling Hills, and the original well was abandoned. However, the new well site failed to meet the required 100 ft. radius requirements and was never approved by DEH. Witness Perkins testified that Hydraulics intends to obtain site approval for the second well and interconnect the two systems to meet requirements for both systems. He also testified that Hydraulics plans to replace the roof of the Rolling Hills well house in the fall of 1996. Numerous improvements have been made to the systems.

Walker Heights

The Walker Heights system is in good condition, with the well house floor and hydropneumatic water storage tank recently painted.

Mar-Lynn Forrest

Two customers, Mr. David Coffey and Mr. Phillip Bracken, testified at the hearing in Gastonia about water quality problems. Hydraulics has made several improvements to the Mar-Lynn system since it was acquired in 1995. Witness Perkins testified that since the system exceeded the action level on copper, and in order to treat the low pH, Hydraulics will need to add caustic soda with chemical feed equipment. This will require a new wellhouse to be built, which is planned for spring of 1997.

Applegate (Including Ingram and Hidden Hills)

The Applegate well was in relatively good condition. Shingles need to be installed where recent work on the pump required opening a hole in the roof, and some of the vinyl trim on the house was missing. The Ingram and Hidden Hills wells were found to be in good condition.

Pine Knolls

Mr. James Podem and Mr. Tom Means appeared at the Greensboro hearing and testified that they had no problems with the water quality, had heard no other water quality complaints, that water pressure was adequate, and service was good.

Witness Furr stated that all three wells and the booster station at Pine Knolls were found to be in need of improvements. Well #1 has a well house that is old and deteriorating, and in need of significant improvements. A large air space exists between the outside of the hydropneumatic water storage tank and the inside edge of the opening where the tank is inserted in the side of the building. The opening allows easy access for small animals, and allows heat to escape during the winter months. There was no drain in the well house. Witness Perkins testified that Hydraulics plans to make renovations to the well house in the fall of 1996 to close the air space that exists in the wellhouse.

Water from Well #3 is pumped to Well #2 where water from both wells is treated. There is a water leak in the check valve(s) and/or the piping between the two wells. The well house at Well #2 is a small block structure. It is in need of repair to the covering and blocks. These wells do not have a blow-off. Witness Perkins testified that the leak in the check valve between the wells will be fixed as soon as Hydraulics can schedule it.

There was water standing outside one corner of the booster station building, and there was a packing leak on one of the booster pumps. It was not clear if the standing water was from the leaking booster pump, or from some other source. Witness Perkins testified that Hydraulics is in the process of replacing the booster pump.

Greystone Forrest, Holliday Hills, Staffordshire

The Greystone Forrest, Holliday Hills, and Staffordshire systems were found to be in good condition and well maintained.

Heartwood

Two customers, Mr. Hank Maiden and Mr. David Valleroy, appeared at the hearing in Raleigh. They testified in regards to an overpressure situation at Heartwood that had caused damage to some homes, and occasions of staining. Mr. Maiden stated he appreciated the company trying to operate the water system, and that their efforts are professional. Witness Perkins testified that the overpressure problem was due to a pressure sensing line freezing.

Pinewood Country Club

A total of four customers, Ken Clark, Larry Black, Mike Conley, and Watson Murphy, testified from the Pinewood Country Club water system. These customers testified as to the outage which occurred the weekend of June 30, 1996, at which time portions of the system were without water for an extended period of time. These customers complained about periodic outages in the system and questioned the adequacy of the water supply with the continuing of building of homes in the subdivision. Several questioned the recent restrictions on outside water usage and irrigation. Each testified that outages had occurred in prior years. The customers also testified that some experienced brown and blue stains, and they questioned the water quality for drinking.

Manuel Perkins testified that about six weeks ago a dry spell began and Hydraulics asked the Commission to issue an order requiring the reduction of outside irrigation at the Pinewood Country Club system. He testified Hydraulics discovered there was extensive irrigation on two homes which had a combined consumption total of 75,000 gallons in one month. Hydraulics requested the irrigation restriction until after the dry spell ended.

Hydraulics' witness Perkins testified that in order to increase the water supply, he had called Pinewood Country Club to request an easement or lease as to land to drill an additional well. He further testified he had contacted the president of the board of the nearby Seagrove-Ulah Water Authority to seek to buy bulk water for resale. He testified that Hydraulics would take whatever actions were necessary to acquire additional water to ensure an adequate water supply.

With respect to the water quality at Pinewood Country Club, he testified that the blue/green stains in sinks are caused when the PH is low. He testified this was the first he had heard of blue/green and brown staining at Pinewood and Hydraulics would investigate further.

On September 26, 1996, counsel on behalf of Ken Clark and other residents of the Pinewoods Subdivision filed a letter with the Commission. The letter alleges that Hydraulics has not secured an additional supply of water and has failed to correct the deficiencies in its service in the Pinewood Subdivision. Accordingly, the letter requested the following relief:

(1) Defer, indefinitely, the decision on Hydraulics' pending rate request. It would be imprudent to reward Hydraulics with a rate increase when it has been so patently indifferent to its customers, to its basic duty to operate in the public interest, and to the promises it made to the Commission;

(2) Require Hydraulics to submit to the Commission immediately a detailed factual report of the specific actions, if any, it has taken to secure an adequate supply of water and improve the quality of the water for Pinewoods Subdivision;

(3) Provide the residents of Pinewoods Subdivision, the Public Staff and other interested parties an opportunity to comment on Hydraulics' response; and

(4) If necessary, re-open the hearing record to allow the Commission and all parties an opportunity to cross-examine officials of Hydraulics.

Based upon the foregoing the Commission concludes that it is appropriate to require Hydraulics to comply with items (2) and (3) above. Upon receipt of the report from the Company and comments thereto, the Commission will take appropriate action in this regard.

Wright Beaver

Plans and specifications for Wright Beaver's design have not been approved as required, and no expansion or further connections can be made to the system. Witness Perkins testified that Hydraulics will continue to seek to obtain information for DEH approval, and hopes to be able to submit the engineering plans and specifications in the fall of 1996.

Enoch Turner

Plans and specifications for Enoch Turner's design have not been approved as required, and no expansion or further connections can be made to the system. The well head is not constructed properly, there is no master meter, the 100 foot radius around the well head is not known to be properly owned or controlled, and continuous chlorination is not provided. These same deficiencies were also discussed in a letter dated March 19, 1993. It was noted that steps have been started to improve the system, including a newly constructed well house and a hydropneumatic tank on site that is not functional. Witness Perkins testified that Hydraulics continues to seek to obtain information for DEH approval, and hopes to be able to submit the engineering plans and specifications in the fall of 1996.

Violation of Asbestos Monitoring Requirements

Section .1508 of RGPWS requires community water systems that are vulnerable to asbestos contamination in their source water to sample for asbestos between January 1, 1993, and December 31, 1995. By letters dated May 16, 1996, the following systems are in violation of this requirement: Crestview, Knoll View, Enoch Turner, Meadowcreek Estates, Pine Meadows, Shade Tree Acres, Wright Beaver, and Kimberly Court. Hydraulics believes these letters to be in error, but a DEH representative indicates they still have no evidence that the testing has been completed. Witness Perkins testified that if DEH will not rescind their instructions for monitoring, Hydraulics will expeditiously proceed with the monitoring.

General Observations

In some of the well houses, chlorine and caustic soda are being fed from the same solution tank using one feed pump. Rules Governing Public Water Systems (RGPWS) .0404 requires separate feeders for each chemical used. Witness Perkins stated that this type application has been performed in order to save capital costs, and although a technical violation of DEH rules, has not diminished the effectiveness of the chemical treatment by the chlorine and caustic soda.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6 - 7

The evidence supporting these findings of fact is contained in the testimony and exhibits of witnesses Henry, Furr, and Perkins, and the Commission's records.

Witness Furr testified that the annualized level of water service revenues under Hydraulics' present rates is $1,217,947. Witness Henry testified that the annualized level of miscellaneous revenues under Hydraulics' present rates is $14,865. These numbers were not contested by the Applicant. Since the parties are in agreement, the Commission concludes that these water service revenues and miscellaneous revenues figures are appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 - 11

The evidence supporting these findings of fact is contained in the testimony of witness Furr and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is contained in the testimony and exhibits of witnesses Henry and Perkins. Both parties agree that the uncollectibles amount should be calculated as a percentage of water service revenues and miscellaneous revenues using a rate of .69%. Having determined the appropriate level of water service revenues and miscellaneous revenues elsewhere in this order, the Commission concludes that the appropriate level of uncollectibles under present rates is $8,506.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is contained in the testimony and exhibits of witnesses Henry, Furr and Perkins. The following table summarizes the positions of the parties for original cost rate base:

	Company	Public Staff	Difference
Plant in service	$2,143,962	$2,107,797	$ (36,165)
Accumulated depreciation	(299,800)	(283,681)	16,119
Contributions in aid of construction	(1,488,770)	(1,488,770)	0
Cash working capital	147,092	117,175	(29,917)
Average tax accruals	(20,686)	(17,753)	2,933
Original cost rate base	$ 481,798	$ 434,768	$ (47,030)

As shown in the preceding table, the Public Staff and the Company agree on the level of contributions in aid of construction (CIAC). Therefore, the Commission agrees that the appropriate level of CIAC is $1,488,770. The Company and Public Staff disagree on several items of rate base, as discussed below.

Plant In Service

The difference in plant in service is due to the parties' differing positions relating to Mr. Perkins' van, capitalization of check valves, capitalization of a stone road, and non-utility allocations.

1994 Chrysler Van

The Public Staff has recommended that a 1994 Chrysler van be removed from plant in service stating that it is not needed for utility operations. The Public Staff excluded the vehicle as they counted 11 vehicles available for transportation of employees which includes a pump truck. Public Staff witness Furr testified that only eight persons need full-time transportation and three are in need of part-time transportation. His testimony was that two vehicles would be sufficient for these three individuals, Company President Manuel Perkins, an employee that takes water quality samples and a part time employee who did work on the water systems including grass cutting.

The Company's evidence, through the testimony of witness Perkins, was that the Public Staff only allowed 11 trucks in rate base, one of which was the Ford F350 truck which was a specialized truck and used only for the installation and replacement of submersible well pumps. He testified the pump truck was not available to use by the employees for transportation as this truck is more heavy duty and must always be kept available for pump replacements. He testified that when a pump on a system goes out and needs to be repaired or replaced, the only tool the Company has to remove the pump is the pump truck, and therefore, this vehicle must be kept available and centrally located to respond to emergencies.

Mr. Perkins strongly contested the Public Staff's assertion that three individuals could reasonably and efficiently share two trucks as contended by Mr. Furr. First, he pointed out that a truck had been provided to the part-time electrician who worked 24 hours per week. He stated that providing this truck was more cost effective than paying a mileage fee to the electrician. Another truck was used by the office employee who does water sampling and is in charge of the water monitoring program for Hydraulics. The other Company employee who previously used one of the trucks and worked part-time during the test year, witness Perkins testified was no longer provided a Company truck as now the electrician used that truck.

Mr. Perkins testified it was absolutely essential that the Company President have a vehicle to inspect the operations of water systems, travel to customer meetings, travel to the Utilities Commission, meet at water systems with DEH officials, meet with customers to discuss any water quality and other service concerns, discussions with customers whose property adjoins well lots as to the use of their property affecting the well lots, travel to suppliers, transporting of Company employees as needed when their vehicles may be inoperable or being repaired, transporting tools, small equipment and picking up materials as necessary. He testified that his sharing of the two pickup trucks with the other two persons would be extremely impractical with the vehicle not being available many times when necessary.

Mr. Perkins further testified that any personal use on this Company vehicle is reported on his W-2 form upon which he pays federal and state income taxes pursuant to the Internal Revenue Service regulations. He testified that as Company President with over 25 years experience in the water utility business and 40 years experience in the business world, any personal use portion on the vehicle is a small amount of compensation as President. He testified he must, as President, have a full-time vehicle to direct the operations of Hydraulics which has a total of 82 water systems, with 131 wells, serving 3,803 customers in 21 different counties. He testified that his vehicle had been allowed in all prior rate cases.

The Commission concludes that the Public Staff's adjustment is inappropriate. The operation of water utilities under the Safe Drinking Water Act and its various amendments has become increasingly complex over the past several years. It is essential that the Company President have a full-time vehicle in order to travel to systems for inspections, meet with DEH officials, meet with customers, travel to the Utilities Commission, attend customer meetings and inspect the operations of the water systems. It is not cost-effective for the Company President to be sharing two vehicles with two other employees whereby his accessibility to immediately respond to emergencies, travel to various Company water systems, and attend meetings would be materially restricted. The pump truck cited by the Public Staff is a specialized vehicle which is essential to be held as an emergency vehicle to repair and replace pumps on Hydraulics' systems thereby restoring water service to the customers as soon as possible. The Public Staff's suggestion that this vehicle be used for travel is very impractical as this is a very heavy duty emergency vehicle.

With Hydraulics having a total of 82 water systems with 131 wells serving 3,803 customers in 21 different counties, it is essential that the Company President travel and visit the systems, meet with the customers, DEH officials and Utilities Commission officials as frequently as reasonably needed. The Commission concludes that it is reasonable to include the President's vehicle in rate base.

Check Valves

It is inappropriate to reclassify 6 check valves from operation and maintenance and 8 check valves from maintenance and repairs to plant in service. This is discussed under these expense categories.

Stone Road

It is appropriate to reclassify $593 of stone for a road from outside services to plant in service. This is discussed under the outside services expense category.

Non-Utility Allocations

The remaining difference of $11,354 between the Company and the Public Staff relates to the use of different non-utility allocation factors. As discussed elsewhere in this Order, the Commission has found the Company's allocation factor of .44% to be appropriate for use in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of plant in service is $2,144,553.

Accumulated Depreciation

The difference between the Company and the Public Staff regarding accumulated depreciation, other than a mathematical error, is due entirely to the difference in the levels of plant in service. Based on the conclusion that plant in service is $2,144,553, the Commission concludes that the appropriate level of accumulated depreciation is $299,897.

Cash Working Capital

The difference between the Public Staff's recommended level of cash working capital and the level proposed by the Company results from using different totals for operating expenses. The standard calculation allows one-eighth of operating expenses as the amount required for cash working capital.

Based on the evidence of record and findings and conclusions set forth elsewhere in this Order, the Commission concludes that the appropriate level of cash working capital is $146,916.

Average Tax Accruals

The difference between the Public Staff's calculation of tax accruals and the Company's calculation involves the use of different levels of expense for payroll taxes on salaries and wages. The appropriate level of gross receipts tax, property tax, and payroll tax are determined elsewhere in this Order. Based on these levels the Commission concludes that the appropriate level of average tax accruals is $18,172.

Summary Conclusion

Based on the foregoing, the Commission concludes that the Company's reasonable original cost rate base is $484,630, consisting of the following items:

Plant in service	$2,144,553
Accumulated depreciation	(299,897)
Contributions in aid of construction	(1,488,770)
Cash working capital	146,916
Average tax accruals	(18,172)
Original cost rate base	$ 484,630

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding of fact is found in the testimony and exhibits of witnesses Henry, Furr, and Perkins. The following table summarizes the positions of the parties for operating and maintenance expenses:

	Company	Public Staff	Difference
Operations and maintenance	$ 15,974	$ 15,382	$ (592)
Salaries and wages	214,086	214,086	0
Purchased water	2,631	2,631	0
Purchased power	113,361	113,361	0
Chemicals	14,725	10,327	(4,398)
Supplies - tools	3,694	3,694	0
Maintenance and repair	50,084	49,297	(787)
Gas - vehicles	31,565	31,565	0
Testing	83,250	83,250	0
Outside services	82,737	51,240	(31,497)
Dues, permits, and other fees	16,008	16,008	0
Total operating and maintenance expenses	$628,115	$590,841	$(37,274)

As shown in the preceding table, the Public Staff and the Company agree on several components of operating and maintenance expenses. The Commission agrees with those items of expense where there is no disagreement between the parties. The Company and Public Staff disagree on several items of expense, as discussed below.

Operations and Maintenance/Maintenance and Repair

The Public Staff and Company disagreed as to the appropriate treatment as to whether a total of 14 check valves should be expensed or capitalized. The accounts that these items were in are: six check

valves - operations and maintenance account $590, and eight check valves - maintenance and repair expense account $787.

Public Staff witness Furr reclassified the 14 check valves which he reclassified to capital improvements. Company witness Perkins testified that each of these check valves had a cost of $98. He testified that this amount is less than the $100 guideline set forth in the Uniform System of Accounts Accounting Instructions, Paragraph 19(3), which states for materials and supplies:

> "The cost of individual items and equipment of small value (for example $100 or less) or short life, including small tools and implements, should not be charged to the utility plant accounts unless the correctness of the accounting therefore is verified by current inventories."

Witness Perkins testified that the check valves were replacement check valves for the systems and it was more cost-effective that these be expensed which concurs with the accounting instructions in the Uniform System of Accounts. He testified that it was Hydraulics' position that all materials and supplies less than the $100 guideline as set forth in the Uniform System of Accounts should be expensed as that such treatment is more cost-effective considering the amount of accounting time necessary to capitalize these small cost items.

The Commission concludes it is appropriate to expense these 14 check valves with $787 remaining as maintenance and repairs expense and $590 remaining as operations and maintenance expense. These replacement items are of small value, less than $100. There was no evidence by the Public Staff that the correctness of accounting for these small items of equipment including tools and implements have been verified by current inventories as required by the Uniform System of Accounts. The capitalizing of these small items of equipment is not cost-effective and results in excessive accounting costs which does not benefit the ratepayers. Accordingly, the Commission concludes that the appropriate level of operations and maintenance is $15,972, which includes the correction of a $2 error, and that the appropriate level of maintenance and repair is $50,084.

Chemicals

The Company and Public Staff have agreed on the level of expenses for chemicals except for those associated with Polyphosphates (C-4) and Caustic/Soda. Both parties also agree that additional use of these chemicals will be required in the future to be in compliance with Safe Drinking Water Act (SDWA) lead and copper requirements. The disagreement in the expense relates to the additional amount of the chemicals to be used and the associated additional expense.

The Public Staff excluded the additional chemical treatment for these wells to comply with the SDWA lead and copper levels as explained by Public Staff witness Furr who testified the Public Staff was not sure of the number of wells to which the additional polyphosphate and/or caustic soda treatment had been added up to the hearing date, and the Public Staff did not believe using the average pounds of chemical per well during the test year was the appropriate method to calculate the additional chemicals needed for the additional wells.

Upon cross-examination, witness Furr testified that in his original prefiled testimony prior to the amendment at the hearing, he allowed additional chemical treatment for both polyphosphate and caustic soda at seven wells. He testified the reason he deleted the seven wells was that he was not sure the Company's list did not include wells which already had this chemical treatment. He also testified he believed the gallons of water pumped during the test year from each well was a more accurate method to calculate the chemical usage.

Witness Furr also on cross-examination testified that the standard method to raise the PH and thereby treat water corrosivity, which is a major objective under the SDWA to comply with the lead and copper levels, was to add caustic soda as proposed by the Company. He testified that an additional method was adding polyphosphate which coats the water lines and customer fixtures which prevents the water from reacting with the customer plumbing thereby preventing the leaching lead from the plumbing solder or copper from the pipes and fixtures. He testified that adding the caustic soda and polyphosphate would improve the water quality for the customers. In addition, he testified polyphosphate helps eliminate brown and black staining experienced by the customers from iron and manganese. Witness Furr testified that polyphosphate is frequently used instead of iron and manganese removal filters. He further testified upon cross-examination that the addition of caustic soda to the water helps eliminate blue and green stains experienced by customers. Witness Furr also testified on cross-examination that even if he had the gallons pumped per well during the test year, he could not calculate exactly the pounds of chemical necessary for the water treatment at each well.

Mr. Perkins testified that Hydraulics was required to take corrective action to reduce water corrosivity as a total of 26 Hydraulics' water systems exceeded the lead and/or copper action levels under the SDWA. He testified Hydraulics was in the process of installing chemical feed pumps and as of the hearing date had installed additional chemical feed pumps and treatment at 13 wells for polyphosphate treatment and eight wells for caustic soda treatment. He testified all this chemical treatment is absolutely necessary to improve the water quality for compliance with the SDWA and should be included as expenses in the case.

He testified Hydraulics used the methodology in Mr. Furr's original prefiled testimony to calculate the additional chemical treatment cost using the average pounds per chemical used at Hydraulics' wells during the test year. This calculation revealed a test year average usage of 371 pounds of polyphosphate per well a test year average of 1,021 pounds of caustic soda per well.

Mr. Perkins further testified the average chemical feed quantity per well is the most appropriate method to make this adjustment as it was impossible to predetermine for any well the exact amount of caustic soda that will be necessary to increase the PH to the level necessary to comply with the SDWA. He testified the amount of caustic soda required depends on the complex chemical characteristics of water from each well and therefore, it is impossible from an engineering stand point to predetermine the chemical feed rate for caustic soda to raise the PH to the desired level. He testified that the process entails adding some caustic soda to slightly raise the PH and then testing, adding more caustic to slightly raise the PH and test again. This process is repeated until the appropriate PH level is reached. There is no predetermined formula. Mr. Furr, upon cross-examination stated

"The quality of water coming out of the wells varies, and you asked me if I had read the rebuttal testimony. (Manuel Perkins) There is a very good statement in there talking about the quality of water and how you had to adjust the chemical based on the quality of water."

Mr. Perkins also testified that there was no predetermined formula for the addition of polyphosphate as the amount needed to be added will also be dependent upon the complex water chemistry.

Based upon the credible evidence presented by the Company, the Commission concludes it is appropriate to include the cost of adding the additional chemical treatment for polyphosphate to 13 wells totaling $3,038 and caustic soda to eight wells totaling $1,360.

The appropriate calculation for the polyphosphate adjustment is 13 wells x 371 pounds per well average equals 4,023 pounds times $.63 per pound equals $3,038. The appropriate calculation for caustic soda is eight wells added through close of hearing times 1,021 pounds per well test year average equals 8,168 pounds times $.16664 per pound equals $1,360. The appropriate method to calculate the dosage or quantity of chemical to be used is the average usage in Hydraulics' wells for each chemical during the test year. The use of the average test year quantity chemical per well is the most reliable test year information available.

The evidence was clear in this case that Hydraulics needed to add the additional polyphosphate and caustic soda treatment to these wells in order to bring the wells into compliance with the lead and copper rule of the SDWA. The addition of these chemicals would reduce the corrosivity of the water and the leaching of lead and copper from the customers plumbing and fixtures into the water. In addition, the addition of caustic soda and polyphosphate would reduce blue green staining caused by low PH and brown and black staining caused by iron and manganese. The Public Staff testified that use of polyphosphate is an effective means of treating iron and manganese in lieu of more expensive iron and manganese removal filters.

Based upon the foregoing, the Commission concludes that the appropriate level of chemicals for use in this proceeding is $14,725.

Outside Services

The Public Staff and Hydraulics disagree on three adjustments for outside services as follows: Part-time meter reader - $5,944, part-time electrician - $24,960 and reconditioning of a stone access road - $593.

The Public Staff presented the testimony of Mr. Henry as to the Public Staff's position for the part-time meter reader and electrician. Mr. Henry testified that these two contract services had not been utilized during the test year. He testified that as of June 7, 1996, Hydraulics had not incurred these expenses. In addition, he testified if there was to be an outside electrician, then a portion of his fees should be capitalized and not fully expensed as outside services.

Company witness Perkins testified that the part-time meter reader is absolutely necessary as the two existing meter readers are Frank Ahalt, age 85, and Jack Tuttle, age 67. He testified these two meter readers cannot read meters as quickly as they could in past years. He testified that because of Frank Ahalt's advancing age, he can no longer work in the field the 40 hours per week as necessary to read customer meters, particularly in the warmer weather. He testified it was necessary to have the additional part-time meter reader as the two other meter readers were decreasing in their meter reading speed.

He testified that Mr. Ahalt had been showing fatigue now for three or four years and although he was a retired engineer and a graduate of Yale University, he was paid less than $16,000 per year. He testified that the part-time meter reader position was filled prior to the hearing date. He testified that subsequent to the end of the test year, there had been two other part-time meter readers in this position, both of whom had quit.

Mr. Perkins testified that Hydraulics had hired a part-time electrician in August 1995 but had to let him go in December 1995, due to lack of funds. He testified this position had been refilled by Moir Whicker, on June 10, 1996. He testified Mr. Whicker was a licensed electrician who was retired but doing contract services for Hydraulics 24 hours per week at the rate of $20 per hour. He testified Mr. Whicker was not an employee and does not receive any benefits from Hydraulics with the exception Hydraulics does provide a service truck to travel to the systems. The total annual expense for the electrician for his outside services is $24,960 per year ($20 per hour x 20 hours per week x 52 weeks per year = $24,960).

Upon cross-examination, Mr. Perkins was asked a series of questions as to whether the other water operators could perform these electrical services. He responded that although they had some electrical knowledge to do very simple functions such as checking the breaker to find out if power is coming in and so forth, and also deal with minor electrical problems, they could not perform the more complicated electrical functions.

Mr. Perkins testified that Hydraulics has a total of 131 wells and they are all dependent upon electricity having starters, pumps and controls in each house. He testified if anything goes wrong in the electrical system, the well is completely out of service with a complete outage for the customers. He testified the outside electrician's position was created to provide better electrical operations and repairs at Hydraulics' existing water systems. He testified the electrician's duties include trouble shooting, electrical problems in controls, pumps, inspecting and repairing control boxes and starters, pressure switches, cleaning the contacts, repairs and replacement of wiring to insure wiring is in conduit and meeting code, and replacing heaters in pump houses.

The Commission concludes that the part-time meter reading position of $5,944 and the part-time electrician totaling $24,960 are necessary and should be included as reasonable operating expenses. The evidence is very clear that Hydraulics' existing meter readers due to advanced age are not able to complete the meter readings, particularly during the hot summer months. There had been two other part-time meter readers in this position. The Public Staff's primary basis for recommending against the position was it had not been refilled. However, this position had been refilled prior to the July 18, 1996, hearing. The Commission further concludes the electrician is a reasonable operating expense and should be included in this proceeding. The Public Staff disallowed the expense stating that the position had not been utilized and had not been filled as of the June 7, 1996, Public Staff review. However, Hydraulics' evidence was

uncontroverted that the electrician position had been filled from August 1995 to December 1995, at which time the electrician was let go due to lack of funds. This position was refilled on June 10, 1996, with the electrician performing the more complex electrical functions on Hydraulics' 131 wells including troubleshooting electrical problems in controls, pumps, inspecting and repairing control boxes and starters, pressure switches, cleaning the contacts, repairs and replacements of wiring to insure wiring is in conduit and meeting code, and replacing heaters in pump houses. The operation of the electrical equipment on each of Hydraulics' 131 wells is essential in order to properly operate each well production facility and avoid customer outages and low pressure. Many of Hydraulics' systems are one well systems which accentuates the need for extremely well maintained electrical systems and controls.

The final area of disagreement between the Company and the Public Staff regarding the amount of outside services to include in this proceeding relates to an amount of $593 for stone on an access road to a well house, including delivery and labor for spreading. Witness Furr had reclassified this item to plant in service with a service life of 25 years. It was agreed at the time of the hearing that the appropriate service life for the stone should be 5 years, and that this item should be capitalized (Transcript of Testimony, Volume 4, page 75, lines 4 through 6). Therefore, on the basis of witness Furr's testimony, the Commission finds that it is appropriate that this item be removed from this expense category and placed in plant in service.

Based upon the foregoing, the Commission concludes that the appropriate level of outside services for use in this proceeding is $82,144.

Summary Conclusion

Based on the foregoing, the Commission concludes that the appropriate level of operating and maintenance expenses under present rates is $627,520, which consists of the following:

Operations and maintenance	$ 15,972
Salaries and wages	214,086
Purchased water	2,631
Purchased power	113,361
Chemicals	14,725
Supplies - tools	3,694
Maintenance and repair	50,084
Gas - vehicles	31,565
Testing	83,250
Outside services	82,144
Dues, permits, and other fees	16,008
Total operating and maintenance expenses	$627,520

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15 THROUGH 19

The evidence supporting these findings of fact is found in the testimony and exhibits of Mr. Henry, Mr. Furr, and Mr. Perkins. The following table summarizes the positions of the parties for general and administrative expenses:

	Company	Public Staff	Difference
Job travel	$ 26,201	$ 26,201	$ 0
Salaries and wages	264,023	226,712	(37,311)
Advertising	796	796	0
Bank charges	3,037	3,037	0
Filing fees	1,800	1,800	0
Insurance	105,336	103,289	(2,047)
Licenses - auto	1,799	1,799	0
Licenses - other	186	186	0
Utility maint. repair - office	4,888	4,888	0
Maintenance - trash collections	2,727	2,727	0
Maintenance agreements	8,465	8,465	0
Miscellaneous expense	533	533	0
Office and warehouse rent	29,640	17,568	(12,072)
Office supplies	12,055	12,055	0
Postage	15,009	15,009	0
Professional service	10,613	10,613	0
Professional development	4,066	4,066	0
Rental of equipment	2,356	2,356	0
Telephone	27,068	27,068	0
401(k) expense	4,505	4,505	0
Rate case expense	18,206	11,121	(7,085)
Non-utility adjustment	(1,166)	(28,219)	(27,053)
Capitalized expenses	0	(111,242)	(111,242)
Annualization adjustment	5,671	4,329	(1,342)
Total general and administrative expenses	$547,814	$349,662	$(198,152)

As shown in the preceding table, the Public Staff and the Company agree on several components of general and administrative expenses. The Commission agrees with those items of expense where there is no disagreement between the parties. The Company and Public Staff disagree on several items of expense, as discussed below.

Salaries And Wages

The first area of disagreement between the parties pertains to the level of salaries and wages to allow in this proceeding for a part-time customer service employee. Mr. Henry contended that he removed the salary of a part-time customer service employee not hired as of May 30, 1996, the last day of his field investigation. The Company's updated level includes proposed wages for this employee who was to be hired after the end of the test year. Mr. Henry testified that this person did not appear on the Company's most recent payroll report, as of June 7, 1996, therefore he removed the proposed wages from cost of service.

Company witness Perkins testified that this employee had started work on July 8, 1996, ten days prior to the evidentiary hearing. He stated the employee earns $9.00 per hour working 20 hours per week with annual compensation of $9,360. He stated this position was needed to reduce the extremely heavy work load of the other administrative employees. Mr. Perkins testified the reason the part-time employee was hired is Hydraulics had analyzed the work load of its employees with a total of seven office employees quitting Hydraulics within the past three years and three months. He testified this review revealed the need for an additional part-time office employee to relieve the workload and perform various customer service and clerical tasks including filing. He testified this position, although not filled during the test year, was absolutely needed to alleviate the extremely heavy workload. He testified that five of the seven employees who quit did so before the end of the test year. He testified the heavy workload along with Hydraulics' pay levels and non-competitive benefit package, have been the factors as to why these employees quit. He stated this part-time employee was absolutely essential to alleviate the heavy workload which existed at the end of the test year and now continues.

The Commission concludes that it is appropriate to include the $9,360 for this part-time office employee to assist in customer service and clerical tasks. This employee, although hired after the end of the test year, was hired and working prior to the hearing. The evidence was that the extremely heavy work load at Hydraulics was materially contributing to the high turnover of office employees and therefore, this additional office position was necessary in order for the Company to continue to provide adequate service to its customers.

The remaining difference between the Company and the Public Staff relates to $27,951 of salaries and wages allocated to non-utility operations by the Public Staff. As discussed elsewhere in this Order, the Commission has found the Company's non-utility allocations to be appropriate for use in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of salaries and wages - general and administrative is $264,023.

Insurance

The difference in insurance expense is due to the differences in salaries and wages - general and administrative, outside services, and non-utility allocations used in calculating workman's compensation and general liability insurance. Based on the Commission's findings on salaries and wages - general and administrative, outside services, and non-utility allocations, the Commission concludes that the appropriate level of insurance expense is $105,336.

Office And Warehouse Rent

The Public Staff made an adjustment to office rent and parking totaling $12,072 based on the Public Staff's position that the monthly rental payment should be the same as the property owners' monthly mortgage payment. The Public Staff asserted that as Manuel Perkins, the owner of 100% of the stock of Hydraulics, and his wife owned the office building property, which is leased to Hydraulics, then as an affiliated transaction the Commission should take the position that Hydraulics should have purchased the

building and property with it being included in rate base. Therefore, the Public Staff reasoned only the monthly mortgage payment should be included as a reasonable rental amount.

The Public Staff did not contest the reasonableness of the rent at $10.93 per square foot and did not contest that all the rented office space is needed to provide service to Hydraulics' customers. Mr. Henry stated that evidence in this case clearly shows that the cost which would have been incurred by Hydraulics had it purchased the building in question would be less than one-half of its $26,760 annual rental fee now being imposed on the utility and its ratepayers by the utility's sole shareholder and his wife. Therefore, substantial cost savings to the utility and its customers would have resulted had Hydraulics itself acquired the building. However, the Public Staff did not provide any supporting evidence that Hydraulics in 1988 could have obtained the bank loan for the building in its own name.

Hydraulics' evidence was substantially the same as in its prior rate case as stated in the final Commission Order by the Full Commission dated November 24, 1993, in Docket No. W-218, Sub 88. Hydraulics' evidence was the building and land could not have been purchased in Hydraulic's own name as no bank would provide financing to Hydraulics even with the office building and land as collateral. All the banks required the personal guarantee of Manuel Perkins and wife, Chris Perkins. Mr. Perkins testified that in 1988, when the land and building were purchased, Hydraulics was still having credit problems which existed at the time of the purchase of all the Hydraulics' stock in 1985.

Hydraulics' evidence as to comparable rentals showed that the adjoining property next door at 706 Regional Drive rented for $15.60 per square foot and property one-quarter mile down the road at 600 North Regional Road rented for $14.50 per square foot. In comparison, Hydraulics' rental was below market at $10.93 per square foot. The Public Staff did not contest the fair market rental value of Hydraulics' building.

Witness Perkins testified the building had been expanded since the Sub 88 case to provide more adequate work space for Hydraulics' employees and increased parking facilities. The building had been expanded a total of 958 square feet office space plus the addition of five parking spaces bring the total to 22 paved parking spaces. The addition to the building added two offices, a conference room which also serves as a field operator meeting room, and a supply area in which are located water testing supplies, storage facilities, sink and refrigerator. The Public Staff did not contest the need for the expansion or that all the space is needed to serve Hydraulics' customers.

Hydraulics contended that the facts are the same as the prior Sub 88 rate case and the Commission should include the monthly rental of $2,230 as operating expense which is $10.93 per square foot in comparison to the Public Staff's prior recommended allowance of only $6.00 per square foot. ($14,688 per year ÷ 2,449 square feet = $6.00)

The Commission concludes that the reasonable office rent expense is the $2,230 per month which is the rental rate of $10.93 per square foot. The Commission, as it did in the final order dated November 24, 1993, in Docket No. W-218, Sub 88, rejects the Public Staff argument that as there is an affiliated nature to the transaction, that no consideration should be given to the reasonableness of rent paid in comparison to the Greensboro rental market.

Hydraulics President Manuel Perkins testified in 1988 that he and his wife purchased the property in their individual names, as Hydraulics was unable to obtain bank financing in the Company's name. He testified that no bank would loan money to Hydraulics for this property without the personal guarantee of Manuel Perkins and wife, Chris Perkins. The uncontroverted evidence was that the entire office space of 2,449 square feet was needed to serve the customers. In addition, the office building had 22 paved parking places which are needed for Hydraulics' workforce and customers.

The rent at $10.93 per square foot was reasonable in comparison to the comparable rental properties with rental of $15.60 per square foot for the contiguous property at 704 North Regional Road and $14.50 per square foot for property at 600 North Regional Road one-quarter mile away. The rental rate paid by Hydraulics to lease this building was clearly below market. This evidence as to the comparable rentals was uncontroverted.

In this case, the Commission believes that the transaction between Hydraulics and its affiliate is below market rental demonstrated by the rent on the comparable adjoining property and nearby building also. In addition, the Commission has considered the only way Hydraulics could have received a loan to purchase the property would have required the Perkinses to be cosigners of the loan.

Based upon the foregoing, the Commission concludes that, consistent with the decision rendered by the Full Commission in Docket No. W-218, Sub 88, which was not appealed by the Public Staff, the appropriate level of office and warehouse rent expense for use in this proceeding is $29,640.

Rate Case Expense

The Public Staff and Company disagreed as to the amount to be included as rate case expense. The Public Staff and Company both agreed the $2,816 from three previous rate cases being Subs 92, 94 and 97 should be included and then amortized over a three-year period. The Public Staff and Company disagreed as to the appropriate amount of rate case expenses for the current Sub 108 proceeding.

Public Staff witness Henry in his prefiled testimony stated the Company should be denied all rate case expense in this current Sub 108 proceeding as the Public Staff had recommended a rate decrease and therefore the rate filing was unjustified.

Witness Henry further testified that the rate case attorney's fees and accounting fees in this Sub 108 case were substantially greater than Hydraulics' prior Sub 88 rate case. He testified in that Sub 88 case, 140 hours of attorney time were allowed by the Commission and there were 189.5 actual attorney hours. He testified that in the current case, the Company's updated expense for attorney hours through June 2, 1996, were 149.5 actual hours with an estimate of 123 hours for completion. He testified these hours were 95% over the amount allowed in the last rate case and 44% more hours than the actual hours in the prior Sub 88 rate case.

Witness Henry testified there were no expert accounting fees included in the last Sub 88 rate case. He testified that some of the increased accounting and attorney's fees were related to the filing of the W-1 documents. He testified that the preparation of the rate case schedules and the proforma adjustments would normally be done by the Company's in-house accountant. Witness Henry testified the Company

does now have an in-house accountant who he believed could prepare these rate case schedules and perform adjustments in the future cases and, therefore, future cases should have lower attorney and accounting fees.

At the hearing on July 18, 1996, Public Staff witness Henry modified his prefiled testimony stating it was now the Public Staff's recommendation that the Company's legal and accounting fees related to rate case expenses in this Sub 108 rate case expense be split 50/50 between the shareholders and the ratepayers. He stated that the Company had incurred an abnormally high level of legal and accounting fees in this proceeding as a result of:

"1) Preparation of the W-1, accounting schedules and proforma adjustments by Company's attorney and outside accountant,
2) Non compliance with the Commission's order in the last general rate case regarding CIAC and allocations to non utility, and
3) Completion of rate base, depreciation expense and tap-on fee schedules which were not included with the Company's application."

Witness Henry testified for the above reasons he believed the ratepayers should not be required to pay the full cost of these legal and accounting fees and that the Company's shareholders should absorb some of these costs. He stated that this adjustment was reasonable and consistent with the Commission's Order in Carolina Water Service's Sub 128 rate case where the Commission determined a 50/50 sharing of cost from Carolina Water Services' prior rate case was appropriate because Carolina Water Service had not complied with Commission rules, regulations and orders.

Witness Henry further testified that if the Commission decides to allow the Company to recover its actual legal and accounting fees, then the Public Staff recommended that the Sub 108 rate case expense be amortized over a longer period than normal, such as five years.

Upon cross-examination, witness Henry admitted that this was the first rate case in which Hydraulics has been required to file the W-1 documentation. He testified he was also the lead accountant in the last Mid South Water Systems, Inc. rate case being Docket No. W-720, Sub 144, in which Mid South had far more information missing from the W-1 filing than Hydraulics. He testified that the Public Staff did not recommend in the Mid South case that the legal and accounting rate case expenses be shared 50/50 between the shareholders and ratepayers.

Witness Henry upon cross-examination further testified that Hydraulics' in-house accountant only began work for Hydraulics six weeks prior to the Public Staff audit and he had no prior utility ratemaking experience. He testified that Hydraulics' previous accountant left the Company the first week of January 1996.

Hydraulics presented the testimony of witness Perkins who disagreed with the Public Staff's recommended rate case expense treatment. He testified that there was no way possible that Hydraulics could have possibly foreseen the Public Staff's recommended 27% capitalized labor adjustment from which the Public Staff proposed to reduce operating expenses by $110,814 (as revised). He testified neither the Commission nor Public Staff had ever made this type adjustment; nor had such an adjustment ever been

proposed for Hydraulics. Therefore, without this adjustment the Public Staff's prefiled recommendation would have been for a rate increase.

The Public Staff's revised schedules recommend a rate increase and, therefore, the Public Staff no longer recommended total rate case expense exclusion.

With respect to the Public Staff's statements that legal and expert accounting hours are excessive, witness Perkins testified that the Company strongly disagreed. He testified the 140 hours included in the last general rate case being Sub 88, were the only hours the Company submitted with the application. He testified the Company never updated the application attorney hours estimate and the 140 hours was accepted by the Public Staff. He testified this issue was never submitted to the Commission and, therefore, the Commission never allowed or disallowed the remaining 49.5 hours.

Witness Perkins testified that this Sub 108 case was far more involved and time consuming for Hydraulics' personnel than the previous Sub 88 case. He testified that for the first time Hydraulics was required to file a W-1 filing with the rate case application. Witness Perkins further testified the W-1 filing is very extensive for a company the size of Hydraulics which only has one in-house accountant who never previously prepared a W-1 filing. He testified the W-1 filing required outside accounting and legal assistance.

Witness Perkins further testified that the Public Staff has made in this proceeding far more data requests than previous Hydraulics' rate cases. He testified the amount of time Hydraulics' personnel have spent on this case and the preparation of the application, preparation of W-1 documentation, responding to Public Staff data requests, providing information during the Public Staff audits and providing information for the preparation of rebuttal testimony is approximately double the time Hydraulics spent on the prior Sub 88 rate case.

Witness Perkins testified in this current rate case that the Public Staff sent two CPAs to Hydraulics for the audit with Hydraulics having only one in-house accountant who began working for the Company in January 1996. He testified that there were also Public Staff accounting supervisors working on the case. Manuel Perkins testified that Hydraulics cannot adequately prepare the data request responses, provide information for the audit, adequately prepare rebuttal testimony and present its evidence at the hearing without extensive outside legal and accounting services thereby enabling Hydraulics to have a level playing field. He testified Hydraulics must have the outside accounting and legal services in order to ensure that Hydraulics' case is adequately presented to the Commission in comparison to the number of personnel and manhours which the Public Staff had devoted to this proceeding.

Hydraulics filed as late-filed exhibits on September 16, 1996, at the time of filing of Hydraulics proposed order, invoices showing actual legal and expert accounting fees and expenses from July 10, 1996, through September 16, 1996. These updated invoices showed for this Sub 108 rate case proceeding total attorney fees of $39,544 and total expert accounting fees of $4,534. In addition, as part of this late-filed exhibit, Hydraulics filed an invoice for legal services on the CIAC gross-up refund issue showing that these legal hours and charges have been kept completely separate and out of the rate case expense. Hydraulics has not asked any ratepayers to share any cost of the payment of legal services for the CIAC gross-up issue as was alluded to in witness Henry's revised testimony at the hearing.

The Commission concludes after reviewing all the evidence that the rate case expense presented by Hydraulics is reasonable and that a total in this Sub 108 proceeding of $51,802 should be included as a reasonable operating expense and amortized over a three-year period. Hydraulics filed a complete rate case application with the exception that the rate base schedule was omitted. This rate base schedule was later provided by Hydraulics to the Public Staff. The later providing of the schedule did not involve extra legal or accounting work; it simply involved work performed after the filing of the application rather than before.

The evidence was uncontroverted that this was the first W-1 filing by Hydraulics. None of Hydraulics' in-house personnel had any prior experience with a W-1 filing. The evidence was that the Public Staff for the recent Mid South rate case did not recommend a 50/50 split between the ratepayers and the shareholders despite the fact that Mid South had much more missing from the W-1 filing that Hydraulics. Although Public Staff witness Henry asserts the compiling of the W-1 information is relatively simple, he did testify that not one of the Public Staff's 17 or 18 accountants had ever compiled the documentation for a W-1 filing.

The Commission concludes the Public Staff's comparison with the prior Sub 88 rate case is inappropriate as that rate case involved substantially fewer issues plus it is true that the issue as to actual reasonable legal hours in the Sub 88 rate case was never submitted to the Commission for determination. In addition, this current Sub 108 rate case involves several issues never presented to the Commission by the Public Staff in a Hydraulics prior rate case with the largest one being the Public Staff's recommendation that 27% of Hydraulics' field operations labor and all related expenses be capitalized. In addition, the Public Staff recommended for the first time that the vehicle of Hydraulics' President be excluded from rate base, with all depreciation and gasoline expenses for the vehicle excluded. In addition, the Public Staff has chosen to again litigate the office rent issue which was decided by the Full Commission in Hydraulics' last rate proceeding.

The Commission concludes that the Company's rate case expenses are reasonable and appropriate. The approved rate case expense for this Sub 108 proceeding which shall be amortized over a three-year period is as follows:

Item	Amount
NCUC filing fee	$ 500
Printing	1,400
Postage	3,640
Travel and meals	320
Attorney's fees	39,554
Attorney's expenses	1,269
Accounting fees	4,534

Accounting expenses	24
Paralegal fees	192
Transcript	369
Total rate case expense	$51,802
Amortization period in years	3
Annual rate case expense	$ 17,267

The total rate case expense including the Sub 92, 94, 97 and 108 dockets is $18,206 ($939 + $17,267 = $18,206)

Non-Utility Allocation

The Public Staff and Company disagree as to the proper non-utility allocation percentage factor for general and administrative salaries and expenses. The Public Staff and Company are in agreement that 8.35% is the appropriate percentage for non-utility allocations of field operator salaries and related expenses. In addition, the Company and Public Staff are in agreement as to the various expense line items to which the allocation factor should be applied. Therefore, the sole issue of disagreement with respect to the non-utility allocations is the correct percentage for non-utility allocations for general and administrative salaries and related expenses.

Public Staff witness Henry testified that there was no disagreement as to the operations and maintenance expenses with the non-utility allocation factor of 8.35%. He testified this allocation factor was based upon the actual hours each field operator spent on these non-utility businesses. He testified Hydraulics did provide the necessary documentation to support the field operator non-utility hours.

Witness Henry testified the hours worked by administrative employees for non-utility hours, in his opinion, had no supporting documentation. He testified without verifiable basis on which he could rely, such as time sheets, the Public Staff recommended that the allocation factor be based upon the revenues of the utility operations and the non-utility operations. He testified that the revenue method of allocating expenses to non-utility operations was utilized by the Public Staff and found reasonable by the Hearing Examiner in Hydraulics' last general rate case being Docket No. W-218, Sub 88. Witness Henry testified that the Public Staff's calculated non-utility factor was 12.92% based upon the per book revenues of all associated business including utility operations and the non-utility construction and projects.

Hydraulics' witness Perkins testified the non-utility operations of Hydraulics consisted of construction work performed on water systems for which Hydraulics had contracts with the developer and which then became systems owned and operated by Hydraulics pursuant to Certificates of Public Convenience and Necessity issued by the Commission. The other type non-utility work performed by Hydraulics' field operators was contract operations on three water systems, which Hydraulics internally refers as "projects." He testified on the three systems for which Hydraulics performed contract operations,

the Company only performed the following services: adding chemicals to the wells, collecting the necessary water samples and operating the chemical treatment. He testified that on only one of these three systems being Belews Creek, does Hydraulics respond to any emergency or repair any broken water lines. He testified Hydraulics does not perform any customer billing and meter reading on any of these systems.

Witness Perkins testified that the installation of water systems being construction work on these developer systems consisted of the installation of water mains and services, performing the 24 hour DEH well draw down test, construction of interiors of well houses, including plumbing, controls, chemical treatment equipment, and the installation of the submersible pump and hydropneumatic storage tank. He testified the actual construction of the well house building is frequently done by an outside contractor except the carpentry which is performed by Hydraulics' employees.

Hydraulics strongly contested the Public Staff's 12.92% allocation factor for general and administrative employees which was 55% higher than the field operators allocation factor of 8.35%. Witness Perkins testified that the time spent by the field operators doing contract operations such as adding chemicals, collecting samples and operating the chemical treatment equipment, plus making repairs to the water lines and other emergency responses at only the one Belews Creek system, far exceeds the amount of time spent by office personnel who merely send out a total of two invoices each month for contract operations and occasionally have telephone discussions with the owners of the systems.

Hydraulics' evidence was that the work of the field operators performing the developer systems construction work far exceeded the time spent by administrative personnel in the office who merely invoice the developer for the work performed, have various discussions with the developers relating to the work to be performed, estimate the job, and discuss the plans and specifications to be prepared by the engineer to be submitted to DEH for approval. Witness Perkins testified Hydraulics' in-house accountant records the field operators time spent on these contract operations and construction for developer systems, and also totals the time spent by the office personnel.

Witness Perkins testified that the time spent by general office and administrative personnel for new developer system construction is far below the time spent by field operators who are actually in the field performing the actual construction work for the installation of these new water systems. He testified that the Public Staff's calculation of a 12.92% general administrative allocation factor being 55% higher than the field operations who actually perform the work, is totally unrealistic as it is impossible for the general and administrative employees time to exceed the field operators' time.

Witness Perkins testified that Hydraulics' administrative and general personnel gave the hours worked on contract operations (projects) and developer systems construction to Hydraulics' in house accountant. These times were given by the respective employee to the accountant each time work was performed for the contract operations or construction. The accountant then recorded the time and made appropriate journal entries. Witness Perkins testified that Hydraulics believed it complied with the NARUC Uniform System of Accounts for Class A Water Companies 1984, Accounting Instructions No. 10, General - Allocation of Salaries and Expenses of Employees because Hydraulics time recording was based upon the actual time spent in contract operations and developer system construction activities which was a study of time during the representative period. Hydraulics' witness Perkins testified the total time spent by Hydraulics administrative and general personnel averaged .44% per employee. Hydraulics' evidence was that the Public Staff using the revenue method materially overstated the time spent by

administrative and general employees as the field operators who do the actual work in the field spent far more time on these contract operations and construction than did the office employees.

Witness Perkins testified that he has been in the water utility business and has been bidding jobs for 27 years and needs very little time to estimate the cost of installing the water system as it does not vary from job to job. He testified Hydraulics has standard specifications which are used again and again by the engineer so he spends very little time in discussions with the engineer.

The Commission, after studying all the evidence, concludes that it is appropriate for purposes of this proceeding to use the Company's factor of .44% for non-utility allocations for general and administrative salaries and related expenses. Hydraulics' employees supplied their time worked on these projects to in-house accountant who compiled the totals. The NARUC Uniform System of Accounts for Class A Water Utilities 1984, Accounting Instructions No. 10, General - Allocation of Salaries and Expenses of Employees includes the statement

> "In the event actual time spent on various activities is not available or practicable, salaries should be allocated upon the basis of a study of time engaged during a representative period. Charges should not be made to the accounts based upon estimates or in an arbitrary fashion."

In so concluding, the Commission is persuaded that the representative study by Hydraulics is more reliable than the Public Staff's estimated allocations based solely upon revenues. The Public Staff's methodology of allocating general administrative personnel salaries and related expenses strictly by revenues distorts the amount of time spent by these employees on contract operations (projects) and construction on new developer systems. The work on contract operations performed by Hydraulics' field operators takes far more of their time than the relatively few functions performed in the office consisting for contract operations primarily of issuing two invoices per month and occasionally having telephone discussions with the owners of the water systems. The field operators in doing construction work do the 24 hour well draw down test, install the mains and services, install the hydropneumatic tank and submersible well pumps, and also install the interiors of the well houses including plumbing, electrical, valve bank and controls. The only functions performed in the office are invoicing the developers, discussions by Manuel Perkins with the developer on the initial project, estimating the job and discussing the plans and specifications to be prepared by the engineer to be submitting to DEH for approval. By using standard specifications, Hydraulics, causes the discussions with the engineer to not be time consuming.

The uncontroverted evidence was very clear that the time spent by the general and administrative personnel for both the contract operations and construction was far less than the field operators. This is in sharp contrast to the Public Staff's allocation method which has the general and administrative employees factor 55% higher than the field operators allocation factor who performed virtually all the work.

Capitalized Expenses

The Public Staff and Hydraulics disagree as to whether there should be an adjustment for the capitalized labor and related expenses for Hydraulics' employees working on improvements and upgrades to the existing water systems owned by Hydraulics. The proposed adjustment by the Public Staff totals $111,242.

Public Staff witness Henry testified that, as work performed on Hydraulics' existing systems for upgrades is performed by Hydraulics' operations personnel, some of their time spent improving these systems should be capitalized. He testified that the time was spent renovating pump houses, changing pumps, motors and compressors, drilling new wells and refurbishing storage tanks. He testified Hydraulics has not capitalized any of the field operator salaries or salary related expenses for the time spent by the operators on these upgrades, renovations and replacements.

The Public Staff's evidence was that the Public Staff requested the Company to compile a capitalization percentage. Public Staff witness Henry testified that the Public Staff rejected the Company's calculations because the Public Staff believed the information to be incomplete and the preliminary numbers showed 6.35%, which the Public Staff believed to be low.

Public Staff witness Henry testified the Hydraulics' calculation of its capitalization percentage contained errors and omissions and, in the opinion of the Public Staff, could not be supported. The Public Staff then calculated a 27% capitalization rate for salaries and wages and various other expenses based upon what the Public Staff determined to be the average capitalized operations salaries of water and sewer utilities in the state. However, the Public Staff limited its study to three very large companies from their last general rate cases being Heater Utilities, Inc. (Heater), Brookwood Water Corporation (Brookwood), and Carolina Water Service, Inc. of North Carolina (Carolina Water).

Public Staff witness Henry also testified that the Public Staff had never previously proposed such an adjustment for Hydraulics.

The testimony of Manuel Perkins was that neither the Public Staff nor the Commission has ever capitalized Hydraulics' labor in prior rate cases for upgrading and replacements of Hydraulics' existing systems. Witness Perkins also testified that, to the best of his knowledge, the Public Staff had never made such an adjustment to an operating ratio water company with the exception of only one employee who was an engineer at Mid South Water Systems, Inc., in Mid South's last general rate case.

Witness Perkins testified the capitalization of labor would preclude Hydraulics from acquiring and upgrading troubled water systems, and would therefore be against public policy. He testified that Hydraulics, over the years acquired and upgraded utility plant and customer service for a number of troubled water systems at the request of the Commission Staff and/or the Public Staff. During the test year, Hydraulics invested a significant amount of Hydraulics' funds to make improvements to these systems, capitalizing the materials for the improvements and amounts paid to outside contractors. He testified that during the test year, Hydraulics acquired two extremely troubled systems after encouragement from the Public Staff and that each of these systems needed major upgrades. In addition, Hydraulics also acquired three other systems during the test year which needed upgrades. Hydraulics presented photographic evidence of the system upgrades performed by Hydraulics on the two extremely troubled water systems being Huntwood and Parkwood.

Witness Perkins testified that capitalizing of labor for system improvements and replacements, if approved by the Commission, would make the acquisition of troubled systems beyond Hydraulics' financial capabilities. He testified Hydraulics could simply not afford the significant cash outlays for field operators' salaries which the Public Staff now for the first time proposed to be capitalized. Witness Perkins testified

that Hydraulics has done an excellent job of improving the level of service in these acquired troubled water systems over the years. He testified that eliminating Hydraulics' ability to acquire and upgrade troubled water systems would be against public policy.

Witness Perkins testified that the Public Staff's comparison of Hydraulics to Brookwood, Heater and Carolina Water was totally unrealistic with the Public Staff using the 27% average capitalization rate for those three companies from their last general rate cases. He testified that those companies are large rate base companies and much larger than Hydraulics as follows: Customers - Brookwood - 1.8 times larger, Heater - 3.1 times larger, and Carolina Water - 4.6 times larger. He also testified each of these three have large rate bases, with original cost net investment at Brookwood - $2.7 million, Heater - $7.1 million and Carolina Water - $12.1 million (water operations only) in comparison to Hydraulics' original cost net investment of less than $400,000. He also testified that each of these three companies had extensive long-term lines of credit with lending institutions which are not available to Hydraulics.

Witness Perkins testified the Commission has and should continue to provide different rate treatment for operating ratio companies compared to well-capitalized rate base companies if the Commission intends to encourage well-managed operating ratio companies to continue to take over and upgrade small nonviable troubled systems. He testified that the Public Staff's adjustment to capitalize the labor for the system renovations on systems owned by Hydraulics should be totally rejected and that these expenses should continue to be expensed as they have been in all previous Hydraulics rate cases.

Hydraulics did present evidence through witness Perkins that if the Commission should decide to capitalize any salaries and wages, then Hydraulics' actual hours for the work should be used and not the Public Staff's estimate of 27%. Hydraulics, in witness Perkins' rebuttal testimony, presented a summary of a study Hydraulics had done based upon the field operators' daily reports. Hydraulics did not represent this to be a complete study of all time spent by all field operators, but stated that it was a representative study in compliance with the NARUC System of Accounts - Accounting Instructions No. 10. Manuel Perkins stated this was a representative period as it covered the entire test year.

In Hydraulics' study, which the Public Staff first requested near the very end of the Public Staff's audit, witness Perkins did do a complete analysis of all four pump houses which were rebuilt, seven of the 20 submersible pumps that were replaced, the only main extension, 35 of 67 original customer meter installations, and eight of the 18 chemical pump replacements. In doing this study, Hydraulics excluded items whereby the materials cost was less than the $100 pursuant to Accounting Instructions Section 19 on Utility Plant Components of Construction Cost under the NARUC Uniform System of Accounts for Class A Water Utilities, 1984. It was Hydraulics' position that on renovations projects with materials such as a meter replacement, or switch boxes which cost less than $100, that those materials should be expensed and not capitalized.

Witness Perkins explained how in calculating the time spent by the field operators from the daily reports, Hydraulics included the travel time to the job at each of these system improvement activities. Hydraulics' study calculated the total of 1,717 hours for field operator time which totaled 8.79% of the total labor hours for Hydraulics' water field operators during the test year, in comparison to the Public Staff's estimate of 27%. Applying the 1,717 hours to the average hourly rate of $11.03 which includes a weighted overtime percentage, the total capitalized labor for field operators was $18,939.

Hydraulics also opposed the Public Staff capitalizing 27% of the salary of Michael Perkins, the supervisor of field operators. Witness Perkins testified that Hydraulics has experienced field operators performing these upgrading activities and the system upgrade work requires very little supervision by Michael Perkins. He testified the amount of time Michael Perkins spends supervising upgrades on existing systems is extremely small and, therefore, it is not appropriate to capitalize any of his salary.

Hydraulics also presented evidence that the test year renovation and upgrade hours should be normalized if any salaries and wages are to be capitalized, due to the abnormally large number of upgrades for systems acquired during the test year. Witness Perkins testified that during the test year Hydraulics acquired eight systems, two of which were extremely troubled and three others which needed upgrades. Hydraulics presented a chart showing that the capital expenditures for materials for Hydraulics during the test year were $100,765 which was abnormally high due to the significant upgrades to the acquired troubled systems. The test year was 67% higher than the prior three-year average which was only $60,490. Hydraulics presented evidence that, if any labor is capitalized, it would be appropriate to use only the normalized level. Therefore, Hydraulics contended that, if salaries and wages of field operators were capitalized, then only 60% of the capitalizable test year salaries and wages should be used ($60,490 ÷ $100,765 = 60%) totaling $11,363 ($18,939 x 60% = $11,363) to normalize these salaries and wages.

The Commission has carefully reviewed the evidence in this docket and concludes that it is inappropriate for purposes of this proceeding to capitalize Hydraulics' labor for upgrades and renovations to Hydraulics' existing systems. This issue is one of first impression for Hydraulics as the Public Staff has never previously proposed such an adjustment for Hydraulics. This is also the first case the Public Staff has ever proposed such a capitalized labor adjustment of this magnitude for an operating ratio company. The Commission has never previously ordered a capitalized labor adjustment of this type in any prior Hydraulics' case.

The Public Staff's comparison of Hydraulics to Brookwood, Heater and Carolina Water is unrealistic as these three companies have significantly larger customer bases ranging from 1.8 times to 4.6 times the customer base of Hydraulics. In addition, these companies have significant original cost net investments ranging from $2.7 million to $12.1 million which are six times to more than 30 times the size of Hydraulics.

The Commission concludes that it is inappropriate for the Public Staff to use a 27% average capitalization rate from these three large rate base companies, Brookwood, Heater and Carolina Water, and then adjust Hydraulics expenses by 27%, resulting in an extremely significant operating expense adjustment in this case of $111,242. A comparison with these three companies is inappropriate as all three companies have extensive long-term lines of credit with lending institutions available for substantial capital improvements.

The Commission also rejects the capitalization percentage developed by the Company as a result of errors, omissions, and unsupported documentation on the Company's part regarding its calculation of capitalized time. However, the Commission acknowledges that capitalization of labor is an accounting principle that should be followed by all water companies, whether rate base or operating ratio. Accordingly, the Commission concludes that the Company, on a prospective basis, should capitalize labor

and related costs so that they are properly included in the utility plant accounts in accordance with the Uniform System of Accounts.

Annualization Adjustment

The Public Staff and Company disagreed as to which account line items the annualization adjustment should be applied. The Company and Public Staff did agree that the appropriate annualization factor to be applied is the 2.604% recommended by Public Staff engineer David Furr. The Public Staff in its prefiled testimony has only applied the annualization factor to the following accounts: purchased power, chemicals, bank charges, office supplies, postage and a total of $667 of the outside services expenses. The Public Staff excluded a number of other accounts which they believe not to be directly related to customer growth.

At the July 18, 1996, hearing, Public Staff witness Henry testified that the Public Staff would reconsider the telephone expense and would apply the annualization factor to the long distance calls since Hydraulics accepts collect calls from customers, makes long distance calls to customers and calls to Hydraulics' field operators who use cellular phones. The Company agreed to the Public Staff's adjustment to apply the annualization factor to the long distance calling portion of the telephone bills and cellular phones. Therefore, both the Company and the Public Staff used the same amount of $15,669 for long distance telephone and cellular phone calls for which to apply the annualization factor.

Witness Henry testified that the annualization factor is applied to those accounts that have not been adjusted to an end of period level as a result of customer growth. He further testified the end result is a level of expense which corresponds to the level of customers served at the end of the test year.

Upon cross-examination, witness Furr testified that he disagreed with the Company's inclusion of a number of repair and maintenance accounts in the annualization adjustment as he believed on a number of these repair expenses with the upgrades that Hydraulics had performed, that the repairs and maintenance may actually decrease. His basis for the exclusion is that none of these repair and maintenance items were directly related to customer growth and, therefore, the customer growth factor should not be applied.

Hydraulics, in witness Perkins' testimony, did not contest the Public Staff only applying the annualization adjustment to $677 of the outside services line item. However, Hydraulics contested the remainder of the Public Staff's omissions.

Company witness Perkins presented testimony that Hydraulics believed the annualization adjustment was necessary to adjust expense accounts which increase as customers grow but it is not reasonably possible to make a specific adjustment to an end of period level because of the complexity of compiling the information and calculating the adjustment Therefore, a simplified method to adjust these accounts to an end of period level to match the revenues is to apply the annualization adjustment.

Witness Perkins testified how the Company had acquired eight water systems during the test year and operating them varying from five to eleven months during the test year. He testified that additional customers were also continuously added to the existing systems during the test year which affects these same contested operating expense accounts as there are more repairs needed to service lines, meters and

mains. Hydraulics presented a list of the eight systems showing a total of 13 wells, 12 entry points and an additional 435 end of period customers on these eight systems.

Hydraulics' witness Perkins described how each account was affected by the increased wells, entry points or additions in customers during the test year as follows: operations and maintenance line item - $15,974 – the account includes a lot of repairs to the well houses, services and mains and would increase during the year with the addition of 13 wells and 12 entry points; supplies and tools expense - $3,694 – this account includes numerous small tools such as rakes, hoses, wrenches, hand saws, extension cords. The more pumphouses and systems the Company has, the more these tools are purchased; maintenance and repair trencher - $110 - the more systems the Company has the more the trencher is used for repairs and more repair parts for this equipment; repairs - buildings - $13,093 – with the acquisition of 13 additional wells and 12 entry points, the result is 12 additional buildings to be maintained that were not operated and repaired by Hydraulics the entire year. The more buildings there are, the more repairs that are necessary and the growth factor should be applied to this building repair account; repairs - water plant - $6,838 -- this account consists of repair parts such as electrical, well seals, valves, repair couplings, primarily of well houses and wells. This account is increased as the more well houses and wells, the greater this account would grow; repair tanks - $1,422 – during the test year there were eight additional hydropneumatic tanks for which repairs would be needed; repairs - water mains - $2,779 -- with eight additional systems added during the test year, there are additional main repairs. In addition, the Company made a main extension during the test year at Hickory Creek which would be subject to repairs.

The Commission concludes it is appropriate to apply the annualization adjustment to all the operating accounts for which Hydraulics presented evidence. Hydraulics acquired a total of eight existing water systems during the test year and operated these systems for varying periods during the test year between five and eleven months. These systems added a total of 13 wells, 12 entry points, 12 well houses and eight hydropneumatic tanks. With these increased number of wells, entry points, hydropneumatic tanks and well houses, there would be increased repairs over the partial operation periods during the test year. The Public Staff's exclusion fails to recognize the increased repairs and maintenance.

It is proper to apply an annualization adjustment to expense accounts which increase as customers grow but for which it is not reasonably possible to make a specific adjustment to an end of period level because of the complexity of compiling information in calculating the adjustment. Therefore, a simplified method to adjust these accounts to an end of period level to match the revenues is to apply the annualization adjustment. On these eight systems, Hydraulics added a total of 435 end of period customers. The Public Staff's noninclusion of these expense items in the annualization adjustment, coupled with the fact these line items have not been adjusted to an end of period level, ignores the fact that these additional facilities added during the test year must be operated, maintained and repaired over a full 12-month period. The annualization adjustment is the appropriate means to bring these expense accounts to an end of period level as it is the most reasonably accurate method.

Summary Conclusion

Based on the foregoing, the Commission concludes that the appropriate level of general and administrative expenses under present rates is $547,806, which consists of the following:

Job travel	$ 26,201
Salaries and wages	264,023
Advertising	796
Bank charges	3,037
Filing fees	1,800
Insurance	105,336
Licenses - auto	1,799
Licenses - other	186
Utility maint. repair - office	4,888
Maintenance - trash collection grounds	2,727
Maintenance agreements	8,465
Miscellaneous expense	533
Office and warehouse rent	29,640
Office supplies	12,055
Postage	15,009
Professional service	10,613
Professional development	4,066
Rental of equipment	2,356
Telephone	27,068
401(k) expense	4,505
Rate case expense	18,206
Non-utility adjustment	(1,174)
Capitalized expenses	0
Annualization adjustment	5,671
Total general and administrative expenses	$547,806

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The evidence supporting this finding of fact is found in the testimony and exhibits of Mr. Henry, Mr. Furr, and Mr. Perkins. The following table summarizes the positions of the parties for depreciation and taxes:

	Company	Public Staff	Difference
Depreciation	$108,160	$101,158	$ (7,002)
Property taxes	7,560	7,560	0
Payroll taxes	36,879	34,860	(2,019)
Regulatory fee	1,224	1,224	0
Gross receipts tax	48,972	48,972	0
State income tax	0	5,847	5,847

Federal income taxes	0	12,299	12,299
Total depreciation and taxes	$202,795	$211,920	$ 9,125

As shown in the preceding table, the Public Staff and the Company agree on the level of property taxes, regulatory fee, and gross receipts tax to include in this proceeding. Therefore, the Commission agrees with these items of expense. The Company and Public Staff disagree on several items as discussed below.

Depreciation

The difference between the Company and the Public Staff for depreciation involves the same issues discussed in plant in service related to Mr. Perkin's van, capitalization of check valves, capitalization of the stone road refurbishment, and non-utility allocations. Based on conclusions reached elsewhere on these issues, the Commission concludes that the appropriate level of depreciation expense to include in this proceeding is $108,257.

Payroll Taxes

The first difference between the parties, other than allocations to non-utility operations, is due to an error in the final schedules filed by the Company on August 27, 1996. On Hydraulics' Proposed Order Exhibit V, the Company failed to calculate an amount for state unemployment tax on its proposed level of salaries and wages. Correction of this error results in an increase in the Company's payroll taxes amount of $503.

The remaining difference in payroll taxes results from the parties disagreement over the appropriate levels of salaries and wages, after allocations to non-utility operations, to include in this proceeding. Having previously determined the appropriate level of salaries and wages for operating and maintenance and general and administrative, the Commission concludes that the appropriate level of payroll taxes is $37,382.

State Income Tax

The difference between the Company and the Public Staff for state income tax results from the application of the statutory rate to different levels of operating revenues and expenses recommended by the Company and the Public Staff. Based on the Commission's findings on revenues and expenses under present rates, the Commission concludes that the appropriate level of state income tax is $0.

Federal Income Tax

The difference between the Company and the Public Staff for federal income tax results from the application of the statutory rate to different levels of operating revenues recommended by the Company and the Public Staff. Based on the Commission's findings on revenues and expenses under present rates, the Commission concludes that the appropriate level of federal income tax is $0.

Summary Conclusion

Based on the foregoing, the Commission concludes that the appropriate level of depreciation and taxes under present rates for purpose of this proceeding is $203,395, which consists of the following:

Depreciation	$108,257
Property taxes	7,560
Payroll taxes	37,382
Regulatory fee	1,224
Gross receipts tax	48,972
State income tax	0
Federal income taxes	0
Total depreciation and taxes	$203,395

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence for this finding of fact is contained in the testimony of Mr. Perkins, Mr. Farmer, and Mr. Henry.

Mr. Henry testified that Hydraulics' test year operating revenue deductions requiring a return is substantially greater than the Company's original cost rate base. He stated that he used the operating ratio method to evaluate Hydraulics' proposed rate increase since the revenue requirement calculated by using this method is higher than the amount that would be produced using the rate base method.

G.S. 62-133.1 provides that the Commission may fix rates for a water or sewer utility on the ratio of the operating expenses to the operating revenues unless the utility requests that rates be fixed under G. S. 62-133(b).

The Commission, therefore, concludes that the operating ratio method should be used in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence for this finding of fact is contained in the testimony of Mr. Perkins, Mr. Farmer, and Mr. Henry, and in the following Hydraulics, Ltd., rate cases: the Recommended Order of July 29, 1993, and the Final Order of November 24, 1993, in Docket No. W-218, Sub 88, the Recommended Order of January 17, 1986, and the Final Order of March 10, 1986, in Docket No. W-218, Sub 32, and the Recommended Order of December 21, 1990, in the Scotsdale Water and Sewer, Inc., rate case, Docket No. W-883, Sub 12.

Mr. Farmer recommended that Hydraulics be granted an 8.9% margin on operating revenue deductions requiring a return. He stated that he derived a margin above expenses by combining the risk-free rate of 5-year U.S. Treasury bonds averaged over the most recent 26-week period, which was 5.9%, with a three percentage point factor to adjust for risk.

Hydraulics presented evidence that a 5% risk factor is appropriate as was decided in Hydraulics' last two litigated rate cases where this risk factor was an issue: being the March 10, 1986, Order in Docket No. W-218, Sub 32, and the final Order by the Full Commission dated November 24, 1993, in Docket No. W-218, Sub 88.

Hydraulics presented evidence that Hydraulics cannot, based on its own credit and assets, borrow money from any bank. In order to obtain credit and borrow funds for Hydraulics, it was necessary for Manuel Perkins, the owner of all the shares of stock of Hydraulics, to place a second mortgage on the family home which is owned by he and his wife. The proceeds of the financing were used to pay past due gross receipts tax, a portion to pay accounting fees, and a portion to buy the remainder of outstanding stock in Hydraulics. He stated the fact that the owner of Hydraulics has to mortgage his family home in order to obtain funds necessary to operate Hydraulics, demonstrates a much greater risk factor than the 3% which the Public Staff recommends for all water utilities. He stated this mortgage is still on the family home. He further testified all lending institution loans to Hydraulics must be personally guaranteed by him and his wife.

Hydraulics presented evidence that Hydraulics continues to struggle to make payroll. Payroll checks to certain employees have been withheld as funds were not available. He testified the Company continues to experience difficulty paying water monitoring laboratories which have threatened to discontinue Hydraulics' water monitoring laboratory work. He testified the Company has experienced difficulty paying suppliers which furnish important services and/or materials for the water systems. He testified Hydraulics has faced and continues to face possible cut offs of materials and supplies because of the inability to pay these accounts.

Witness Perkins further testified that Hydraulics is frequently considerably past due on the payment of automobile, general liability and workman's compensation insurance with threatened cancellation of the policies. He testified that Hydraulics continually experiences difficulty paying its electric bills and frequently receives notices threatening discontinuance of service. Witness Perkins testified that until the Company received the emergency interim rate increase in this proceeding, Hydraulics was unable to replace the part-time electrician or the C-Well operator, both of which left Hydraulics in December 1995. Witness Perkins testified in January 1996, he individually borrowed $30,000 from a bank, which he then loaned to Hydraulics to pay operating expenses as Hydraulics couldn't obtain the $30,000 bank loan.

Witness Perkins testified the Safe Drinking Water Act has increased Hydraulics' risks as the Company, because of maximum contaminant level water quality violations, had to replace wells at Deerpath, Canterbury and Chatham water systems.

The Commission has carefully reviewed the evidence in this docket and concludes a 5% risk factor is appropriate. The evidence in this current proceeding closely parallels the evidence in prior rate proceeding decided by the Full Commission by Order dated November 24, 1993, in Docket No. W-218, Sub 88. In that Order, the Commission took judicial notice of the last litigated Hydraulics rate case whereby the risk factor issue was litigated being Docket No. W-218, Sub 32. In the Sub 32 case, by Order dated March 10, 1986, the Commission approved a 5% risk factor. The Commission in its Sub 88 rate Order quoted from the Sub 32 rate Order as follows:

"The Commission notes that the margin on operating revenue deductions methodology of determining operating ratio was introduced several years ago by the Public Staff and has been accepted routinely by the Commission in water cases. The methodology itself obviously has merit. However, the Public Staff has generally not altered its risk premium of 3% for any water company. It is recognized that the risk factor is judgmental based on the overall risk of the company involved. The 3% risk factor has been advocated by the Public Staff for small, large, financially stable, financially unstable, well managed and poorly managed systems alike. The Commission believes proper consideration of these factors warrant varied risk factors for individual companies since all water companies do not face the same risk. The financial instability of the Company clearly justifies the use of 5% risk factor. Thus the Commission affirms the Hearing Examiner's decision in this regard."

The Commission finds that the factors considered in assessing the appropriate risk factor for Hydraulics in the prior Commission Orders of March 10, 1986, and November 24, 1993, in large part still exist. There is still a second mortgage on the home of the owner of Hydraulics, the proceeds of which were used to partially pay operating expenses of Hydraulics. Hydraulics continues to have difficulty paying its suppliers which furnish important services and/or materials for water systems. Hydraulics still faces possible cut offs of materials and supplies. Hydraulics still experiences difficulty making payroll. Hydraulics continues to experience difficulty paying laboratories for water analyses and Hydraulics continues to have difficulty paying premiums for automobile, general liability and workmen's compensation insurance with threatened cancellation of policies.

The Company has also experienced increased risks from the Safe Drinking Water Act caused by the replacement of three wells for SDWA water quality maximum contaminant level violations at the Deerpath, Canterbury and Chatham water systems.

The Commission concludes that a risk factor of 5% is appropriate for Hydraulics in this proceeding and will result in a margin of 10.9% on operating revenue deductions requiring a return. This 10.9% margin is a combination of the parties agreed to risk free rate of 5.9% and the 5% risk factor.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 AND 24

The evidence supporting these findings of fact is contained in the testimony and exhibits of Mr. Perkins, Mr. Farmer, Mr. Henry, and Mr. Furr.

The following schedules summarize the gross revenue, operating revenue deductions, and rate base based upon the conclusions reached in this Order:

SCHEDULE I

HYDRAULICS, LTD.
DOCKET NO. W-218, SUB 108
STATEMENT OF OPERATING INCOME FOR RETURN
For the Twelve Months Ended June 30, 1995

Item	Present Rates	Increase Approved	After Approved Increase
Operating revenues:			
Metered and unmetered revenues	$1,217,947	$ 381,982	$1,599,929
Miscellaneous revenues	14,865	9,283	24,148
Uncollectibles	(8,506)	(2700)	(11,206)
Total operating revenues	1,224,306	388,565	1,612,871
Operating revenue deductions:			
Operating and maintenance exp.	627,520	0	627,520
General and administrative exp.	547,806	0	547,806
Depreciation	108,257	0	108,257
Property taxes	7,560	0	7,560
Payroll taxes	37,382	0	37,382
Regulatory fee	1,224	389	1,613
Gross receipts tax	48,972	15,543	64,515
State income tax	0	15,782	15,782
Federal income tax	0	57,627	57,627
Total operating revenue deductions	1,378,721	89,341	1,468,062
Net operating income for return	$(154,415)	$299,224	$144,809

SCHEDULE II

HYDRAULICS, LTD.
DOCKET NO. W-218, SUB 108
STATEMENT OF ORIGINAL COST RATE BASE
For the Twelve Months Ended June 30, 1995

	Amount
Plant in service	$ 2,144,553
Accumulated depreciation	(299,897)
Contributions in-aid-of construction	(1,488,770)
Cash working capital	146,916
Average tax accruals	(18,172)
Total original cost rate base	$ 484,630

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACTS NOS. 25 THROUGH 34

The evidence supporting these findings of fact is contained in the testimony of Mr. Perkins and Mr. Henry. Mr. Henry made several accounting recommendations for the Company in his prefiled testimony and Hydraulics responded to each recommendation in its rebuttal testimony.

W-1

Mr. Henry testified that Hydraulics' W-1 filing failed to include a number of items, and contained incomplete and insufficient information. In order for the Public Staff to conduct a thorough and accurate audit investigation, it must have a complete W-1 on file with the Commission. To get information required in the W-1, Mr. Henry stated that the Public Staff had to go through a time consuming discovery process. Therefore, he recommended that Hydraulics be ordered to fully complete its W-1 filing requirement in the future.

Hydraulics responded by stating in Mr. Perkins' rebuttal testimony that the departure of the Company's in-house accountant materially affected Hydraulics ability to fully comply with the W-1 requirements. This current rate case is the first rate case Hydraulics has filed in which it was required to file the W-1 information. Mr. Perkins testified that Hydraulics believes that based upon the experience in this case, Hydraulics will be in a position to fully comply in the future with the W-1 filing requirements.

The Commission is of the opinion that Mr. Henry's recommendation in this regard is appropriate. Both parties acknowledge that the Company's W-1 was not complete and Hydraulics stated it will fully comply in the future with the W-1 filing requirements.

Rate Case Application

Mr. Henry testified that Hydraulics' application for a rate increase did not contain any workpapers showing its calculation of rate base at the end of the test year. Hydraulics did eventually provide its calculation of rate base near the end of the Public Staff's investigation in response to a data request inquiry.

Until that time, the Public Staff had to rely on its own internal workpapers and the Company's general ledger accounts to try to calculate rate base as of June 30, 1995. Therefore, Mr. Henry recommended that the Company be ordered to fully complete its application requirement for rate increase in the future.

In his rebuttal testimony, Mr. Perkins acknowledged that Hydraulics did not file workpapers with its application showing the rate base calculation at the end of the test year. He stated that Hydraulics could not provide this information in a timely fashion as its in-house accountant had left the Company during the time the application was being prepared. Mr. Perkins testified that Hydraulics is now and always has been an operating ratio company and rate base has never been a factor in the Commission setting rates. With the exception of the rate base information, Hydraulics' rate case application complied with all other filing requirements.

The Commission strongly disagrees with the Company that rate base has never been a factor in setting rate for Hydraulics. Although Hydraulics is not a rate base company and therefore does not receive a return on its investment in plant in service, under the operating ratio method, rates are set by the Commission that allow the Company to recover all of its expenses, including depreciation, and earn a return on those expenses as well. Consequently, rate base has to be examined thoroughly to determine the amount of depreciation to include in expenses. The Commission finds that Hydraulics shall file rate base schedules with its rate case applications in the future.

Allocation To Non-Utility And Daily Time Sheets

Mr. Henry testified that in Hydraulics' last general rate case, Docket No. W-218, Sub 88, the Company was ordered to modify its accounting and record-keeping system so as to provide for coding for all non-utility expenses. In this current proceeding, Mr. Henry stated that the Company has not fully complied with the previous rate case order regarding allocations to non-utility operations. Mr. Henry stated that the Company allocated operators time and directly assigned operations and maintenance expenses to non-utility operations. But the Company failed to allocate administrative and general expenses and utility plant in service to non-utility operations as required by the Order.

Mr. Henry went on to testify that Hydraulics attempted to allocate some administrative salaries to non-utility operations as a pro forma adjustment using factors that have not been supported. He stated that unlike the operations personnel, the administrative staff do not keep daily time sheets which could be used to verify how much time each spends on non-utility functions. Therefore, Mr. Henry recommended that Hydraulics administrative personnel begin using daily time sheets to track the amount of time spent on non-utility functions. Mr. Henry also recommended that the Company be warned that it must comply with past Commission orders regarding allocations to non-utility operations.

In response to this recommendation, Mr. Perkins testified that Hydraulics believes it has reasonably complied with the Order dated July 29, 1993, in Docket No. W-218, Sub 88. He testified that his field operators keep daily reports which are used to allocate their time and related expenses. In addition, Hydraulics has allocated the general and administrative salaries based upon the information maintained and provided to the in-house accountant who made journal entries.

Mr. Perkins also testified that the Public Staff's recommendation that Hydraulics' administrative personnel be required to keep daily time sheets is completely unreasonable. He stated that the maintaining of time sheets is very time consuming and in reality takes time away from the most important and time consuming job of serving customers.

On cross-examination by the Public Staff, Mr. Perkins acknowledged that Hydraulics was ordered to modify its accounting and record keeping so as to provide for coding for all non-utility expenses. He testified that the Company did not keep actual records to code administrative salaries to non-utility operations as required by the Commission because it looked like it was so small it did not seem cost-wise to do it. Mr. Perkins also testified that the percentages used to allocate administrative salaries to non-utility operations were based on direct time only and did not include any common costs which should be allocated to non-utility operations, such as payroll taxes, benefits, insurance, vehicles, general accounting, bookkeeping, and tax return preparation.

The Commission agrees with the Public Staff that Hydraulics has not completely complied with its Order in the last general rate case regarding allocations to non-utility operations. Allocations of administrative and general expenses, including salaries and wages, and plant in service should be made on the Company's books based on actual Company records. As yet, Hydraulics does not have any records available to support its administrative salaries and wages allocation percentages nor does it want to maintain the necessary records to allocate expenses and plant costs.

The Commission again orders Hydraulics to modify its accounting and record-keeping system so as to provide for coding of all non-utility expenses and plant items. Since the Company has already implemented daily time records for its operations personnel, the same can be done for its administrative personnel. The Commission is not insensitive to the burdens associated with additional record-keeping. It is necessary, however, that the Commission and Public Staff have information of sufficient accuracy and detail regarding the cost of providing utility service in order to set just and reasonable rates.

Capitalization Of Expenses

Mr. Henry testified that since the last general rate case, Hydraulics has acquired several systems that were in need of capital improvements. Costs associated with upgrading those systems have been included in plant in service by the Company and the Public Staff. In addition, Mr. Henry stated that the Company's operations personnel were involved in general capital projects such as renovating well houses, drilling wells, and refurbishing tanks.

Mr. Henry also testified that Hydraulics did not capitalize any salary nor salary related expenses of its operators during the test year. He stated that operators time sheets are not being coded for time spent on projects of a capital nature and their salaries are not being capitalized. Mr. Henry recommends that the operations personnel begin coding their daily time sheets to reflect the amount of time each spends on capital projects. In addition, Mr. Henry recommended that Hydraulics begin recording the necessary journal entries on its books to recognize capitalization of salary and salary related expenses.

In his rebuttal testimony, Mr. Perkins stated that he believes the capitalization of labor and related expenses is inappropriate for Hydraulics as it is an operating ratio company. Capitalization of labor would financially preclude Hydraulics' future acquisitions and upgrading of troubled water systems.

Elsewhere in the Order, the Commission has already concluded that Hydraulics should capitalize labor and related expenses. In order to maintain the necessary records to do so, the Company's operations personnel, who already keep daily time sheets, should make an additional entry on their daily time sheets that would show how much time was spent on capital projects. Consequently from those additional entries, the Company will be able to capitalize salary and related expenses on their books based on actual Company records. The Commission therefore orders Hydraulics to keep track of operator time spent on capital projects and make the necessary journal entries on its books to record capitalization of labor and related expenses.

Personal Expenses

Both parties acknowledge that during the test year Hydraulics did record some of Mr. Perkins' personal expenses on the Company's books and records. Although Hydraulics did not include those personal expenses in this rate case proceeding, they should not be recorded on the Company's books nor should they have been paid from the Company funds. Hydraulics stated that it has corrected this practice and will not charge personal expenses on the Company's books in the future. Since both parties are in agreement, the Commission orders Hydraulics to cease from recording Mr. Perkins' personal expenses on its books and records and no longer make payment for these expenses from Company funds.

NARUC Uniform System Of Accounts

Mr. Henry recommended that Hydraulics make the necessary adjustments to its plant assets accounts to comply with NARUC USOA which requires plant assets to be segregated by function. Hydraulics has testified that it has ordered a current version of the USOA for Class A water utilities and will be modifying its accounting and plant records for future compliance with the Commission requirements. Since both parties are in agreement on the Public Staff's recommendation, the Commission hereby orders Hydraulics to modify its plant asset accounts to comply with the NARUC USOA.

Collection Of Gross-Up On CIAC

In his final recommendation, Mr. Henry testified that he found that Hydraulics is not consistent on the collection of gross-up on CIAC. For example, he stated that during the first six months of 1995, Hydraulics used gross-up factors varying from the following: zero, 1.3195, 1.5, 1.639, 1.88, and 1.9. It should be noted that the Company would not pay taxes at the income tax rates which would generate gross-up factors of 1.88 and 1.9.

Mr. Henry also testified that during its audit in the last rate case, Docket No. W-218, Sub 88, the Public Staff found that the Company was not collecting gross-up on CIAC in accordance with Commission's Orders in Docket No. M-100, Sub 113. In that case, the Company was ordered to collect gross-up on CIAC in accordance with Commission Orders. Mr. Henry stated that the Company has failed to comply with the Commission Order.

In this current proceeding, Mr. Henry is recommending that the Commission again order the Company to comply with the Commission gross-up requirements as set forth in Docket No. M-100, Sub 113 and that the Commission warn the Company in its Order that failure to comply with the gross-up requirements in the future could result in fines and penalties.

In response to the Public Staff recommendation, Mr. Perkins stated that Hydraulics has experienced a very difficult time over the years determining the appropriate gross-up percent which is to be based upon the expected federal marginal tax rate. He stated that it is extremely difficult to project in January 1995, what the effective marginal income tax rate will be for the tax year ending December 31, 1995.

Hydraulics has not provided an adequate explanation as to why it has failed to comply with the Commission Order in Docket No. M-100, Sub 113 concerning collection of gross-up on CIAC as was ordered by the Commission. However, since the hearing in this case, the Commission has issued an Order on August 27, 1996, in Docket No. M-100, Sub 113 requiring all water and sewer companies to cease collecting gross-up on CIAC received after June 12, 1996. The issue of compliance with gross-up on a prospective basis is only applicable to gross-up collected on CIAC received before June 12, 1996. Therefore, the Commission requires Hydraulics to comply with the gross-up requirements as they pertain to the collection of gross-up on CIAC received before June 12, 1996.

Refund of Overcollection of Gross-up On CIAC

Mr. Henry testified that he reviewed the Company's collection of gross-up on CIAC and determined that Hydraulics had collected varying amounts of gross-up since the last rate case. Due to these varying amounts of gross-up, Mr. Henry stated that he evaluated the collection of gross-up on CIAC for 1993 and 1994 as follows. First, he determined the amount of CIAC, including gross-up, reported on the tax returns, and what the taxable income was with and without this amount. Next, Mr. Henry calculated the taxes paid on CIAC as the difference between the taxes paid including the CIAC and the taxes paid excluding the CIAC. Finally, Mr. Henry calculated what the actual multiplier would have been based on the actual taxes paid. Mr. Henry's calculations were presented on Exhibit II of his revised schedules.

Mr. Henry recommended that the Company be ordered to refund, with interest at 10% per annum, all amounts collected above the actual multiplier. For example, in 1993, Mr. Henry determined an actual multiplier of 1.195029. In instances where the Company collected gross-up on the $500 tap on fee using a multiplier of 1.639, the Company would refund $222 plus 10% interest (1.639 - 1.195029 = .443971 x $500 = $222). Mr. Henry stated that his recommendation applies to all CIAC, including contributed plant, tap on fees, and main extension fees. Finally, Mr. Henry recommended that the Company file a refund plan with the Commission within 30 days after the date of the Commission's order is issued in this rate case.

In his rebuttal testimony, Mr. Perkins stated that the Public Staff's calculation of the multiplier is extremely punitive to the utility company while being very favorable to the developer or contributor who is receiving a refund. Mr. Perkins testified that the effect of the calculation is to take the losses which were incurred by the utility and refund the benefit of those losses back to the developer or contributor. The

developer or contributor is not entitled to the benefit of the tax loss of the utility. Mr. Perkins testified that since the stockholders have the burden of these losses, they should also receive the tax benefit.

On his Proposed Order Financial Exhibit Z, Mr. Perkins calculated actual gross-up multipliers for 1993 and 1994 of 1.444131 and 1.453630, respectively. His multipliers are derived by calculating state and federal income tax on the amount of taxable CIAC and gross-up in each of the tax years presented. Next, Mr. Perkins calculated a weighted average federal marginal tax rate of 24.936% for 1993 and 25.424% for 1994 based on the amount of CIAC and gross-up subject to federal income tax. Finally, Mr. Perkins uses the weighted average federal tax rate to determine his actual gross-up multipliers.

The Commission notes that there are significant differences in the method of calculating the actual multipliers for 1993 and 1994 between the parties in this proceeding. First, the Public Staff methodology of calculating the multipliers that will determine the amount of gross-up to be refunded is the same calculation that has been made in other proceedings and accepted by the Commission in its Orders. Although the Public Staff method has not been fully litigated by the Commission, it does account for all financial data necessary to calculate an accurate multiplier. Mr. Perkins' calculation has not been accepted by this Commission, nor has it been litigated, and it omits financial data, such as actual taxable income, needed to calculate the actual multiplier.

Mr. Perkins' calculation of his actual multipliers begins with determining income taxes on the amount of CIAC and gross-up received. Under this scenario, Hydraulics' actual taxable income as reported on its tax returns is ignored. Therefore, the Company's multipliers are based on income taxes that have not been paid to any government agency. Under the Public Staff's methodology, the multipliers are calculated based on actual taxes paid as a result of including CIAC and gross-up in taxable income.

The Commission rejects the Company's argument that tax losses should not be factored into the calculation of taxes paid on CIAC. The intent of the Commission's gross-up requirements is to allow companies to collect actual taxes paid on CIAC from contributors, not to allow companies a windfall. If, due to tax losses, the Company does not pay any income taxes, even with CIAC included, it certainly shouldn't collect any gross-up. Therefore, it is necessary to factor in the actual taxable income or loss in determining the actual taxes paid on CIAC to be collected as gross-up.

The Commission has carefully reviewed both parties' calculation of their multipliers in this proceeding and concludes that the Public Staff's multiplier should be used to determine the amount of gross-up to be refunded to the contributors. Therefore, the Commission orders Hydraulics to refund to the contributors gross-up collected greater than the multipliers calculated by the Public Staff with interest at 10% compounded annually. The Company is also ordered to file a refund plan within 30 days of the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35

The evidence supporting this finding of fact is contained in conclusions reached by the Commission elsewhere in this Order.

On April 10, 1996, the Commission issued an Order in this docket allowing Hydraulics to increase it rates, on an interim basis, for all of its metered and unmetered water systems in North Carolina. The approved interim rates were subject to an undertaking by Hydraulics to refund to customers, at 10% interest, any portion of the interim rates that are ultimately found to be excessive.

Based on the conclusions reached by the Commission and set forth in this Order, the interim rates granted to Hydraulics are not in excess of those approved herein. Accordingly, no refund of the interim rates will be required and the undertaking should be rescinded.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36

The Public Staff immediately prior to the close of the evidentiary hearing on July 18, 1996, filed a paper document which they requested to be Cross-Examination Exhibit 8. However, there were no longer any witnesses to cross-examine. Counsel for the Public Staff explained that the Public Staff would request in its proposed order some type of audit to determine the financial viability of Hydraulics. The Public Staff stated this paper document was a compilation of previous statements in the record.

Although there was not specific evidence tendered upon the Public Staff's discussion of Hydraulics' financial viability, Hydraulics' attorney at the time the Public Staff tendered this document stated the Company's cross-examination of the Public Staff accountants in relation to the depth and time spent on their audit had been limited as the Company had expected any such motion by the Public Staff to be made at the beginning of the Public Staff's testimony. Therefore, the Company did not cross-examine the Public Staff more extensively on their audit. However, the limited cross-examination of Public Staff witness Henry on their audit revealed that the Public Staff had two CPAs at Hydraulics for their audit for two weeks each, and one CPA returned to Hydraulics' office for a portion of another week. The Company pointed out the Public Staff has been auditing Hydraulics' books and records from March 1996 through date of the hearing on July 18, 1996, and that an additional financial viability audit was an overkill.

The Commission concludes that the Public Staff's motion for a financial viability audit should be denied. The Public Staff has not presented any substantial evidence which would justify a financial viability audit. The evidence was uncontroverted that the Public Staff has been auditing Hydraulics' financial records since March 1996 through the hearing on July 18, 1996, which is a period of four months. The Public Staff sent two CPA staff accountants to Hydraulics, each of whom spent two weeks auditing the Company's books and records and one of the CPAs returned for a portion of another week. In addition, the evidence was uncontroverted that the accounting supervisors at the Public Staff also assisted the two Public Staff accountants in their audit.

The Commission concludes that the Public Staff has had an opportunity to conduct a full and complete audit. The ordering of an additional audit would result in additional expenses for the ratepayers, and would be punitive against Hydraulics.

The Public Staff has made accounting recommendations which the Commission has adopted to assist Hydraulics in improving its accounting procedures. In addition, Hydraulics hired a new accountant, Joe Alberti, in January 1996, who based on the testimony of both witnesses Henry and Manuel Perkins, is working diligently to improve Hydraulics' accounting procedures and cash flow management.

The Commission in examining the applied for rates has approved a level of rates and annual revenues which will provide Hydraulics adequate revenues to pay all operating expenses and earn a reasonable margin. The purpose of filing the rate increase application by Hydraulics was to obtain adequate revenues so the Company would be financially viable. The approved increase in revenues ensures the Company has adequate revenues to pay operating expenses and earn a reasonable margin, which is a major focus of this rate case process. Therefore, an additional audit as to financial viability is unnecessary.

IT IS, THEREFORE, ORDERED as follows:

1. That Hydraulics, Ltd., shall adjust its water rates and charges so as to produce, based upon the adjusted test year level of operations, an increase in water revenues of $388,565 effective for service rendered on and after the date of this Order.

2. That the Schedule of Rates, attached as Appendix A, is approved for water service rendered by Hydraulics. These rates shall become effective for service rendered on and after the date of this Order. The Commission considers this Schedule of Rates to be filed as required by G.S. 62-138.

3. That a copy of the attached Appendix B shall be delivered by Hydraulics to all its customers in conjunction with the next billing statement after the date of this Order.

4. That Hydraulics shall file the attached Certificate of Service, properly signed and notarized, within 10 days of completing the requirement of Ordering Paragraph No. 3.

5. That Hydraulics shall fully complete its W-1 filing requirement in the future.

6. That Hydraulics shall file rate base schedules with its rate case applications in the future.

7. That Hydraulics shall modify its accounting and record keeping system so as to provide for coding of all non-utility expenses and plant items, including maintaining time records for administrative personnel.

8. That Hydraulics shall keep track of operators time spent on capital projects and make the necessary journal entries on its books to record capitalization of labor and related expenses.

9. That Hydraulics shall cease from recording Mr. Perkins' personal expenses on its books and records and no longer make payment for these expenses from Company funds.

10. That Hydraulics shall modify its plant asset accounts to comply with the NARUC USOA.

11. That Hydraulics shall comply with the gross-up requirements as they pertain to the collection of gross-up on CIAC received before June 12, 1996.

12. That Hydraulics shall refund to contributors gross-up collected greater than the multipliers calculated by the Public Staff with interest at 10% compounded annually.

13. That Hydraulics shall file a refund plan for the excess gross-up within 30 days of the date of this Order and the Public Staff shall file a response to said refund plan not later that 60 days from the date of this Order.

14. Hydraulics shall file quarterly reports providing the status of the following:

(a) DEH approval of system plans for the following systems: Hickory Creek, Valleydale, Wright Beaver, Rolling Hills/South Borne, and Enoch Turner.

(b) Additional water source for the Pinewood Country Club system.

(c) Improvements to the Enoch Turner system.

15. For systems that have not completed asbestos water quality testing, Hydraulics shall obtain exemptions from DEH, or complete the testing within 90 days of the date of this order. These systems include: Crestview, Knoll View, Enoch Turner, Meadowcreek Estates, Pine Meadows, Shade Tree Acres, Wright Beaver, and Kimberly Court.

16. That Hydraulics file with the Commission within 20 days from the date of this Order a detailed factual report of the specific actions it has taken to secure an adequate supply of water and improve the quality of the water at the Pinewood Subdivision. Upon receipt of the report, the residents of the Pinewood Subdivision, the Public Staff, and other interested parties shall have 30 days within which to respond to the report. Thereafter, the Commission will proceed accordingly.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

SCHEDULE OF RATES
for
HYDRAULICS LIMITED (LTD)
for providing water utility service in
ALL OF ITS SERVICE AREAS IN NORTH CAROLINA

Metered Rates:	
Base charge per month (no usage included)	$ 13.75
Usage charge (per 1,000 gallons)	$ 4.00
Unmetered Rates: (per month)	$ 28.75
Connection Charge:	
Meter Fee - 5/8"x3/4" meter - $500.00	
Larger than 5/8"x3/4" meter - Actual Cost of Installation	
No connection charges shall be collected for Apple Hill, The Meadows, and Staffordshire Estates water systems	
Main Extension Fee per Single Family Dwelling:	$625.00
Reconnection Charge:	
If water service cut off by utility for good cause:	$ 25.00
If water service cut off by customers request:	$ 15.00
New Account Fee:	$ 15.00
Returned Check Charge:	$ 20.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance for bills still past due 25 days after billing date.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-218, Sub 108, on this the 30th day of October, 1996.

APPENDIX B

DOCKET NO. W-218, SUB 108

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application by Hydraulics, Ltd., Post Office Box	)	
35047, Greensboro, North Carolina, 27425, for	)	NOTICE TO
Authority to Increase Its Rates for providing Water	)	CUSTOMERS
Utility Service in All Its Service Areas in North	)	OF NEW RATES
Carolina	)	

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has granted a rate increase to Hydraulics, Ltd. for water utility service provided in all its service areas in North Carolina. This decision was based upon evidence presented at the public hearings held on May 2, 1996, in Gastonia, North Carolina, on May 22, 1996, in Greensboro, North Carolina, and July 18, 1996, in Raleigh, North Carolina. The new rates are as follows and are effective for service rendered on and after the date of this Notice.

Residential Flat Rates:	$ 28.75 per month
Residential Metered Rates:	
Base charge per month (no usage included)	$ 13.75
Usage charge (per 1,000 gallons)	$ 4.00

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of October, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

CERTIFICATE OF SERVICE

I, _____, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by Order of the North Carolina Utilities Commission in Docket No. W-218, Sub 108, and the Notice to Customers was mailed or hand delivered by the date specified in the Order.

This the _____ day of _____, 1996.

By: _____
Signature

_____
Name of Utility Company

The above named Applicant, _____, personally appeared before me this day and, being first duly sworn, says that the required customer notice was mailed or hand delivered to all affected customers, as required by the Commission Order dated _____ in Docket No. W-218, Sub 108.

Witness my hand and notarial seal, this the ____ day of _____, 1996.

_____
Notary Public

_____
Address

(SEAL) My Commission Expires: _____
Date

DOCKET NO. W-720, SUB 144
DOCKET NO. W-95, SUB 18
DOCKET NO. W-335, SUB 6
DOCKET NO. W-314, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Mid South Water Systems, Inc., Huffman Water Systems, Inc., Lincoln Water Works, Inc., and Surry Water Company, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673, for Authority to Increase Rates for Water and Sewer Utility Service in All of Their Service Areas In North Carolina	))))))	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Basement Courtroom, McDowell County Courthouse, Corner of Main & Court Streets, Marion, North Carolina, on August 22, 1995

Superior Courtroom, 1924 Courthouse, Courthouse Square, Newton, North Carolina, on August 23, 1995

Large Courtroom, Upper Level, Yadkin County Courthouse, Courthouse Square, Yadkinville, North Carolina, on August 24, 1995

Courtroom A, Gaston County Courthouse, Gastonia, North Carolina, on August 30, 1995

Meeting Chamber, Lobby Level, Charlotte-Mecklenburg Government Center, 600 East Fourth Street, Charlotte, North Carolina, on August 31, 1995

Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 20, 21, and 29, 1995

BEFORE: Commissioner Charles H. Hughes, Presiding, and Commissioners Allyson K. Duncan and Jo Anne Sanford

APPEARANCES:

For Mid South Water Systems, Inc., Huffman Water Systems, Inc., Lincoln Water Works, Inc., and Surry Water Company, Inc.:

Robert F. Page, Anne M. Fishburne, and Marion Hill Bergdolt, Attorneys at Law, Crisp, Page, & Currin, LLP, Suite 400, 4011 Westchase Boulevard, Raleigh, North Carolina 27607

For the Public Staff:

Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For the Using and Consuming Public

For the North Carolina Department of Justice:

J. Mark Payne, Assistant Attorney General, and Margaret A. Force, Associate Attorney General, Post Office Box 629, Raleigh, North Carolina 27602
For the Using and Consuming Public

BY THE COMMISSION: On April 10, 1995, Mid South Water Systems, Inc., Huffman Water Systems, Inc., Lincoln Water Works, Inc., and Surry Water Company, Inc., (collectively referred to as Mid South, Applicant, or Company), filed an application with the Commission for authority to increase their rates for water and sewer utility service in all of their service areas in North Carolina.

By Order dated May 12, 1995, the Commission declared this matter to be a general rate case, suspended rates, scheduled hearings, and required customer notice.

Public hearings were held as scheduled. The following public witnesses appeared and offered testimony and exhibits:

Marion: Harry A. Lewis, Jerry Linn, Helen Bernau, Sherry Barnwell, Carr Chiaromonte, Henry Holscher, Ann Brandt, Hiram Woods, E.L. Bryant, Frank Gates, James Wearn, James Hollifield, Ted McKinney, William Duncan, Robert Washburn, Jr., Patti Hollifield, and Michael Bartlett.

Newton: Anice Overton, Mary George, Donald Souther, Vonda Cantor, Linda Hyder, Larry Andrews, Brian Murray, Karen Houston, Linda Brotherton, Lester Berry, Thad Crump, Bill Robinson, Barry Matthews, Susan Lowery, Michael O'Keefer, Benny Hicks, Gil Davis, Watson Benfield, Robert Stephens, Andrew Heili, and Richard Todd.

Yadkinville: Brenda Wall, Larry Wilson, Bob McPherson, Sidney Grose, Euphrobia Robinson, Barbara Teuschler, Tim Nestor, Deborah Lane, Henry Eldridge, Caonabo Jiminez, Deborah Womack, and Rosemary Wilson.

Gastonia: Thelma Auten, Ruby Elmore, Girdie Clemons, Ollie Lewis, Lucille Bryant, Roy Ammons, ~~Gwen Keziah~~, E.M. Drisco, Sarah Wentz, James R. Potter, Tim Frady, Kathy Endicott, Lloyd Pyles, Ruby Butler, Jay Norris, Bob Russell, Frank Harkey, Joseph Jenkins, James Laircey, Harold Hovis, John Fraley, Terry Rodgers, Eugenia Vale, Kevin Hickey, Karen Kossow, and Michael K. Hudson.

Charlotte: Donald Castle, Marcia Lane, Jack Madey, C.F. Galloway, Kyle Clark, Leonard Jones, Melissa Noll, Jim Pianko, Rex Byers, William Avery, Lesia Paulk, Richard West, Mary G. Fielding, Richard Robertson, Christopher Kitchens, Mike Bednarik, Glen Haene, Robert Loughlin, Mike Brooks, and James Barnett.

In addition to the public witnesses, Tamara Taylor of the Division of Environmental Health and Mike Mickey of the Division of Environmental Management testified at the hearing in Yadkinville, and James Adams of the Division of Environmental Health testified at the hearing in Gastonia. Subsequent to the hearing in Yadkinville, Ms. Tamara Taylor, at the request of the Presiding Commissioner, filed a report on the violations of Mid South in the region supervised by the Winston-Salem office of that agency.

The Applicant filed the direct testimony of T. Carroll Weber, President, Jocelyn M. Perkerson, Vice President, Finance and Regulatory Affairs, Tony R. Parker, Vice President, Utility Operations, and Kim Colson, Vice President, Engineering, on July 27, 1995. The Public Staff filed the direct testimony and exhibits of Windley E. Henry, Staff Accountant, and John R. Hinton, Financial Analyst on August 24, 1995, the testimony and exhibits of O. Bruce Vaughan, Utility Engineer, on August 25, 1995, and supplemental testimony of O. Bruce Vaughan on September 19, 1995. The Applicant filed rebuttal testimony of Jocelyn M. Perkerson, Tony R. Parker and Kim Colson on September 8, September 13, and September 27, 1995.

At the hearings in Raleigh the Applicant presented the testimony of T. Carroll Weber and the testimony, exhibits, and rebuttal testimony and exhibits of Jocelyn M. Perkerson, Tony Parker, and Kim Colson. The Public Staff presented the testimony and exhibits of John Robert Hinton, and Windley E. Henry, and the testimony and supplemental testimony and exhibits of O. Bruce Vaughan. At the request of the Presiding Commissioner, Tamara Taylor of the Division of Environmental Health appeared in the hearing in Raleigh to respond to questions concerning the report she filed after the hearing in Yadkinville.

On October 20, 1995, as requested by the Commission, the Public Staff filed late-filed exhibits setting forth their revised schedules of revenues, expenses, plant in service, revenue requirements, and rates for the Applicant's water and sewer utility operations.

On October 26, 1995, as requested by the Commission, Mid South filed late-filed exhibits consisting of Mid South's schedules of final accounting position, plan for use of 1% of margin on expenses and its capital budget for calendar year 1996.

On January 17, 1996, Mid South filed a Progress Report concerning actions it has undertaken in addressing certain matters which had been raised as issues in the rate case proceeding.

Based on the foregoing, the verified application, the evidence adduced at the hearings, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. Mid South Water Systems, Inc., Huffinan Water Systems, Inc., Lincoln Water Works, Inc., and Surry Water Company, Inc., are public utilities as defined by G.S. 62-3(23) and are properly before the Commission for a determination of the justness and reasonableness of their proposed rate increase.

2. The Applicant's proposed water rates are the same for all divisions. The Applicant's present and proposed rates are as follows:

WATER AND SEWER - RATES

MID SOUTH WATER SYSTEMS, INC. (EXCEPT HENSLEY DIVISION)

	Present Rates	Proposed Rates
Water Utility Service (Monthly):		
Metered Rates:(Residential / nonresidential)		
Base Charge (based on meter size)		
Meter Size		
3/4" x 5/8"	$ 8.35	$ 10.25
3/4"	$ 12.35	$ 15.37
1"	$ 20.35	$ 25.62
1-1/2"	$ 40.35	$ 51.25
2"	$ 64.35	$ 82.00
3"	$120.35	$153.75
4"	$200.35	$256.25
6"	$400.35	$512.50
Usage charge, per 1,000 gallons	$ 2.05	$ 3.30
Flat Rate:		
Residential	$ 13.35	$ 30.27
Woodlawn Business	$ 18.35	$ 45.00
Woodlawn Motel	$ 60.35	$136.21
Connection Charge: (except where excluded by contract)	$400.00	$500.00
Returned Check Fee:	$ 10.00	$ 20.00
New Customer Processing Fee:	n/a	$ 25.00
After Hours Service Connections:	n/a	$100.00
Willful Destruction:	n/a	$ 20.00 plus cost of materials

MID SOUTH WATER SYSTEMS, INC. (HENSLEY DIVISION)

	Present Rates	Proposed Rates
Water Utility Service (Monthly):		
Metered Rates:(Residential / nonresidential)		
Base Charge (based on meter size)		
Meter Size		
3/4" x 5/8"	$ 6.30	$ 10.25
3/4"	n/a	$ 15.37
1"	n/a	$ 25.62
1-1/2"	n/a	$ 51.25
2"	n/a	$ 82.00
3"	n/a	$153.75
4"	n/a	$256.25
6"	n/a	$512.50
Usage charge, per 1,000 gallons	$ 1.36	$ 3.30
Flat Rate:		
Residential	$ 15.50	$ 30.27
Connection Charge: (except where excluded by contract)	$500.00	$500.00
Returned Check Fee:	$ 10.00	$ 20.00
Disconnect/Reconnect Charge: If cut off for good cause by utility when there is no cutoff valve	$ 15.00	$ 50.00
New Customer Processing Fee:	n/a	$ 25.00
After Hours Service Connections:	n/a	$100.00
Willful Destruction:	n/a	$ 20.00 plus cost of materials

MID SOUTH WATER SYSTEMS, INC. (ASHEBROOK PARK)

	Present Rates	Proposed Rates
Water Utility Service (Monthly):		
Metered Rates:(Residential / nonresidential)		
Base Charge (based on meter size)		
Meter Size	(3,000 gallons)	(zero usage)
3/4" x 5/8"	$ 4.00	$ 10.25
3/4"	n/a	$ 15.37
1"	n/a	$ 25.62
1-1/2"	n/a	$ 51.25
2"	n/a	$ 82.00
3"	n/a	$153.75
4"	n/a	$256.25
6"	n/a	$512.50
Usage charge, per 1,000 gallons	$ 1.00 (after 3,000 gal)	$ 3.30 (gallons used)
Connection Charge: (except where excluded by contract)	$150.00	$500.00
Returned Check Fee:	n/a	$ 20.00
Disconnect/Reconnect Charge: If cut off for good cause by utility when there is no cutoff valve	$ 15.00	$ 50.00
New Customer Processing Fee:	n/a	$ 25.00
After Hours Service Connections:	n/a	$100.00
Willful Destruction:	n/a	$ 20.00 plus cost of materials

HUFFMAN WATER SYSTEMS, INC.

	Present Rates	Proposed Rates
Water Utility Service (Monthly):		
Metered Rates:(Residential / nonresidential)		
Base Charge (based on meter size)		
Meter Size		
3/4" x 5/8"	$ 8.35	$ 10.25
3/4"	n/a	$ 15.37
1"	n/a	$ 25.62
1-1/2"	n/a	$ 51.25
2"	n/a	$ 82.00
3"	n/a	$153.75
4"	n/a	$256.25
6"	n/a	$512.50
Usage charge, per 1,000 gallons	$ 2.05	$ 3.30
Flat Rate:		
Residential	$ 13.35	$ 30.27
Connection Charge: (except where excluded by contract)	$400.00	$500.00
Returned Check Fee:	$ 10.00	$ 20.00
New Customer Processing Fee:	n/a	$ 25.00
After Hours Service Connections:	n/a	$100.00
Willful Destruction:	n/a	$ 20.00 plus cost of materials

LINCOLN WATER WORKS, INC.

	Present Rates	Proposed Rates
Water Utility Service (Monthly):		
Metered Rates:(Residential / nonresidential)		
Base Charge (based on meter size)		
Meter Size		
3/4" x 5/8"	$ 8.35	$ 10.25
3/4"	$ 12.35	$ 15.37
1"	$ 20.35	$ 25.62
1-1/2"	$ 40.35	$ 51.25
2"	$ 64.35	$ 82.00
3"	$120.35	$153.75
4"	$200.35	$256.25
6"	$400.35	$512.50
Usage charge, per 1,000 gallons	$ 1.50	$ 3.30
Connection Charge: (except where excluded by contract)	$400.00	$500.00
Returned Check Fee:	$ 10.00	$ 20.00
New Customer Processing Fee:	n/a	$ 25.00
After Hours Service Connections:	n/a	$100.00
Willful Destruction:	n/a	$ 20.00 plus cost of materials

SURRY WATER COMPANY, INC.

	Present Rates	Proposed Rates
Water Utility Service (Monthly):		
Metered Rates: (Residential / nonresidential)		
Base Charge (based on meter size)		
Meter Size		
3/4" x 5/8"	$ 7.75	$ 10.25
3/4"	n/a	$ 15.37
1"	n/a	$ 25.62
1-1/2"	n/a	$ 51.25
2"	n/a	$ 82.00
3"	n/a	$153.75
4"	n/a	$256.25
6"	n/a	$512.50
Usage charge, per 1,000 gallons	$ 2.02	$ 3.30
Connection Charge: (except where excluded by contract)	n/a	$500.00
Returned Check Fee:	n/a	$ 20.00
Disconnect/Reconnect Charge:		
If discontinued at customer's request	$ 10.00	$ 15.00
If cut off for good cause by utility when there is no cutoff valve	$ 15.00	$ 50.00
New Customer Processing Fee:	n/a	$ 25.00
After Hours Service Connections:	n/a	$100.00
Willful Destruction:	n/a	$ 20.00 plus cost of materials

3. The Applicant's present and proposed sewer rates are as follows:

MID SOUTH WATER SYSTEMS, INC.

	Present Rates	Proposed Rates
Metered Service: (Commercial)		
Base charge (no usage)	$ 12.25	$ 17.00
Usage charge (per 1,000 gallons)	$ 3.00	$ 4.19
Flat Rate Service: (Residential)		
Monthly charge	$ 29.00	$ 44.00
Flat Monthly Rate: (Commercial)		
Lowes Food Store - Denver	$ 29.00	$125.00
Untouchables Restaurant	$ 29.00	$125.00
Blue Parrot Grill	$ 29.00	$125.00
River End	$ 29.00	$125.00
Flat Monthly Rate: (Commercial @ Residential Rate)		
REVCO - Denver	$ 29.00	$ 44.00
Mt. Pleasant Church	$ 29.00	$ 44.00
Coast Guard Auxiliary	$ 29.00	$ 44.00
River City Marina	$ 29.00	$ 44.00
North Bridge, Inc.	$ 29.00	$ 44.00
Connection Charge: (except where excluded by contract)	$400.00	$500.00
Returned Check Fee:	$ 10.00	$ 20.00
Disconnect/Reconnect Charge: (if water service not provided by utility)	$ 75.00	$100.00
New Customer Processing Fee: (unless also a water customer)	n/a	$ 25.00

4. The test year established for use in this proceeding is the twelve months ended December 31, 1994.

5. For the purposes of this rate case, the correct number of water customers is 8,871, including 1,142 flat rate and 7,729 metered customers. The correct number of sewer customers is 1,446, including 1,415 flat rate and 31 metered customers.

6. The customer numbers used for the purposes of calculating revenues in this rate case do not include customers transferred and actually connected to the Charlotte Mecklenburg Utility Department (CMUD), and to Caldwell County, since the end of the test year. The customer numbers used for this rate case also do not include customers added or acquired in system acquisitions since the end of the test year.

7. The annualized water service revenues under the Applicant's present and proposed rates are $1,876,716 and $3,155,962, respectively.

8. The annualized sewer service revenues under the Applicant's present and proposed rates are $515,207 and $783,766, respectively.

9. The appropriate level of other water revenue for use in this proceeding is $106,359.

10. The appropriate level of original cost rate base is $1,161,022, of which $907,171 pertains to the water operations and $253,851 pertains to the sewer operations, as follows:

Item	Water	Sewer	Total
Plant in service	$7,485,332	$4,623,555	$12,108,887
Accumulated depreciation	(919,391)	(80,304)	(999,695)
Contributions in aid of construction	(5,805,284)	(4,363,360)	(10,168,644)
Acquisition adjustment	(93,885)	-	(93,885)
Cash working capital	266,652	80,682	347,334
Average tax accruals	(26,253)	(6,722)	(32,975)
Original cost rate base	$907,171	$ 253,851	$1,161,022

11. The appropriate nonutility allocation factor to include in this rate case is 17% for both water and sewer operations.

12. It is appropriate to use revenues to determine the nonutility allocation factor for purposes of this proceeding.

13. The nonutility allocation factor should be applied to the following expense categories: salaries and wages - general and administrative, purchased power, contractual services - accounting, rental of building/real property, transportation - general and administrative, office expense, postage, and telephone expense.

14. It is appropriate to use customer numbers to determine the other jurisdictions/systems allocation factors for purposes of this proceeding.

15. The appropriate other jurisdictions/systems allocation factors to include in this proceeding are as follows:

Item	Percent
Water	9.39%
Sewer	5.98%
Water/Sewer Combined	9.01%

16. It is appropriate to remove direct expenses associated with Tara, Wexford, Brantley Oaks, Lakeview Park, Landen Meadows, and Governor's Island from test year expenses.

17. It is appropriate to remove indirect expenses associated with Tara, Governor's Island, Mountain View, Silverton, the Ruff Systems, the Ralph Falls Systems and the Carroll County, Virginia, System from test year expenses.

18. The appropriate customer growth rates to include in this rate case are:

Item	Percent
Water	1.8%
Sewer	5.6%

19. It is appropriate to apply the water customer growth rate to the following expense categories: purchased water, purchased power, chemicals, maintenance and repair, transportation - operations, rental of equipment, postage, and telephone expense.

20. It is appropriate to apply the sewer customer growth rate to the following expense categories: sludge removal, purchased power, chemicals, maintenance and repair, transportation - operations, postage and telephone expense.

21. The appropriate level of operating and maintenance expenses for use in this proceeding is $2,021,331, which consists of the following:

Item	Water	Sewer	Total
Salaries and wages	$ 775,373	$ 223,012	$ 998,385
Purchased water	13,530	-	13,530
Sludge removal expense	-	52,201	52,201
Purchased power	291,545	111,944	403,489
Chemicals	18,880	4,847	23,727
Testing	188,300	47,133	235,433
Maintenance and repair	75,939	26,241	102,180
Contractual services - other	88,914	28,988	117,902
Transportation	51,898	22,586	74,484
Total operating and maintenance expenses	$1,504,379	$ 516,952	$2,021,331

22. The appropriate level of general and administrative expenses for use in this proceeding is $757,344, which consists of the following:

Item	Water	Sewer	Total
Salaries and wages	$179,595	$ 39,423	$219,018
Employee pensions and benefits	368	114	482
Contractual services - accounting	16,944	3,221	20,165
Contractual services - legal	16,156	3,131	19,287
Contractual services - mgmt. fees	72,778	-	72,778
Rental of building/real property	26,835	1,955	28,790
Rental of equipment	25,451	295	25,746
Transportation	5,181	1,396	6,577
Insurance - vehicles	39,467	6,626	46,093
Insurance - general liability	25,051	5,232	30,283
Insurance - workman's compensation	21,780	21,792	43,572
Insurance - other	86,383	20,811	107,194
Regulatory Commission expense	11,727	2,206	13,933
Advertising	1,796	494	2,290
Misc. exp.	4,040	270	4,310
Misc. exp. - dues & subscriptions	1,351	232	1,583
Misc. exp. - uniforms	6,121	2,251	8,372
Misc. exp. - office expense	9,059	1,646	10,705
Misc. exp. - postage	21,997	3,114	25,111
Misc. exp. - telephone	45,796	13,048	58,844
Misc. exp. - travel	2,473	111	2,584
Misc. exp. - meals & entertainment	716	109	825
Misc. exp. - bank charges	7,790	1,028	8,818
Misc. exp. - other	(16)	-	(16)
Total general and administrative expenses	$628,839	$128,505	$757,344

23. The appropriate level of depreciation and taxes under present rates for use in this proceeding is $438,325, which consists of the following:

Item	Water	Sewer	Total
Depreciation	$104,807	$ 21,812	$126,619
Property taxes	22,698	2,243	24,941
Payroll taxes	81,452	22,254	103,706
Other taxes and licenses	59,135	11,471	70,606
Regulatory fee	1,976	515	2,491
Gross receipts taxes	79,050	30,912	109,962
Total depreciation and taxes	$349,118	$ 89,207	$438,325

24. The operating ratio methodology, which allows a margin on operating revenue deductions requiring a return, is appropriate for determining the Applicant's revenue requirements and rates for both the water and sewer operations.

25. Seventy eight customers from 33 water utility systems and 14 customers from four sewer utility systems attended and testified at the five public hearings held in Mid South's service areas. Some of these customers served as representatives from homeowners associations or other groups. Their complaints dealt mainly with the size of the proposed rate increase and with ongoing problems with service quality.

26. The Public Staff's on-site investigations of the water and sewer systems, the evidence received from public witnesses, and the evidence received from representatives of the Division of Environmental Health (DEH) and the Division of Environmental Management (DEM) revealed operational deficiencies in many of Applicant's service areas.

27. DEH has sent deficiency letters to the Applicant concerning the water utility systems in numerous subdivisions. DEH has sent several Administrative Penalty Request letters to the Public Water Supply Section in Raleigh in regard to Mid South. DEM has sent deficiency letters and/or Notices of Violation to the Applicant concerning the wastewater utility systems at several subdivisions, including Pinebrook Manor, Country Woods East, Frye Bridge, Oxford Glen/Reigate, Mallard Head Condos, Castaway Shores/Bridgeport, Farmwood, and Harbor Estates. DEM has processed Administrative Penalty Requests and has assessed civil penalties on Mid South for its wastewater utilities.

28. The Applicant's failure to respond to ongoing customer complaints in a timely and effective manner constitutes marginally adequate water and sewer utility service.

29. The Applicant's failure to correct deficiencies cited by DEH and DEM constitutes marginally adequate water and sewer utility service.

30. Between February 24, 1994, and April 12, 1995, the Applicant collected what the Public Staff has calculated to be substantially in excess of one million dollars from its customers to cover the cost of EPA-mandated water quality testing through surcharges approved by the Commission in Docket Nos. W-720, Sub 134; W-314, Sub 30; and W-95, Sub 17.

31. Due to the availability of waivers and the fact that the Applicant's testing program was considerably behind schedule, the actual incurred testing expenses related to water quality testing were significantly lower than initially projected.

32. The purpose of the surcharges was not to advance to the Applicant the funds to pay for future testing expenses or other operating expenses, but to cover the actual cost of testing during the approximate period in which the surcharges were collected.

33. The Applicant's failure to perform EPA-mandated testing constitutes marginally adequate water service.

34. A rate of return or margin of 9.5% on operating revenue deductions requiring a return is just and reasonable in this proceeding.

35. The overall quality of water and sewer utility service being provided by the Applicant is marginally adequate and warrants the implementation of the rates approved herein on a provisional basis, such that the rates may be reduced by the Commission in the future if Mid South is unable to satisfactorily correct certain deficiencies and make specific improvements as required herein within 180 days from the date of this Order.

36. The Applicant has failed in basic areas of audit procedures and adherence to North Carolina Public Utility Laws and Regulations. The Applicant has recently discovered a substantial number of customers in a single subdivision who were receiving service at no charge. The Applicant has billed customers in unfranchised systems and has failed to obtain required ownership and/or franchises in other systems, specifically in its Surry Water Company division.

37. The annual level of total operating revenue necessary to allow the Applicant the opportunity to earn the 9.5% return found just and reasonable herein is $2,899,500 for the water operations which is an increase of $923,262 over the Company's present rates.

38. The rates requested by the Company for its sewer operations are reasonable and should be approved. These rates result in an annual level of gross revenue of $783,766, which is an increase of $268,559 over the present rates. The operating revenues produced by the Company's proposed sewer rates result in an operating ratio of 96.34% excluding interest and taxes and an operating ratio of 96.59% including interest and taxes.

39. The rates shown in Appendix A and Appendix B, attached hereto, will produce annual total operating revenues of $2,899,500 for the water operations and $783,766 for the sewer operations.

40. In order to clarify the tariffs regarding collections of tap on fees, the Company should file a report with the Commission listing all subdivisions for Mid South, Huffman, Surry, and Lincoln, and indicate therein whether or not a tap on fee is collected and state the amount that is collected for each subdivision.

41. The Company should use the depreciation rates approved by the Commission on its books.

42. The Company should file a complete NCUC Form W-1, Rate Case Information Report with all its future general rate case applications.

43. The Company should file with the Commission a method for allocating common plant and expenses to nonutility, contract, and nonjurisdictional operations.

44. The Company should file with the Commission copies of its affiliated contracts covering all transactions between Mid South and its affiliated companies as required under G.S. 62-153.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 4

The evidence for these findings of fact is contained in the application, the testimony of witnesses Weber, Perkerson, and Vaughan and the Commission's records. This evidence is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence for these findings of fact is contained in the testimony of witnesses Weber, Parker, Vaughan, and Hinton, and the Commission's records.

The Applicant has transferred systems serving Wexford and Brantley Oaks to CMUD in Docket No. W-720, Sub 148, and a system serving Landen Meadows to CMUD in Docket No. W-720, Sub 147. These customers have actually been connected to CMUD lines. Huffman's Lakeview water system has been transferred to Caldwell County. Mid South is still serving some customers who have been approved by the Commission for transfer to CMUD. Revenues, expenses, and plant investment related to the customers actually transferred were removed and not included in this rate case proceeding.

On June 7, 1995, the Commission issued Orders in Docket Nos. W-720, Sub 143, and W-720, Sub 145, approving the transfer of systems serving customers formerly served by Ruff Water Company and Ralph L. Falls, respectively. Revenues, expenses, and plant investment related to these customers were not included in this rate case.

The Commission concludes that the appropriate number of water customers is 8,871, including 1,142 flat rate and 7,729 metered customers. Furthermore, the Commission concludes that the appropriate number of sewer customers is 1,446, including 1,415 flat rate and 31 metered customers.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 - 9

The evidence for these findings of fact is contained in the testimony and exhibits of witnesses Vaughan and Henry, and in the Commission's records.

Service revenues

Witness Vaughan testified that the Applicant's annualized level of revenues under Mid South's present rates for water service is $1,876,716 and that under the Company's proposed rates, the annualized revenues for water service would be $3,155,962. Witness Vaughan revised the sewer revenue figures stated in his testimony, due to the discovery of nine additional sewer customers. As corrected, the Applicant's annualized level of revenues under Mid South's present rates for sewer service is $515,207 and under the Company's proposed rates, the annualized revenues for sewer service would be $783,766. These numbers were not contested by the Applicant. Since the parties are in agreement, the Commission concludes that these water and sewer service revenue figures under present rates are appropriate for use in this proceeding.

Other water revenues

In its final exhibits filed on October 26, 1995, the Company revised its other water revenues to $107,267. The Company's schedules did not include any footnotes or supporting schedules showing how its number was derived. In its proposed order, the Public Staff included other water revenues of $106,359.

According to the Company's trial balances filed in Item 10(a) of its Form W-1, the amount of per books other water revenues, not including EPA surcharge revenues, is $107,559. The Public Staff made an adjustment to reduce other water revenues by $1,200, which was not opposed by the Company. This adjustment results in other water revenues of $106,359. Therefore, the Commission concludes that the appropriate level of other water revenues for use in this proceeding is $106,359.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The evidence supporting this finding of fact is contained in the testimony and exhibits of witnesses Henry and Perkerson. In the Applicant's final exhibits filed on October 26, 1995, Mid South did not provide any rate base schedules for its water and sewer operations. In her rebuttal testimony, Company witness Perkerson made the following statement, "In order not to unduly burden this case with more disputes, the Company is willing to accept the level of Plant, Accumulated Depreciation and Depreciation Expense as adjusted by the Public Staff for changes they have made to Plant for the purpose of this case only." Additionally, in its proposed order, Mid South stated that "The reasonable original cost rate base for use in this proceeding is the level calculated by the Public Staff."

Based upon the foregoing, the Commission concludes that the original cost rate base as recommended by the Public Staff for the water and sewer operations is reasonable with the exception that the level of cash working capital should be adjusted. The Public Staff reflected cash working capital in rate base based on one-eighth of operating and maintenance expenses and general and administrative expenses, which is the standard formula used by this Commission for water and sewer companies. Based on the level of operating and maintenance expenses and general and administrative expenses determined elsewhere in this Order, the Commission concludes that the appropriate level of cash working capital is $347,334 consisting of $266,652 for the water operations and $80,682 for the sewer operations. In summary, the appropriate original cost rate base is $1,161,022, of which $907,171 pertains to the water operations and $253,851 pertains to the sewer operations, as follows:

Item	Water	Sewer	Total
Plant in service	$7,485,332	$4,623,555	$12,108,887
Accumulated depreciation	(919,391)	(80,304)	(999,695)
Contributions in aid of construction	(5,805,284)	(4,363,360)	(10,168,644)
Acquisition adjustment	(93,885)	-	(93,885)
Cash working capital	266,652	80,682	347,334
Average tax accruals	(26,253)	(6,722)	(32,975)
Original cost rate base	$ 907,171	$ 253,851	$ 1,161,022

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 - 13

The evidence for these findings of fact is contained in the testimony and exhibits of witnesses Henry and Perkerson.

The parties disagree on the allocation factor to be used to allocate indirect expenses of Mid South Water Systems, Inc., to nonutility operations. Public Staff witness Henry calculated a nonutility allocation factor of 17% based on revenues of Mid South Water Systems, Inc., and its affiliated companies. Witness Perkerson initially calculated an allocation factor of 2.5% which was reflected in calculations on the Company's application. The Company's allocation factor was later revised to 3.95% as shown on Perkerson Rebuttal Appendix A. Both parties agree that revenues of Mid South Water Systems, Inc., and certain affiliated companies should be used to calculate the allocation factor needed to allocate common costs to nonutility operations.

The difference between the Public Staff's allocation factor of 17% and the Company's allocation factor of 3.95% is due almost entirely to the fact that the Public Staff included the revenues of Weber Plumbing and Well Services, Inc., (Weber Plumbing) and Mid South Utilities, Inc., (Mid South Utilities) in the calculation to determine its factor, but Mid South did not include the revenues of these two companies. Public Staff witness Henry testified that Mid South Water Systems, Inc., is a member of a controlled group of corporations which included on December 31, 1994: Weber Plumbing, Mid South Utilities Supply, Inc., (Mid South Supply), Mid South Utilities, and Mid South Leasing, Inc., (Mid South Leasing). Each of these companies has its own separate set of books. Direct expenses of each associated company are recorded in the books of each company responsible for the expense. However, the indirect expenses (common costs) incurred by Mid South in support of the associated companies are included on Mid South's books for the test year and therefore, they should be allocated out to the associated companies.

Witness Perkerson testified that these companies are now operating out of a separate facility i.e., they are no longer operating out of the common facility. They have their own books and records which are being maintained by a new employee who was hired to work for these two companies only. These companies will have their own telephone number which will be separate and apart from the Mid South's telephone numbers.

Witness Perkerson testified that the only common thing about these two companies will be the stockholders. Therefore, according to witness Perkerson, the allocation factor should not reflect these two companies because there are no continuing allocations except for the salaries of Carroll and Mary Weber pertaining to Weber Plumbing and Mid South Utilities.

On cross-examination, witness Henry stated that the expenses of all of the affiliated companies are reflected in test year expenses so his proposed adjustments resulting from his calculated nonutility allocation factor will remove those expenses from the test year expenses. Witness Henry went on to state that since Carroll Weber is the president and shareholder of these nonregulated companies, on an ongoing basis, indirect expenses should still be allocated to those nonutility operations in the future.

Mid South and the Public Staff have agreed that their respective nonutility allocation factors should be applied to the following expenses: salaries and wages - general and administrative, purchased power, contract services - accounting, rental of buildings/real property, transportation - general and administrative, office expense, postage, and telephone expense.

The Commission disagrees with witness Perkerson's position that these two companies should not have indirect expenses allocated to them because they now have separate facilities. First, although these companies now have separate facilities, the expenses during the test year included common facility costs related to these companies. For example, in her prefiled rebuttal testimony, witness Perkerson stated that the legal and accounting expenses will be billed to these companies separately in the future. However, the accounting expenses during the test year included these companies, therefore, it is appropriate to allocate a portion of such costs to these two companies. Additionally, since this type of expense will be billed separately in the future, it appears to the Commission that the per books expenses are overstated for utility operations. Therefore, the Commission concludes that costs such as contractual services - accounting should be allocated to nonutility operations for purposes of this proceeding.

Second, the officers of these two companies, Carroll and Mary Weber, have their offices in the Mid South office building. Witness Perkerson acknowledged that their salaries should be allocated to Weber Plumbing and Mid South Utilities. However, if a portion of their salaries are associated with these companies, then it also seems reasonable that some portion of the overheads, such as purchased power, rental of building/real property, transportation - general and administrative, office expense, postage, and telephone expense, should also be allocated to Weber Plumbing and Mid South Utilities. To do otherwise would not be fully distributed costing and would result in the utility ratepayers subsidizing the nonutility operations.

The remaining area of disagreement between the parties in their calculations of the nonutility allocation factor is the level of revenues to include for Mid South Water Systems, Inc. Witness Henry included $2,709,979 of revenues for Mid South, while witness Perkerson included $2,803,638.

Based on the Company's application, Perkerson Exhibit I, Schedule 1, pages 1 and 2, Column (a), the per books metered and flat rate revenues for the water and sewer operations is $2,709,979, which is the number used by the Public Staff in its calculations. In her rebuttal testimony, witness Perkerson did not indicate that she had revised the amount of per books revenue for Mid South, nor did she present any schedules or include any footnotes to explain such change in revenues. For purposes of calculating a nonutility allocation factor, the Commission concludes that the appropriate level to include for Mid South's revenues is $2,709,979, which is supported by the per books amounts shown in the Company's application.

Based upon the foregoing, the Commission concludes that the appropriate nonutility allocation factor to be used in this proceeding is 17%. Such factor is based upon the revenues of Mid South and its affiliated companies – Weber Plumbing, Mid South Utilities, Mid South Supply, and Mid South Leasing.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 - 17

The evidence for these findings of fact is contained in the testimony and exhibits of Company witness Perkerson and Public Staff witness Henry.

The Company and the Public Staff agreed that it was appropriate to remove all the direct expenses associated with Tara, Wexford, Brantley Oaks, Lakeview Park, Landen Meadows and Governor's Island from test year expenses and the parties' agreed on the level of such direct expenses to be removed. There being no controversy in this regard, the Commission accepts the parties' removal of such direct expenses.

The parties disagree on the allocation factor to be used to allocate indirect expenses of Mid South Water Systems, Inc. to systems which are either out of state, contract operated, or newly acquired. The following table sets forth the position of each party:

Item	Company	Public Staff
Water	1.19%	9.39%
Sewer	5.98%	5.98%
Water/Sewer Combined	1.73%	9.01%

As shown above, the parties agree on the other jurisdictions/systems allocation factor for the sewer operations. Therefore, the Commission concludes that the appropriate other jurisdictions/systems sewer allocation factor to be used in this proceeding is 5.98% as agreed to by the parties.

The difference between the Public Staff's recommended other jurisdictions/systems allocation factor for water and water/sewer combined and that proposed by the Company relates almost entirely to Public Staff's inclusion of the Ruff and Ralph Falls Systems in the calculation to determine its factor. Witness Henry used the customers acquired in the Ruff and Ralph Falls transfers to determine his allocation factors for water and water/sewer combined, while the Company excluded these customers.

Both parties agree that it is appropriate to use customer numbers to determine the other jurisdictions/systems allocation factors for purposes of this proceeding; however, they disagree on which customers to include. Both parties also agree that it is appropriate to remove indirect expenses associated with Tara, Governor's Island, Mountain View, Silverton, and the Carroll County, Virginia Systems from test year expenses.

Witness Henry testified that the Company failed to determine an allocation factor based on the customers in the newly acquired Ruff and Ralph Falls Systems' Subdivisions. He testified that since an adjustment had been made by the Public Staff to recognize the transfer of certain systems to the Charlotte Mecklenburg Utility Department (CMUD) which occurred after the end of the test year, then it is also appropriate to recognize other significant acquisitions and transfers which have occurred since the end of the test year. The transfer of certain systems to CMUD resulted in the Company losing approximately 923 customers, but the acquisition of the Ruff and Ralph Falls Systems resulted in the Company gaining approximately 938 customers.

Company witness Perkerson argued that by the admission of Public Staff witness Henry at Line 10, Page 23 of his testimony which reads "Additionally, I removed costs associated with the acquisition of the Ruff systems since these systems are not included in this rate case proceeding", indicates that these systems are not in the rate case. However, in his calculation, Mr. Henry included not only the Ruff systems but also the Ralph Falls systems in determining the other jurisdictions/systems allocation factor; witness Perkerson believed such treatment was inappropriate.

On cross-examination, witness Henry testified that his other jurisdictions/systems allocation factor was calculated to recognize the fact that some systems have been sold and purchased during the test year and that he is allocating some of the test year expenses out to systems that have been sold and purchased during the test year, as well as subsequent to the test year. Witness Henry also stated that by allocating some of the test year indirect expenses to the Ruff and Ralph Falls Systems, he is recognizing that those systems are not a part of this general rate case proceeding.

Mid South's acquisition of the Ruff and Ralph Falls Systems took place after the end of the test year just as the sale of certain systems to CMUD in Docket No. W-720, Sub 148. Both parties have recognized the effects of the Company transferring systems to CMUD, which occurred after the end of the test year. Additionally, both parties agree that the acquisitions of the Ruff and Ralph Falls Systems should not be a part of this proceeding. Therefore, plant, revenues, and direct expenses associated with Ruff and Ralph Falls were not included in test year cost of service. However, indirect expenses (common costs) that should be assigned to Ruff and Ralph Falls remained in test year operating costs.

Witness Henry used the number of customers in the newly acquired Ruff and Ralph Falls Systems to determine an allocation factor to remove indirect expenses related to those systems from the cost of service. The Public Staff stated that to do otherwise would destroy the matching concept and result in the indirect expenses associated with the Ruff and Ralph Falls Systems being assigned to customers in Mid South's other service areas which would be inappropriate.

Based upon the foregoing, the Commission finds good cause to include the Ruff and Ralph Falls Systems' customers in determining an other jurisdictions/systems allocation factor to be used in this proceeding for allocating the indirect costs of Mid South to systems which are out of state, contract operated, or newly acquired. The testimony and exhibits of Company witness Perkerson reflected that revenues, direct expenses, and customer ratio expenses from the sale of systems to CMUD should not be a part of this proceeding. The Commission finds that it would be inappropriate to recognize the sale of systems after the end of the test year without also recognizing significant acquisitions as well, like the purchases of the Ruff and Ralph Falls Systems. The Commission recognizes that if none of the Company's indirect expenses were assigned to Ruff and Ralph Falls then Mid South's current customers would be subsidizing operations in these newly acquired systems which would be inappropriate.

The remaining difference between the parties is due to errors made by the Company in its late-filed final exhibit calculations. On Perkerson Appendix A, the water/sewer allocation factor proposed by the Company of 1.73% is actually incorrect. It is incorrect because the Company erroneously included 1,368 sewer customers of Mid South as sewer customers for Lincoln Water Works instead of as customers of Mid South; the total customers for water/sewer combined for Mid South should have been 9,752, not 7,752 as shown by the Company; and in calculating the water/sewer combined factor, the Company erroneously failed to include its Carroll County, Virginia customers in the calculation of its water/sewer combined, other jurisdictions/systems allocation factor.

Based upon the foregoing, the Commission concludes that it is appropriate to remove indirect expenses associated with Tara, Governor's Island, Mountain View, Silverton, the Ruff Systems, the Ralph Falls Systems, and the Carroll County, Virginia Systems from test year expenses. Therefore, it is appropriate to reflect these systems' customer numbers in the calculation of the other jurisdictions/systems

allocation factors. The Commission concludes that the appropriate allocation factors for other jurisdictions/systems for purposes of this proceeding are 9.39% for the water operations, 5.98% for the sewer operations, and 9.01% for the water/sewer combined operations.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 18 - 20

The evidence for these findings of fact is contained in the testimony of witness Vaughan, and in the Commission's records. The Public Staff recommended a water customer growth rate of 1.8% and a sewer customer growth rate of 5.6%. The Applicant agreed with these customer growth factors. Furthermore, the Applicant did not disagree with the Public Staff's recommendations concerning the accounts to which these growth factors should be applied. Therefore, the Commission concludes that the Public Staff's growth factors are appropriate for this proceeding. The Commission concludes that the water customer growth rate should be applied to purchased water, purchased power, chemicals, maintenance and repair, transportation - operations, rental of equipment, postage, and telephone expense. Also, the Commission concludes that the sewer customer growth rate should be applied to sludge removal, purchased power, chemicals, maintenance and repair, transportation - operations, postage, and telephone expense.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence supporting this finding of fact is found in the testimony and exhibits of witnesses Henry, Vaughan, and Perkerson.

In its late-filed exhibits filed on October 26, 1995, the Company did not include any schedules for its sewer operations stating that it accepted the findings of the Public Staff as they relate to sewer rates in this proceeding. However, in its proposed order, the Company stated that such position does not imply that Mid South fully agrees with all of the Public Staff's sewer adjustments but simply that the proposed sewer rates are acceptable to Mid South.

In its proposed order, the Public Staff provided a statement of the operating income available for a return for the sewer operations which showed that the Company's requested sewer rates would provide a margin of 6.02% on operating revenue deductions requiring a return assuming the Public Staff's recommendations on revenues, expenses, and rate base. The parties did not address the dollar impact of specific issues on the sewer operations in their respective proposed orders, apparently since they were in agreement that the Company's requested sewer rates should be approved.

There being no disagreement on the proposed sewer rates, the Commission concludes that the Company's requested sewer rates and the resulting level of proposed revenues should be approved as agreed to by the parties. In the discussion which follows, the Commission will specifically address the issues between the parties with respect to the water operations and will appropriately state the effect of how such decisions will effect the Company's operating revenue deductions for its sewer operations.

The following table summarizes the positions of the parties for operating and maintenance expenses for the water operations as reflected in their respective proposed orders:

WATER OPERATIONS ONLY

Item	Company	Public Staff	Difference
Salaries and wages	$ 928,424	$ 775,373	$ (153,051)
Purchased water	13,530	13,530	-
Purchased power	293,485	291,130	(2,355)
Chemicals	18,880	18,880	-
Testing	188,300	188,300	-
Maintenance and repair	75,939	75,939	-
Contractual services - other	100,925	76,903	(24,022)
Transportation	51,898	51,898	-
Total operating and maintenance expenses	$1,671,381	$1,491,953	$ (179,428)

As shown in the preceding table, the Public Staff and the Company agree on several components of operating and maintenance expenses. There being no controversy, the Commission accepts the parties' proposed level of expenses for purchased water, chemicals, testing, maintenance and repair, and transportation. Besides allocations to nonutility operations, allocations to other jurisdictions/systems, and adjustments for customer growth, which were previously discussed in the Evidence and Conclusions for Findings of Fact Nos. 11 through 20, the Company and the Public Staff also disagree on several other items of expense.

Salaries and wages

The difference in operating and maintenance salaries and wages of $153,051 is due to the parties' differences regarding salary expense for a water supervisor, the salary level of an accounting clerk, salary expense for a supply clerk, salary expense for Mid South Utilities' construction personnel, nonutility allocations, and other jurisdictions/systems allocations.

The first issue between the Company and the Public Staff regarding the proper amount of operating and maintenance salaries and wages to include in this proceeding relates to the Company's inclusion of salary expense for a water supervisor that the Company had not hired by the date of the hearing. The Public Staff excluded the Company's proposed annualized salary expense for this water supervisor from test year expenses. Witness Henry testified that this water supervisor position had not been filled by the Company as of July 28, 1995.

In rebuttal testimony, witness Perkerson stated that Mid South does not have a sufficient number of operators at this time. She testified at the hearing that the Company is still advertising for this position and stated that it had interviewed a few candidates.

The Commission agrees with the Public Staff's recommendation that the salary expense for the proposed water supervisor position should be excluded from this proceeding. The Commission understands that this position had not been filled by the hearing date in this proceeding. Therefore, the

Commission concludes that this salary expense proposal is not a known and measurable change and it should not be reflected in the Company's cost of service.

The next area of disagreement between the Company and the Public Staff relates to the proper level of operating and maintenance salaries and wages to include in this proceeding for an accounting clerk that the Company hired at the end of the test year.

Witness Henry, in his prefiled testimony, stated that he made an adjustment to reduce the estimated salary of the accounting clerk to the actual annualized salary paid to her during 1995. According to witness Henry, Mid South had overestimated the salary to be paid to this employee in determining salary and wage expense to include in this proceeding.

Company witness Perkerson testified that the Public Staff's reduction in salary for this accounting clerk was too high. Witness Perkerson stated that a proper annualization would result in a reduction of $3,619 rather than $4,659.

At the hearing, Public Staff witness Henry filed revised schedules to reflect changes to his prefiled exhibits. Included among those changes was an adjustment to salaries and wages to reflect the reduction in compensation paid to the accounting clerk as proposed by witness Perkerson in her rebuttal testimony.

In the Company's late-filed exhibits, filed with the Commission on October 26, 1995, witness Perkerson did not reduce the accounting clerk's salary by the amount stated in her rebuttal testimony and by the amount included in witness Henry's revised schedules. Instead, witness Perkerson's final exhibits reflected the same level of compensation to this accounting clerk that was initially included by the Company in its application. The Company did not provide any explanation as to why the level should not be the amount proposed in Perkerson's rebuttal testimony.

Based on the foregoing, the Commission concludes that the appropriate compensation to include in this proceeding for the Company's accounting clerk is the amount reflected in the Public Staff's revised schedules which is the same amount witness Perkerson stated as the proper annualized amount that is currently being paid to this employee.

The next difference between the Company and the Public Staff regarding the amount of operating and maintenance salaries and wages relates to the inclusion in this proceeding of compensation for a supply clerk.

Witness Henry testified that he removed the annualized salary included by the Company for this supply clerk from expenses because the position had not been filled by the Company as of July 28, 1995. Thus, this is not a known and measurable change that should be reflected in the Company's cost of service.

In her rebuttal testimony, witness Perkerson stated that the Company does not disagree with the removal of the salary expense for the supply clerk. Further, she testified that when this position is filled, it will be kept completely separate from Mid South Water Systems, Inc. However, the Company's late-

filed exhibits, filed on October 26, 1995, did not reflect the removal of this position from salaries and wages and no explanation was provided as to why such amount should not be removed from expenses.

Based on the foregoing, the Commission concludes that the salary expense related to the supply clerk position should not be included in salaries and wages in this proceeding. The supply clerk position had not been filled at the time of the hearing, therefore, it is not a known and measurable change that should be reflected in the Company's cost of service. Further, it was the Company's position as stated in witness Perkerson's rebuttal testimony that this position, once filled, will be kept separate from Mid South Water Systems, Inc., and that it should therefore be removed from expenses.

The next area of disagreement between the Company and the Public Staff regarding the amount of operating and maintenance salaries and wages relates to salaries of Mid South Utilities' construction personnel. On its application, witness Perkerson did not include any amount in salaries and wages for Mid South Utilities' construction personnel. However, witness Perkerson's late-filed exhibits filed with the Commission on October 26, 1995, reflected an adjustment of $22,165 to allocate 25% of the salaries of Mid South Utilities' construction personnel to Mid South Water Systems, Inc.

Since this adjustment was not proposed until the Company's late-filed exhibits were filed, there has been no evidence offered into the record by the Company to support such adjustment to include nonutility wages on the books of the water and sewer utilities. Additionally, the Company's proposed order did not address this particular proposal. Based on the foregoing, the Commission concludes that the Company's adjustment to include 25% of the salaries of Mid South Utilities' construction personnel in salaries and wages expense in this proceeding is inappropriate.

The final areas of disagreement between the parties concerns allocations to nonutility operations and other jurisdictions/systems. As previously discussed in this Order, the Commission has found the Public Staff's allocation factors to be appropriate for use in this proceeding.

Based upon the foregoing, the Commission concludes that the appropriate level of operating and maintenance salaries and wages for the water operations is $775,373 and $223,012 is the appropriate level for the sewer operations as proposed by the Public Staff.

Purchased power

The difference in purchased power expense of $2,355 is due to the parties' differing positions relating to the electric power cost at the apartment of Ms. Perkerson in Sherrills Ford, North Carolina, nonutility allocations, and the customer growth adjustment.

The first area of disagreement between the parties in purchased power relates to the electric power cost at the apartment of Ms. Perkerson. The Company included the purchased power expense for Ms. Perkerson's apartment in the cost of service, while witness Henry excluded this item of expense.

Witness Henry stated that he removed these costs because ratepayers should not have to pay any cost for which they do not receive any kind of benefit. Further, it is the Public Staff's opinion that its

recommendation with regard to Ms. Perkerson's salary is adequate for her to use to pay her personal expenses, such as the electric bill at her apartment.

Witness Perkerson stated in her rebuttal testimony that payment of the electric power expense by Mid South was included as part of her total compensation package as the Company's Vice President of Regulatory Affairs. Witness Perkerson provided a copy of her employment contract to the Public Staff and stated that her overall compensation package includes her salary, a Company vehicle, a mobile phone for her car, an apartment in Sherrills Ford, and the electricity expense for that apartment.

Elsewhere in this Order, the Commission has concluded that the Public Staff did not provide sufficient evidence that the compensation package as outlined in the contract between Ms. Perkerson and Mid South with the exception of the Company vehicle, was unfair or unreasonable to include as a component in the Company's cost of service. Absent any proof to the contrary, the Commission finds that for purposes of this proceeding it is reasonable to include the recommended level of electric power cost of Ms. Perkerson's apartment as a part of the Company's purchased power expense.

The remaining differences between the parties relating to purchase power expense are due to the difference in the nonutility allocation factor and an error in the Company's calculation of its customer growth adjustment. In the late-filed exhibits filed by the Company on October 26, 1995, in Perkerson Exhibit I, Schedule 3-19(a)(6), Columns (c) and (d) are shown as additions to purchased power expense when they should have been reflected as reductions to purchased power expense, thus causing the Company's customer growth for purchased power to be overstated.

Based on the foregoing and the Commission decisions concerning allocations and customer growth as set forth elsewhere in this Order, the Commission concludes that the appropriate level of purchased power expense for the water operations is $291,545 and $111,944 is the appropriate level for the sewer operations.

Contractual services - other

The difference between the parties of $24,022, relates entirely to the Company's inclusion of contract services provided by Mid South Utilities to Mid South. Witness Perkerson initially made an annualization adjustment to include $72,067 of contract labor hours in expenses for services performed by Mid South Utilities. Such amount represented 75% of the salaries for Mid South Utilities' construction personnel. Witness Henry testified that the 75% assigned to the utility operations was an estimate for which the Company could not provide any supporting documentation. Additionally, witness Henry stated that time spent by the Mid South Utilities' construction personnel would relate to improvements and should be capitalized in the future.

In the Company's late-filed exhibits filed with the Commission on October 26, 1995, witness Perkerson reduced the amount of contract services - other regarding Mid South Utilities by $48,045, leaving $24,022 of the amount originally listed on its application to be recovered from ratepayers which represented 25% of the salaries for Mid South Utilities' construction personnel.

Witness Perkerson testified that a great deal of work was done by these construction personnel for Mid South. Further, witness Perkerson stated that the Public Staff never asked to see the work logs supporting these expenses.

Based upon the evidence presented, the Commission concludes that the Public Staff has failed to prove that the employees of Mid South Utilities did not participate in some level of maintenance and repair work that is being performed for the benefit of Mid South's customers. Further, given the parties conflicting opinions as to the availability of supporting documentation for the inclusion of such expenses, i.e. the Company stated that logs of the work done by these employees were available, but not reviewed by the Public Staff and the Public Staff stated that no supporting documentation was available; the Commission concludes that for purposes of this proceeding it would be reasonable to include one-half of the $24,022 amount proposed for inclusion by the Company. Therefore, the Commission finds that $12,011 would be a reasonable level of labor costs for Mid South Utilities' construction personnel to be included in expenses in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of contractual services - other for the water operations is $88,914 and the reasonable level for the sewer operations is $28,988 as proposed by the Public Staff. The Company did not propose any similar Mid South Utilities' construction personnel adjustment for its sewer operations.

Summary conclusion

Based on the foregoing, the Commission concludes that the appropriate level of operating and maintenance expenses is $2,021,331, which consists of the following:

Item	Water	Sewer	Total
Salaries and wages	$ 775,373	$ 223,012	$ 998,385
Purchased water	13,530	-	13,530
Sludge removal expense	-	52,201	52,201
Purchased power	291,545	111,944	403,489
Chemicals	18,880	4,847	23,727
Testing	188,300	47,133	235,433
Maintenance and repair	75,939	26,241	102,180
Contractual services - other	88,914	28,988	117,902
Transportation	51,898	22,586	74,484
Total operating and maintenance expenses	$1,504,379	$ 516,952	$2,021,331

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence supporting this finding of fact is found in the testimony and exhibits of witnesses Henry, Vaughan, and Perkerson.

As previously stated, the parties did not address the dollar impact of specific issues on the sewer operations in their respective proposed orders since they were in agreement that the Company's requested sewer rates should be approved and as stated elsewhere, the Commission has accepted the proposed sewer rates. In the discussion which follows, the Commission will specifically address the issues between the parties with respect to the water operations and will appropriately state the effect of how such decisions will effect the Company's operating revenue deductions for its sewer operations.

The following table summarizes the positions of the parties for general and administrative expenses for the water operations as reflected in their proposed orders:

WATER OPERATIONS ONLY

Item	Company	Public Staff	Difference
Salaries and wages	$ 219,515	$ 116,255	$(103,260)
Employee pensions and benefits	368	368	-
Contractual services - accounting	20,483	16,944	(3,539)
Contractual services - legal	18,767	657	(18,110)
Contractual services - mgmt. fees	75,346	72,778	(2,568)
Rental of building/real property	30,036	23,375	(6,661)
Rental of equipment	25,909	25,451	(458)
Transportation	6,815	5,181	(1,634)
Insurance - vehicles	58,360	39,467	(18,893)
Insurance - general liability	26,557	25,051	(1,506)
Insurance - workman's compensation	22,545	21,780	(765)
Insurance - other	84,741	86,383	1,642
Regulatory Commission expense	11,727	11,727	-
Advertising	1,796	1,796	-
Misc. exp.	4,040	4,040	-
Misc. exp. - dues & subscriptions	1,473	1,351	(122)
Misc. exp. - uniforms	6,979	6,121	(858)
Misc. exp. - office expense	11,425	9,059	(2,366)
Misc. exp. - postage	25,690	21,997	(3,693)
Misc. exp. - telephone	53,352	45,382	(7,970)
Misc. exp. - travel	2,680	2,473	(207)
Misc. exp. - meals & entertainment	776	716	(60)
Misc. exp. - bank charges	8,370	7,790	(580)
Misc. exp. - other	(16)	(16)	-
Total general & administrative expenses	$717,734	$546,126	$(171,608)

As shown in the preceding table, the Public Staff and the Company agree on several components of general and administrative expenses. There being no controversy, the Commission accepts the parties' proposed level of expense for employee pensions and benefits, regulatory Commission expense, advertising, general miscellaneous expense, and miscellaneous expense - other. Besides allocations to nonutility operations, allocations to other jurisdictions/systems, and adjustments for customer growth, which were previously discussed in the Evidence and Conclusions for Findings of Fact Nos. 11 through 20, the Company and the Public Staff also disagree on several other items of expense.

Salaries and wages

The difference of $103,260 in general and administrative salaries and wages is due to the parties' differences in regard to the salary levels of Carroll and Mary Weber, the salary level of Jocelyn Perkerson, the salary level of Kim Colson, nonutility allocations, and other jurisdictions/systems allocations.

The first difference between the Company and the Public Staff regarding general and administrative salaries and wages relates to the appropriate level of wages to include in this proceeding for Carroll Weber, the Company's President and Treasurer, and Mary Weber, the Company's Vice President and Secretary.

Public Staff witness Henry stated that the adjusted salary levels included on the Company's application for Carroll and Mary Weber represented an increase of more than 100% over the salaries paid to these employees during the test period. Further, witness Henry stated that an examination of the Company's payroll records for 1995 revealed that the ongoing salary being paid to these employees is the same as it was during the test year. Therefore, witness Henry recommended that the test year level of salary expense on the Company's books for the Webers should be the ongoing level reflected in the utility's cost of service.

Additionally, witness Henry testified that another reason that the Public Staff is not recommending any salary increases for either Carroll or Mary Weber is because of the additional layers of management that the Company has hired, a vice president of finance and regulatory affairs, a vice president of operations, and a vice president of engineering. Therefore, in the Public Staff's opinion much of the day-to-day operations of running the Company should have shifted over to these employees and away from Carroll and Mary Weber.

Further, witness Henry testified that as officers and sole shareholders of the Company, part of the Webers' day-to-day operations is to look out for the interest of the shareholders of the Company. As shareholders and officers of the Company, witness Henry stated that part of the Webers' salaries should be recorded below the line to be recovered from shareholders. In support of such adjustment, witness Henry noted that the Public Staff allocated some portion of salaries of officers to shareholders' interests in one of the recent electric rate cases. However, on cross-examination he admitted that he did not know which particular docket or the amount. Additionally, on cross-examination witness Henry stated that the raises for Carroll and Mary Weber "...were so substantial that it led me to believe that the only reason for the increase was because they did file a rate case."

Company witness Perkerson testified that it has been obvious from a review of the Company's filing that Carroll and Mary Weber have been paid salaries that are far below the levels of those that would be paid to persons with their responsibilities in similar companies. Witness Perkerson stated that the increases are fully warranted to provide reasonable levels of compensation for their services; they should not be asked to work for the ratepayer at extremely substandard levels of compensation.

Witness Perkerson testified that Carroll Weber is the President and Treasurer of the third largest water company in North Carolina and that his proposed salary is in keeping with persons with similar responsibilities. She also stated that Mary Weber is the Vice President and Secretary of Mid South and performs the duties attendant to that position. She testified that Mary Weber does a variety of things including spearheading the EPA testing program and was responsible for seeing that things were done on time.

Witness Perkerson testified that Mid South's actual levels of salaries and wages were documented by its books. The incurring and paying of these expenses, with the exception of the proposed salary increases for Carroll and Mary Weber, is a documented fact on Mid South's books. According to the

testimony of witness Perkerson, the salary increases for Carroll and Mary Weber are an accounts payable which could not be paid due to a lack of funds prior to the pending rate case proceedings. Further, witness Perkerson stated that Mr. and Mrs. Weber have not received an increase in their compensation, as officers of Mid South and the affiliated companies, since 1989.

In questions from the Commission, witness Henry was asked "Do you think that Mr. Weber should make less than his Vice Presidents and his other help?" Witness Henry responded stating that "I didn't evaluate as far as how much – I didn't compare it to how much their vice president makes, granted it is less but I still think it's a reasonable and adequate salary for him based on his participation in management." Further, witness Henry was asked "Can you name one water company president that has the same responsibility that this president has that makes less than the amount of money he's requesting his salary to be?" Witness Henry responded stating that "I'm not aware of – I don't know what salaries other people in his position for other water utilities make." Further, witness Henry stated that his rationale for removing the salary increase proposed by the Company for Mary Weber was the same rationale he had used for disallowing Mr. Weber's proposed salary increase.

Based upon the evidence presented, the Commission concludes that the record has provided no clear nor convincing reasons to find that the requested salary adjustments for Carroll and Mary Weber are unreasonable. The Commission has reviewed the salary levels that are being paid to the other employees of Mid South and on the basis of such review and in consideration of the Commission's own knowledge and impartial judgment of what various other water/sewer utility personnel are being paid, the Commission believes that the Company's proposed salary levels for Carroll and Mary Weber, after adjustments for allocations to nonutility and other jurisdictions/systems using the factors approved herein, are reasonable.

The next difference between the Company and the Public Staff regarding general and administrative salaries and wages relates to the amount of compensation that should be recovered from ratepayers for the Company's Vice President of Finance and Regulatory Affairs, Ms. Jocelyn Perkerson.

Witness Henry, in his prefiled testimony stated that he reduced the salary level of Ms. Perkerson by one-half because in his opinion Ms. Perkerson is not a full-time employee of Mid South. In support of his position, witness Henry stated that in addition to her position with Mid South, Ms. Perkerson also spends a portion of her time serving as an expert witness for other water and sewer companies franchised in North Carolina. As an example of time spent working for other companies, witness Henry stated that during the recent Rayco Utilities, Inc., rate increase request in Docket No. W-899, Sub 14, Ms. Perkerson estimated that she was going to spend approximately 173 hours working for Rayco as an expert witness. Furthermore, witness Henry testified that Ms. Perkerson spends time in both Sherrills Ford and Raleigh and time is also spent traveling between these two locations. Thus, Ms. Perkerson does not live full-time in Sherrills Ford. Therefore, witness Henry considered Ms. Perkerson to be a part-time employee.

The Company included the level of salary expense for Ms. Perkerson as stated in the employment contract between Mid South and Ms. Perkerson. Witness Perkerson testified that her contract clearly states that she is to work an average of 40 hours per week for Mid South, with an average of 20 hours of those being spent at Sherrills Ford and the balance being spent in the Raleigh office, at hearings, etc. Witness Perkerson stated that the Company needs a person to handle regulatory affairs and that person is needed for a minimum of 40 hours per week. Further, she testified that the 40 hours however do not

always have to be spent between 8:00 a.m. and 5:00 p.m., Monday through Friday. Additionally, witness Perkerson stated that she usually travels at 5:00 a.m. in the morning to be at work in Sherrills Ford on Monday morning and travels after 5:00 p.m. in the afternoon on return trips to Raleigh.

When witness Henry was asked, if he had any doubt that Ms. Perkerson, with regard to travel time to Sherrills Ford, gets up and leaves her house at 5:00 a.m. so that she can arrive there by 8:00 a.m. Mr. Henry stated that during his four-week investigation at the Sherrills Ford office, there were days when Ms. Perkerson would not arrive until noon, so she would be traveling between the hours of 8:00 a.m. and noon from Raleigh to arrive at Sherrills Ford. Further, witness Henry responded to a question from the Commission on what constitutes a full-time employee by stating that a full-time employee is someone who works 40 hours per week at a job that is close to their home. Thus, witness Henry concluded that Ms. Perkerson was not a full-time employee.

Based upon the foregoing, the Commission can find no substantive reasons to treat Ms. Perkerson as a part-time employee as recommended by the Public Staff. Without some supporting evidence showing that Ms. Perkerson does not actually work the hours she has been hired to work by Mid South, it would be improper for the Commission to conclude that she is not a full-time employee just because she occasionally performs work for other utility companies or because of her preferences to work in both Raleigh and Sherrills Ford. The Commission disagrees with the Public Staff's characterization that for a person to be a full-time employee they must work 40 hours per week at a job that is close to their home, clearly Ms. Perkerson can and does perform work for Mid South in both Raleigh and Sherrills Ford as required by her contract. Furthermore, the Commission finds no direct evidence that indicates that Ms. Perkerson's compensation is unreasonable if she is considered as a full-time employee. Therefore, the Commission finds that the Company's proposed salary level for Ms. Perkerson after adjustments for allocations to nonutility and other jurisdictions/systems using the factors approved herein is reasonable.

The next area of difference between the parties' level of general and administrative salaries and wages concerns the level of Kim Colson's salary which should be capitalized. In his prefiled testimony, witness Vaughan testified that 50% of Kim Colson's salary should be capitalized since it relates to plant modifications and expansions. Company witness Perkerson testified in her prefiled rebuttal testimony that the percent to be capitalized should not be in excess of 35%. Witness Vaughan testified at the hearing on September 20, 1995 that he agreed with the rebuttal testimony of Ms. Perkerson in this regard and that he had revised his recommended position on Mr. Colson's salary to allow 65% of it to be expensed, with the remaining 35% to be capitalized. In her summary testimony given at the hearing on September 21, 1995, witness Perkerson referred to the Public Staff's revision and voiced no objection. However, in her final exhibits, filed with the Commission on October 26, 1995, witness Perkerson did not reduce Mr. Colson's salary by the 35% for the amount that should be capitalized. Ms. Perkerson's final exhibits reflect the same level of salary for Mr. Colson as was originally included in its application.

Based on the foregoing, the Commission agrees that it is appropriate to include in expenses 65% of Kim Colson's salary, with the remaining 35% to be capitalized since it relates to capital projects. The 35% to be capitalized is the same percent which witness Perkerson stated as reasonable in her rebuttal testimony.

The final area of disagreement between the parties concerns allocations to nonutility operations and other jurisdictions/systems. As previously discussed in this Order, the Commission has found the Public Staff's allocation factors to be appropriate for use in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of general and administrative salaries and wages for the water operations is $179,595 and $39,423 is the appropriate level for the sewer operations.

Contractual services - accounting

The difference of $3,539 in contractual services - accounting is due to a transposition error, nonutility allocations, and other jurisdictions/systems allocations.

The only difference between the parties, other than the allocation differences, is due to an error in the final schedules filed by the Company on October 26, 1995. On Perkerson Exhibit I, Schedule 3-5, Line 2, the Company had a transposition error of $630. After correcting this error and reflecting the allocations to other jurisdictions and nonutility operations based on the allocation factors found appropriate elsewhere in this Order, the appropriate level of contractual services - accounting for the water operations is $16,944 and the appropriate level for the sewer operations is $3,221, as recommended by the Public Staff.

Contractual services - legal

The difference in contractual services - legal expense of $18,110 is due to the following items:

Item	Amount
Company transposition error	$ 210
Pine Isle and Bishop's Ridge franchises	1,495
Stock transfer of Paysour	597
Sale of Brantley Oaks to CMUD	66
Whitley complaint to the Commission	188
Ruff transfer	243
Bradfield Farms and Britley franchises	3,570
Lawsuit between Carolina Water and Mid South	8,698
Docket No. W-100, Sub 21 - financial investigation	3,043
Total difference	$18,110

The first difference between the parties is due to an error in the final schedules filed by the Company on October 26, 1995. On Perkerson Exhibit I, Schedule 3-6, Line 2, the Company had a transposition error which resulted in a $210 overstatement of contractual services - legal expense. The Commission concludes that such error should be corrected.

The next area of disagreement between the parties relates to legal fees incurred by the Company to acquire the Pine Isle and Bishop's Ridge Systems. Public Staff witness Henry stated that he had capitalized the legal costs associated with the acquisition of these systems and included them in rate base.

Witness Perkerson, in her final exhibits, annualized these legal costs over a three-year period and placed 1/3 of these legal costs in expenses.

As previously discussed, the Company has already stated that it is willing to accept the level of plant in service as adjusted by the Public Staff which would include these capitalized legal fees, yet the Company still included 1/3 of such legal fees in the cost of service.

The Commission has accepted the Public Staff's adjusted level of plant in service for purposes of this proceeding as discussed elsewhere. Thus, the Commission finds that it would be improper to also include legal fees associated with the acquisition of Bishop's Ridge and Pine Isle in the Company's expenses. The inclusion of these legal costs in operating expenses would result in the Company recovering these expenses twice, once through depreciation and again through operating expenses. Furthermore, these costs are related to acquiring the franchises for these systems and should be capitalized, as was done by the Public Staff.

The next item of difference between the parties relates to legal fees incurred by the Company to transfer stock of the Paysour system. Witness Henry testified that he capitalized the legal costs associated with the stock transfer of the Paysour system and included them in rate base. Witness Perkerson, in her final exhibits, annualized these legal costs over a three-year period and placed 1/3 of these fees in operating expenses.

The Commission has concluded that the Public Staff's adjusted level of plant in service is the appropriate amount to use in this proceeding. Therefore, it would not be proper to include the legal fees associated with the stock transfer of the Paysour system in operating expenses, otherwise the Company would be unfairly recovering these legal fees twice, once through depreciation expense and again through its proposed level of contractual services - legal expenses.

The next difference between the parties relates to legal fees incurred by the Company as a result of selling its Brantley Oaks system to CMUD. Witness Henry excluded these legal costs and all other direct expenses associated with the Brantley Oaks system from test year expenses because the Company no longer owned this system. Witness Perkerson, in her final exhibits, annualized these legal costs over a three-year period and placed 1/3 of these legal fees in operating expenses.

Mid South has realized a gain on the sale of the Brantley Oaks system and other systems sold to CMUD. The Commission believes that any legal fees that the Company has incurred as a result of the sale should be netted against that gain. Additionally, since the Commission has deferred ruling on the gain on sale issue in this matter, it would be inequitable for ratepayers to pay for the legal expenses associated with the sale when they have not received any benefit from the gain.

Furthermore, the Commission recognizes that the Company and the Public staff are in agreement that the Brantley Oaks system should not be included in this proceeding. Based on the evidence in this proceeding, the Commission concludes that legal fees associated with the Brantley Oaks system should not be included in this proceeding.

The next area of disagreement between the parties relates to legal fees incurred by the Company as a result of a complaint proceeding filed by William Whitley III against Mid South Utilities, Inc. Witness Henry excluded these legal fees from this proceeding because in his opinion they were unnecessary for the provision of adequate water and sewer service. Witness Perkerson included these legal fees in this proceeding because they related to a regulatory matter before the Commission where the Company was a party to such proceedings. Witness Perkerson stated that these legal fees were incurred in proceedings at the Commission and, that at a minimum, they should be amortized to expenses over a three-year period.

The complaint proceeding filed by Mr. Whitley in Docket Nos. W-1026 and W-1046 requested that the Commission issue an order requiring Mid South Utilities, Inc. to pay $10,000 to SPDI Partnership or issue an order requiring Pace Utilities Group to convey to Mr. Whitley, all of its property interest in utility plant and other facilities that connect the water distribution system in Silverton Subdivision to Britley Subdivision. The Public Staff filed a statement of position in the abovementioned dockets stating that the $10,000 which was at issue related to nonutility property and that the controversy did not touch on the rates or services provided to the public by a regulated utility. Mid South Water Systems, Inc., filed a response in opposition to Mr. Whitley's motion, requesting the Commission to dismiss and deny such motion. The Commission ordered that Mr. Whitley's motion for relief be treated as a formal complaint and scheduled a hearing on the matter. Mid South participated in the hearings for the limited purpose of contesting jurisdiction. The Commission, in its final order in these dockets, after hearings on the matter, agreed with the Public Staff and Mid South Water Systems, Inc., that the complaint was a matter of controversy between two nonregulated parties.

Based upon the foregoing, the Commission concludes that it would be reasonable to include one-third of these legal fees in operating expenses. The Commission believes it was entirely appropriate for Mid South to participate in those proceedings for the purpose of contesting jurisdiction and finds that the Company's level of expense proposed to be included in the cost of service in this regard is reasonable. The three-year amortization period is the same as the parties have agreed to use for determining the appropriate level of rate case expenses arising out of this proceeding to be included in operating expenses.

The next issue between the parties relates to legal fees incurred by the Company when it acquired the Ruff Water System. Witness Henry stated that he removed these legal fees from test year expenses because the Ruff Systems are not included in this rate case proceeding. It is the Public Staff's opinion that these costs are related to acquiring these new systems, and as such they should be capitalized and recovered from the customers of the systems acquired.

Witness Perkerson, in her final exhibits, annualized these legal costs over a three-year period and placed 1/3 of these legal costs in test year expenses. Witness Perkerson did not provide any evidence or testimony to explain why these legal costs should be recovered from current customers of Mid South rather than from the water customers of the Ruff Systems. Additionally, in her rebuttal testimony, witness Perkerson stated that she reluctantly agreed with the capitalization of costs related to securing new systems.

After careful examination of the records in this proceeding, the Commission finds that the Company has not presented any evidence to support the inclusion of these legal costs in test year expenses. Both parties have agreed that the Ruff Systems are not to be included in this rate case proceeding and the

Commission has accepted this treatment. The Commission concludes that these legal fees should be capitalized and included with the other capital costs of the Ruff Systems. Thus, such costs should be excluded from operating expenses in this proceeding as recommended by the Public Staff.

The next matter of disagreement between the parties relates to legal fees incurred during the test year as a result of Mid South winding down its activities relating to its applications for franchises in Britley and Bradfield Farms Subdivisions in Docket Nos. W-720, Sub 96 and Sub 108. Witness Henry stated that he removed these legal fees because the Company does not own either one of these systems. Witness Perkerson annualized these legal costs over a three-year period and included 1/3 of these fees in operating expenses. It was the Company's position that these expenses were incurred in good faith, representing itself in proceedings before the Commission.

The regulatory matters involving Mid South's provision of water and sewer utility service in Bradfield Farms and Britley Subdivisions are extremely complicated and have been ongoing for a lengthy period of time beginning with Mid South's July 10, 1989 filing of an application for a franchise to provide water and sewer utility service in Bradfield Farms Phase II. Such franchise request was granted by the Commission in October 1989 but it was later revoked by the Commission in December 1992, some three years later. Thereafter, the Commission appointed Mid South to be the temporary and/or emergency operator in Bradfield Farms and Britley Subdivisions.

Eventually, the Commission revoked the temporary operating authority granted to Mid South to provide water and sewer utility service in Bradfield Farms and Britley Subdivisions in Docket Nos. W-720, Sub 96 and Sub 108. The Commission found that Mid South was not justified in participating in the extension of water and sewer lines into subsequent phases (III, IV, and V) of Bradfield Farms without first obtaining approval of the Commission as required by the Commission's Order of October 3, 1989. The Commission also found that Mid South's service to Silverton by contiguous extension did not comply with G.S. 62-110 and was, therefore, unlawful.

Based upon the evidence presented in this proceeding, and its extensive knowledge of these matters, the Commission concludes that the Company's requested level of legal costs to be included in operating expenses for expenditures related to the Company's winding down of matters surrounding its franchise applications in Britley and Bradfield Farms Subdivisions are reasonable to include in test year expenses. The Company did have a certificate of public convenience and necessity to serve Bradfield Farms Phase II for several years and the Company also has had temporary operating authority and/or emergency operator authority to serve both Bradfield Farms and Britley Subdivisions in the past. The Commission considers that the Company's overall involvement in providing water and sewer utility service in Bradfield Farms and Britley Subdivisions warrants the inclusion of the Company's proposed level of associated legal fees in this proceeding.

Next the parties disagreed on the inclusion of legal fees incurred by the Company as a result of a lawsuit between Mid South Water Systems, Inc., and Carolina Water Service, Inc. (CWS). Witness Henry removed all of the legal costs associated with this lawsuit, while the Company amortized the fees over a three-year period.

In a civil action brought against Mid South, CWS alleged that the Commission had not given enough relief to CWS in the Bradfield Farms (Docket Nos. W-720, Sub 96 and Sub 108) cases at the Commission. Mid South instructed its attorneys to vigorously defend this lawsuit, and they did, winning the case on a Motion for Summary Judgement.

Witness Perkerson testified that Mid South believed that these expenditures, which were made during the test year, were reasonable, prudent, and necessary. It was her opinion that Mid South should not be made to absorb 100% of these costs. Witness Perkerson went on to state that this case was directly related to regulatory matters at the Commission and that these legal fees should either be added back or should, at a minimum, be amortized over a three-year period.

Witness Henry testified that this lawsuit was between Mid South's shareholders and CWS. The Public Staff's position is that this lawsuit did not come before the Commission, it was not ordered by the Commission, it had nothing to do with providing service to ratepayers, and its costs should therefore not be recovered from existing customers.

After careful examination of the record in Docket Nos. W-720, Sub 96 and Sub 108 and the evidence in this proceeding, the Commission concludes that the Company's proposal to include a portion of these legal expenses in the cost of service is reasonable. Mid South was being sued by CWS, they hired a lawyer to represent them, and they won the case which arose out of matters dealing with Mid South's utility operations. The Commission believes that it was reasonable and prudent for Mid South to take action in this regard and defend itself against the civil action initiated by its competition, CWS. Thus, the Commission concludes that it is reasonable to include 1/3 of such legal fees in operating expenses as proposed by the Company in this proceeding.

The final area of disagreement between the parties relates to legal fees incurred as a result of matters relating to Mid South's financial condition and viability which have been under review in Docket No. W-100, Sub 21. Witness Henry removed these legal costs from expenses because in his opinion they relate to the Company's noncompliance with governmental regulations. Witness Perkerson, in her final exhibits, annualized these legal costs over a three-year period and placed 1/3 of such fees in test year expenses.

Docket No. W-100, Sub 21, was initiated by the Commission as a result of the Commission's continuing concern regarding the financial condition and viability of Mid South. The Commission requested that the Public Staff investigate and evaluate the current financial conditions of the Company and address whether the Company was complying with Commission rules, practices, and procedures concerning gross-up of contributions in aid of construction (CIAC), whether the Company had potential CIAC-related income tax liabilities, whether the Company was financially fit, whether the Company's pledging of assets without prior Commission approval jeopardized the future provision of public utility service, and whether the Company and/or the Webers, the sole shareholders, should be fined for having so pledged public utility assets.

Witness Henry testified that had the Company complied with the Commission's rules and regulations, there would not have been any need for the Commission to investigate the financial fitness of Mid South. Witness Henry went on to testify that as a result of deficiencies found in the Company's annual

report, the Company not being properly managed, and problems the Company had with gross up on CIAC, the Commission initiated an investigation to have the Public Staff address all these problems as well as the financial fitness of Mid South.

Witness Perkerson stated that these legal costs were directly related to regulatory matters at the Commission and that these fees should either be added back to operating expenses or should, at a minimum, be amortized over a three-year period such that 1/3 of these legal fees would be recovered in operating expenses. She went on to state that Mid South was the respondent in this matter which was initiated by the Commission. The Company pointed out that the Public Staff has now filed two Mid South audit reports in Docket No. W-100, Sub 21 and has found the Company to be financially fit in each of its audits.

Based upon the foregoing and the eminent understanding of all matters which have been questioned by the Commission and investigated by the Public Staff in Docket No. W-100, Sub 21, the Commission finds that the Company's request to include a portion of such legal fees in the cost of service to be reasonable. Docket No. W-100, Sub 21 is still an open docket, in fact the Public Staff's next audit report, their third one, is now due to be filed on or before February 15, 1996. The Commission believes that it would be inappropriate to disallow all of these costs as proposed by the Public Staff especially considering that the Public Staff has found the Company to be financially fit in its prior two audit reports filed with the Commission, the Company was not fined by the Commission, and presently the Commission is still continuing to require ongoing audits of Mid South's operations. Therefore, the Commission concludes that is reasonable to include 1/3 of such legal fees in operating expenses in this proceeding.

Based on the foregoing, the Commission concludes that the appropriate level of contractual services - legal for the water operations is $16,156 and the appropriate level for the sewer operations is $3,131.

Rental of building/real property

The difference of $6,661 in rental of building/real property expenses is due to the parties' differing positions relating to the rent expense for the apartment of Jocelyn Perkerson in Sherrills Ford, nonutility allocations, other jurisdictions/systems allocations, and adjustments for customer growth.

The first difference between the Company and the Public Staff in this regard relates to the rental of an apartment in Sherrills Ford for Ms. Perkerson. Witness Henry removed the rental fees for this apartment from the cost of service since in his opinion the salary that he has recommended for inclusion in this proceeding is adequate compensation for her services. Witness Perkerson included the apartment rental in the cost of service because it is a part of her total compensation package with Mid South.

Witness Perkerson stated in her rebuttal testimony that payment of her apartment rent in Sherrills Ford by Mid South was included as part of her total compensation package as the Company's Vice President of Regulatory Affairs. Witness Perkerson provided a copy of her employment contract to the Public Staff and stated that her overall compensation package includes her salary, a Company vehicle, a mobile phone for her car, an apartment in Sherrills Ford, and the electricity expense for that apartment.

According to witness Perkerson, the full cost of the apartment and the electricity expense which was discussed previously is $440 per month on average.

Elsewhere in this Order, the Commission has concluded that the Public Staff did not provide sufficient evidence that the compensation package as outlined in the contract between Ms. Perkerson and Mid South with the exception of the Company vehicle, was unfair or unreasonable to include as a component in the Company's cost of service. Absent any proof to the contrary, the Commission finds that for purposes of this proceeding it is reasonable to include the Company's recommended level of rent expense relating to Ms. Perkerson's apartment as a part of the Company's operating expenses.

The next difference between the parties is due to an error in the calculations on the schedules filed by the Company on October 26, 1995. On Perkerson Exhibit I, Schedule 3-19(a)(6), the Company included one dollar for customer growth on the rental of building/real property expense in error. The parties agreed that customer growth should not be applied to this account.

Based on the foregoing and the allocations which the Commission has found appropriate elsewhere in this Order, the Commission concludes that the appropriate level of rental of building/real property expense for the water operations is $26,835 and $1,955 is the appropriate level for the sewer operations.

Rental of equipment

The difference between the parties of $458 relates entirely to a Company error in its customer growth adjustment which was reflected in the underlying calculations included in the final schedules filed by the Company on October 26, 1995. On Perkerson Exhibit I, Schedule 3-19(a)(6), the Company included $24,485 as its nonutility adjustment to rental of equipment in error. Also, the Company included its allocation to other jurisdictions in the total amount of $467 as an addition to the rental of equipment account, rather than as a deduction.

After correcting for these errors, the Commission finds that the appropriate level of rental of equipment for the water operations is $25,451 and it is $295 for the sewer operations as recommended by the Public Staff.

Insurance - vehicles

The difference of $18,893 relates to the parties' differences on the proper number of vehicles to include for insurance purposes and to the differences in their other jurisdictions/systems allocation factors. The Public Staff made an adjustment to insurance expense for the percentage of vehicles which were not included in rate base, resulting in a $15,504 decrease in these expenses. Public Staff witness Henry testified that this adjustment corresponded to his adjustment to vehicles which he had excluded from rate base.

As previously discussed under the Evidence and Conclusions for Finding of Fact No. 10, the Company did not file any final schedules for rate base for its water or sewer operations. In fact, the Company has accepted the Public Staff's amounts for plant in service, accumulated depreciation, and depreciation expense for purposes of this proceeding. Since the plant in service, accumulated

depreciation, and depreciation expense found reasonable in this case excludes these vehicles, or a portion of these vehicles, it would be inappropriate to include any insurance expense related to these excluded vehicles. Therefore, the Commission concludes that vehicle insurance should be adjusted by $15,504 as proposed by the Public Staff to remove the percentage of vehicles not included in rate base.

Therefore, the appropriate level of insurance - vehicles for the water operations, including the allocations found appropriate elsewhere in this Order, is $39,467 and the appropriate level for the sewer operations is $6,626 as recommended by the Public Staff.

Insurance - workman's compensation

The difference of $765 between the parties is due to errors contained in certain calculations in the final schedules filed by the Company on October 26, 1995. On Perkerson Exhibit I, Schedule 3-10, the amounts on Lines 4 and 5 for allocation to other jurisdictions/systems and customer growth are incorrect. In such Schedule 3-10, the Company erroneously included the adjustments for insurance - vehicle instead of the adjustments for insurance - workman's compensation as shown on Perkerson Exhibit I, Schedule 3-19(a)(2) and Schedule 3-19(a)(6).

After correcting these errors and reflecting the allocations and customer growth adjustments found appropriate elsewhere in this Order, the Commission finds that the appropriate level of insurance - workman's compensation for water operations is $21,780 and it is $21,792 for the sewer operations as proposed by the Public Staff.

Insurance - other

The difference of $1,642 between the parties for insurance - other relates to health and dental insurance. Public Staff witness Henry testified that he decreased the Company's annualized health and dental expense to correspond with his adjustments to salaries and wages. Company witness Perkerson testified that the entire amount of the health insurance needs to be revised, however, the Company did not provide any revised amounts in its rebuttal testimony or at the hearing.

When the Company filed its final exhibits on October 26, 1995, it included a revised calculation of health and dental insurance in its Appendix B. However, the Company's calculations on Appendix B are erroneous and thus should not be relied upon. For example, the amounts listed for the employee, Tony Parker, do not add across and the Company allocated health insurance for operators, such as the Surry operators, who work on water operations only, to its sewer operations. Furthermore, the Company's revised amount also reflects a level of health and dental insurance which is lower than the Public Staff's calculation which was a surprising result.

Based upon the conclusions reached herein on which employees' salaries and wages should properly be included in the Company's cost of service and using the parties' agreed upon annual cost of $1,840 per employee for health and dental insurance coverage, the Commission finds that the reasonable level for health and dental insurance is $71,191 for the water operations and $18,599 for the sewer operations. Such amounts reflect the nonutility and other jurisdictions/systems allocations found appropriate elsewhere in this Order. Therefore, the Commission finds that the appropriate total level of

insurance - other, which includes health, dental, and other insurance costs, for the water operations is $86,383 and for the sewer operations it is $20,811 as recommended by the Public Staff.

Miscellaneous expense - telephone

The difference of $7,970 between the Company and the Public Staff relates to the expense of a mobile telephone located in Ms. Perkerson's Company car, nonutility allocations, other jurisdictions/systems allocations and an adjustment for customer growth. Witness Henry removed the telephone charges for the use of Ms. Perkerson's mobile phone from the cost of service based upon his opinion that the level of salary he had included for witness Perkerson was sufficient compensation. Witness Perkerson included the telephone charges in the amount of $536 in the cost of service because they represent additional compensation to her as an employee of Mid South.

Witness Perkerson stated in her rebuttal testimony that payment of her mobile telephone expense by Mid South was included as part of her total compensation package as the Company's Vice President of Regulatory Affairs. Witness Perkerson provided a copy of her employment contract to the Public Staff and stated that her overall compensation package includes her salary, a Company vehicle, a mobile telephone for her car, an apartment in Sherrills Ford, and the electricity expense for that apartment. Ms. Perkerson travels for Mid South on a regular basis and testified that the phone was needed to allow contact between herself and the office during travel.

Elsewhere in this Order, the Commission has concluded that the Public Staff did not provide sufficient evidence that the compensation package as outlined in the contract between Ms. Perkerson and Mid South with the exception of the Company vehicle, was unfair or unreasonable to include as a component in the Company's cost of service. Even though the Company vehicle provided for Ms. Perkerson has been excluded from the Company's plant in service in this proceeding, the Commission believes that it would be appropriate to consider this mobile phone as a bag phone which would enable Ms. Perkerson who is definitely a very mobile employee to have the ability to conduct Company business while away from the office. Absent any proof to the contrary, the Commission finds that for purposes of this proceeding it is reasonable to include the Company's recommended level of telephone expense relating to Ms. Perkerson's mobile phone as a part of the Company's telephone expenses.

Based on the foregoing and the allocations and customer growth adjustment found reasonable by the Commission elsewhere in this Order, the Commission concludes that the appropriate level of miscellaneous expense - telephone for the water operations is $45,796 and the appropriate level for the sewer operations is $13,048.

Other categories of expenses

The differences in the remaining categories of expenses are for the most part related to the parties' differences with respect to allocations and customer growth adjustments. However, there are some unreconciled differences in some of these remaining categories of expense, specifically, the expenses for contractual services - management fees, transportation, insurance - general liability, and miscellaneous expense relating to uniforms, office expense, postage, and bank charges reflect a total unreconciled difference of $1,962. In its late-filed final exhibits filed on October 26, 1995, the Company did not provide

any footnotes or supporting schedules to explain its adjustments to these accounts where the Public Staff and the Commission find unreconciled differences. The only adjustments made to these accounts by the Public Staff were for allocations and customer growth. However, the Company's adjustments to these accounts for allocations and customer growth shown in the Company's late-filed exhibits on Perkerson Exhibit I, Schedule 3-19(a)(1) through Schedule 3-19(a)(6) do not equal the adjustment amounts shown in Perkerson Exhibit I, Schedule 3, as such there are unreconciled differences totaling $1,962 in the aforementioned expenses. In its proposed order, the Public Staff indicated that it was unable to reconcile the differences for these items.

Since the only known and explained differences in the remaining categories of expense are due to allocations and customer growth, and since the Commission has found the Public Staff's allocations and customer growth adjustments to be reasonable for purposes of this proceeding, the Commission concludes that the appropriate levels for these remaining categories of expenses are those proposed by the Public Staff. Therefore, the Commission accepts the Public Staff's proposed levels of expenses for contractual services - management fees, transportation, insurance-general liability, miscellaneous expenses relating to dues, subscriptions, uniforms, office expense, postage, travel, meals, entertainment, and bank charges.

Summary conclusion

Based on the foregoing, the Commission concludes that the appropriate level of general and administrative expenses is $757,344, which consists of the following:

Item	Water	Sewer	Total
Salaries and wages	$179,595	$ 39,423	$219,018
Employee pensions and benefits	368	114	482
Contractual services - accounting	16,944	3,221	20,165
Contractual services - legal	16,156	3,131	19,287
Contractual services - mgmt. fees	72,778	-	72,778
Rental of building/real property	26,835	1,955	28,790
Rental of equipment	25,451	295	25,746
Transportation	5,181	1,396	6,577
Insurance - vehicles	39,467	6,626	46,093
Insurance - general liability	25,051	5,232	30,283
Insurance - workman's compensation	21,780	21,792	43,572
Insurance - other	86,383	20,811	107,194
Regulatory Commission expense	11,727	2,206	13,933
Advertising	1,796	494	2,290
Misc. exp.	4,040	270	4,310
Misc. exp. - dues & subscriptions	1,351	232	1,583
Misc. exp. - uniforms	6,121	2,251	8,372
Misc. exp. - office expense	9,059	1,646	10,705
Misc. exp. - postage	21,997	3,114	25,111
Misc. exp. - telephone	45,796	13,048	58,844
Misc. exp. - travel	2,473	111	2,584
Misc. exp. - meals & entertainment	716	109	825

Misc. exp. - bank charges	7,790	1,028	8,818
Misc. exp. - other	(16)	-	(16)
Total general and administrative expenses	$628,839	$128,505	$757,344

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

The evidence supporting this finding of fact is found in the testimony and exhibits of witnesses Henry, Vaughan, and Perkerson.

As previously stated, the parties did not address the dollar impact of specific issues on the sewer operations in their respective proposed orders since they agreed that the Company's requested sewer rates should be approved and as stated elsewhere, the Commission has accepted the proposed sewer rates. In the discussion which follows, the Commission will specifically address the issues between the parties with respect to the water operations and will appropriately state the effect of how such decisions will effect the Company's operating revenue deductions for its sewer operations.

As to the water operations, the following table summarizes the positions of the parties under present rates for depreciation and taxes as set forth in their respective proposed orders:

WATER OPERATIONS ONLY

Item	Company	Public Staff	Difference
Depreciation	$ 104,807	$ 104,807	$ -
Property taxes	25,210	22,698	(2,512)
Payroll taxes	97,099	76,607	(20,492)
Other taxes and licenses	59,135	59,135	-
Regulatory fee	1,977	1,976	(1)
Gross receipts taxes	79,086	79,050	(36)
Total depreciation and taxes	$ 367,314	$ 344,273	$ (23,041)

As shown in the preceding table, the Public Staff and the Company agree on depreciation expense and other taxes and licenses expense. The Commission agrees with these two items of expense where there is no disagreement between the parties. Besides allocations to nonutility operations and allocations to other jurisdictions/systems, which were previously discussed in the Evidence and Conclusions for Findings of Fact Nos. 11 through 17, the Company and Public Staff also disagree on several other items of expense.

Property taxes

The difference of $2,512 between the parties is due to two errors in the late-filed final schedules filed by the Company on October 26, 1995, and allocations. On Perkerson Exhibit I, Schedule 3, the Company had a transposition error of $90. On Perkerson Exhibit I, Schedule 3-17, the amount allocated

to other jurisdictions of $427 should have been included as a negative amount, not a positive amount as shown by the Company.

After correcting these errors and reflecting the allocations found appropriate elsewhere in this Order, the appropriate level of property taxes for the water operations for use in this proceeding is $22,698 and the appropriate level for the sewer operations is $2,243 as recommended by the Public Staff.

Payroll taxes

The difference in payroll taxes results from the parties' disagreement over the appropriate levels of salaries and wages. Having previously determined the appropriate levels of salaries and wages for operating and maintenance expenses and general and administrative expenses, the Commission concludes that the appropriate level of payroll taxes for the water operations is $81,452 and the appropriate level for the sewer operations is $22,254.

Regulatory fee and gross receipts taxes

The difference in regulatory fee expense and gross receipts taxes is due to the differences in the parties' position on the proper level of other water revenues. Based on the Commission's prior findings on revenues under present rates, the Commission concludes that under present rates the appropriate levels of regulatory fee expense and gross receipts taxes for the water operations are $1,976 and $79,050, respectively, and for the sewer operations they are $515 and $30,912, respectively.

Summary conclusion

Based on the foregoing, the Commission concludes that the appropriate level of depreciation expense and taxes under present rates is $438,325, which consists of the following:

Item	Water	Sewer	Total
Depreciation	$ 104,807	$ 21,812	$ 126,619
Property taxes	22,698	2,243	24,941
Payroll taxes	81,452	22,254	103,706
Other taxes and licenses	59,135	11,471	70,606
Regulatory fee	1,976	515	2,491
Gross receipts taxes	79,050	30,912	109,962
Total depreciation and taxes	$ 349,118	$ 89,207	$ 438,325

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence supporting this finding of fact is found in the evidence and conclusions for Findings of Fact Nos. 10 through 23. G.S. 62-133.1(a) provides that the Commission may set rates for water and sewer utilities on the operating ratio method unless the utility requests that rates be set under the rate base method under G.S. 62-133(b). Based on the relative levels of the Applicant's operating revenue deductions

and the original cost rate base, the Commission concludes that the operating ratio method is appropriate in this case as the level of operating revenue deductions requiring a return is greater than the level of original cost rate base for both the water and sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25

The evidence for this finding of fact is contained in the testimony of the public witnesses and the testimony of Mr. Parker, Mr. Colson, and Mr. Vaughan.

A total of 78 water customers from 33 water utility systems testified at the five hearings that were held in August, 1995. Some of these customers served as representatives from homeowners associations or other groups. Almost without exception, they objected to the amount of the proposed rate increase or the prospect of any increase at all. Typical complaints about water service included low pressure or lack of water, unannounced and sometimes lengthy outages, residue, sediment or color in the water, and water which for all of these reasons is simply not drinkable.

In the customer hearings, seven sewer customers from Pinebrook Manor (Forsyth County), three from Brantley Oaks (Mecklenburg County), three from Country Woods East (Union County), and one from Alexander Island (Iredell County) had service and/or quality complaints. Typical complaints about sewer service included offensive odors, manholes which smell bad and overflow, and inadequate grounds maintenance. Some customers suggested that rates should be based on metered water consumption. Customers from Country Woods East Subdivision complained that the Applicant is now back billing several customers who were receiving service without the Applicant's knowledge. These customers asserted that the Applicant should have been able to determine who was connected to its system.

Both water and sewer customers testified that the Applicant's response to customers' complaints or requests has been slow or entirely lacking, that improvements when promised are slow to come or neglected, and that persons answering the telephone for the Applicant were sometimes rude or uncooperative. There was no indication of a practice of call-backs or responses to complaints to inform customers of the cause of problems or to determine whether or not problems have been corrected.

Witness Vaughan suggested a number of steps to improve customer service and record keeping as follows:

1. Update Mid South's January, 1993, *CUSTOMER RELATIONS MANUAL* with the needed revisions or improvements that have become evident during the process of this rate case or otherwise.

2. Fully implement a customer service and relations procedure, using the results of Item 1 above.

3. Develop generic responses for customer questions concerning troublesome matters such as rate cases.

4. Review Mr. Weber's Rebuttal Testimony filed in Docket No. W-720, Sub 119, beginning on page 8, line 19, and convert his ideas into realities. The "different

log-in system" described on page 8 and lines 1-3 on page 9 would seem to have many benefits. Being able to "go back through the records of each subdivision ... and find out the date of any telephone calls, inquiries, questions or trouble spots" would be very advantageous any time a question arises about allegations of poor service.

5. Be courteous and thorough, correcting real problems as soon as possible, and following up with customers regardless of the degree of seriousness. An improved company attitude and policy must start at the top and proceed with no "weak links" through customer service representatives, telephone answering personnel, and repair personnel.

The Commission concludes that these recommendations are appropriate and should be implemented and that a copy of the updated *CUSTOMER RELATIONS MANUAL* should be filed with the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

The evidence for this finding of fact is contained in the testimony of the public witnesses, Mr. Parker, Mr. Colson, DEM witness Tamara Taylor, DEH witness James Adams, DEM witness Mike Mickey, and Mr. Vaughan, and in the Commission's records.

WATER FIELD INVESTIGATIONS

Witness Vaughan testified that on various dates in June, July, and August of 1995, he inspected 72 water systems in 11 counties with Mr. Parker and several operators. From an operational standpoint, the majority of these water systems were in generally good condition and were adequately operated and maintained. However, the physical appearance of the well sites was poor in many cases, mainly due to inadequate grass cutting and poor maintenance of access paths and roads. Since such inspections, Mid South has completely reworked some systems to comply with DEH well construction guidelines. This is especially true in Gaston County, where the Hensley Division systems have been radically improved recently.

Witness Vaughan offered numerous suggestions, both general and system specific for improving the Company's water system operations as follows:

General Water Operations

1. Certified operators - Obtain Certification Board approval for its operator/water system ratio.

2. Water pressure
   a. Investigate all pressure complaints, especially repeated ones. Check out possible causes for reduced flow for individuals even when most customers on a system have pressure which is acceptable.

b. Add a booster pump and pressure tank where elevated storage is the existing source of pressure and it is not sufficient.
c. Inform customers of efforts to improve pressure and make them aware of any unusual options they may have, which the Company is willing to assist with.

3. Outages
   a. Schedule outages for making repairs and upgrades whenever possible.
   b. Provide advance notice of scheduled outages using the best available means.
   c. Develop, distribute, and implement flushing schedules in systems where regular flushing may improve overall water quality.

4. Water quality
   a. Re-evaluate water quality for suspected elevated levels of iron, manganese, pH, or other water quality parameters.
   b. Investigate additional treatment for parameter problems.
   c. Flush systems more or less often than normal, depending on circumstances and the quality of water actually received by customers.
   d. Flush and service pressure tanks on a regular basis.
   e. Educate customers as to the pros and cons of water filtering systems.

5. Well site appearance and access
   a. Keep the grass cut on well sites.
   b. Remove trees, underbrush, and vines, etc. which are close to well houses and storage tanks or impede access to same.
   c. Provide access for both personnel and equipment, building bridges where access is needed across creeks or ditches.
   d. Improve existing access roads or paths by grading and adding gravel where needed.
   e. Paint rusty tanks. (Note: This is also preventive maintenance.)
   f. Provide proper keys to authorized personnel and to no others.
   g. Remove any hindrances to authorized well house access, such as heavy vegetation, wasp nests, and rusty locks.

6. Security - Replace wooden door frames with metal ones in service areas which are experiencing vandalism.

7. Do not exceed the approved number of connections on any system.

<u>System Specific Water Operations</u>:

1. Fox Ridge, Woods at Fox Ridge, and Fountain Trace system (Fox Ridge) - Bring the system into compliance with DEH specified guidelines as soon as possible.

2. Sherwood Forest - Bring the system into compliance with DEH specified guidelines as soon as possible.

3. Former Hensley systems - Complete the remaining minor repairs on all of these systems.

The Commission concludes that these recommendations are appropriate and should be implemented.

SEWER FIELD INVESTIGATIONS

Witness Vaughan testified that on various dates in June, July and August of 1995, he inspected 17 sewer systems in 5 counties with Mr. Parker and several WWTP operators. The plants appeared to be in good condition and were reported to be visited, as required, by assigned personnel. Observed effluent flow at all plants was clear to very clear. There were few plants at which an offensive odor was detected; offensive odors were restricted mainly to the influent points at these sites, not generally spread over the site nor outside the immediate area. There were few areas of structural or cosmetic concern. Several plants had a buildup of surface scum.

Witness Vaughan offered numerous suggestions, both general and system specific for improving sewer system operations as follows:

General Sewer Operations

1. Effluent Quality
   a. Fecal coliform violations - Practice more frequent removal of solids from chlorine contact tanks, inspect chlorine supply over weekends, and evaluate chlorine contact tank to insure a 30 minute retention time.
   b. Floating solids and scum, and significant amounts of accumulated sludge - Develop and execute a sludge monitoring program with more frequent sludge hauling, if necessary.

2. Operations
   a. Certified operators - Obtain Certification Board approval for its operator/sewer system ratio
   b. Flow meter calibration - Develop and execute a schedule for meter calibration.
   c. Clean-up and maintenance - Provide a potable, or otherwise acceptable, water source for operator's use at each plant.
   d. Access roads or paths - Develop and execute a schedule for improvements, including grading, drainage, gravel, etc.
   e. Other problems
      (1) Odor - Practice the use of potassium permanganate or other effective odor suppressing chemicals or techniques.
      (2) Noise - Utilize barriers in the form of vegetation or manmade walls, fences, etc.

(3) Aesthetics - Cut the grass outside of protective fences, in addition to the areas of normal cutting.

3. Administration
   a. Correspondence with regulatory agencies
      (1) First-line responsibility should rest with departmental vice-presidents of regulatory affairs, operations, and engineering, and other subsequent departments.
      (2) Vice-presidents must make Mr. Weber aware of each major regulatory item and assume responsibility to follow up on it if Mr. Weber insists on taking responsibility for its completion.
   b. Fees - pay fees on schedule.
   c. Identified deficiencies - address them promptly and follow up on stated corrective actions.

System Specific Sewer Operations

1. Catawba County
   a. Country Valley - Control excess foam, sludge buildup, and solids in final stages of plant.
   b. Killian Crossroads - Repair access road by grading and adding gravel.
   c. Spinnaker Bay - Add the additional blower as required by plans.
   d. The Landings - Repair access road by grading and adding gravel.

2. Forsyth County
   a. Frye Bridge - Avoid further administrative problems with late permit fees and flow monitoring.
   b. Pinebrook Manor - Avoid further administrative problems with late permit fees.

3. Iredell County
   a. Alexander Island -
      (1) Continue attempts to eliminate complaints about odor.
      (2) Improve the entrance to the WWTP, eliminating the muddy area(s).
      (3) Check lift stations three times per week or more.
      (4) Post 'NO TRESPASSING' signs in an effort to keep customers and other unauthorized persons outside the WWTP fence.
   b. Diamond Head
      (1) Negotiate with the developer to replace the power line to the pump/lift stations (cut, repaired, and stretched several times).
      (2) Raise or have the developer raise the manholes which have been covered up by the developer.

(3) Repair or have the developer repair the sewer laterals and collectors on the side of the lake next to the condos.

c. Heronwood - Correct the problem with noisy blowers.

d. Mallard Head Condos - Make major road repairs to allow for access of pumper truck to the WWTP in inclement weather.

4. Mecklenburg County

a. Harbor Estates - Repair access road by grading and adding gravel.

b. Mint Hill Festival - Utilize enzymes or other odor fighting methods to control septic influent odor, which is more noticeable than at most WWTP's.

c. Oxford Glen

(1) Verify that an acceptable response was sent to DEM in reference to the April 17, 1995, NOV for Effluent Limitations.

(2) Repair access path by grading and adding gravel.

d. Willows Creek - Improve access path by adding gravel.

e. Wyndham - Continue to monitor leech fields in wet weather and adjust valving to avoid localized excess flows and surface pooling of effluent.

5. Union County

a. Country Woods East

(1) If not already implemented, place the second .045 MGD plant in service as soon as possible.

(2) Identify and correct problems with inflow and infiltration, and with overflowing manholes.

(3) Provide a copy to the Commission of the requested response to DEM concerning sampling compliance inspection report; see Mr. Rex Gleason's follow-up letter to Company dated June 15, 1995.

The Commission concludes that these recommendations are appropriate and should be implemented.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

The evidence for this finding of fact is contained in the testimony of the public witnesses, Ms. Perkerson, Mr. Parker, Mr. Colson, DEM witness Tamara Taylor, DEH witness James Adams, DEM witness Mike Mickey, and Mr. Vaughan, and in the Commission's records.

Mr. Vaughan testified that information provided to him by various DEH representatives indicates that many Mid South systems are physically acceptable, with certain persistent exceptions including Fox Ridge and Sherwood Forest. The greatest problems have been in the operations, in adherence to stated system requirements, and in staying within customer connection limits. There have been many examples of a lack of regular operator attendance at well sites and improper record keeping. At times Mid South has not performed special non-scheduled tests requested by DEH.

DEH witness Taylor submitted a two-part report to the Commission at the Yadkinville hearing on August 24, 1995, addressing Mid South systems in the Winston-Salem Region of DEH. The first part of the report listed many citations for failing to sample the water properly in the time since Mid South's purchase of Surry Water Company, Inc., in 1989. The second part of Ms. Taylor's report was a list of ten subdivisions which are out of compliance with plans and specifications requirements. Ms. Taylor testified that "most of these systems have expanded beyond their original plan approvals...", and characterized Mid South as "cooperative but slow".

Ms. Taylor filed with the Commission her file of up-to-date requests for administrative penalties and of deficiency letters. According to Ms. Taylor, there are three outstanding Administrative Penalty Requests: (1) for Bannertown Hills, May 8, 1995, with correspondence to Mid South concerning uncorrected deficiencies dated June 30, 1991, October 24, 1991, and February 23, 1995; (2) for Greenfield, February 17, 1995, with correspondence dated August 1, 1994, February 15, 1995, and February 17, 1995; and (3) for Pine Lakes, August 31, 1995, with correspondence dated September 13, 1989, October 11, 1991, February 22, 1995, March 2, 1995, and March 16, 1995. Deficiency letters mailed to Mid South in 1995, and still current, were provided for 11 subdivisions in addition to these three.

With regard to waste water treatment, Mr. Vaughan testified that although the Pinebrook Manor WWTP has been operated satisfactorily, Mid South's administration with regards to its permit for Pinebrook Manor has been poor. Mid South has had three separate Notices of Violation letters, dated September 26, 1994, September 27, 1993, and September 28, 1992, for failure to pay the required annual administering and compliance monitoring fee on time. The results of these violations were $450 fees instead of $300 fees in 1993, 1994, and 1995.

Mr. Vaughan also stated that Mid South had the same problem with late payment of fees at Frye Bridge. Mid South's administration of its permit for Frye Bridge has also been poor. Mid South has had three separate Notices of Violation letters for this WWTP, dated September 26, 1994, September 27, 1993, and September 28, 1992, for failure to pay the required annual administering and compliance monitoring fee on time. The results of these violations were $450 fees instead of $300 fees in 1993, 1994, and 1995.

Mr. Vaughan noted that Mid South experienced another problem which resulted from accumulated administrative and operational errors. On September 30, 1993, DEM notified Mid South that the permit for Frye Bridge requires continuous flow monitoring and recording. The following events transpired thereafter:

1. On September 30, 1993, Mr. Carroll Weber, President of Mid South, wrote DEM, saying that on that date, Mid south was ordering a flow meter for Frye Bridge.

2. On February 15, 1994, Mr. Weber wrote DEM, stating, "With regards to the flow meter, the same is currently being ordered, and will be installed as soon as we receive same."

3. On October 17, 1994, Mr. Weber wrote DEM, accepting the blame personally for the absence of a flow meter at Frye Bridge and for the failure to report continuous flow values. He stated, "I am today ordering the flow device."

4. On January 23, 1995, the flow meter was installed by Mid South.

5. On January 25, 1995, DEM issued notice to Mid South of civil penalty assessment.

6. On June 22, 1995, a civil penalty of $4,523.20 was assessed to Mid South by the Department of Justice.

Mr. Mike Mickey, Environmental Specialist II, Winston-Salem Water Quality Section of DEM verified the compliance problems at Pinebrook Manor and Frye Bridge Estates WWTP's in his letter to Public Staff Attorney Robert Cauthen, dated August 28, 1995.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 28 - 33

The evidence for these findings of fact is contained in the testimony and exhibits of the public witnesses, Ms. Perkerson, Mr. Parker, Mr. Colson, Mr. Adams, and Mr. Vaughan, and in the Commission's records, including the record of the Company's last general rate case, Docket No. W-720, Sub 119.

Witness Vaughan testified that the Applicant's service is inadequate based on noted deficiencies in the areas of customer service, compliance delays, administrative problems, and testing irregularities.

Customer Service

A full understanding of the degree of the Applicant's weaknesses in the area of customer service must begin with a review of Mid South's last general rate case, Docket W-720, Sub 119. The public hearings in that case, which was for sewer rates only, elicited many complaints concerning the attitude and performance of Mid South.

In his rebuttal testimony, dated November 12, 1992, filed in Docket No. W-720 Sub 119, Mr. Weber stated, "... we will not tolerate unresponsive or abusive attitudes from our office or field representatives. ... We simply cannot afford to have customers calling in with questions, complaints or reports of service outages who feel that we did not care or were not interested in addressing their problems. ...I will be very disappointed if, in the future, our consumers are testifying that we were *unresponsive* or *abusive*."

The words, *unresponsive* and *abusive*, or variations of them, occur repeatedly in the testimony of the public witnesses in this case. Broken promises, lengthy outages, slow response times, persistently rude remarks, and arrogant statements were mentioned again and again in the hearings as customers described Mid South's customer service. Some of Mid South's customers have continued to experience this type of attitude from office and field personnel despite Mr. Weber's assurance three years ago that public relations would improve. However, the customers in the Gaston County area testified that they were treated courteously at the local office. As an example, one customer responded, "No. They have a lady there that operates their office in the Lowell area and she's most pleasant", in response to a direct question, " . . . Are they polite? Have you had trouble with anyone there?" The record shows that although the problem of

improper phone conduct has been acute at the Sherrills Ford office, especially after normal business hours, the problem does not pervade the entire company.

Other examples of the Applicant's shortcomings illustrate the need for a turnaround in the manner in which the Applicant demonstrates its regard for its customers. Sewer customers complained of not getting call-backs, of vulgarity on the phone, of persistent odor problems, of overflowing manholes, and of unkept WWTP sites. Water customers were allowed to change fuses at Swiss Pine Lakes where there were frequent electrical outages, a dangerous and ill-advised policy. The nuisance and presence of black floc/sediment, a sign of high manganese, in drinking water and in washing machines was reported in a number of systems. While a chemical analysis may show an acceptable level of manganese, this fact does not relieve the Applicant of the responsibility to investigate and at least attempt to solve this problem.

When leaks in the Mid South's lines become frequent and are not repaired promptly, as was reported for Morningside Park, Country Woods East, and Ashe Plantation, a solution other than 'slow response' leak repairs must be found and expedited. When customers do not have enough pressure to get an acceptable amount of usable water into their homes, nothing short of regaining suitable pressure is acceptable. The Commission reminds the Applicant that good customer service requires rapid response to reported leaks and the repair of all leaks.

One customer at the Charlotte hearing, Mr. Glen Haene, speaking on behalf of the Ashe Plantation Home Owner's Association (HOA), illustrated as well as anyone the overall feelings of many of those customers who testified at the five customer hearings in August. Mr. Haene stated that "The quality of water they provide is poor. The service and responsiveness is virtually non-existent. The attitude we encounter is criminal and the community, as a community we seem to be powerless to effect any change in our current situation". This customer recalled a seven year history of problems. He also detailed the contents of a DEH letter dated February 14, 1994, and the lack of progress by Mid South to address the 10 items resulting from a field inspection by the Public Water Supply Section on February 8, 1994. This letter and a resulting Enforcement Recommendation will be discussed later in this Order.

This same customer recalled a situation regarding a leak on September 17, 1993, when he had almost no water at 6 p.m. He called Mid South, with no evident response. At 11 p.m., he had no water and called Mid South again. He was told that the service person had inspected the situation and had found no leak or problem anywhere near his house. At 8 a.m. the next morning, the customer "found a geyser" gushing water into the air and into the street. A Mid South repairman fixed the leak around 11 a.m. and informed the customer that no one could have missed the leak if they had come into Ashe Plantation, as had been reported to the customer. Another leak was reported by the same customer at the same property on October 25, 1993, and was not fixed until February 28, 1994, four months later. The Commission finds such delays and customer service to be quite inappropriate.

Mid South filed a late-filed exhibit in Docket No. W-720, Sub 119, in January, 1993, entitled *CUSTOMER RELATIONS MANUAL*. The Commission's Order of March 24, 1993, issued in that docket stated, "the Commission fully expects Mid South's management to monitor fully its commitment to its newly implemented customer service procedures".

It appears from customer testimony in this rate case that there is still room for improvement and that important parts of this manual have often been forgotten. The following are taken directly from the manual and have, as the record shows, been disregarded by the Applicant:

* Be sure to get the name, telephone number (both home and work), city, and subdivision and as much detail as possible regarding the problem being reported by the customer calling.

* Office personnel will make an effort to contact the customer when a problem has been addressed to be sure the customer is satisfied.

* Field personnel should not engage in discussions with customers regarding the problems they are working on or the customers' opinion of the company or any of its employees.

* Partial information or misinformation causes the customer to develop a bad opinion of the company.

The Applicant has not fulfilled the Commission's expectation to "fully monitor its newly implemented customer service procedures". The Commission reminds the Applicant that if part of its established policy fails, it should be improved. The Applicant has asserted that it has made "a great deal of progress" in the area of recording complaint information, that calls were returned to all persons who asked that a call be returned, that it has "conducted numerous meetings with its field personnel in which we discussed the problem of becoming involved with the customers", and has replaced certain employees who have been less than an asset to the Company.

Compliance Delays

Mr. Vaughan cited three prime examples of the Applicant's failure to promptly bring systems into regulatory compliance: (1) Fox Ridge, Woods of Fox Ridge, and Fountain Trace, (2) Sherwood Forest, and (3) the Hensley water systems. Further, Mr. Vaughan recommended that the rate increase approved in this Order not apply to Fox Ridge, Woods of Fox Ridge, Fountain Trace and Sherwood Forest until they are brought into compliance.

In Docket W-720, Sub 115, the Applicant acquired the Fox Ridge system, Mid South was required to make improvements which would bring the overall system into compliance with DEH approved plans and to install meters. At the hearing in Gastonia on August 30, 1995, Environmental Engineer Jim Adams testified about the progress in Fox Ridge. Major deficiencies have been or are being corrected. However, the approved number of connections (125) for the Fox Ridge system apparently has been exceeded (approximately 150 currently), in spite of DEH instruction to the contrary in July of 1993. The Fox Ridge HOA provided copies of letters from developers to Mr. Weber, dated during the last six months of 1993, requesting extension of water lines, acknowledging the collection and payment of tap fees, requesting service, and requesting "the expansion of the water system...in order for the continued development of Fountain Trace". Without adhering to DEH restrictions, expansion continued by Mid South in the Fox Ridge system.

Witness Vaughan testified that even though unauthorized expansion has continued in Fox Ridge, the following required improvements are still not completed almost four years after the transfer of ownership to the Applicant:

1. Sufficient water storage has not been provided.
2. Plans and specifications have not been approved.
3. Meters have not been installed.

The Commission issued its Order for Fox Ridge in December of 1991, DEH wrote a detailed deficiency letter to Mid South in July of 1993, and approval of plans has not been close to reality until late 1995, almost four years after issuance of the Order approving the transfer. Furthermore, in its EXHIBIT A (Plan for Use of 1% of Margin on Expenses, as requested by the Commission), dated September 27, 1995, Mid South again neglected to include the installation of meters at Fox Ridge in its plan for resolving outstanding system deficiencies. Meter installation is a required part of the Fox Ridge improvement process.

Unauthorized expansion and failure to install meters notwithstanding, the evidence shows that the customers at Fox Ridge have not had their health endangered and that the Applicant has been cooperative with the DEH. The following dialogue occurred during the examination of Mr. Adams by Mr. Cauthen:

Q. Does the present situation pose any hazard to the residents of the subdivision?

A. I think that's one of the reasons why we haven't really pushed that in the first place. There is no imminent hazard based on some guidelines that we have.

Under further examination by Ms. Fishburne, the following dialogue occurred:

Q. Has the Company been cooperative in working with you?

A. Yes, we've met on a number of occasions. In other words, yes, they've been cooperative. I think the word cooperative and having the end point met are two different things. In other words, the time frame has not met my time frame for completion. We're still working on trying to get to that point.

Q. And did you say that the problems in the letter had been corrected or were being corrected?

A. Yes, most of them that I know of are being worked on or fixed or have been corrected. The only one that's outstanding is the storage.

Q. Did you say that there was no health problem?

A. I don't know of any particular health problem.

In a March 17, 1994, letter to Mid South addressing deficiencies at the Sherwood Forest water system Mr. Harold Saylor, DEH Regional Engineer at Black Mountain, wrote, "We have had a number

of problems at the referenced water system off-and-on over the *past few years that do not seem to be getting any closer to correction.* We have received numerous complaints from homeowners concerning water system pressure, concerns of improper construction and inadequate operator attention." In a June 7, 1995, letter to the Public Staff, Mr. Saylor stated, "This is probably the worst situation we have with Mid South. Enforcement action has not been initiated yet." Mr. Vaughan testified that the problems in Sherwood Forest have continued and are finally being actively addressed during this rate case. No customers from Sherwood Forest testified at any of the customer hearings.

In a letter to Mr. Arnold Hensley in August, 1984, Mr. James Adams, Black Mountain DEH Environmental Engineer, listed over 30 water systems in Gaston County which needed extensive repair. The Application to transfer these systems to Mid South was submitted on January 19, 1990, in Docket No. W-720, Sub 99. Most of the repair needs cited by Mr. Adams in 1984 still existed at the time of the transfer application. The Applicant's self-imposed schedule of repairs, included in the Application for Transfer, called for most improvements to be made within 12 months.

Mid South was ordered to complete the Hensley system repairs before it could increase its rates to charge its uniform rates for water service to the customers in the Hensley systems. Mid South has completed enough of the most necessary system repairs to enable the Public Staff to recommend the inclusion of these systems in the uniform rates tariffs with Mid South's other systems in the current proceeding. However, many of these repairs occurred in the months immediately prior to the hearings in the current proceeding. Indeed, the last two systems (Fontain Village and Southwood) in need of repairs were completed in September, 1995, just before the hearings in Raleigh. The Commission is disturbed that 25% of the Applicant's customers (Fox Ridge, Sherwood Forest, and Hensley systems) had to wait many years for system improvements to be made.

Another example of Mid South's slow compliance is illustrated by a letter from DEH Assistant Regional Engineer Britt Setzer to Mid South concerning Ashe Plantation, dated February 14, 1994. This letter discussed unapproved system alteration, unkept well houses, lack of operational reports, lack of a certified operator, lack of tank inspections by the Department of Labor, improper chlorine tank, illegal encroachment into the 100 foot protected radius, and monitoring violations. It was stated that until all items were resolved, no further connections could be made to the system. On August 14, 1995, Mr. Setzer notified Mid South of DEH's recommendation for enforcement action due to the lack of compliance with regulations, including the addition of 5 new connections, with 3 more nearing readiness. Again Mid South ignored a regulatory agency's strict instructions not to add more connections.

It is essential that a public utility be timely in responding in a positive manner to both its customers and to all the regulatory agencies under whose guidelines it operates. Appropriate action to correct system deficiencies identified by DEH or DEM must be addressed within a reasonable period of time.

Mid South acquired Ashebrook Park Subdivision in Gaston County in a transfer from Paysour. In the Order granting transfer issued on September 9, 1994, Mid South was ordered to complete repairs to the system within 90 days and submit plans for approval to DEH within 120 days. Mid South met that deadline.

Mid South has essentially completed the required improvements in the Hensley systems. Mid South has completed all of the improvements at Fox Ridge, except the installation of meters. Mid South has begun to make improvements to the systems it acquired from Ralph Falls Water System and Ruff Water System in 1995. Mid South has indicated in its Progress Report dated January 16, 1996, that Sherwood Forest is next on their agenda to receive the required improvements.

Administrative Problems

In his August 28, 1995, letter to Mr. Cauthen, Mr. Mickey noted that, "although Mid South Water Systems treatment plants have a fairly good effluent quality history, the company's ability to comply with the administrative aspects of their permits has been poor".

Late payment of required annual administering and compliance monitoring fees for Pinebrook Manor and Frye Bridge has already been discussed. The cost to the Company of $150 extra per renewal on six occasions was a direct result of not paying these fees on time. This occurred three years in succession. Similarly, as discussed earlier, the civil penalty for the lack of proper flow measurement at Frye Bridge could have been mitigated or reduced. The penalty was assessed for 169 daily flow monitoring violations from January, 1994, through August, 1994. The flow meter was installed January 23, 1995. The Commission expects the Applicant to comply with its permits, it has a duty to do so.

Testing Irregularities

Mid South, Surry, and Huffman requested and were granted EPA testing pass-throughs on February 24, 1994. The resulting surcharges raised the water bills for their customers by an average of $14.06 per month.

Mr. Vaughan testified that in August, 1994, the Commission and the Public Staff were informed by DEH that Mid South had not conducted required lead and copper testing and that the EPA was pursuing enforcement action against Mid South. At the request of the Commission, the Public Staff asked for and received information from Mid South which established the status of its water testing at the time.

On August 30, 1994, Water Division Director Andy Lee wrote a memorandum to Chairman Hugh Wells. In this memo, Mr. Lee stated that the equivalent of only 10% of the required lead and copper testing had been conducted. He concluded that Mid South and its affiliated companies were also considerably behind in other EPA Phase II testing requirements.

On March 3, 1995, in a letter from Utilities Engineer David Furr to Mr. Weber, Mid South was told that the surcharges for testing should be terminated. The Public Staff had determined that surcharge revenues already collected should be more than enough to cover the required testing expenses. Several factors led to the overestimation of testing expenses, including (1) DEH initiated a testing waiver program in 1995 after the required testing of water systems commenced in 1994, (2) Mid South's testing program was behind schedule, (3) the initial estimate utilized number of wells rather than number of points-of-entry for many multiple well systems, and (4) the Applicant was able to receive a volume discount from the lab after testing commenced. On April 12, 1995, the Commission issued Orders terminating the surcharges immediately and requiring the filing of a refund plan by Mid South within 30 days.

On June 16, 1995, Mid South filed its refund plan. On June 26, 1995, the Commission instructed the Public Staff to investigate and file a report of the status of testing and a proposed refund plan within 90 days. This deadline has been extended, due to the rate case and the pending delivery of information to the Public Staff.

The issue addressed herein is not the matter of the overcollection, but rather the delay in timely completion of testing. The Applicant attempted through examination of witness Vaughan and in its Combined Rebuttal testimony to minimize the seriousness of the testing issue, and to say that it had no place in the rate case. The Applicant's legal counsel implied that witness Vaughan was basing his assertions on "circumstances that existed, if at all, approximately a year ago." These 'circumstances' are well documented and undeniable. Under further examination by the Applicant's legal counsel, Mr. Vaughan was asked, "So Mid South went down to Atlanta, had a (Show Cause) meeting with EPA and there have been no adverse consequences toward Mid South that have resulted from EPA since then?" The absence of a monetary penalty or lawsuit by the EPA does not mean that Mid South's conduct has been appropriate, or that the EPA is or has been satisfied. It only means that the current Order(s) is being or has been carried out by the utility.

Mid South did not just have a paperwork violation when it failed to conduct required Phase II testing on time and had to play catch-up. Mid South could not certify whether or not the water from the untested systems posed a health hazard. Thus, at the time the tests were overdue, several thousand people had no assurance that their drinking water was safe to drink, nor did they have any indication that it was unsafe. In its Progress Report filed January 17, 1996, Mid South reported that testing is on schedule, based on their later start time.

The details of the testing/surcharge issue and of any refunds to customers will be determined in Docket No. W-720, Sub 134, which is pending. As was the case for practically every other utility with an EPA surcharge, the Applicant continued to collect the surcharge until the Commission ordered it to stop, rather than voluntarily asking to terminate the surcharge. The exact extent of the overcollection will not be known until all of the waiver applications are processed by DEH and the final order in the pending docket (W-720, Sub 134) is issued. It is apparent, however, that the level of overcollection will likely be substantial.

Mid South stated in its Combined Rebuttal that the fact that long standing deficiencies still exist "does not mean that these customers are being provided water that is inadequate or unsafe to drink". The Commission has found and stated in the Recommended Order for Rayco in Docket Nos. W-899, Sub 14, et al., dated September 22, 1995, "There is more to providing adequate water utility service than coming within minimum state water quality parameters". The Commission emphasizes this point to Mid South, not only must a utility dedicate itself to providing a good product, but it must also provide prompt responses to complaints and outages, and maintain good customer relations.

In summary, the Commission concludes that the Applicant's poor customer relations, its failure to respond to ongoing customer complaints in a timely and concerned manner, its poor administrative practices resulting in penalties due to late payment of fees, its failure to bring systems into compliance with regulatory requirements in a timely manner, and its late commencement of the required Phase II EPA testing, while at the same time overcollecting the surcharge for this testing, constitutes marginally adequate

water and sewer utility service or alternatively stated the Company's provision of service to its customers is in need of substantial improvement.

Based upon the foregoing, the Commission also concludes that within 180 days from the date of this Order, the Applicant should complete the items listed under Part II, System Deficiencies, in its Plan for the Use of 1% Margin on Expenses which was attached to the combined rebuttal testimony of Perkerson, Colson, and Parker, dated September 27, 1995. Furthermore, the Commission also concludes that the Applicant should complete the installation of meters in Fox Ridge, locate or install flush valves in Fox Ridge, and establish a program of regular flushing at Fox Ridge within 180 days of the date of this Order. Accordingly, the Commission specifically requires the Company to make system improvements and to correct system deficiencies as follows:

(1)	Swiss Pine Lake	Correct the fuse problem and continue negotiations with Town of Spruce Pine.
(2)	Sherwood Forest	Paint the fire hydrants black, label same "not for Fire Use", strip the threads on the hydrants, make necessary upgrades to eliminate well head deficiencies, study well yields and make a determination by using the data obtained in the well yield tests to submit plans and specifications for system approval, paint the tank, and upgrade the treatment complex.
(3)	Fox Ridge	Install water lines; upon plan approval, install an additional storage tank, make any necessary upgrades to the system as required by the plan approval, complete the installation of meters, locate or install flush valves, and establish a program of regular flushing.
(4)	Stone Mountain	Furnish and install booster pumps to improve pressure when such need has been determined by the Engineering Department.
(5)	Woodlawn	Install a hydropneumatic storage tank, and/or in line booster pumps for those customers with pressure problems, as determined by an Engineering survey, with the work to be completed after the necessary plan approval has been obtained from DEH.
(6)	Alexander Island	Repair the entrance to the wastewater treatment facility, place no trespassing signs at this area to prevent further damage to the grass, and continue to treat odor with enzymes and other odor reducing procedures.
(7)	Diamond Head	Monitor the problem with contract-related cut lines, complete all work necessary and get such work approved to obtain system approval, including raising manholes, and repairing sewer laterals and connectors.
(8)	Spinnaker Bay	Install a blower at the Spinnaker Bay WWTP, continue to treat and eliminate sewer odors with enzymes through drip feed equipment or some other successful solution.
(9)	Roads/Access Paths	Develop a schedule for improvements including grading, drainage, gravel, etc., and begin making significant progress

toward improving all system roads and access paths which are in need of repair (The Landings, Mallard Head, Harbor Estates, Oxford Glen, etc.).

These required improvements and corrections are to be completed within the next 180 days. At the conclusion of the 180-day period, the Commission also finds that the Company should be required to file a report with the Commission providing a complete, detailed, narrative, discussion, by subdivision, of the improvements and/or corrections completed and their related costs.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 34 AND 35

The evidence for these findings of fact is contained in the testimony of the public witnesses who appeared at the public hearings held in Marion, Newton, Yadkinville, Gastonia, and Charlotte, and in the testimony and exhibits of witnesses Perkerson, Parker, Colson, Adams, Hinton, and Vaughan, and in the Commission's records, including the record of the Company's last general rate case proceeding, in Docket No. W-720, Sub 119.

The Applicant did not take issue with witness Hinton's recommendation of a margin of 9.5% on operating revenue deductions requiring a return assuming the provision of adequate water and sewer utility service. Witness Hinton derived his 9.5% return margin by combining a 6.5% risk-free rate based on current rates of five-year U.S. Treasury bonds with a three-percentage point factor to adjust for risk. There being no controversy, the Commission concludes that a margin of 9.5% on operating revenue deductions requiring a return would be just and reasonable assuming that the Applicant is providing adequate water and sewer utility service to its customers. Such a return should allow the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to its ratepayers.

As previously discussed in this Order, Public Staff witness Vaughan testified that the Company was providing inadequate water and sewer utility service. Therefore, the Public Staff recommended that a penalty of 100 basis points be imposed on the Company such that Mid South be allowed a return margin of 8.5%, rather than the 9.5% which otherwise would have been considered appropriate by the Public Staff. Witness Hinton testified that the recommended margin of 8.5% on expenses would provide sufficient revenues for Mid South to meet its expenses including interest, and that the Applicant would remain financially viable with this margin.

In its brief filed in this proceeding, the Attorney General joined the Public Staff in its recommendation that a 1% penalty be imposed on Mid South's operating margins due to inadequate service. The Attorney General's brief provided extensive discussion on the legal authority for the imposition of a rate of return penalty. Additionally, the Attorney General recommended that the Commission hold public hearings between nine to twelve months after the issuance of its Order in this matter to determine whether the level of service being provided by the Applicant had improved sufficiently to warrant the lifting of such a penalty. Additionally, the Public Staff and the Attorney General also recommended that the increased rates be withheld for the water systems in Fox Ridge/Woods of Fox Ridge/ Fountain Trace (collectively referred to as Fox Ridge, et al.) and Sherwood Forest until the improvements required by DEH are completed in those systems.

In its proposed order, Mid South stated that its overall quality of service is adequate and that DEM and DEH requirements are being met or plans have been submitted to address unresolved concerns. Mid South stated that it should be allowed the opportunity to earn a margin of 9.5% and that the Public Staff's proposed 1% rate of return penalty should not be imposed in light of the Company's Plan of Action to address and resolve identified problem areas. It was the Company's opinion that the return penalty would only delay the completion of necessary system improvements. The Company stated that if the full 9.5% return is granted, then 1% of that return could be used to carry out its Plan of Action.

Based on the evidence presented in this proceeding, the Commission has concluded elsewhere in this Order that the Applicant is providing marginally adequate water and sewer utility service to its customers. On that basis, the Commission finds that it would presently be inappropriate to impose a penalty of 100 basis points on Mid South's return as recommended by the Public Staff and the Attorney General. However, the Commission is very concerned about the overall quality of service that is presently being provided as it is considered by the Commission to be marginally adequate. As discussed elsewhere, the Commission has ordered Mid South to make certain system improvements and to correct system deficiencies within 180 days from the issuance date of this Order. The Commission believes that it is in the best interest of the customers at this time to allow Mid South to implement the rates discussed herein on a provisional basis such that these provisional rates are considered conditionally granted subject to being reduced if Mid South is unable to properly complete the required system improvements and correct the system deficiencies, specifically identified elsewhere in this Order, within 180 days. After the expiration of the 180-day period, the Commission will review the Applicant's report and then consider whether the provisional rates should be reduced, made permanent, or continued on a provisional basis and it will issue a further order on the final disposition of this matter.

The Commission believes that the customers would best be served if Mid South is allowed the additional $41,126 in annual water service revenues that results from a determination of the Company's water rates based on a return of 9.5% rather than 8.5%, as such additional funds could certainly be used by Mid South toward the resolution of its service and technical compliance problems. Therefore, in the interim, pending the resolution of certain matters within the next 180 days, the Commission concludes that a margin of 9.5% on operating expenses requiring a return is just and reasonable at this time for determining the Company's provisional rates.

Additionally, the Commission also finds that at this time it would not be appropriate to accept the Public Staff's and the Attorney General's recommendations that the rate increase be withheld in the water systems of Fox Ridge, et al., and Sherwood Forest. In regard to the water system of Fox Ridge, et al., the Company stated in a Progress Report filed on January 17, 1996 in this docket, that plan approval has now been received; increased storage at the well has been installed and connector lines installed according to approved plans; lines have been repaired; two blowoffs have been located; and the replacement of two booster pumps and a well pump is underway. In regard to the Sherwood Forest water system, the Company's January 17, 1996 Progress Report indicated that this system is next on its agenda for the needed repairs as brought out at the hearing. Further, the Company's Plan of Action for the proposed use of funds from the 1% of margin on expenses indicated that the Company plans to spend $10,000 in Sherwood Forest and $15,000 in Fox Ridge to correct their respective system deficiencies. Based on the foregoing, the Commission will allow the rate increase to be implemented in these subdivisions, but the

Company is again reminded that the rates approved herein are provisional rates subject to change if certain requirements are not timely met by the Company.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36

The evidence for this finding of fact is contained in the testimony of the public witnesses and Mr. Vaughan, and in the Commission's records.

At the Charlotte hearing, it was noted that Mid South recently discovered that there were quite a few customers who had never been billed; now they are being back-billed. Customer complaints about Mid South's inability to accurately track and bill its current sewer customers served by the Country Woods East sewer system were raised in a formal complaint filed on August 29, 1995, by William and Janice Avery in Docket No. W-720, Sub 152. This docket was resolved and closed by Order of the Commission issued on November 1, 1995. This situation resulted from the recent discovery of approximately 26 customers who were receiving free sewer service in Country Woods East, some of which had done so for many months. In this subdivision, Mid South only provides sewer service. Union County provides the water service in Country Woods East.

In the Surry water systems, Allen Woods (28 customers) and Windgate (32 customers), Mid South has been charging for water without having applied for a Certificate of Public Convenience and Necessity after securing ownership from Mr. Bobby Lovill, the developer. In another Surry system, Mill Creek, Mid South has been operating the unfranchised water system and not charging rates. In a fourth Surry system, South Ridge, for which it has not acquired proper ownership from Mr. Lovill, Mid South has been operating the unfranchised water system and not charging rates.

Witness Vaughan has recommended that the Applicant do the following: (1) develop and implement a customer audit procedure to avoid not billing using and consuming customers, (2) file new franchise applications as soon as possible for Allen Woods and Windgate in the Surry service area, (3) apply for 'franchises' as soon as possible in business dealings with developers of systems, such as Mill Creek in the Surry service area, and (4) acquire ownership of a service area, such as South Ridge in the Surry service area, prior to serving it.

The Commission concludes that witness Vaughan's recommendations in this regard are appropriate and should be implemented.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 37 - 39

The evidence supporting these findings of fact is contained in the testimony, exhibits, and late-filed exhibits of witnesses Perkerson, Vaughan, Hinton, and Henry.

The following schedules summarize the gross revenue and margin on operating revenue deductions requiring a return that the Company should have a reasonable opportunity to achieve based upon the increases approved in this Order for the water operations.

SCHEDULE I
MID SOUTH WATER SYSTEMS, INC., ET AL.
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
WATER OPERATIONS
For the Twelve Months Ended December 31, 1994

Item	Present Rates	Increase Approved	After Approved Increase
Operating revenues:			
Metered revenues	$1,690,418	$ 746,753	$2,437,171
Flat rate revenues	186,298	176,509	362,807
Other revenues	106,359	-	106,359
Bad debt expense	(6,837)	-	(6,837)
Total operating revenues	1,976,238	923,262	2,899,500
Operating revenue deductions:			
Operating and maintenance exp.	1,504,379	-	1,504,379
General and administrative exp.	628,839	-	628,839
Depreciation	104,807	-	104,807
Property taxes	22,698	-	22,698
Payroll taxes	81,452	-	81,452
Other taxes and licenses	59,135	-	59,135
Regulatory fee	1,976	924	2,900
Gross receipts taxes	79,050	36,930	115,980
State income taxes	-	28,769	28,769
Federal income taxes	-	122,417	122,417
Total operating revenue deductions	2,482,336	189,040	2,671,376
Net operating income for return	$ (506,098)	$ 734,222	$ 228,124
Operating revenue deductions requiring a return	$2,401,310		$2,401,310
Margin	(21.08%)		9.50%

SCHEDULE II
MID SOUTH WATER SYSTEMS, INC., ET AL.
STATEMENT OF ORIGINAL COST RATE BASE
WATER OPERATIONS
For the Twelve Months Ended December 31, 1994

Item	Amount
Plant in service	$ 7,485,332
Accumulated depreciation	(919,391)
Contributions in aid of construction	(5,805,284)
Acquisition adjustment	(93,885)
Cash working capital	266,652
Average tax accruals	(26,253)
Original cost rate base	$ 907,171

The following schedules summarize the gross revenue and margin on operating revenue deductions requiring a return which the Company's requested rates will generate for the sewer operations.

SCHEDULE III
MID SOUTH WATER SYSTEMS, INC., ET AL.
STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
SEWER OPERATIONS
For the Twelve Months Ended December 31, 1994

Item	Present Rates	Increase Approved	After Approved Increase
Operating revenues:			
Metered revenues	$ 22,787	$ 25,166	$ 47,953
Flat rate revenues	492,420	243,393	735,813
Total operating revenues	515,207	268,559	783,766
Operating revenue deductions:			
Operating and maintenance exp.	516,952	-	516,952
General and administrative exp.	128,505	-	128,505
Depreciation	21,812	-	21,812
Property taxes	2,243	-	2,243
Payroll taxes	22,254	-	22,254
Other taxes and licenses	11,471	-	11,471
Regulatory fee	515	269	784
Gross receipts taxes	30,912	16,114	47,026
State income taxes	-	2,321	2,321
Federal income taxes	-	3,690	3,690
Total operating revenue deductions	734,664	22,394	757,058
Net operating income for return	$ (219,457)	$ 246,165	$ 26,708

Operating revenue deductions requiring a return	$ 703,237	$ 703,237
Margin	(31.21%)	3.80%

SCHEDULE IV
MID SOUTH WATER SYSTEMS, INC., ET AL.
STATEMENT OF ORIGINAL COST RATE BASE
SEWER OPERATIONS
For the Twelve Months Ended December 31, 1994

Item	Amount
Plant in service	$ 4,623,555
Accumulated depreciation	(80,304)
Contributions in aid of construction	(4,363,360)
Cash working capital	80,682
Average tax accruals	(6,722)
Original cost rate base	$ 253,851

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 40 - 44

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Henry and Company witness Perkerson. Both parties are in agreement that the accounting recommendations set forth in witness Henry's testimony should be implemented by the Company. Since there is no disagreement between the parties regarding witness Henry's accounting recommendations, the Commission concludes that the Company should be required to file the following information with the Commission: (1) a report listing all subdivisions for Mid South, Huffman, Surry, and Lincoln and indicate therein whether or not a tap on fee is collected and state the amount that is collected for each subdivision; (2) a report detailing the Company's method for allocating common plant and expenses to nonutility, contract, and nonjurisdictional operations; and (3) copies of all affiliated contracts covering all transactions between Mid South and its affiliated companies. The Commission also concludes that the Company should begin using the Commission approved depreciation rates on its books. Further, the Commission concludes that the Company should file a complete NCUC Form W-1 Rate Case Information Report as a part of all its future general rate case applications.

IT IS, THEREFORE, ORDERED as follows:

1. That Mid South is authorized to increase its rates and charges to produce additional annual revenues of $923,262 for water utility service and $268,559 for sewer utility service.

2. That no change in the rates of the systems acquired by Mid South from Ruff Water and Ralph Falls Water Company is authorized by this Order.

3. That the Schedules of Rates attached hereto as Appendix A and Appendix B are approved on a provisional rate basis, as discussed herein, for water and sewer utility service in all of Mid South's service areas, except for customers in the Ruff Water and Ralph Falls Water Company Systems. Said rates shall be billed and collected on a provisional rate basis, effective for service rendered on and after the date of this Order. These Schedules of Rates are deemed filed with the Commission pursuant to G.S. 62-138.

4. That a copy of the Notice to Customers of New Rates, attached hereto as Appendix C, shall be mailed or hand delivered to all affected customers by the Applicant in conjunction with its next regularly scheduled billing process.

5. That the Applicant shall undertake the recommendations regarding general water operations addressed in Evidence and Conclusions for Finding of Fact No. 26. The Applicant shall report on its progress monthly until all items are completed and the Commission advises the Applicant that monthly reports are no longer required.

6. That the Applicant shall undertake the recommendations regarding system specific water operations addressed in Evidence and Conclusions for Finding of Fact No. 26. The Applicant shall report on its progress monthly until all items are completed and the Commission advises the Applicant that monthly reports are no longer required.

7. That the Applicant shall undertake the recommendations regarding general sewer operations addressed in Evidence and Conclusions for Finding of Fact No. 26. The Applicant shall report on its progress monthly until all items are completed and the Commission advises the Applicant that monthly reports are no longer required.

8. That the Applicant shall undertake the recommendations regarding system specific sewer operations addressed in Evidence and Conclusions for Finding of Fact No. 26. The Applicant shall report on its progress monthly until all items are completed and the Commission advises the Applicant that monthly reports are no longer required.

9. That the Applicant shall undertake the recommendations regarding improvement of customer service and record keeping addressed in Evidence and Conclusions for Finding of Fact No. 25 and shall file a copy of its updated *CUSTOMER RELATIONS MANUAL* with the Commission within 60 days of the date of this Order. The Applicant shall report on its progress on the recommendations monthly until all items are completed and the Commission advises the Applicant that monthly reports are no longer required.

10. That the Applicant shall develop and implement a customer audit procedure to avoid not billing using and consuming customers, shall file new franchise applications as soon as possible for Allen Woods and Windgate in the Surry service area, shall in the future apply for franchises as soon as possible in business dealings with developers of systems, such as Mill Creek in the Surry service area, and shall in the future acquire ownership of a service area, such as South Ridge in the Surry service area, prior to serving it.

11. That Mid South shall file a report with the Commission listing all subdivisions for Mid South, Huffman, Surry, and Lincoln, and indicate therein whether or not a tap on fee is collected and state the amount that is collected for each subdivision. Such report shall be filed within 60 days of the date of this Order.

12. That Mid South shall file with the Commission a method for allocating common plant and expenses to nonutility, contract, and nonjurisdictional operations within 60 days of the date of this Order.

13. That Mid South shall file with the Commission copies of its affiliated contracts covering all transactions between Mid South and its affiliated companies as required under G.S. 62-153 within 60 days of the date of this Order.

14. That Mid South shall use the depreciation rates approved by this Commission on its books.

15. That Mid South shall file a complete NCUC Form W-1, Rate Case Information Report with all its future general rate case applications.

16. That within 180 days from the date of this Order, the Applicant shall complete the system improvements and correct the system deficiencies specifically set forth in this Order under the Evidence and Conclusions for Finding of Fact Nos. 28 - 33. Additionally, at the conclusion of the 180-day period, the Company shall file a report with the Commission providing a complete, detailed, narrative, discussion, by subdivision, of the improvements and/or corrections completed and their related costs.

ISSUED BY ORDER OF THE COMMISSION
This the 9th day of February 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

APPENDIX A

SCHEDULE OF RATES
for
MID SOUTH WATER SYSTEMS, INC., HUFFMAN WATER SYSTEMS, INC., LINCOLN WATER WORKS, INC., AND SURRY WATER COMPANY, INC.
for providing water utility service in
ALL THEIR SERVICE AREAS IN NORTH CAROLINA

Except: The former Ruff Water Company Systems (Docket No. W-720, Sub 143) and the former Ralph Falls Systems (Docket No. W-720, Sub 145).

METERED WATER RATES (Monthly) [1]

Residential:	
Base Charge (3/4 x 5/8" Meter)	$ 10.30
Usage Charge, per 1,000 gallons	$ 2.74
Nonresidential/Commercial:	
Base Charge (based on meter size)	
Meter Size	
3/4 x 5/8"	$ 10.30
3/4"	$ 15.45
1"	$ 25.75
1 1/2"	$ 51.50
2"	$ 82.40
3"	$154.50
4"	$257.50
6"	$515.00
Usage Charge, per 1,000 gallons	$ 2.74

FLAT WATER RATES (Monthly) [1] [2]

Residential:	$ 26.04
Nonresidential/Commercial:	
Commercial @ Residential Rate	$ 26.04
Commercial @ Business Rate	$ 39.06
Commercial @ Motel Rate	$117.18

OTHER MATTERS

Connection Fee: $500 (except where excluded by contract), *plus* full gross up.

Reconnection Charges: [3]

If water service cut off by utility for good cause:	$15.00
If water service discontinued at customer's request:	$15.00
If water service cut off by utility for good cause when there is no cutoff valve (to cover installation cost of cutoff valve):	$50.00

Cutoff Valve Replacement Fee: $40.00
(This fee will be charged only when Company is required to replace cutoff valve as a result of damages made by homeowner.)

Deposits: May be requested in accordance with NCUC Rules R12-1 through R12-6.

Returned Check Charge: $20.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charge for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

[1] Monthly base charges or monthly flat rates will be charged whether or not a unit is occupied, unless disconnection is requested (see reconnection charges). Units that are sold or rental units that change occupants (where service in not in name of landlord) will not be charged these charges for the period that they were disconnected from the system.

[2] The Utility, at its expense, may install a meter and charge the metered rate.

[3] When service is disconnected and reconnected by the same unit owner within a period of less than nine full months, the entire flat rate and/or base charge rate will be due and payable before the service will be reconnected.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-720, Sub 144; W-95, Sub 18; W-335, Sub 6; and W-314, Sub 31, on this the 9th day of February 1996.

APPENDIX B

SCHEDULE OF RATES
for
MID SOUTH WATER SYSTEMS, INC.
for providing sewer utility service in
ALL ITS SERVICE AREAS IN NORTH CAROLINA

METERED SEWER RATES (Monthly) [1]

Commercial:	
Base Charge (no usage)	$ 58.01
Usage Charge, per 1,000 gallons	$ 4.34

FLAT SEWER RATES (Monthly) [1]

Residential:	$ 43.03
Nonresidential/Commercial:	
Condo residents, @ residential rate:	$ 43.03
Commercial, @ residential rate:	$ 43.03
Commercial, @ commercial rate:	$129.08

OTHER MATTERS

Connection Fee: $500 (except where excluded by contract), *plus* full gross up.

Reconnection Charges: [2]

If sewer service cut off at customers request or by utility for good cause and the sewer customer is also a water customer: $15.00

If water service is not provided by sewer utility: Actual Cost
(An itemized billing of estimated actual charges shall be submitted to the customer and to the North Carolina Utilities Commission prior to disconnection of the customer's sewer service.)

Deposits: May be requested in accordance with NCUC Rules R12-1 through R12-6.

Returned Check Charge: $20.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency:	Shall be monthly for service in arrears
Finance Charge for Late Payment:	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

1/ Monthly base charges or monthly flat rates will be charged whether or not a unit is occupied, unless disconnection is requested (see reconnection charges). Units that are sold or rental units that change occupants (where service in not in name of landlord) will not be charged these charges for the period that they were disconnected from the system.

2/ When service is disconnected and reconnected by the same unit owner within a period of less than nine full months, the entire flat rate and/or base charge rate will be due and payable before the service will be reconnected.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-720, Sub 144, on this the 9th day of February 1996.

APPENDIX C

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Mid South Water Systems, Inc., Huffman Water Systems, Inc., Lincoln Water Works, Inc., and Surry Water Company, Inc., Post Office Box 127, Sherrills Ford, North Carolina 28673, for Authority to Increase Rates for Water and Sewer Utility Service in All of Their Service Areas In North Carolina	)))))	NOTICE TO CUSTOMERS OF NEW RATES

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order authorizing Mid South Water Systems, Inc., Huffman Water Systems, Inc., Lincoln Water Works, Inc., and Surry Water Company, Inc., to charge new rates for water and sewer service for all its customers in North Carolina (except as ordered otherwise). The new approved rates are as follows:

FLAT WATER RATES (Monthly)

Residential:	$ 26.04
Nonresidential/Commercial:	
Commercial @ Residential Rate	$ 26.04
Commercial @ Business Rate	$ 39.06
Commercial @ Motel Rate	$117.18

METERED WATER RATES (Monthly)

Residential:	
Base Charge (3/4 x 5/8" Meter)	$ 10.30
Usage Charge, per 1,000 gallons	$ 2.74
Nonresidential/Commercial:	
Base Charge (based on meter size)	
Meter Size	
3/4 x 5/8"	$ 10.30
3/4"	$ 15.45
1"	$ 25.75
1 1/2"	$ 51.50
2"	$ 82.40
3"	$154.50
4"	$257.50
6"	$515.00
Usage Charge, per 1,000 gallons	$ 2.74

WATER AND SEWER - RATES

FLAT SEWER RATES (Monthly)

Residential:		$ 43.03
Nonresidential/Commercial:		
Condo Residents, @ Residential Rate:	$ 43.03	
Commercial, @ Residential Rate:		$ 43.03
Commercial, @ Commercial Rate:		$129.08

METERED SEWER RATES (Monthly)

Commercial:	
Base Charge (no usage)	$ 58.01
Usage Charge, per 1,000 gallons	$ 4.34

Mid South has been ordered to make a number of repairs and system improvements. Mid South has been also ordered to submit monthly reports to the Commission addressing the progress of such required repairs and improvements.

ISSUED BY ORDER OF THE COMMISSION
This the 9th day of February 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-1061

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Unauthorized Provision of Water Utility Service in Point Tillery Subdivision (also Known as Sapona Trace Subdivision), Stanly County, North Carolina, by Don S. Page, 16538 Eno Court, Norwood, North Carolina 28128	)	ORDER FINDING VIOLATION AND INSTITUTING PENALTY

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on November 28, 1995, at 10:00 a.m.

BEFORE: Commissioner Laurence A. Cobb, presiding, Commissioners Charles H. Hughes and Jo Anne Sanford

APPEARANCES:

For Don S. Page:

No Attorney of Record

For the Commission Staff:

Larry S. Height, Commission Staff Attorney, North Carolina Utilities Commission, Post Office Box 29510, Raleigh, North Carolina 27626-0510

BY THE COMMISSION: On March 27, 1995, the Public Staff filed a Petition to initiate a show cause proceeding in which it moved the Commission to issue an order that Don S. Page appear and show cause why he should not be found to be providing water utility service to the Point Tillery Subdivision (also known as Sapona Trace Subdivision) in Stanly County and why he should not be ordered to account for and refund with interest all money received for utility service. The Public Staff further requested that Mr. Page be ordered to cease and desist from attempting to recover compensation for water utility service and to dismiss all pending court actions attempting to collect such compensation.

On March 28, 1995, the Commission issued an Order scheduling a show cause hearing in the above-captioned proceeding for 7:00 p.m., Tuesday, April 11, 1995, in the Stanly Room, 4th Floor, Stanly County Courthouse, 201 South Second Street, Albemarle, North Carolina.

On April 11, 1995, the Hearing Examiner in the above-captioned proceeding issued an Order continuing the hearing in part. The Hearing Examiner was of the opinion that good cause existed to continue that part of the hearing concerning Don S. Page and to take only the testimony of the witnesses presented by the Public Staff and/or customers of the Sapona Trace Subdivision.

The show cause hearing was held on the date and at the time and location mentioned hereinabove and the customers were allowed to present their testimony. The record in the April 11, 1995 hearing

indicated that Don S. Page would be given an opportunity at a later date to appear before the Commission in order that he may give his testimony and/or present his witnesses.

On April 21, 1995, an Order rescheduling the hearing was issued, setting a hearing date for Wednesday, June 7, 1995, at 7:00 p.m., in the Stanly Room, 4th Floor, Stanly County Courthouse, 201 South Second Street, Albemarle, North Carolina. On Thursday, June 1, 1995, Don S. Page informed a member of the Commission's legal staff by telephone that he would not be available on this date. The Hearing Examiner chose to treat Mr. Page's response as a request for continuance.

The show cause hearing was rescheduled for Tuesday, June 20, 1995. The hearing was held as scheduled on June 20, 1995, and Don S. Page offered his testimony and exhibits.

On July 18, 1995, the Hearing Examiner entered a Recommended Order in this docket. Exceptions to the Recommended Order were due no later than August 2, 1995. No exceptions were filed by the parties. By Order dated August 2, 1995, the Commission found good cause, on its own motion, to delay the effective date of the Recommended Order pursuant to G. S. 62-78(c) in order to allow further time to consider certain concerns and issues.

On August 8, 1995, the Commission issued an Order allowing the Recommended Order to become effective and final. That Recommended Order, dated July 18, 1995, contained two (2) ordering paragraphs which stated as follows:

> 3. That Don S. Page shall file within thirty (30) days of the effective date of this Order a proposed schedule for compliance with the standards and rules governing public water systems established by the Division of Environmental Health (15A North Carolina Administrative Code 18C).
>
> 5. That, within sixty (60) days of the date of this Order, Don S. Page shall complete the bond attached hereto as Appendix C and return said bond to the Commission and shall deposit appropriate security in the amount of $10,000.00 with United Carolina Bank, Attention: Sandra P. Sawyer, 3605 Glenwood Avenue, Raleigh, North Carolina 27612.

By letter dated September 12, 1995, the Hearing Examiner encouraged Don S. Page to comply with the ordering paragraphs contained in the July 18, 1995 Recommended Order. By letter dated September 18, 1995, and filed with the Chief Clerk of the Commission on September 20, 1995, Don S. Page indicated that he was financially unable to meet the bond requirement to become a certified utility company. Further, Mr. Page indicated that he would need an extension of at least ninety (90) additional days in order to comply with the Commission's Order that he provide the Commission with a proposed schedule for compliance with the standards and rules governing public water systems established by the Division of Environmental Health.

The Commission issued an Order on October 10, 1995, finding that Mr. Page had been given opportunity to comply with the Orders previously issued but had demonstrated no intention of complying. The Commission found good cause to schedule a show cause proceeding and to order Mr. Page to appear

and show cause why he should not be found to be in violation of the Commission's Orders and subject to penalties and other appropriate sanctions as deemed necessary by the Commission.

The show cause proceeding came on for hearing as scheduled on Tuesday, November 28, 1995, at 10:00 a.m. in Commission Hearing Room 2115 in Raleigh. Don S. Page, who was notified, did not enter an appearance and was not represented in his absence by counsel. Paul Judge of the Public Water Supply Section if the Department of Environmental Health and Natural Resources testified.

On the basis of the evidence received and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Sapona Trace Subdivision was developed in the late 1970s by a family-owned business under the direction of Don S. Page. A privately owned water system was installed, including a well, storage tank, and distribution mains, designed to serve more than ten lots in the subdivision. A charge of seventy five dollars ($75.00) per year for water was imposed. No application was filed with the Utilities Commission for a certificate of public convenience and necessity, nor has any application been filed to this date.

2. The water system serving Sapona Trace Subdivision is now owned and operated by Don S. Page.

3. Since 1978 Don S. Page or his predecessor or predecessors in interest have sought and received compensation for providing water utility service.

4. In 1991 Don S. Page was advised by the Public Staff that he could not lawfully receive compensation for providing water utility service unless and until he acquired a certificate of public convenience and necessity from the Utilities Commission.

5. After 1991, Don S. Page continued to request and receive compensation for water utility service. On at least one occasion Mr. Page disconnected the water service to a home in Sapona Trace Subdivision for failure to pay for water. In March of 1995 Mr. Page initiated an action in the Small Claims court of Stanly County seeking compensation for water utility service.

6. The water system serving Sapona Trace Subdivision does not comply with the standards and rules governing public water systems established by the Division of Environmental Health (15A North Carolina Administrative Code 18C). The system does not have a well house, does not provide for the disinfection of the drinking water, and does not have an operator in charge with the appropriate certification.

7. A Recommended Order was issued by the Commission on July 18, 1995, which ordered the following:

a. That a certificate of public convenience and necessity is hereby issued to Don S. Page to provide water utility service in Sapona Trace Subdivision and is attached hereto as Appendix A.

b. That the Schedule of Rates attached hereto as Appendix B should be and hereby is established for utility service rendered on and after the effective date of this Order, and this Schedule of Rates is deemed to be filed with the Commission pursuant to G.S. § 62-138.

c. That Don S. Page shall file within 30 days of the effective date of this Order a proposed schedule for compliance with the standards and rules governing public water systems established by the Division of Environmental Health (15A North Carolina Administrative Code 18C).

d. That Don S. Page shall maintain his books and records in such manner that all the applicable items required in the prescribed Annual Report to the Commission can be readily identified from the said Annual Report.

e. That within 60 days of the date of this Order, Don S. Page shall complete the Bond attached hereto as Appendix C and return said bond to the Commission and shall deposit the appropriate security in the amount of $10,000 with United Carolina Bank, Attention: Sandra P. Sawyer, 3605 Glenwood Avenue, Raleigh, North Carolina 27612.

f. That Don S. Page shall mail or hand deliver a copy of this Order to all residents of Sapona Trace Subdivision within 30 days of the effective date of this Order.

8. The Recommended Order became effective and final on August 8, 1995, by virtue of a final Commission Order of that date which specifically ordered that Mr. Page comply with all the provisions of the Recommended Order.

9. By letter filed with the Chief Clerk of the Commission on September 12, 1995, a member of the Commission Staff called Mr. Page's attention to decretal paragraphs three (3) and five (5) (hereinabove referred to as subparagraph (c) and (e)) contained in the Recommended Order.

10. In response to the September 12, 1995 letter from the Commission, Mr. Page responded with a letter filed with the Chief Clerk of the Commission on September 20, 1995, indicating he was "personally unable financially to meet the bond requirement. . . "; he was seeking to "Abandon Operation of the System"; and that he needed at least an additional ninety (90) days to formulate a plan to meet Division of Environmental Health's requirements in accordance with the Commission Order of August 8, 1995.

11. Notwithstanding repeated attempts by the Commission to work with Mr. Page, there has been no effort on the part of Mr. Page to comply with any of the Commission's Orders.

On the basis of these Findings of Fact, the Commission reaches the following:

CONCLUSIONS

1. Don S. Page is a public utility under the jurisdiction of and subject to regulation by the North Carolina Utilities Commission.

2. The Commission has the authority to impose fines pursuant to North Carolina General Statute § 62-310(a) which states:

> (a) Any public utility which violates any of the provisions of this Chapter or refuses to conform to or obey any rule, order or regulation of the Commission shall, in addition to the other penalties prescribed in this Chapter forfeit and pay a sum up to one thousand dollars ($1000.00) for each offense. . . . and each day such public utility continues to violate any provision of this Chapter or continues to refuse to obey or perform any rule, order or regulation prescribed by the Commission shall be a separate offense.

3. Don S. Page has failed to obey the Recommended Order and the final Commission Order issued in this docket. The final Commission Order allowing the Recommended Order to become effective and final was dated August 8, 1995. There has been no compliance by Don S. Page to date.

4. The Commission finds good cause to issue the present Order Finding Violation and Instituting Penalty. Although the statute authorizes penalties in an amount up to one thousand dollars for each offense, with each day the violation occurs a separate offense, the Commission concludes that a total penalty of one thousand dollars for all offenses to the date of this Order is appropriate. Don S. Page should be fined in the amount of one thousand dollars ($1000.00) for all offenses to date, which shall be paid not later than thirty (30) days from the date of this Order. The Commission reserves the right to order further penalties if the penalty ordered herein is not paid as directed.

IT IS, THEREFORE, ORDERED as follows:

1. That Don S. Page violated the Commission's Orders of July 18, 1995, and August 8, 1995, and

2. That Don S. Page shall pay a penalty in the amount of one thousand dollars ($1000.00) for his violation of the July 18, 1995 and August 8, 1995 Orders to date. Said penalty shall be paid to the Commission not later than thirty (30) days from the date of this Order. If Don S. Page fails to voluntarily pay the penalty and does not appeal this Order to the North Carolina Court of Appeals, the Commission Staff is directed to recover said penalty and any additional penalties which may be assessed in an action instituted in the Superior Court of Wake County pursuant to G. S. § 62-310.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of February 1996..

(SEAL)

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-354, SUB 143
DOCKET NO. W-354, SUB 145

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. W-354, Sub 143

In the Matter of)
Application by Carolina Water Service,)
Inc. of North Carolina, 2335 Sanders)
Road, Northbrook, Illinois 60062, for)
Authority to Transfer the Franchise)
Serving the Hidden Hills and Farmwood)
Section 18 Subdivisions in Mecklenburg)
County to the City of Charlotte (Owner)
Exempt Regulation) and to Transfer)
Assets) ORDER DETERMINING
) REGULATORY TREATMENT
Docket No. W-354, Sub 145) OF GAIN ON SALE OF FACILITIES
)
In the Matter of)
Application by Carolina Water Service,)
Inc. of North Carolina, 2335 Sanders)
Road, Northbrook, Illinois 60062, for)
Authority to Transfer the Franchise Serving)
the Habersham Subdivision in)
Mecklenburg County to the City of)
Charlotte (Owner Exempt from Regulation))
and to Transfer Assets)

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on September 28, 1995, at 9:30 a.m.

BEFORE: Judge Hugh A. Wells, Presiding; and Commissioners Charles H. Hughes Jr., Laurence A. Cobb, Ralph A. Hunt and Jo Anne Sanford.

APPEARANCES:

For the Applicant Carolina Water Service, Inc. of North Carolina:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For the Public Staff:

Antoinette R. Wike, Chief Counsel, and Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

BY THE COMMISSION: On January 30, 1995, Carolina Water Service, Inc. of North Carolina (CWS or Company), filed an application with the Commission for authority to transfer the water utility systems in the Hidden Hills and the Farmwood-Section 18 Subdivisions in Mecklenburg County to the Charlotte Mecklenburg Utility Department ("CMUD"), which is exempt from the Commission's regulation. CWS currently serves 32 customers in the Hidden Hills subdivision and 58 customers in the Farmwood-Section 18 subdivision. The transfer will result in a $25.48 decrease in the average monthly bill (based on an average usage of 6,000 gallons per month). CMUD will not be charging any tap-on or other fees to the existing customers. These systems will be connected to the CMUD system, which has elevated storage, and the connection will result in better long term service to the customers.

CWS has also requested a determination on the regulatory treatment of the gain resulting from this sale and a ruling that the Company's shareholder be entitled to retain 100 percent of such gain. The Public Staff, in initially bringing this matter before the Commission, took the position that since the issue of the regulatory treatment of the gains on sale of water and sewer systems was on appeal in three CWS dockets, and since CWS, by contract, had agreed to the transfer in question no matter how the gain on sale issue was decided, a ruling on the gain on sale issue in this docket should be deferred until after the Court of Appeals ruled on the appeals. In the alternative, if the ruling was not deferred, the Public Staff requested the Commission to schedule an evidentiary hearing to consider the gain on sale issue in this case.

By order dated May 24, 1995, the Commission approved the transfer, denied the Public Staff's motion to defer ruling on the gain on sale issue, and granted the Public Staff's alternative motion for an evidentiary hearing.

On May 18, 1995, CWS filed an application in Docket No. W- 354, Sub 145 for authority to transfer the water utility system in the Habersham subdivision in Mecklenburg County to CMUD. In its application in Docket No. W-354, Sub 145, CWS likewise requested that the Commission allow CWS to retain all the gain on sale of the system. By motion filed May 26, 1995, the Public Staff requested that the Commission consolidate for hearing CWS's applications in Docket No. W-354, Sub 143 and Docket No. W-354, Sub 145, that the Commission continue the hearing in the two dockets and accompanying filing dates by 60 days, and that the Commission place the burden of going forward (e.g. filing of initial testimony) on CWS. In a response dated June 5, 1995, CWS agreed that the two dockets should be consolidated, asked that the Commission deny the request for continuance and offered, should the Commission desire to do so, for CWS to file initial direct testimony first.

By order dated June 20, 1995, the Commission consolidated the two dockets, continued the hearing, accepted the tendered pre-filed testimony by CWS for filing and established a further schedule under which the parties should prefile direct and rebuttal testimony.

By order dated June 26, 1995, the Commission authorized the transfer of the Habersham subdivision system. Pre-filed direct and rebuttal testimony was filed by Carl Daniel, Regional Vice President, on behalf of CWS. The Public Staff filed direct and rebuttal testimony on behalf of Katherine Fernald, Supervisor of the Water Section of the Accounting Division of the Public Staff, and direct testimony of Andy Lee, Director of the Water and Sewer Division of the Public Staff.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. In 1990, CWS was confronted by efforts of three municipal or governmental entities to acquire three of its systems. The City of Charlotte, through CMUD, sought to acquire CWS's Beatties Ford system in Mecklenburg County. The Eastern Wayne Sanitary District sought to acquire CWS's Genoa system in Wayne County, and the Town of New Bern sought to acquire CWS's Riverbend system in Craven County. Order Determining Regulatory Treatment of Gain on Sale of Facilities, October 16, 1990, Docket Nos. W-354, Subs 82, 86, 87 and 88. CWS entered into tentative contracts to sell the three systems and requested the Commission to rule on the issue of whether the Company's stockholder should be permitted to retain 100 percent of the gain on sale in Docket Nos. W-354, Subs 82, 86, 87, and 88. Heater Utilities Inc., the Carolinas' Chapter of the National Association of Water Companies, and the City of Charlotte intervened in the Commission proceeding to support the position of CWS. The Public Staff and the Attorney General advocated giving 100 percent of the gain to the Company's ratepayers. After an evidentiary hearing, the Commission held in Docket Nos. W-354, Subs 82, 86, 87, and 88 that the gain should be split 50/50 between the Company's ratepayers and its shareholder. The Commission reasoned that both the shareholder and the ratepayers bore part of the risk in maintaining the systems and both should share equally in the profits upon disposition through sale.

2. As CWS's contracts for the Beatties Ford, Genoa, and Riverbend systems were tentative and conditioned on the Commission's ruling, each of the three contracts was renegotiated in light of the Commission's actions. CWS sought to obtain a higher price for the systems since the Commission's ruling denied the Company half of the profit for which it had initially bargained. CMUD paid an increased price for Beatties Ford. While the Eastern Wayne Sanitary District determined that it would rather parallel the Genoa system than pay more than what it had initially bargained to pay, it ultimately paid less than the tentative contract price. New Bern was unwilling to pay an increased price, and the sale of the Riverbend system to New Bern did not take place.

3. In 1992, in the aftermath of the CWS gain on sale cases, Heater Utilities, Inc., sold the system in the Pinewood Subdivisions to the City of Goldsboro and sought to discontinue service to the Country Acres Subdivision in Wayne County. In Docket Nos. W-274, Subs 71 and 72, Heater asked the Commission to permit it to retain 100 percent of the gain on sale. Order Determining Regulatory Treatment of Gain on Sale and Loss on Abandonment of Facilities, May 21, 1993. 83rd Report N.C. Utilities Commission Orders and Decisions at 653 (1993). The Commission affirmed the rationale it had relied upon in the 1990 CWS cases and ruled that the gain should be shared 50/50 between shareholders and ratepayers. The Commission ruled that the evidence was not appreciably different to warrant a different result. However, four members of the Commission filed concurring or dissenting opinions

wherein they expressed concerns that past decisions may have discouraged or certainly not encouraged the sale of systems to municipal operators to the detriment of the public interest.

4. In 1993 and 1994, CWS again faced requests that it sell systems to a municipality. CMUD desired to acquire the Farmwood B and Chesney Glen systems in Mecklenburg County. In light of the differences of opinion expressed in the Heater Sub 71 and Sub 72 dockets, CWS again requested the Commission to address the gain on sale issue as a result of transfer applications filed in Docket Nos. W-354, Subs 133 and 134. At the hearing in the Farmwood B and Chesney Glen matters, CWS advocated that sales to municipalities should neither be discouraged or encouraged and that regulatory treatment denying the Company's shareholder the opportunity to retain the gain, including gain-splitting, discouraged sales. The Public Staff argued that the Commission should adhere to the ruling from the earlier cases and split the gain equally between the Company's shareholder and its remaining ratepayers.

5. The Commission in its September 7, 1994 Order in Docket Nos. W-354, Subs 133 and 134 held that CWS's shareholder should retain 100 percent of the gain. The Commission determined that "[w]ith the benefit of hindsight, the Commission can now see that the policy to split the gains or losses on sales of water and/or sewer systems has had a negative impact on the public good." The Commission cited the harmful consequences of its decision with respect to the Beatties Ford, Genoa, and Riverbend cases. The Commission also cited as beneficial the progression of ownership first from developers to private utilities and second to municipalities and concluded that if economic incentives are removed so that this succession of ownership becomes inadvisable, customers are denied those benefits. Further, if companies are prevented from retaining the gain on sale, a substantial incentive is removed for those companies to buy systems from developers or small, undercapitalized operators in the first instance. The Commission noted that the Public Staff's primary support for its position was that the Commission previously had decided to split the gain and that CWS had presented no new evidence to distinguish the facts in those cases from the prior cases. The Commission ruled that its prior orders constituted inadequate precedent upon which the Public Staff could rely so heavily. The Commission also articulated the public interest principles it would follow in addressing future gain on sale requests.

6. The Public Staff has appealed the Commission's order in the Farmwood B and Chesney Glen dockets to the North Carolina Court of Appeals.

7. CWS next filed a request with the Commission in Docket No W-354, Sub 140 to relinquish its certificate to serve the Mallard Crossing Subdivision in Mecklenburg County and to permit CWS to sell that system to CMUD. Under its contract with the City of Charlotte, CWS would experience a capital gain on the sale. CWS requested on December 29, 1994, a determination from the Commission of the regulatory treatment the Commission would authorize for that gain. CWS made reference to the Commission's holding in Docket Nos. W-354, Subs 133 and 134 (the 1994 Farmwood B and Chesney Glen cases) and asked the Commission to apply the rationale it had articulated in those cases of permitting the stockholder to retain 100 percent of the gain, absent overwhelming and compelling evidence to the contrary. On January 23, 1995, the Public Staff recommended that the transfer be approved but that a ruling on the gain on sale issue should be deferred until CWS's first rate case after a final decision in the cases on appeal. CWS asked that the Commission refuse to defer indefinitely the gain on sale decision. By order of February 3, 1995, the Commission denied the Public Staff's motion to defer and granted CWS's request that 100 percent of the gain on sale be given to the Company's shareholder. The

Commission recited its conclusion from its order in the Farmwood B and the Chesney Glen cases that the public interest favored granting the stockholder 100 percent of the gain on sale. On February 17, 1995, the Public Staff again requested the Commission to defer its decision on the gain on sale issue. By order issued March 14, 1995, the Commission denied the Public Staff's request that the matter be held in abeyance. On March 15, 1995, the Public Staff filed a motion for an evidentiary hearing. On April 12, 1995, the Commission denied the Public Staff's request for a hearing. The Commission held the Public Staff's motion to be untimely. The Commission ruled that the time for the Public Staff to ask for a hearing or to challenge the standard was at the time of the Staff Conference in January, not in March after the Commission already had acted on the various requests before it. The Commission ruled that the Public Staff waived its right to request a hearing by remaining silent on the issue on January 23, 1995. The Public Staff has appealed the Commission's decision in the Mallard Crossing docket to the North Carolina Court of Appeals.

8. The facts with respect to CWS's Farmwood Section 18, Hidden Hills and Habersham applications are not materially different from those with respect to the Company's Farmwood B application.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

These cases now before the Commission in these two dockets mark the latest in a line of cases addressed by the Commission since 1990 in which the issue has been the regulatory treatment of the gain or loss on sale upon the partial liquidation of a water utility. The Commission's position has evolved over the years, and the current position is that expressed by the Commission's order of September 7, 1994, in CWS's Farmwood B and Chesney Glen cases in Docket Nos. W-354, Subs 133 and 134. In that order, the Commission determined that the shareholder should retain 100 percent of the gain. The Commission has followed the decision of September 7, 1994, in the gain on sale cases it has decided since that date.

The Public Staff has disagreed with the Commission's decisions to permit the shareholder to retain the entire gain on sale and has appealed each such decision to the North Carolina Court of Appeals. In these dockets, the Public Staff has requested a hearing in order to present evidence to convince the Commission to alter its position and permit remaining ratepayers to retain at least a portion of the gain. The hearing conducted in these dockets was scheduled to permit the Public Staff to present such evidence.

Based upon procedural orders issued early in these cases, the burden of presenting a prima facie case was placed upon CWS. CWS witness Daniel presented the same testimony in this case that he presented in Farmwood B. Mr. Daniel testified that the Commission should follow its most current precedent on this issue. As CWS's witness presented the same testimony the Commission found satisfactory in the past and as Mr. Daniel merely requested the Commission to adhere to the position it had annunciated in the past, the Commission finds that CWS has met its prima facie burden.

The Public Staff testimony consists primarily of a reiteration of arguments the Public Staff has advocated in the past on the gain on sale issue. The Public Staff recites the history of the gain on sale issue within the water industry since 1990, cites cases addressing the gain on sale issue in the electric, telephone and gas industries in North Carolina, lists considerations relied upon by state regulatory commissions

addressing these issues, and sets forth conclusions the Public Staff advances through which it takes issue with the reasoning articulated by the Commission in past orders establishing the current gain on sale policy.

On cross-examination, Public Staff witness Fernald was asked to identify the parts of the Public Staff's case that are new in this proceeding. Witness Fernald responded that she had presented the CMUD line extension policy, information from the Riverbend negotiations, and the National Regulatory Research Institute (NRRI) survey results to show that in many other jurisdictions a policy is followed permitting the ratepayers to keep or share the gain on sale. The Public Staff presents the CMUD line extension policy to argue that the price CMUD is willing to pay to acquire a system is determined based on the cost to parallel the system, and the Commission's gain on sale policy will have no impact on those factors.

The Commission determines that the Public Staff has failed to present evidence of sufficient probative value to persuade the Commission to alter its current position on the gain on sale issue. The NRRI study data are insufficient. At most, the study shows that some jurisdictions have adopted positions different from this Commission's. However, this Commission's position has developed to address the unique factors existing in this State with respect to public interest issues applicable to the water industry here. This Commission has long been concerned over the "troubled water system problem." We have sought, with a significant degree of success, to facilitate the orderly transfer from developers to investor-owned utilities and from investor-owned utilities to municipalities and governmental entities.

Ms. Fernald could cite nothing from the NRRI study as a basis relied upon by another state in rendering decisions in this area that has not been raised or argued in the past before us.

The NRRI study classifies states on the basis of the most recent decisions in the state on the gain on sale issue prior to the time the study was conducted. The study classifies North Carolina as a "split the gain" state. The NRRI classification for North Carolina is incorrect in several respects. The Commission's past decisions to split the gain on sale applied only for water utilities in a partial liquidation context. The Commission has issued a number of decisions on gain on sale issues in electric, gas and telephone cases in which the ratepayers retained all the gain. These cases are still valid precedent in those contexts, and to the extent NRRI classifies North Carolina as a split the gain state, the classification is incomplete and misleading.

Also, after the study was completed, the Commission departed from the split the gain decision and adopted its current position of permitting the stockholder to keep 100 percent of the gain. For North Carolina, the NRRI study is outdated. The NRRI study has serious deficiencies with respect to its classification of North Carolina. As these are deficiencies we can readily observe, we are reluctant to rely on conclusions that might be drawn from the study concerning the policy in effect in other states.

Ms. Fernald's discussion of the CMUD line extension policy constitutes insufficient evidence to persuade the Commission to depart from its current position and public interest determination. The CMUD line extension policy has been in effect since prior to 1990 when the Beatties Ford case was before the Commission. In fact, Earl Lineberger, CMUD's chief engineer, testified in the Beatties Ford case. The CMUD line extension policy has influenced CMUD's actions for a number of years, and the role it plays in the acquisitions at issue in these dockets is no different from the role it has played in past cases.

The Commission has reviewed the information submitted by the Public Staff from CWS's negotiations with the Town of Riverbend as confidential exhibits. Nothing contained in these exhibits justifies alteration of the Commission's position as articulated in the Farmwood B case. Indeed, part of the correspondence indicates that negotiations between the parties were postponed until the Commission issued its order of September 7, 1994, in Farmwood permitting the stockholder to retain 100 percent of the gain on sale.

The Commission concludes that the Public Staff has presented no new evidence in this case to persuade the Commission to depart from its current position that it is in the public interest to allow water and/or sewer utility shareholders to retain 100 percent of the gain on sale. The Commission likewise rejects the Public Staff's arguments that suggest that the Commission's stated reasons for its current position are incorrect. The Public Staff argues that the Commission's gain on sale position has no influence on the decision of entities like CMUD and CWS to establish the price at which water systems are sold. The Public Staff argues that the market forces establish price, each entity seeking to maximize its economic position, irrespective of the Commissions's position.

The evidence proves the invalidity of the Public Staff argument. In Beatties Ford, a higher purchase price was negotiated after the Commission determined to split the gain on sale. In Farmwood B, the purchase price would have increased by $58,000 if the Commission had required a splitting of the gain. In the Riverbend matter, the sale to New Bern fell through after the Commission announced its gain splitting decision. After the Commission in 1994 determined that shareholders should retain all of the gain, negotiations have proceeded between CWS and the Town of Riverbend for the sale of the Riverbend system.

In addition to this evidence, the Public Staff's argument has serious logical inconsistencies. When a municipality approaches a utility like CWS seeking to acquire a water system, the utility retains the option of refusing to sell. Obviously, the Commission's position on whether the utility will retain all of the profit will have a dramatic impact on the utility's decision on whether it will sell. Market price is defined as the price for which a willing seller will sell and a willing buyer will buy. If the Commission's position on gain on sale converts a willing seller into an unwilling one, market price drops from "X" to "O". The Public Staff's assertion that the Commission's position will not influence market price is illogical.

While a municipality's ability to parallel permits it to exert considerable pressures on the utility to sell on terms favorable to the municipality, there are serious limitations on this pressure. In many occasions, the municipality's ability to parallel may be nonexistent or severely limited. The Public Staff asserts that New Bern had no authority to parallel CWS in Riverbend. Property owners may have entered into restrictive covenants obligating them to take service exclusively from the utility. Paralleling results in the damaging of streets and the disruption of neighborhoods. Lawns and property must be dug up. Water users must incur costs to transfer service. Municipalities assess substantial connection fees when water users switch from the utility to the municipality. The magnitude of these fees may prohibit the water user from switching even if to switch would reduce the monthly usage charge. CWS witness Daniel testified that the City of Winston-Salem had experienced this problem when it paralleled one of CWS's systems. The Commission determines that the factors influencing the decision of parties to sell water systems and affecting price are far more complex and sophisticated than the Public Staff's analysis suggests. We are not persuaded that our determination with respect to gain on sale plays no role in this context.

The Public Staff has addressed issues such as whether gain on sale should be allocated depending on whether assets sold had been included in rate base, whether ratepayers had protected investors from the risk of owning property, and past Commission precedent on gain on sale issues. Also, the Public Staff has addressed certain public interest considerations. The Public Staff acknowledges that these issues are those that have been presented before by the parties and that have been addressed by the Commission. The Commission was aware of the Public Staff positions on these issues when it issued its decision in the Farmwood B case. As the Public Staff presents nothing new in advancing these issues again, the Commission declines to alter its ruling as espoused in Farmwood B as a result of the Public Staff's arguments. Ms. Fernald admits, for example, that "the risks in this case are the same risks that the Commission considered in Docket No. W-354, Subs 82, 86, 87 and 88, and Docket No. W-274, Subs 71 and 72, when it determined that the risks are shared equally between the stockholders and the ratepayers." The Commission finds that no evidence, much less overwhelming and compelling evidence, has been presented in this proceeding to warrant the departure from the Commission's current gain on sale position and therefore concludes that the Company should retain 100 percent of the gain on sale. In so concluding, the Commission believes that its current position better serves and promotes the public interest, should be followed in these dockets.

IT IS THEREFORE, ORDERED as follows:

1. That 100 percent of the gain on the sale of the public water utility systems owned by CWS which serve the Farmwood 18, Hidden Hills and Habersham Subdivisions in Mecklenburg County, North Carolina, shall be assigned to CWS's stockholder.

2. That CWS shall file reports with the Commission and Public Staff concerning the calculations of the gain and the workpapers supporting the calculations. Any party disagreeing with the calculations of the gain may contest the amount of the gain in CWS's next general rate case.

3. That CWS shall file journal entries related to the gain including the removal of the plant and associated accounts from CWS's books and records consistent with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of March 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-354, SUB 148
DOCKET NO. W-354, SUB 149
DOCKET NO. W-354, SUB 150
DOCKET NO. W-354, SUB 151
DOCKET NO. W-354, SUB 155
DOCKET NO. W-354, SUB 156
DOCKET NO. W-354, SUB 157

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. W-354, Sub 148 In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Hampton Green, Courtney and Courtney II Subdivisions in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation) Docket No. W-354, Sub 149 In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Idlewood Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation) Docket No. W-354, Sub 150 In the Matter of Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Wood Hollow & Brandywine at Matthews Subdivisions in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation) Docket No. W-354, Sub 151 In the Matter of	ORDER DETERMINING REGULATORY TREATMENT OF GAIN ON SALE OF FACILITIES

Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Providence West Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation)

Docket No. W-354, Sub 155
In the Matter of
Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Southwoods Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation)

Docket No. W-354, Sub 156
In the Matter of
Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Saddlebrook Subdivision in Gaston County to the City of Charlotte (Owner Exempt From Regulation)

Docket No. W-354, Sub 157
In the Matter of
Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Suburban Woods Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation)

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on May 29, 1996, at 9:30 a.m.

BEFORE: Commissioner Jo Anne Sanford, Presiding; Chairman Hugh A. Wells, and Commissioners Charles H. Hughes, Allyson K. Duncan, Ralph A. Hunt, and Judy Hunt.

APPEARANCES:

For Carolina Water Service, Inc. of North Carolina:

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520.

BY THE COMMISSION: On August 25, 1995, in Docket No. W-354, Sub 148, Carolina Water Service, Inc. of North Carolina ("CWS"), filed an application with the Commission for authority to transfer the water utility systems serving the Hampton Green, Courtney and Courtney II Subdivisions in Mecklenburg County to the Charlotte Mecklenburg Utility Department ("CMUD"), which is exempt from the Commission's regulation. CWS currently serves 227 customers in these subdivisions. The transfer will result in a $20.59 decrease in the average monthly bill (based on usage of 6,000 gallons per month). CMUD will not be charging any tap-on or other fees to the existing customers.

Likewise on August 25, 1995, in Docket No. W-354, Sub 149, CWS filed an application with the Commission for authority to transfer the water system in the Idlewood Subdivision in Mecklenburg County to CMUD. This system serves 92 water customers. On August 25, 1995, in Docket No. W-354, Sub 150, CWS filed an application with the Commission for authority to transfer the water system in the Wood Hollow and Brandywine at Matthews Subdivisions in Mecklenburg County to CMUD. These systems serve 197 water customers. On August 25, 1995, in Docket No. W-354, Sub 151, CWS filed an application with the Commission for authority to transfer the water system in the Providence West Subdivision in Mecklenburg County to CMUD. This system serves 99 customers.

By Orders issued October 3, 1995, the Commission authorized CWS to transfer the water utility systems serving Hampton Green, Courtney and Courtney II, Idlewood, Brandywine, Forest Ridge and Providence West to CMUD. In its Orders, the Commission deferred any ruling on the regulatory treatment of the gain on sale until the North Carolina Court of Appeals rendered its decision on the Public Staff's appeals in Docket Nos. W-354, Subs 133, 134 and 140, cases in which the Commission ruled that the shareholder should retain 100 percent of the gain on sale.

On December 12, 1995, CWS asked the Commission to reconsider its determination of October 3, 1995 that it should defer its ruling on the regulatory treatment of the gain on sale until after the Court of Appeals ruled on the Public Staff's appeals.

By Order dated February 12, 1996, the Commission granted the Company's motion and scheduled a hearing for May 29, 1996.

On January 16, 1996, in Docket No. W-354, Sub 155, CWS filed an application with the Commission for authority to transfer the water system in the Southwoods Subdivision in Mecklenburg County to CMUD. This system serves 153 water customers. Also, on January 16, 1996, in Docket No. W-354, Sub 156, CWS filed an application with the Commission for authority to transfer the water system in the Saddlebrook Subdivision in Gaston County to CMUD. This system serves 55 water customers. On January 16, 1996, in Docket No. W-354, Sub 157, CWS filed an application with the Commission for authority to transfer the water system in the Suburban Woods Subdivision in Mecklenburg County to CMUD. This system serves 94 water customers.

By Order issued on March 14, 1996, in Docket Nos. W-354, Subs 155, 156 and 157, the Commission approved the transfer of the Southwoods, Saddlebrook and Suburban Woods systems to CMUD. The Commission scheduled the hearing on the gain on sale issue for May 29, 1996.

On March 8, 1996, CWS filed the direct testimony of Carl Daniel, Vice President of CWS. On April 12, 1996, the Public Staff filed the direct testimony of Katherine Fernald, Supervisor of the Water Section of the Accounting Division of the Public Staff. On April 26, 1996, CWS filed the rebuttal testimony of Mr. Daniel. On May 10, 1996, the Public Staff filed the rebuttal testimony of Ms. Fernald.

On May 10, 1996, the Public Staff filed a motion to strike certain of Mr. Daniel's rebuttal testimony. On May 17, 1996, CWS filed its response to the motion to strike. By Order issued May 24, 1996, the Commission granted the motion in part and denied it in part.

Based on the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. In 1990, CWS was confronted by efforts of three municipal or governmental entities to acquire three of its systems. The City of Charlotte, through CMUD, sought to acquire CWS's Beatties Ford system in Mecklenburg County. The Eastern Wayne Sanitary District sought to acquire CWS's Genoa system in Wayne County, and the Town of New Bern sought to acquire CWS's River Bend system in Craven County. Order Determining Regulatory Treatment of Gain on Sale of Facilities October 16, 1990, Docket Nos. W-354, Subs 82, 86, 87 and 88. CWS entered into tentative contracts to sell the three systems and requested the Commission to rule on the issue of whether the Company's stockholder should be permitted to retain 100 percent of the gain on sale in Docket Nos. W-354, Subs 82, 86, 87, and 88. Heater Utilities Inc., the Carolinas' Chapter of the National Association of Water Companies, and the City of Charlotte intervened in the Commission proceeding to support the position of CWS. The Public Staff and the Attorney General advocated giving 100 percent of the gain to the Company's ratepayers. After an evidentiary hearing, the Commission held in Docket Nos. W-354, Subs 82, 86, 87, and 88 that the gain should be split 50/50 between the Company's ratepayers and its shareholder. The Commission reasoned that both the shareholder and the ratepayers bore part of the risk in maintaining the systems and both should share equally in the profits upon disposition through sale.

2. As CWS's contracts for the Beatties Ford, Genoa, and River Bend systems were tentative and conditioned on the Commission's ruling, each of the three contracts was renegotiated in light of the

Commission's actions. CWS sought to obtain a higher price for the systems since the Commission's ruling denied the Company half of the profit for which it had initially bargained. CMUD paid an increased price for Beatties Ford. While the Eastern Wayne Sanitary District determined that it would rather parallel the Genoa system than pay more than what it had initially bargained to pay, it ultimately paid less than the tentative contract price. New Bern was unwilling to pay an increased price, and the sale of the River Bend system to New Bern did not take place.

3. In 1992, in the aftermath of the CWS gain on sale cases, Heater Utilities, Inc., sold the system in the Pinewood Subdivision to the City of Goldsboro and sought to discontinue service to the Country Acres Subdivision in Wayne County. In Docket Nos. W-274, Subs 71 and 72, Heater asked the Commission to permit it to retain 100 percent of the gain on sale. Order Determining Regulatory Treatment of Gain on Sale and Loss on Abandonment of Facilities, May 21, 1993. 83rd Report N.C. Utilities Commission Orders and Decisions at 653 (1993). The Commission affirmed the rationale it had relied upon in the 1990 CWS cases and ruled that the gain should be shared 50/50 between shareholders and ratepayers. The Commission ruled that the evidence was not appreciably different to warrant a different result. However, four members of the Commission filed concurring or dissenting opinions wherein they expressed concerns that past decisions may have discouraged or certainly not encouraged the sale of systems to municipal operators to the detriment of the public interest.

4. In 1993 and 1994, CWS again faced requests that it sell systems to a municipality. CMUD desired to acquire the Farmwood B and Chesney Glen systems in Mecklenburg County. In light of the differences of opinion expressed in the Heater Sub 71 and Sub 72 dockets, CWS again requested the Commission to address the gain on sale issue as a result of transfer applications filed in Docket Nos. W-354, Subs 133 and 134. At the hearing in the Farmwood B and Chesney Glen matters, CWS advocated that sales to municipalities should neither be discouraged or encouraged and that regulatory treatment denying the Company's shareholder the opportunity to retain the gain, including gain-splitting, discouraged sales. The Public Staff argued that the Commission should adhere to the ruling from the earlier cases and split the gain equally between the Company's shareholder and its remaining ratepayers.

5. The Commission in its September 7, 1994 Order in Docket Nos. W-354, Subs 133 and 134 held that CWS's shareholder should retain 100 percent of the gain. The Commission determined that "[w]ith the benefit of hindsight, the Commission can now see that the policy to split the gains or losses on sales of water and/or sewer systems has had a negative impact on the public good." The Commission cited the harmful consequences of its decision with respect to the Beatties Ford, Genoa, and River Bend cases. The Commission also cited as beneficial the progression of ownership first from developers to private utilities and second to municipalities and concluded that if economic incentives are removed so that this succession of ownership becomes inadvisable, customers are denied those benefits. Further, if companies are prevented from retaining the gain on sale, a substantial incentive is removed for those companies to buy systems from developers or small, undercapitalized operators in the first instance. The Commission noted that the Public Staff's primary support for its position was that the Commission previously had decided to split the gain and that CWS had presented no new evidence to distinguish the facts in those cases from the prior cases. The Commission ruled that its prior Orders constituted inadequate precedent upon which the Public Staff could rely so heavily. The Commission also articulated the public interest principles it would follow in addressing future gain on sale requests.

6. The Public Staff appealed the Commission's Order in the Farmwood B and Chesney Glen dockets to the North Carolina Court of Appeals. On July 2, 1996, the Court of Appeals affirmed the Commission's Order. In so ruling, the Court of Appeals found that the findings and conclusions set forth by the Commission supported the decision to allow CWS to retain 100 percent of the gain on sale in the Farmwood B and Chesney Glen dockets and that the record before the Commission contained substantial, material, and competent evidence to support the Commission's findings. The Court of Appeals also disagreed with the Public Staff's contention that the Commission's Order was arbitrary and capricious. The Court held that "...the Commission gave fair and careful consideration to the issues before it, and that the Commission's final decision was the product of reasoning and the exercise of its judgment." The Court of Appeals declined to consider and decide the due process issue raised by the Public Staff on the theory that the issue was not then ripe for determination. Utilities Commission v. Public Staff, __ N.C.App. __ (1996).

7. CWS next filed a request with the Commission in Docket No W-354, Sub 140 to relinquish its certificate to serve the Mallard Crossing Subdivision in Mecklenburg County and to permit CWS to sell that system to CMUD. Under its contract with the City of Charlotte, CWS would experience a capital gain on the sale. CWS requested on December 29, 1994, a determination from the Commission of the regulatory treatment the Commission would authorize for that gain. CWS made reference to the Commission's holding in Docket Nos. W-354, Subs 133 and 134 (the 1994 Farmwood B and Chesney Glen cases) and asked the Commission to apply the rationale it had articulated in those cases of permitting the stockholder to retain 100 percent of the gain, absent overwhelming and compelling evidence to the contrary. On January 23, 1995, the Public Staff recommended that the transfer be approved but that a ruling on the gain on sale issue should be deferred until CWS's first rate case after a final decision in the cases on appeal. CWS asked that the Commission refuse to defer indefinitely the gain on sale decision. By Order of February 3, 1995, the Commission denied the Public Staff's motion to defer and granted CWS's request that 100 percent of the gain on sale be given to the Company's shareholder. The Commission recited its conclusion from its Order in the Farmwood B and the Chesney Glen cases that the public interest favored granting the stockholder 100 percent of the gain on sale. On February 17, 1995, the Public Staff again requested the Commission to defer its decision on the gain on sale issue. By Order issued March 14, 1995, the Commission denied the Public Staff's request that the matter be held in abeyance. On March 15, 1995, the Public Staff filed a motion for an evidentiary hearing. On April 12, 1995, the Commission denied the Public Staff's request for a hearing. The Commission held the Public Staff's motion to be untimely. The Commission ruled that the time for the Public Staff to ask for a hearing or to challenge the standard was at the time of the Staff Conference in January, not in March after the Commission already had acted on the various requests before it. The Commission ruled that the Public Staff waived its right to request a hearing by remaining silent on the issue on January 23, 1995. The Public Staff appealed the Commission's decision in the Mallard Crossing docket to the North Carolina Court of Appeals.

8. The next two cases before the Commission involving the gain on sale issue were those involving Hidden Hills and Farmwood 18 in Docket No. W-354, Sub 143 and Habersham in Docket No. W-354, Sub 145. By Order issued March 29, 1996, the Commission found that no evidence, much less overwhelming and compelling evidence, had been presented in those proceedings to warrant the departure from the Commission's current gain on sale position and, therefore, concluded that the Company should retain 100 percent of the gain on sale. In so concluding, the Commission stated that its current position

better serves and promotes the public interest and should be followed in those dockets. The Public Staff appealed the Commission's Order in the Hidden Hills, Farmwood 18, and Habersham dockets to the North Carolina Court of Appeals.

9. On March 18, 1996, the Commission issued its Order in Docket No. W-354, Sub 154. In that Order, the Commission approved the transfer of CWS's River Bend system and reiterated its policy to allocate 100 percent of any resulting gain to CWS's shareholder. The Public Staff did not oppose the River Bend treatment of the gain on that sale.

10. The facts with respect to CWS's Hampton Green, Courtney, Courtney II, Idlewood, Wood Hollow and Brandywine at Matthews, Providence West, Southwoods, Saddlebrook and Suburban Woods systems are not materially different from those with respect to the Company's Farmwood B, Chesney Glen, Mallard Crossing, Hidden Hills, Farmwood 18, Habersham, and River Bend applications.

11. It is appropriate to include the plant modification fees collected from customers of the systems transferred to CMUD in the net original cost rate base in determining the gain for each system.

12. It is appropriate to include the flow back of taxes paid through gross-up of contributions-in-aid-of-construction (CIAC) related to the systems as cost free capital in future rate cases.

DISCUSSION OF EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDINGS OF FACT NOS. 1 - 10

The cases now before the Commission in these seven dockets mark the latest in a line of cases addressed by the Commission since 1990 in which the issue has been the regulatory treatment of the gain or loss on sale upon the partial liquidation of a water utility. The Commission's position has evolved over the years, and the current position is that expressed by the Commission's Order of September 7, 1994, in CWS's Farmwood B and Chesney Glen cases in Docket Nos. W-354, Subs 133 and 134. In that Order, which was recently affirmed on appeal by the North Carolina Court of Appeals, the Commission determined that CWS's shareholder should retain 100 percent of the gain. The Commission has consistently followed the decision of September 7, 1994, in the gain on sale cases it has decided since that date. CWS has conducted its negotiations using this policy as a guide. Utilities have been transferred to municipal agencies in an orderly fashion.

The Public Staff has disagreed with the Commission's decisions to permit the shareholder to retain the gain on sale and has appealed each such decision to the North Carolina Court of Appeals. The Public Staff was unsuccessful in its first appeal. The North Carolina Court of Appeals affirmed the Commission's decision to allow CWS to retain 100 percent of the gain realized as a result of the sales of the Farmwood B and Chesney Glen water systems. In these dockets, the Commission scheduled a hearing in order to permit the Public Staff to present evidence to convince the Commission to alter its position and permit remaining ratepayers to retain at least a portion of the gain.

Based upon procedural Orders issued early in these cases, the burden of presenting a prima facie case was placed upon CWS. CWS witness Daniel presented the same testimony in this case that he presented in Farmwood B. Mr. Daniel testified that the Commission should follow its most current precedent on this

issue. As CWS's witness presented the same testimony the Commission found satisfactory in the past and as Mr. Daniel merely requested the Commission to adhere to the policy it had annunciated in the past, the Commission finds that CWS has met its prima facie burden.

The Public Staff, through witness Fernald, listed three reasons for its belief that the Commission should depart from its position of assigning 100 percent of the gain to the utility shareholder(s). First, Ms. Fernald testified that CMUD would have extended its lines in accordance with its policies and either purchased or paralleled the lines of CWS irrespective of the Commission's position, and, consequently, the Commission's decision to give the shareholder 100 percent of the gain does not further the Commission's stated goal of encouraging the transfer of utility systems, particularly to municipalities. Ms. Fernald testified that in these cases CMUD would have taken over the service regardless of the rate-making position. Second, according to the Public Staff, CWS's contracts with CMUD are not contingent on the treatment of the gain or are silent on the point. Third, according to the Public Staff, CWS's loss of customers to CMUD will reduce the economies of scale enjoyed by CWS's remaining ratepayers who have shared the risk associated with owning the systems that are being transferred. Sharing the gain equally will mitigate this impact.

After careful review of the evidence presented in these dockets, the Commission concludes that the Public Staff has failed to present any new evidence of sufficient probative value to persuade the Commission to alter its current position on the gain on sale issue. Accordingly, the position taken by the Public Staff must be rejected. This result is entirely consistent with the recent decision rendered by the North Carolina Court of Appeals affirming the Commission in conjunction with the CWS Sub 133 and Sub 134 dockets.

The Commission has articulated a position of encouraging the orderly transfer of water systems from developers and small owners to reputable water utilities like CWS and from reputable water utilities to municipalities and other governmental owners. The Commission has endeavored to establish a generic policy that could be relied upon by affected parties in the State of North Carolina so that they could plan their business affairs accordingly.

There is no evidence that CMUD would have provided service irrespective of its purchase of CWS's mains. Even if the Public Staff is correct that CMUD would have provided service to the consumers in accordance to its line extension policy irrespective of the Commission's position, the Public Staff's logic is deficient. Should CMUD determine to provide service to the consumers by paralleling CWS's facilities, thus rendering such facilities valueless, the Commission's goal of encouraging the orderly transfer of water systems would be frustrated. The Commission's position is to encourage the orderly transfer of systems, not to encourage municipal service per se. Obviously, a Commission position encouraging CMUD to parallel the systems of regulated utilities, thereby resulting in stranded plant and economic waste, would serve as a disincentive to reputable water utilities to acquire systems in the State.

In this regard, the Public Staff fails to recognize that a position that discourages sales by utilities like CWS also discourages acquisitions by utilities like CWS. If CWS will be deprived of the gain on sale when municipal service becomes available, this position will serve as a disincentive to acquire systems. Such a position therefore discourages acquisition of troubled systems in North Carolina by reputable utilities.

The Public Staff misses the point when it argues that the systems at issue in these dockets are not troubled under CWS's operation and ownership. The Commission's position of encouraging the orderly transfer of water systems presumes that operations by reputable utilities like CWS will be superior to operations by small, undercapitalized utilities or developers and that, potentially, operation by municipalities will be superior to operation by reputable utilities.

Furthermore, even if the systems involved in this case were never troubled ones, the Commission's position should be a uniform one. Acquisition of troubled systems will not be encouraged if reputable utilities must guess what the Commission's gain on sale position will be when the utility ultimately has the opportunity to sell the system.

The Commission is unconcerned that CWS describes the Commission's position through use of different terminology than the Commission. Mr. Daniel of CWS describes the position where the shareholder retains 100 percent of the gain as neither encouraging nor discouraging transfers. The Commission refers to the position as encouraging the orderly transfer. The Public Staff refers to the same position as providing a windfall to the shareholder. Both CWS and the Commission agree that a position where the gain is split between the shareholder and ratepayers discourages the orderly transfer of systems.

The Public Staff notes that the CMUD line extension policy changed since 1990 when the Beatties Ford case was before the Commission so that now CMUD pays for extensions to consumers who are within 1000 feet of an existing main. The Commission concludes that such fact should have no impact upon this decision. The CMUD line extension policy has not changed since the Commission annunciated its current position in the Farmwood_B case. As the Public Staff has failed to present credible and convincing evidence of any new developments transpiring since the Farmwood B and Chesney Glen decision, which was affirmed on appeal, the Commission sees no reason to change its existing position.

Also, as the Public Staff acknowledges, should CMUD decide to parallel, this action will necessitate digging up streets and disrupting neighborhoods. In addition, as Ms. Fernald acknowledged, should CMUD decide to parallel, consumers would be forced to pay CMUD's connection fees. These fees are avoided where CWS sells its systems to CMUD. All of these factors support a position removing disincentives for sale of systems from utilities to municipalities.

The Commission notes that although the Public Staff asserts that the Commission's position on gain on sale has no influence on whether CMUD will acquire the systems at issue in this case, the Public Staff admits that it made similar arguments earlier with respect to the transfer of the River Bend system. The Public Staff now concedes, however, that the Commission's position on gain on sale was indeed a motivating factor behind CWS's decisions to sell the River Bend system to the Town of River Bend. As Ms. Fernald testified, the Town of River Bend, like CMUD, has the authority to parallel CWS's system. Just as in the case of River Bend, the Commission's gain on sale position influenced both CWS's decision to sell the systems at issue in these cases to CMUD as well as the price at which the Company is willing to sell.

The Commission is not persuaded that the Public Staff's second reason warrants a change in current Commission position. The contracts for the transfer of systems at issue in this case were executed after the Commission expressed its current position in the Farmwood B and Chesney Glen cases. When the

Commission ruled that its position was to permit the shareholder to retain 100 percent of the gain on sale, no reason thereafter existed for CWS to seek to obtain contract language making the contracts contingent on the Commission's gain on sale treatment. The absence of the contingency clauses, such as those found in earlier CWS contracts, supports the conclusion that the Commission's current position is in the public interest.

As its third reason in support of its position, the Public Staff indicates that the Company has common costs, such as rent and accounting fees, which it will continue to incur regardless of the loss of customers in this case. Due to the loss of customers, argues the Public Staff, the remaining ratepayers will have to pay a higher amount per customer of these costs, all other things being equal.

The Commission concludes that these factors relied upon by the Public Staff fail to support a change in the Commission's current position. The current Commission position applies irrespective of whether the system sold is relatively costly or inexpensive to operate. When costly systems are sold, costs on a per customer basis may actually decline.

Furthermore, to the extent there are losses of economies of scale, such losses are the inevitable consequence of the process whereby there is an orderly transfer of systems to a municipality and do not justify awarding a portion of the gain on sale to remaining ratepayers. The Public Staff would have the Commission create barriers to the orderly transfer of system that deprive some customers of the benefits to be had by municipal ownership (i.e., lower rates). Rather than create barriers to sale, the Commission concludes that it is in the public interest to create an environment to encourage companies like CWS to grow in North Carolina.

The issues in these dockets are those that have been presented before by the parties and that have been addressed by the Commission and recently affirmed by the North Carolina Court of Appeals. The Commission was aware of the Public Staff positions on these issues when it issued its decision in the Farmwood B and Chesney Glen cases. The Court of Appeals found no error in those cases. As the Public Staff presents nothing new in advancing these issues again, the Commission declines to alter its ruling as espoused in the Farmwood B and Chesney Glen dockets as a result of the Public Staff's arguments. The Commission finds that no new evidence, much less overwhelming and compelling evidence, has been presented in this proceeding to warrant the departure from the Commission's current gain on sale position and therefore concludes that the Company should retain 100 percent of the gain on sale. In so concluding, the Commission believes that the current position better serves and promotes the public interest and should be followed in these dockets.

DISCUSSION OF EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDING OF FACT NO. 11

The Public Staff has made recommendations for the first time in these cases concerning the calculation of the gain on sale. The Public Staff argues that it would be inappropriate to include the plant modification fees collected from customers of the systems transferred to CMUD in the specific net original cost rate base in determining the gain for each system. The Public Staff argues that these fees should remain on CWS's books and should not be removed when the systems are sold.

The Public Staff argues that CWS has a uniform plant modification fee. These uniform plant modification fees are not specific to any system but are for CWS's plant as a whole.

The Commission must reject this Public Staff position. It is true that the amount of the plant modification fee is not established with reference to the costs of any specific system but rather based on average costs throughout the company. The fact that the amount of the fee is not system specific, however, does not mean that the cumulative total of the fees collected from customers served by systems that are sold should be disregarded in calculating the gain on sale. This logic would also dictate that any accumulated depreciation for these sold systems remain on CWS's books for the benefit of CWS's remaining customers. Obviously, this would be inappropriate. Ms. Fernald agreed that the precise amount for plant modification fees collected with respect to each system sold to CMUD in this case could be calculated and identified.

The plant modification fees are fees collected from developers or ratepayers to enable the Company to expand facilities without increasing usage fees. Plant modification fees serve as a source of cost free capital. While the amount of the fee may not vary from one system to the next, the fees are deemed to benefit the developer or ratepayer who paid them. CWS accounts for these fees on a system-specific basis. After the systems at issue in this case are sold to CMUD, the ratepayers who paid the plant modification fees or on whose behalf the fees were paid by developers will not longer be customers of CWS. It follows that the plant modification fees paid on behalf of these customers should be attributed to the systems sold. The plant modification fees should be recognized in calculating the gain on sale.

CWS's commodity rates are also uniform rates, not system specific ones. Depreciation and the return on rate base components of the commodity rates are based on system average rate base, not on the basis of the portion of the rate base that serves each individual consumer. Even though the fee established to recover plant related costs is uniform, not system specific, both parties agree that the actual costs of the system sold should be used to calculate the gain on sale, not some average plant amount. By the same logic, the actual amount of the plant modification fees collected with respect to the systems sold should be utilized to calculate the gain on sale. In summary, the Commission rules that the net investment in the system should be calculated using the plant, accumulated depreciation and CIAC for the system sold. It would be illogical to leave the CIAC on CWS's books.

DISCUSSION OF EVIDENCE AND CONCLUSIONS IN SUPPORT OF FINDING OF FACT NO. 12

The Commission determines that it is appropriate to include the flow back of taxes paid through gross-up of CIAC related to these systems as cost free capital in future rate cases. Ms. Fernald recommended this treatment in her testimony. Mr. Daniel did not object to this treatment. Based on these positions, the Commission adopts this recommendation.

IT IS, THEREFORE, ORDERED, as follows:

1. That 100 percent of the gain on sale of the public water utility systems owned by CWS which serve the Hampton Green, Courtney, Courtney II, Idlewood, Wood Hollow and Brandywine at Matthews,

Providence West, Southwoods, Saddlebrook, and Suburban Woods Subdivisions in Mecklenburg and Gaston Counties, North Carolina, shall be assigned to CWS's stockholder.

2. That CWS shall file reports with the Commission and the Public Staff concerning the calculations of the gain and the work papers supporting the calculations. Any party disagreeing with the calculations of the gain may contest the amount of the gain in CWS's next general rate case.

3. That CWS shall file journal entries related to the gain including the removal of the plant and associated accounts from CWS's books and records consistent with the provisions of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of August, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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DOCKET NO. W-354, SUB 149
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DOCKET NO. W-354, SUB 157

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Docket No. W-354, Sub 148	)	
In the Matter of	)	
Application by Carolina Water Service,	)	
Inc. of North Carolina, 2335	)	
Sanders Road, Northbrook, Illinois	)	
60062, for Authority to Transfer the	)	
Assets Serving the Hampton Green,	)	
Courtney and Courtney II	)	
Subdivisions in Mecklenburg County	)	
to the City of Charlotte (Owner	)	
Exempt From Regulation)	)	
	)	
Docket No. W-354, Sub 149	)	ORDER ON MOTION
In the Matter of	)	FOR RECONSIDERATION
Application by Carolina Water Service,	)	
Inc. of North Carolina, 2335	)	
Sanders Road, Northbrook, Illinois	)	
60062, for Authority to Transfer the	)	
Assets Serving the Idlewood Subdivision	)	

in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation)

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In the Matter of
Application by Carolina Water Service, Inc. of North Carolina, 2335 Sanders Road, Northbrook, Illinois 60062, for Authority to Transfer the Assets Serving the Suburban Woods Subdivision in Mecklenburg County to the City of Charlotte (Owner Exempt From Regulation)

BY THE COMMISSION: On August 5, 1996, the Commission entered an Order in these dockets which provided that 100 percent of the gain on sale of the public water utility systems owned by Carolina Water Service, Inc. of North Carolina (CWS) which serve the Hampton Green, Courtney, Courtney II, Idlewood, Wood Hollow and Brandywine at Matthews, Providence West, Southwoods, Saddlebrook, and Suburban Woods Subdivisions in Mecklenburg and Gaston Counties, North Carolina, shall be assigned to CWS's stockholder.

In these proceedings, the Public Staff made recommendations that it would be inappropriate to include the plant modification fees collected from customers of the systems transferred to the Charlotte Mecklenburg Utility Department (CMUD) in rate base in determining the gain for each system. The Public Staff argued that these fees should remain on CWS's books and should not be removed when the systems are sold.

The Commission, in its Order of August 5, 1996, rejected the Public Staff's position and stated the following:

> The Commission must reject this Public Staff position. It is true that the amount of the plant modification fee is not established with reference to the costs of any specific system but rather based on average costs throughout the company. The fact that the amount of the fee is not system specific, however, does not mean that the cumulative total of the fees collected from customers served by systems that are sold should be disregarded in calculating the gain on sale. This logic would also dictate that any accumulated depreciation for these sold systems remain on CWS's books for the benefit of CWS's remaining customers. Obviously, this would be inappropriate. Ms. Fernald agreed that the precise amount for plant modification fees collected with respect to each system sold to CMUD in this case could be calculated and identified.
>
> The plant modification fees are fees collected from developers or ratepayers to enable the Company to expand facilities without increasing usage fees. Plant modification fees serve as a source of cost free capital. While the amount of the fee may not vary from one system to the next, the fees are deemed to benefit the developer or ratepayer who paid

them. CWS accounts for these fees on a system-specific basis. After the systems at issue in this case are sold to CMUD, the ratepayers who paid the plant modification fees or on whose behalf the fees were paid by developers will no longer be customers of CWS. It follows that the plant modification fees paid on behalf of these customers should be attributed to the systems sold. The plant modification fees should be recognized in calculating the gain on sale.

CWS's commodity rates are also uniform rates, not system specific ones. Depreciation and the return on rate base components of the commodity rates are based on system average rate base, not on the basis of the portion of the rate base that serves each individual consumer. Even though the fee established to recover plant related costs is uniform, not system specific, both parties agree that the actual costs of the system sold should be used to calculate the gain on sale, not some average plant amount. By the same logic, the actual amount of the plant modification fees collected with respect to the systems sold should be utilized to calculate the gain on sale. In summary, the Commission rules that the net investment in the system should be calculated using the plant, accumulated depreciation and CIAC for the system sold. It would be illogical to leave the CIAC on CWS's books.

On August 12, 1996, the Public Staff filed a motion for reconsideration of this issue and on August 27, 1996, CWS filed a response.

The Public Staff, in its motion, offered several observations for the Commission's consideration. The Public Staff asserted that a system can be completely contributed by a developer while the customers nevertheless are charged plant modification fees when they connect to the system. In such a situation, under the ruling in this proceeding, the cumulative fees collected from the customers would be deducted from rate base creating a negative investment and, depending on the transaction costs, result in a illogical situation where the gain on sale could exceed the purchase price.

Another illogical result would arise, according to the Public Staff, when CWS sells only part of a system. CWS may sell only the distribution mains serving the customers who transfer to the municipality and not the storage facilities serving the customers who remain. Under the ruling in the instant case, however, the plant modification fees collected from the customers who left would go with the main that served those customers rather than staying with the plant they paid for.

The Public Staff further pointed out that like plant modification fees, CWS collects rates covering depreciation from all of its customers regardless of whether the plant serving those customers was contributed or not. Yet CWS does no contend, and the order does not rule, that accumulated depreciation should be deducted from a zero rate base in arriving at the investment to be deducted from the purchase price in calculating the gain on sale. This is not because depreciation expense was not collected (it clearly was collected in the uniform rates) but because it does not relate to the plant in question. So it is with plant modification fees as well, according to the Public Staff.

Finally, the Public Staff states that the Commission has ignored its argument regarding the impact of the sale of utility systems on the rates of the remaining customers as a ground for assigning at least a

portion of the gain to ratepayers and now has gone a step further and ruled that plant modification fees should be deducted from rate base in calculating the amount of the gain, thereby taking away from ratepayers another source of cost free capital and compounding the ratemaking effect of its decisions.

CWS, in its response, recommended that the Commission deny the Public Staff's motion. CWS states that the Public Staff addresses a number of hypothetical factual scenarios in support of its position. The Public Staff suggests the possibility of a situation where the Company purchases a system for a small amount and collects substantial plant modification fees thereafter from ratepayers, resulting in a negative rate base for the systems. According to CWS, this is not the case with respect to the systems at issue in these dockets. Furthermore, the hypothetical scenario described by the Public Staff is the exception rather than the rule. CWS states that in the majority of cases the developer pays the plant modification fees. If the system has been contributed by the developer, the plant modification fee is waived for that developer. According to CWS, it is illogical to expect a developer to contribute a utility system and then expect him also to pay the plant modification fees. CWS asserts that a review of its tariff shows that plant modification fees are only collected in some systems. In such subdivisions, only a ratepayer who builds on a lot not under the purview of the contributing developer may become responsible for the plant modification fee. The possibility of a negative rate base therefore is remote according to CWS.

Furthermore, CWS states that the Public Staff's argument assumes that a contributed system or a system obtained for a nominal sum will not require future capital improvements of the type the plant modification fee is designed to offset. Seldom do systems exist that do not require such future expansion.

CWS states that in another hypothetical example, the Public Staff describes a scenario where the utility sells the distribution system to a municipality but retains storage or production facilities which have been paid for by plant modification fees provided by ratepayers served by the distribution system sold to the municipality. According to CWS, if it sold a distribution system and retained an elevated tank, the Company would relocate the tank to another needed location on its system. If CWS did not pay for the tank, remaining customers would retain the benefit of the facilities financed by cost free capital.

According to CWS, the Public Staff argues that the Commission should seek to avoid a situation where the gain exceeds the purchase price. The facts of these cases do not present a situation where the gain exceeds the purchase price. Moreover, if the gain did exceed the purchase price, the only impact would be that CWS's tax burden increased. The impact on remaining ratepayers is the same whether or not the purchase price exceeds the rate base of the system sold.

Finally, CWS states that the Public Staff accuses the Commission of compounding the ratemaking effect of its gain on sale decisions by its treatment of the plant modification fee. To the contrary, the Commission's decision in these cases is consistent with its decisions in past gain on sale cases. In these cases, the Public Staff for the first time contests the treatment of the plant modification fee in calculating the gain on sale. According to CWS, a better characterization of the situation is that the Public Staff, after losing in its primary objective of persuading the Commission not to award 100 percent of the gain on sale to the stockholder, now seeks to minimize the impact of the Commission's actions by attempting to persuade the Commission to change the existing policy concerning the plant modification fee calculation.

Based on the foregoing and the entire record in this proceeding, the Commission concludes that the Public Staff's motion for reconsideration should be denied for the reasons stated by CWS.

IT IS, THEREFORE, ORDERED that the motion for reconsideration filed by the Public Staff in these dockets is hereby denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of November, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-274, SUB 97

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Heater Utilities, Inc., Post Office Drawer 4889, Cary, North Carolina, for Approval Of Surcharge for SOC/Pesticide Testing	)))	ORDER APPROVING SURCHARGE

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, September 21, 1995, at 9:30 a.m. and Wednesday, December 6, 1995, at 10:00 a.m.

BEFORE: Commissioner Charles H. Hughes, Presiding, and Commissioners Allyson K. Duncan and Jo Anne Sanford

APPEARANCES:

For Heater Utilities, Inc.:
Robert F. Page, Attorney at Law, Crisp, Page & Currin, Suite 400, 4011 Westchase Blvd., Raleigh, North Carolina 27607

For the Using and Consuming Public:
Antoinette R. Wike, Chief Counsel, Public Staff, North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: This matter arose on January 25, 1995, with the filing of an application by Heater Utilities, Inc. (Heater or the Company), for approval of a Synthetic Organic Chemicals (SOC)/Pesticide testing surcharge to recover costs associated with SOC/Pesticide testing mandated by the United States Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act.

On February 15, 1995, Heater filed an application in Docket No. W-274, Sub 91, for a general increase in its rates and charges which included these same costs for SOC/Pesticide testing amortized over three years in the amount of $82,622 annually. The general rate increase application was set for hearing on July 18, 1995. On July 17, 1995, Heater filed a motion to withdraw these testing costs from the general rate case and to restore them to this docket. The motion was granted, and the matter was set for hearing at the time and place shown above.

On August 29, 1995, the Company filed the direct testimony of Company witness Jerry H. Tweed, Director of Environmental and Regulatory Affairs, in support of the original pass-through application.

On September 8, 1995, the Public Staff filed the testimonies of Public Staff witnesses David C. Furr, Utilities Engineer and David A. Poole, Staff Accountant.

On September 15, 1995, Heater filed the rebuttal testimonies of its President, William E. Grantmyre, and Jerry H. Tweed.

The hearing was held as scheduled on September 21, 1995.

At the call of the matter for hearing, Heater moved to strike certain portions of the testimony of Mr. Poole. That motion was granted. Heater thereafter withdrew portions of Mr. Grantmyre's rebuttal testimony relating to the stricken testimony of Mr. Poole.

On September 28, 1995, the Public Staff filed a motion asking the Hearing Panel to reconsider the decision to grant Heater's motion to strike and to schedule a further hearing in the matter. By Order dated November 8, 1995, the Hearing Panel Chairman issued an Order granting the Public Staff's Motion and scheduling further hearing for December 6, 1995, to allow the introduction into evidence of the portions of Mr. Poole's testimony previously stricken, the introduction into evidence of the portions of Mr. Grantmyre's rebuttal testimony which responds to these portions of testimony of David Poole, and cross examination of Public Staff witness Poole and Company witness Grantmyre regarding the portions of their testimonies not previously allowed in the record.

The December 6, 1995, hearing was held as scheduled.

Based upon the foregoing, the evidence adduced at the hearing, and the entire record in this matter, the Commission makes the following

FINDINGS OF FACT

1. This proceeding is a complaint proceeding pursuant to G.S. 62-136 and 62-137 and the Commission's Order of August 27, 1993, in Docket No. M-100, Sub 120.

2. The Order Establishing Guidelines for Recovery of Testing Costs in Docket No. M-100, Sub 120, dated August 27, 1993, requires that an application include, at a minimum, the following:

a. A complete and accurate current annual report, as required by G.S. 62-36 and Rule R1-32, must be on file with the Commission;
b. The estimated cost of testing each well or entry point, identifying the laboratory from which and the date the estimate was received, and the total cost for these tests for the company;
c. The date the testing must begin and the frequency that the test must be made for each well or entry point;
d. The number of wells or entry points that are to be tested; and
e. The current number of customers on each water system.

3. Heater and the Public Staff filed a Joint Stipulation (Stipulation) in Docket No. W-274, Sub 75 (Heater's prior general rate case proceeding filed in 1993). The Order Approving Partial Increase in Rates issued in that docket on August 18, 1993, accepted the Stipulation.

4. The Stipulation did reflect agreement on the total revenue requirement.

5. The Stipulation did not specify any agreement on amounts of specific categories of expense.

6. The Stipulation did state that only one SOC test per entry point was included in the stipulated rates.

7. The Stipulation did not address the cost per test.

8. The Stipulation did state that Heater could apply for a pass-through of expenses for tests in excess of one per entry point without violating the terms of the Stipulation.

9. At the time of the Stipulation in Docket No. W-274, Sub 75, it was Heater's intention to apply in January 1994 for a pass-through of the cost of additional tests. By January 1994, however, it was apparent to Heater that changes were likely in the near future that would result in the Company not having to conduct four tests per entry point. Although Heater ultimately received many waivers, it had already performed more than one test per entry point by the time these waivers were granted.

10. On January 25, 1995, Heater filed an application in Docket No. W-274, Sub 97, seeking approval of a SOC/Pesticide testing surcharge to recover costs associated with SOC/Pesticide testing mandated by the United States Environmental Protection Agency (EPA) pursuant to the Safe Drinking Water Act. Heater fulfilled all of the filing requirements outlined in the Order Establishing Guidelines referred to in Finding of Fact No. 2.

11. If Heater had obtained the pass-through approval in advance of actual testing, it is likely that an overcollection of expenses would have occurred, resulting in a need to make refunds.

12. The appropriate level of SOC/Pesticide testing expense to be recovered in this pass-through proceeding is $310,032.

13. The appropriate number of residential equivalent units to share in the recovery of the SOC/Pesticide testing expense is 12,403.

14. The EPA monitoring surcharge rate approved herein is just, reasonable, sufficient and nondiscriminatory.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1, 2, AND 10

The evidence for these findings of fact is based upon the record in this docket. This evidence is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 - 8

The evidence for these findings of fact is based upon the record in Heater's rate case (Docket No. W-274, Sub 75) filed in 1993. The Joint Stipulation and August 18, 1993, Order issued in that docket speak for themselves and are uncontroverted.

On March 12, 1993, Heater filed an application in Docket No. W-274, Sub 75, for a general rate increase in all of its North Carolina service areas. On August 16, 1993, Heater and the Public Staff filed a Joint Stipulation in that docket. The Commission issued an Order Approving Partial Increase in Rates on August 18, 1993. In said Order the Joint Stipulation was accepted and approved.

Paragraph No. 10 of the Stipulation entered in Docket No. W-274, Sub 75, reads as follows:

"The rates as stipulated include one SOC test per system in the year. Should Heater be required to perform four SOC tests per system, then it shall not be a violation of this agreement for Heater to apply to the Commission for a pass-through of the cost of the other three tests not covered in these rates."

The term "per system" as stated above, has been interpreted by both Heater and the Public Staff to mean "per entry point."

Paragraph No. 15 of the Stipulation in Docket No. W-274, Sub 75, reads as follows:

"... In entering these Stipulations, the parties have agreed to rates of return, overall revenue requirements for Heater, and a rate design. The parties have not agreed to any of the specific adjustments or ratemaking treatments necessary to produce the agreed upon revenue requirement."

The Order Approving Partial Increase in Rates in Docket No. W-274, Sub 75, provides that:

"It is noted that by the terms of the Joint Stipulation, the above figures include the costs of only one SOC test per entry point. In the event the Company is required to do additional tests per entry point, the Company is free to apply for a pass-through of the costs for any additional tests per entry point."

In said Order, the Commission stated an overall level of operating revenue deductions ($2,921,439), but did not specify the level for any one category of operating expenses, nor the level of any single item (like one SOC test) within a category.

The parties to the Stipulation have acknowledged that the rates did not provide for recovery of all the SOC tests that were required by DEH at the time of the Stipulation. The Stipulation anticipated that the requirements would change in the future, but provided for recovery of the expected additional testing expenses under the then mandated requirements. The Commission, therefore, concludes that the Company is entitled to apply for a pass-through of the costs in excess of one test per entry point.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 AND 11

The evidence for these findings of fact is based upon the record in this Docket (No. W-274, Sub 97), the record in Heater's last two rate cases (Docket Nos. W-274, Sub 75 and Sub 91), and the testimony of the Company's witnesses and the Public Staff's witnesses.

In his testimony, Company witness Tweed stated,

> ". . . We did discuss the potential for filing that in January or early 1994 as discussed in that proceeding. I was, as a matter of fact, I was advised by Mr. Grantmyre to go ahead and file that and based on my recommendations, I was closely monitoring the regulatory climate . . . . and keeping up with all the regulatory changes, I convinced Mr. Grantmyre that it would not be the thing to do at that point in time to apply for a pass-through when we may get waivers at some near future day. . . ."

In its request for a pass-through, filed on January 25, 1995, Heater stated:

> "Heater realizes it could have requested and been granted a pass through of these costs prior to having performed the test. However, Heater was anticipating a waiver program being adopted by the State under which less than four quarterly tests could be performed. In fact, such a waiver program has been enacted that has resulted in many of Heater's systems performing only one, two or three tests rather than the previously required four quarterly tests.
>
> "If Heater had obtained the pass through approval in advance, the costs would have been based upon four test per entry point and resulted in an overcollection and possible need to refund."

The Commission concludes that Heater's assessment of the regulatory climate was correct and commends Heater for its effort to keep the level of pass-through surcharge to a minimum and its avoidance of adverse customer relations that may have resulted from overcollection and refunding of SOC\Pesticide testing expenses.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is based upon the record in this Docket (No. W-274, Sub 97), the record in Heater's last two rate cases (Docket Nos. W-274, Sub 75 and Sub 91), and the testimony of the Company's witnesses and the Public Staff's witnesses.

Attached to its request for a pass-through, Heater provided a tabulation of the SOC tests performed at its 264 entry points. The tabulation shows 33 tests performed in 1993, 381 tests performed in 1994, and 86 tests to be performed in 1995, resulting in a total of 500 SOC tests. After removing 264 tests (the one SOC test per entry point covered by rates in Docket No. W-274, Sub 75, as noted in the Stipulation and Order), Heater shows that the expenses for 236 SOC tests are to be recovered by the requested pass-through.

Heater later revised its tabulation of testing costs to be recovered in this pass-through proceeding. In Mr. Tweed's prefiled testimony, he stated that at 21 entry points to be tested in 1995, the entry points did not qualify for waivers. The January 1995 filing did not anticipate this turn of events and, therefore, does not adequately cover the actual number of SOC tests performed. Mr. Tweed's testimony provided a tabulation showing that an additional 45 SOC tests were performed in 1995 and were not covered by the one SOC test per entry point provided for in the Docket No. W-274, Sub 75 Order.

Therefore, Heater is requesting that the expense incurred for 281 SOC tests (236 plus 45) be recovered through the proposed surcharge. The Commission concludes that after adjusting for 95 tests that cost Heater only $976.50 each, adjusting for the cost of the other 186 tests at $1,100 per test, and adjusting for the associated gross receipts taxes and regulatory fee expenses, the resulting SOC/Pesticide testing expense to be recovered in this pass-through proceeding is $310,032.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence for this finding of fact is based upon the record in this Docket (No. W-274, Sub 97), the record in Heater's last two rate cases (Docket Nos. W-274, Sub 75 and Sub 91), and the testimony of the Company's witnesses and the Public Staff's witnesses.

The Public Staff and Heater differ on the appropriate method of calculating the surcharge amount for various types of customers served. The Public Staff prefers to use residential equivalent units (REUs), whereas Heater stated that "(i)f applied this way, it would place a heavier charge on Heater's larger meter size customers, which are primarily Wake County schools, parks, and community swimming pools that are only open part of the year." Accordingly, Heater calculated its surcharge amount based upon the number of customers, rather than REUs, as of July 31, 1995. It has been the common practice of the Commission to vary the EPA surcharge with the size of the meter in the same manner that the base charge varies in accordance with the size of the meter (see Carolina Water Service, Docket No. W-354, Sub 128, and Mid South Water Systems, Docket No. W-720, Sub 134). Therefore, the Commission finds that the appropriate number to use is 12,403 REUs per month.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence for this finding of fact is based upon the record in this Docket (No. W-274, Sub 97), the record in Heater's last two rate cases (Docket Nos. W-274, Sub 75 and Sub 91), and the testimony of the Company's witnesses and the Public Staff's witnesses.

The number of annual billings that will be charged the surcharge is 148,836 (12 months x 12,403 REUs). On this basis, the Commission finds that the appropriate monthly EPA testing surcharge should be $2.08 ($310,032 / 148,836) per REU, rather than the $2.10 per customer as requested by Heater.

Based upon the foregoing, the Commission is of the opinion that Heater should be allowed to pass along to its customers the cost of the SOC/Pesticide testing mandated by the EPA. It is the Commission's belief that the rate case Order issued in Docket No. W-274, Sub 75, recognized that the additional testing costs were expected to be incurred and that, although the specific amount was uncertain, these expenses would be allowed to be passed through to the customers upon request by Heater. Therefore, the

Commission finds and concludes that Heater, under the unique facts and circumstances of this case, should be allowed to recover the costs incurred for said SOC/Pesticide testing through the imposition of a monthly EPA testing surcharge of $2.08 per REU for a period of 12 months. Recovery by means of an EPA testing surcharge of these previously anticipated additional testing expenses which were not included in rates in the Sub 75 docket does not constitute retroactive ratemaking.

IT IS, THEREFORE, ORDERED as follows:

1. That Heater Utilities, Inc., is authorized to add the EPA testing surcharge in the amount noted herein and on Appendix A, attached hereto, to each customer's billing statement for a period of one year. The surcharge shall be applicable only to those customers served by systems (and extensions thereof) franchised to Heater on or before July 31, 1995.

2. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved and is deemed to be filed with the Commission pursuant to G.S. 62-138. Said Schedule of Rates for providing water utility service shall become effective for bills rendered to all applicable customers after the date of this Order.

3. That the Notice to Customers, attached hereto as Appendix C, shall be served upon the applicable customers by inserting a copy of the said Notice in the Company's next regularly scheduled billing statement for each customer following the date of this Order. The Company shall submit to the Commission the attached Certificate of Service, properly signed and notarized, no later than 15 days after the Notice has been delivered to the customers.

4. That the Applicant shall file a report showing all receipts realized and all expenses incurred related to its approved SOC/Pesticide testing surcharge tariff provision, and the status of any water quality testing waivers requested/granted for its related water systems. Such report shall be provided in the format as provided in Appendix B, attached hereto, and may be supplemented with additional information/comments as needed. Said report is due 30 days after completion of the 12 month period during which the EPA testing surcharge is collected.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

(For Appendix B and Certificate of Service see Official Copy of Order in Chief Clerk's Office.)

APPENDIX A

SCHEDULE OF RATES
for
HEATER UTILITIES, INC.
for providing water utility service in
ALL ITS SERVICE AREAS IN NORTH CAROLINA

Monthly Metered Rates:

	(A) Base charge (zero consumption)	(C) EPA Testing Surcharge [4]
<1" meter	$ 11.79	$ 2.08
1" meter	29.48	5.20
1 1/2" meter	58.95	10.40
2" meter	94.32	16.64
3" meter	176.85	31.20
4" meter	294.75	52.00
6" meter	589.50	104.00

(B) Commodity charge - $ 2.84 per 1,000 gallons, or
$ 2.13 per 100 cubic feet

Temporary Service: $ 40.00 - A one time charge to builder of a residence under construction payable in advance. Fee entitles builder to six months service, unless construction is completed earlier and the service is intended for only normal construction needs for water (not irrigation). Applicable only in the seven following subdivisions where such charge is specifically provided by contract with the developer as follows:

Chesterfield II	- Contract date August 24, 1988
Fairstone	- Contract date September 3, 1988
Fox N' Hound	- Contract date June 13, 1988
Pear Meadow	- Contract date January 19, 1988
Pebble Stone	- Contract date August 24, 1988
Southwoods Sect. III	- Contract date May 25, 1988
South Hills Ext.	- Contract date May 25, 1988

Billing Service Charge: [1] $ 2.00 per month per bill

Meter Installation Fee: [2] $70.00, plus gross-up

Connection Charges: [3]

3/4" x 5/8" meters -

For taps made to existing mains installed inside franchised service area:	$525.00, plus gross-up
For mains extended by Heater outside of franchised service area:	120% of the actual cost of of main extension, plus gross-up
Meters exceeding 3/4" x 5/8" -	120% of actual cost, plus gross-up

Reconnection Charges:

If water service cut off by utility for good cause:	$25.00
If water service discontinued at customer's request:	$ 5.00

Returned Check Charge: $20.00

Bills Due: On billing date

Bills Past Due: 15 days after billing date

Billing Frequency: Shall be monthly for service in arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

[1] Heater is authorized to include on its monthly water bill to the residents of Cary Oaks and Oak Chase Subdivisions the charges resulting from sewer service provided by the Town of Cary. Heater will bill the Town of Cary $2.00 per month per bill for providing this service.

[2] The fee will be charged only where cost of meter installation is not otherwise recovered through connection charges.

[3] In most areas, connection charges do not apply pursuant to contract and only the $70.00 meter installation fee will be charged to the first person requesting service (generally the builder). Where Heater must make a tap to an existing main, the charge will be $525.00, and where main extension is required, the charge will be 120% of the actual cost.

[4] This surcharge shall be applicable for 12 consecutive monthly bills. The surcharge shall be applicable only to those customers served by systems (and extensions thereof) franchised to Heater on or before July 31, 1995.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 97, on this the 4th day of June 1996.

APPENDIX C

DOCKET NO. W-274, SUB 97

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Heater Utilities, Inc., Post Office Drawer 4889, Cary, North Carolina, for Approval Of Surcharge for SOC/Pesticide Testing	)))	NOTICE TO CUSTOMERS OF EPA TESTING SURCHARGE

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has granted an amendment to the tariff of Heater Utilities, Inc. This tariff adjustment, in the form of a water testing surcharge of twelve months duration, is for the purpose of recovering the cost of Synthetic Organic Chemicals (SOC)/Pesticide testing required by United States Environmental Protection Agency (EPA). The tariff adjustment is $2.08 per residential equivalent unit per month, as follows:

EPA Testing Surcharge:

<1" meter	$ 2.08
1" meter	5.20
1 1/2" meter	10.40
2" meter	16.64
3" meter	31.20
4" meter	52.00
6" meter	104.00

The EPA testing surcharge will be in effect for twelve months only.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th day of June 1996.

NORTH CAROLINA UTILITIES COMMISSION
(SEAL) Geneva S. Thigpen, Chief Clerk

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E-100, Sub 79 - Order Establishing Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities - 1996, Requiring Data and Scheduling Public Hearing (07-30-96)

E-100, Sub 79 - Order Excusing Nantahala from Complaince with Commission Order of July 30, 1996 (12-03-96)

E-100, Sub 79 - Order on Motions of CP&L, Duke and N.C. Power for Suspension of Their Avoided Cost Rates (12-13-96)

SP-100, Sub 6 - Notice of Decision in the Matter of Request for Declaratory Ruling of Fayetteville Gas Company LLC (05-08-96)

SP-100, Sub 6 - Declaratory Ruling that Fayetteville Gas Company Shall Not be Regarded as a Public Utility under G.S. 62-3(23) (05-24-96) (Commissioner Cobb did not participate in this decision.)

SP-100, Sub 8 - Notice of Decision in the Matter of Request for Declaratory Ruling of Duke Engineering & Services, Inc. (05-08-96)

SP-100, Sub 8 - Declaratory Ruling that Duke Engineering & Services, Inc. Shall Not be Regarded as a Public Utility under G.S. 62-3(23) (05-25-96) (Commissioner Cobb did not participate in this decision.)

SP-100, Sub 9 - Order on Request for Declaratory Ruling of Wake Landfill Gas Company, LLC and Enerdyn IV, LLC for Facility in Wake County (07-31-96)

SP-100, Sub 10 - Order on Request for Declaratory Ruling of North Carolina Municipal Landfill Gas Co. LLC and Enerdyne IV, LLC for a Facility in Henderson County (10-30-96) Errata Order (11-25-96)

SP-100, Sub 11 - Order on Request for Declaratory Ruling of Duke Power Company and Northbrook Carolina Hydro, L.L.C. for Determination Whether Hydroelectric Facilities are Entitled to Receive Capacity Credits (12-03-96)

GENERAL ORDERS - GAS

G-100, Sub 47 - Protective Order (05-30-96)

G-100, Sub 67 - Order Approving North Carolina Natural Gas Corp.'s Revised Tariffs (02-06-96)

G-100, Sub 69 - Order Making Preliminary Assignments of Franchises (05-14-96)

G-100, Sub 69 - Order Requesting Comments Regarding the Assignment of the Remaining Unfranchised Portion of Stokes County (10-25-96)

G-100, Sub 71 - Order Instituting Rulemaking Proceeding in the matter of Revision of Commission Rule R6-15 -- Adjustment of Bills (05-07-96)

GENERAL ORDERS - RAILROAD

R-100, Sub 3 - Order Requesting Response from the Public Staff and Attorney General in the Matter of the ICC Termination Act of 1995 and Its Effect on the North Carolina Utilities Commission's Jurisdiction in Complaint Cases Involving Private Crossing Disputes (05-23-96)

GENERAL ORDERS - TELEPHONE

P-100, Sub 70 - Order Eliminating Filing Requirement that Each Local Exchange Company File Quarterly Reports Concerning Bypass of LEC Facilities and Closing Docket (05-14-96)

P-100 ,Sub 72 - Order Authorizing Certified Interexchange Carriers to Offer 1+ and 0+ IntraLATA Service to Customers of GTE South Incorporated (07-31-96)

P-100, Sub 84; P-100, Sub 126 - Order Continuing Exemption of Payphone Calling from DRP/DAP Calling Rates (07-31-96)

P-100, Sub 126 - Order Allowing GTE Tariff to Become Effective But Requesting Comments on Classification (06-26-96) Order Classifying Local Calling Plan (07-31-96)

P-100, Sub 133 - Order Requiring Response (01-11-96)

P-100, Sub 133 - Order Requiring Specific Identification of Proprietary Sections (03-28-96)

P-100, Sub 133 - Order Denying Motion for Reconsideration and Seeking Comments Regarding Universal Service (05-15-96) Errata Order (05-17-96)

P-100, Sub 133 - Order Requesting Response from MobileComm (06-12-96)

P-100, Sub 133 - Order on Negotiated Interconnection Agreement between BellSouth Telecommunications, Inc. And MCImetro Access Transmission Services, Inc. Hereby Approved Effective on May 20, 1996 (06-18-96)

P-100, Sub 133 - Notification Order That AT&T Communications of the Southern States, Inc., has Filed a Petition for Arbitration of Interconnection with BellSouth Telecommunications, Inc. Pursuant to the Telecommunications Act of 1996 and that this Petition has Been Placed in Docket No. P-140, Sub 50 (07-18-96)

P-100, Sub 133 - Order on Negotiated Interconnection Agreement between BellSouth Telecommunications, Inc. And Time Warner Communications of North Carolina, L.P. Hereby Approved Effective on Date of Filing, June 7, 1996 (07-31-96)

P-100, Sub 133 - Order Declining MCI Telecommunications Corporation's Request for Mediation with BellSouth Telecommunications, Inc. (08-16-96)

P-100, Sub 133 - Order Requiring Matrix Summaries in Arbitration Proceedings (08-29-96)

P-100, Sub 133 - Order Approving BellSouth/Intermedia Interconnection Agreement (10-10-96)

GENERAL ORDERS - WATER AND SEWER

W-100, Sub 30 - Order Requesting Comments in the Matter of Resale of Water and Sewer Utility Service in Apartments, Condominiums, and Similar Places (09-04-96)

ELECTRICITY

ELECTRICITY - CERTIFICATES

Catawba County - Order Issuing Certificate of Public Convenience and Necessity to Construct a Landfill Gas Fired Qualifying Small Power Facility in Catawba County
SP-112 (12-03-96)

Catawba County - Order Issuing Certificate of Public Convenience and Necessity to Construct a Landfill Gas-Fired Qualifying Cogeneration Facility Near Newton, North Carolina
SP-112, Sub 1 (12-17-96)

Cox Hydro - Order Amending Certificate Authorizing Cox Hydro Project at Cox Lake on the Deep River
SP-5 (04-25-96)

Greenville Utilities Commission of the City of Greenville - Order Issuing Certificates of Public Convenience and Necessity to Install Diesel Generator Facilities
E-49 (03-12-96)

H & H Properties - Order Amending Certificate for the Milburnie Qualifying Small Power Facility in St. Matthews Township, Wake County
SP-76, Sub 1 (12-11-96)

City of Rocky Mount - Order Issuing Certificates of Public Convenience and Necessity to Install Diesel Generator Facilities
E-50 (03-26-96)

City of Rocky Mount - Order Issuing Certificates of Public Convenience and Necessity to Install Diesel Generator Facilities
E-50, Sub 1 (09-04-96)

United Supply of America, Inc. - Order Granting Certificate of Public Convenience and Necessity to Construct a Qualifying Facility in Lewiston, North Carolina
SP-82, Sub 2 (02-20-96)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct a Qualifying Facility near Woodville, North Carolina
SP-82, Sub 3 (04-16-96)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct an Electric Generating Facility to be Located Adjacent to Perdue Farms, Inc., Feedmill Plant on Route 64-A near Nashville, North Carolina
SP-82, Sub 4 (06-26-96)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct a Natural Gas Fired Cogeneration Facility near Wadesboro, North Carolina
SP-82, Sub 8 (07-16-96)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct a Natural Gas-Fired Qualifying Small Power Facility in Rocky Mount, North Carolina
SP-82, Sub 9 (12-17-96)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct a Natural Gas Fueled Cogeneration Facility Adjacent to the Carolina Food Processors, Incorporated Processing Plant on State Route 87 in Tar Heel, North Carolina
SP-82, Sub 10 (12-11-96)

ELECTRICITY - COMPLAINTS

Carolina Power & Light Company - Order Closing Docket in Complaint of Susan L. Jones
E-7, Sub 585 (07-18-96)

Carolina Power & Light Company - Order Keeping Docket Open for Six Months in Complaint of Phyllis Lee
E-2, Sub 688 (04-12-96) Order Closing Docket (10-16-96)

Carolina Power & Light Company - Recommended Order Denying Complaint of David E. Ogron
E-2, Sub 689 (06-28-96)

Carolina Power & Light Company - Order Closing Docket in Complaint of Tommie M. Boston
E-2, Sub 690 (03-07-96)

Carolina Power & Light Company - Order Dismissing Complaint and Closing Docket in Complaint of Robert Hall
E-2, Sub 691 (02-23-96)

Carolina Power & Light Company - Order Dismissing Complaint of Joan Whisnant, Inc.
E-2, Sub 692 (03-15-96)

Carolina Power & Light Company - Order Denying CIGFUR's Motion for Reconsideration of Order Issued on August 6, 1996, Allowing CP&L until September 16, 1996, within which to Submit a List of Accounting Adjustments and their Projected Impact on Earnings
E-2, Sub 699 (08-27-96)

Duke Power Company - Order Finding No Reasonable Grounds to Proceed, Dismissing Complaint and Closing Docket in Complaint of Gary S. Dollarhite
E-7, Sub 568 (01-11-96)

Duke Power Company - Order Tentatively Finding No Jurisdiction and Dismissing Complaint of Victor Richards
E-7, Sub 574 (04-03-96) Order Closing Docket (05-03-96)

Duke Power Company - Order Dismissing Complaint of Benita Elder and Closing Docket
E-7, Sub 579 (05-16-96)

Duke Power Company - Recommended Order That This Complaint Should Be, and Hereby is, Resolved by Duke's Waiver of the Complainant's Outstanding Balance of $281.27 in the Complaint of Patrick C. Ihekwu
E-7, Sub 581 (09-18-96)

Duke Power Company - Order Closing Docket in Complaint of Mr. Purubhai R. Bivek, dba Cavalier Inn
E-7, Sub 582 (08-26-96)

Duke Power Company - Order Closing Docket in Complaint of Scott B. Roberts
E-7, Sub 584 (07-05-96)

Duke Power Company - Order Keeping Docket Open for Six Months in the Complaint of Kevin A. Long
E-7, Sub 590 (10-10-96)

Duke Power Company - Order Keeping Docket Open for Six Months in the Complaint of Bill F. Golden
E-7, Sub 591 (11-25-96)

Duke Power Company - Order Serving Response and Keeping Docket Open for Six Months in the Complaint of R. Stephen Pace, dba Pace/Dowd Properties
E-7, Sub 592 (12-18-96)

Nantahala Power and Light Company - Order Dismissing Complaint of Jenny Wilson and Closing Docket
E-13, Sub 172 (10-10-96)

Nantahala Power and Light Company - Order Closing Docket in Complaint of Judy W. Bradley
E-13, Sub 173 (10-17-96)

ELECTRICITY - APPROVING PURCHASE POWER ADJUSTMENT

Company	Cents per kWh	Docket No	Date
Western Carolina University	.00956	E-35, Sub 21	04-23-96

ELECTRICITY - RATES

Duke Power Company - Order Approving Schedule VP-X(NC)
E-7, Sub 577 (03-12-96)

Nantahala Power and Light Company - Order Extending Purchase Power Factor
E-13, Sub 142 (04-16-96)

New River Light and Power Company - Order Approving Rate Decrease
E-34, Sub 31 (05-21-96) Errata Order (05-31-96)

ELECTRICITY - SALES AND TRANSFER

Hydrodyne Industries, LLC - Order Transferring Certificate for the Robertson Dam Located on the Little River in Montgomery County from American Hydro Power Company
SP-123 (12-04-96)

Northbrook Carolina Hydro, L.L.C. - Order Approving Transfer of Certificates for Idols Hydroelectric Station, Spencer Mountain Hydroelectric Station, Stice Shoals Hydroelectric Station and Turner Shoals Hydroelectric Station from Duke Power Company to Northbrook Carolina Hydro, L.L.C.
SP-122 (12-03-96)

ELECTRICITY - SECURITIES

Carolina Power & Light Company - Order Granting Authority to Issue Securities Pursuant to Revolving Credit Agreement
E-2, Sub 694 (03-18-96)

Carolina Power & Light Company - Order Granting Authority to Issue Securities Pursuant to Revolving Credit Agreement
E-2, Sub 695 (03-18-96)

Duke Power Company - Order Approving Guaranty Agreements Involving Duke Power Company and Nantahala Power & Light Company
E-7, Sub 576 (05-14-96)

Duke Power Company - Order Granting Authority to Issue and Sell Additional Securities (Long-Term Debt Securities and Medium-Term Notes)
E-7, Sub 580 (05-13-96)

Duke Power Company - Order Granting Authority to Issue and Sell Securities (Common Stock)
E-7, Sub 586 (06-25-96)

Duke Power Company - Order Accepting Guaranty Agreements Involving Duke Power Company and Nantahala Power & Light Company for Filing and Allowing Guaranty of Subsidiary Debts
E-7, Sub 587 (09-04-96)

Nantahala Power and Light Company - Order Granting Authority to Issue Notes
E-13, Sub 174 (12-10-96)

ELECTRICITY - MISCELLANEOUS

Carolina Power & Light Company - Order Approving Land Exchange
E-2, Sub 537; E-2, Sub 333 (03-26-96)

Carolina Power & Light Company - Order Granting Limited Waiver and Approving the Consolidated Billing
E-2, Sub 677 (10-30-96)

Carolina Power & Light Company - Order Granting Application for Special Billing Arrangements for K-Mart
E-2, Sub 696 (06-11-96)

Carolina Power & Light Company - Order Approving Revised Provision No. 10 of Service Regulations
E-2, Sub 698 (09-16-96)

Carolina Power & Light Company - Order Approving Availability Extension
E-2, Sub 625; E-2, Sub 667; E-2, Sub 704 (12-31-96)

Duke Power Company - Order Approving Settlement Agreement between Duke Power Company, North Carolina Municipal Power Agency Number 1 and Piedmont Municipal Power Agency
E-7, Sub 391; E-7, Sub 408 (01-17-96)

Duke Power Company - Order Approving Remote Meter Reading and Usage Data Services Pilot Program
E-7, Sub 569 (01-19-96)

Duke Power Company - Order Approving Revised Service Regulations Leaf C, Leaf D and Leaf F
E-7, Sub 593 (12-17-96)

Duke Power Company - Order Approving Revised Street and Public Lighting Service Schedule PL (NC)
E-7, Sub 594 (12-17-96)

Duke Power Company - Order Approving Schedule MP(NC) - Multiple Premises Services and Electric Service Agreement
E-7, Sub 595 (12-31-96)

Electric-Supplier - Order Approving Stipulations of Mecklenburg Electric Cooperative and NC Power in the Matter of Mecklenburg Electric Cooperative for an Assignment of Servcie Territory
ES-106 (05-21-96)

Nantahala Power and Light Company - Order Approving Meter Testing Procedures
E-13, Sub 170 (02-13-96)

New River Light & Power Company - Order Approving Revisions to Service Regulations
E-34, Sub 33 (08-07-96)

New River Light & Power Company - Order Approving Modifications to Outdoor Lighting Schedule OL
E-34, Sub 34 (08-07-96)

North Carolina Electric Membership Corporation - Order Approving Request for Approval of a Commercial and Industrial Audit Services Program and a Weatherization Loan Program
EC-67, Sub 8 (05-14-96)

Virginia Electric and Power Company - Order Granting Authority to Amend Terms and Conditions of Service
E-22, Sub 364 (05-01-06)

Virginia Electric and Power Company - Order Approving Small General Service Schedule 5P and Large General Service Schedule 6P
E-22, Sub 366 (12-17-96)

FERRY BOATS

FERRY BOATS - CANCELLATION OF CERTIFICATE

Beach Bum Ferry and Guide Service; Jack Gonsoulin, Jr., dba - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. A-44
A-44, Sub 1 (09-17-96)

FERRY BOATS - NAME CHANGE/TRADE NAME

Cape Lookout Ferry Service, Inc. - Order Approving Name Change from Calico Jack's Inn & Marina, Inc., Certificate No. A-46
A-46, Sub 1 (01-31-96)

FERRY BOATS - SALE AND TRANSFER

Beaufort Belle Tours, Inc. - Order Approving Sale and Transfer of Certificate No. A-42 from William A. Dean, dba Sea & Sand
A-32, Sub 1 (03-29-96)

Beaufort Belle Tours, Inc. - Order Approving Transfer of Stock from William E. Kwaak and Patricia A. Kwaak to Ronnie Paul Lewis and Jacqueline K. Lewis
A-32, Sub 2 (06-13-96)

GAS

GAS - AMENDING, DISMISSING AND DENYING

Piedmont Natural Gas Company, Inc. - Order Dismissing Application to Use Expansion Funds to Provide Service to Surry, Watauga, Wilkes and Yadkin Counties
G-9, Sub 362 (04-04-96)

GAS - CERTIFICATES

North Carolina Gas Service; Pennsylvania & Southern Gas Company, dba and Piedmont Natural Gas Company, Inc. - Order Consolidating Dockets, Scheduling Hearing, and Requiring Public Notice
G-3, Sub 191; G-9, Sub 372 (02-26-96)

GAS - COMPLAINTS

North Carolina Natural Gas Corporation - Recommended Order Denying Complaint of Cecilia Perry, dba Helping Hands Day Care
G-21, Sub 337 (02-14-96) Final Order Modifying and Adopting Recommended Order (03-05-96)

Piedmont Natural Gas Company - Order Keeping Docket Open for Six Months in Complaint of Robinson Hosiery Mill
G-9, Sub 373 (02-16-96)

Piedmont Natural Gas Company - Order Dismissing Complaint with Prejudice and Closing Docket in Complaint of Robinson Hosiery Mill
G-9, Sub 373 (03-07-96)

Piedmont Natural Gas Corporation - Order Closing Docket in Complaint of Elizabeth and Kelly Blenis
G-9, Sub 374 (03-07-96)

Piedmont Natural Gas Company - Order Withdrawing Complaint of Jane Hopkins and Closing Docket G-9, Sub 376 (08-01-96)

GAS - RATES

North Carolina Gas Service - Order Allowing Rate Increases Effective February 1, 1996
G-3, Sub 192 (02-01-96)

North Carolina Gas Service - Order Allowing Rate Increases Effective January 1, 1997
G-3, Sub 197 (12-17-96)

North Carolina Natural Gas Corp. - Order Allowing Rate Increase Effective February 1, 1996
G-21, Sub 340 (02-01-96)

North Carolina Natural Gas Corp. - Order Allowing Rate Decrease Effective April 1, 1996
G-21, Sub 349 (04-03-96) Errata Order Allowing Rate Decrease Effective April 1, 1996 (04-04-96)

North Carolina Natural Gas Corp. - Order Allowing Rate Increases Effective July 1, 1996
G-21, Sub 350 (07-02-96)

North Carolina Natural Gas Corp. - Order Allowing Rate Changes Effective November 1, 1996
G-21, Sub 353 (11-01-96)

North Carolina Natural Gas Corp. - Order Allowing Rate Changes Effective January 1, 1997
G-21, Sub 354 (12-31-96)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increases Effective January 1, 1996
G-9, Sub 371 (01-03-96)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increase Effective January 15, 1996
G-9, Sub 375 (01-19-96)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increase Effective August 1, 1996
G-9, Sub 383 (07-16-96)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increases
G-9, Sub 385 (12-09-96)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Increase Effective January 1, 1996
G-5, Sub 352 (01-03-96)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Increase Effective February 1, 1996
G-5, Sub 353 (02-01-96)

Public Service Company of North Carolina, Inc. - Order Approving Modifications to the Form G-1 Filing Requirements
G-5, Sub 356 (03-08-96)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Increase Effective March 1, 1996
G-5, Sub 357 (03-07-96)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective December 1, 1996
G-5, Sub 368 (12-03-96)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective January 1, 1997
G-5, Sub 371 (12-31-96)

GAS - SECURITIES

North Carolina Natural Gas Corporation - Order Approving Deposit of Supplier Refunds into Expansion Fund
G-21, Sub 351 (11-12-96)

Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue and Sell 2,000,000 Shares of Common Stock
G-9, Sub 379 (03-05-96)

Public Service Company of North Carolina, Inc. - Order Granting Authority to Issue and Sell 1,000,000 Additional Shares of Common Stock
G-5, Sub 362 (08-13-96)

Public Service Company of North Carolina, Inc. - Order Granting Authority to Issue and Sell Up to $75,000,000 of Senior Unsecured Debt
G-5, Sub 365 (11-05-96)

GAS - TARIFF

North Carolina Gas Service - Order Revising Interruptible Sales and Transportation Tariffs
G-3, Sub 196 (10-02-96)

Piedmont Natural Gas Company, Inc. - Order Allowing Tariffs to Become Effective and Requiring Report
G-9, Sub 380 (03-26-96)

GAS - MISCELLANEOUS

Greenville Utilities Commission of the City of Greenville - Order Granting Application for Waiver of Regulations at 49 C.F.R. Part 193 Pursuant to Public Utilities Act and NCUC Rule R6-39(c)
G-32, Sub 1 (10-22-96)

North Carolina Gas Service - Order Accepting Limited Agency Agreement with East Coast Natural Gas Cooperative, L.L.C. for Filing Pursuant to G.S. 62-153
G-3, Sub 188 (07-23-96)

North Carolina Gas Service - Order Approving Exploration and Development Refund Plan
G-3, Sub 193 (07-05-96)

North Carolina Natural Gas Corporation - Order on Motion for Waiver of Commission Rule R6-84(f)
G-21, Sub 330 (09-17-96) Order Regarding Status Report (11-05-96)

North Carolina Natural Gas Corporation - Order Approving Incentive Programs for NCNG Industry Affiliates, Trade Shows, Conventions, Seminars, Etc.
G-21, Sub 342 (09-26-96)

North Carolina Natural Gas Corporation - Order Approving Incentive Program for Gas Ranger Program for Industry Affiliates
G-21, Sub 343 (09-26-96)

North Carolina Natural Gas Corporation - Order Approving Incentive Program for Triathlon Demonstration Program
G-21, Sub 344 (09-26-96)

North Carolina Natural Gas Corporation - Order Approving Incentive Program for Advanced Gas Technology Development Program
G-21, Sub 345 (09-26-96)

North Carolina Natural Gas Corporation - Order Approving Incentive Program for Industrial Customer Education Program
G-21, Sub 346 (09-26-96)

North Carolina Natural Gas Corporation - Order Granting Application for Waiver of Compliance with Certain Regulations so as to Provide for Use of the Clock Spring® Pipeline Repair and Reinforcement System
G-21, Sub 352 (08-22-96)

Piedmont Natural Gas Company, Inc. - Order Serving Letter and Allowing Responses
G-9, Sub 309 (05-02-96) Order Approving Request (06-18-96)

Piedmont Natural Gas Company, Inc. - Order Approving High Efficiency Natural Gas Heating and Cooling Program
G-9, Sub 377 (05-30-96) Order Approving Incentive Programs (11-12-96)

Piedmont Natural Gas Company, Inc. - Order Approving Exploration and Development Refund Plan
G-9, Sub 378 (07-05-96)

Public Service Company of North Carolina, Inc. - Order Approving Incentive Programs
G-5, Sub 354; G-5, Sub 355 (11-12-96)

Public Service Company of North Carolina, Inc. - Order Approving Exploration and Development Refund Plan
G-5, Sub 358 (07-05-96)

Public Service Company of North Carolina, Inc. - Order Approving Extension of Its Experimental, Incentive Program for Triathlon Gas Heating and Cooling Unit
G-5, Sub 360 (07-05-96)

Public Service Company of North Carolina, Inc. - Order Approving Pooling Program and Transportation Pooling Agreement
G-5, Sub 363 (10-02-96)

Public Service Company of North Carolina, Inc. - Order Granting Waiver for June 1, 1997, Depreciation Study Requirement
G-5, Sub 367 (11-27-96)

MOTOR BUSES

MOTOR BUSES - AUTHORITY GRANTED - COMMON CARRIER

Company	Charter Operations	Docket No.	Date
A & H Tours; Harold Dinwiddie, dba	Statewide(temp)	B-653	08-01-96
Advenutre Seekers Charter Tours; Keith Ivey, dba	Statewide(temp)	B-655	11-07-96
Alpha Omega Charters; Lorna Thompson Moore & Maggie Mack Mobley, dba	Statewide	B-649	04-30-96
Avery Tours, Incorporated	Statewide	B-650	05-07-96

H & H Charter Harvis Junior Mathis & Hattie B. Mathis	Statewide	B-646	02-16-96
Lighthouse International, Inc.	Statewide	B-647	02-19-96
Robinson's Shuttle, Inc.	Statewide	B-638	04-30-96
Royal Coach, Inc.	Statewide	B-651	07-25-96
Specialty Tours, Inc.	Statewide	B-654	11-25-96
T & M Charter Service Edward S. Taylor & Robert Moss, dba	Statewide	B-645	02-07-96

MOTOR BUSES - CERTIFICATES CANCELLED

Elegant Transportation, Inc. - Order Cancelling Certificate
B-562, Sub 1 (03-11-96)

Freeman's Tours & Travel; Nancy G. Freeman, dba - Order Cancelling Broker's License No. B-575
B-575, Sub 1 (10-11-96)

East Coast Charters; Polk & Hardison, dba - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. B-628
B-628, Sub 2 (09-17-96)

Eyewitness USA Charter & Tours; I. Wade Allen, dba - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. B-614
B-614, Sub 1 (09-17-96)

Hill's Christian Tours, Inc. - Recommended Order Cancelling Operating Authority
B-509, Sub 2 (06-03-96)

L & R Tours; Larry Blackley, dba - Order Cancelling Certificate No. B-603
B-603, Sub 1 (11-27-96)

Let's Go/Lyerly's Elite Travel Service; Rev. Dr. Wilford and Betty C. Lyerly, dba - Order Cancelling Certificate No. B-558
B-558, Sub 1 (11-14-96)

New Bern Guided Tours, Inc. - Order Cancelling Broker's License No. B-364
B-364, Sub 1 (10-30-96)

Piedmont Tours of Burlington, Inc. - Order Cancelling Broker's License No. B-427
B-427, Sub 1 (04-11-96)

Pleasure Island Limousine Service, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. B-372
B-372, Sub 1 (09-17-96)

S & S Bus Lines, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. B-566
B-566, Sub 1 (09-17-96)

MOTOR BUSES - RESCINDING CANCELLATIONS

Daybreak Sing, Inc. - Order Reinstating Broker's License
B-434, Sub 1 (08-29-96)

Hill's Christian Tours, Inc. - Order Rescinding Order Cancelling Authority
B-509, Sub 2 (06-12-96)

MOTOR BUSES - NAME CHANGE

Atlantic Tours, Inc. - Order Approving Name Change from Terry and Lyvone Wallace, dba Atlantic Tours
B-633, Sub 1 (02-07-96)

Holiday Express Corporation - Order Approving Name Change from Holiday Express, Inc.
B-448, Sub 1 (05-23-96)

Southern States Tours and Conventions; Penelope B. Noyes, dba - Order Approving Name Change from Peggy B. Bates and Penelope B. Noyes, dba Southern States Tours and Conventions
B-600, Sub 3 (12-04-96)

MOTOR BUSES - SALE\TRANSFER

Go Travels, Travel Net, Inc. dba - Order Approving Sale and Transfer of Certificate No. B-481 from Perry Ray Oxendine, dba Go Travels
B-481, Sub 2 (02-02-96)

MOTOR TRUCKS

MOTOR TRUCKS - AUTHORITY GRANTED - COMMON CARRIER

Action Movers; John Comer, dba - Recommended Order Granting Application, in Part, to Transport Household Goods from Points in Charlotte and its Commercial Zone to All Points in North Carolina, and from All Points in North Carolina to Points in Charlotte and its Commercial Zone
T-4088 (06-15-96)

Adkins Transfer, Inc. - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-3588, Sub 2 (12-13-96)

Advanced Delivery Systems, Inc. - Order Granting Common Carrier Authority to Transport Group 18-B, Household Goods Retail Delivery, Statewide
T-4092 (10-31-96)

Charlotte Van and Storage Co., Inc. - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-931, Sub 5 (12-13-96)

Classic Moving and Storage, Inc. - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-2696, Sub 3 (12-13-96)

Easy Movers; Donovan Fitzeric Reid, dba - Recommended Order Granting Application, In Part , to Transport Household Goods from Points in Charlotte and its Commercial Zone to All Points in North Carolina .
T-4087 (05-31-96)

High Point Delivery Company, Inc. - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-1461, Sub 4 (12-13-96)

Melton Delivery; Francis Donald Melton, dba - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-3824, Sub 1 (12-13-96)

Merchants Home Delivery Service, Inc. - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-1655, Sub 5 (12-13-96)

West Brothers Transfer & Storage, Hauling & Storage Division - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-2085, Sub 9 (12-13-96)

Yarbrough Transfer Company - Order Granting Irregular Route Common Carrier Authority for the Transportation of Group 18-B, Statewide
T-734, Sub 4 (12-13-96)

MOTOR TRUCKS - AUTHORIZED SUSPENSION

Company	Certificate	Reason
Bekins Moving & Storage of the Carolinas Co. T-4081, Sub 1 (05-23-96)	C-2064	Auth. Susp.
Central Warehouse Company of Durham, Inc. T-948, Sub 9 (04-26-96)	C-2209	Auth. Susp.
W. M. Poole Enterprises, Inc., dba Jiffy Moving & Storage Company T-1975, Sub 4 (05-16-96)	C-1453	Auth. Susp.
M. H. Movers, Inc. T-4078, Sub 1 (02-09-96)	C-126	Auth. Susp.
Queen City Moving and Storage Company T-1568, Sub 2 (09-20-96)	C-655	Auth. Susp.
TechTran, Inc. T-3433, Sub 1 (02-07-96)	C-1023	Auth. Susp.

MOTOR TRUCKS - CERTIFICATES/PERMITS CANCELLED

ASE Moving Services; American Star Enterprises, Inc., dba - Recommended Order Cancelling Operating Authority under Certificate No. C-1818 - Termination of Cargo Insurance Coverage
T-3245, Sub 3 (07-05-96) Order Rescinding Order Cancelling Authority (08-05-96)

Alternative Moving Systems, Ltd. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate C-2207
T-2259, Sub 3 (09-17-96)

David's Economove, Inc. - Order Cancelling Certificate No. C-441
T-1996, Sub 2 (08-14-9 Order Reinstating Certificate and Granting Authorized Suspension of Operations T-1996, Sub 3 (08-23-96)

Meyer, William B. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-654
T-3950, Sub 2 (09-17-96)

Morven Freight Lines, Inc. - Order Cancelling Certificate No. C-2213 - Ceased Operations
T-153, Sub 14 (03-11-96)

MOTOR TRUCKS - NAME CHANGE/TRADE NAME

Action Moving and Storage of North Carolina, Inc. - Order Approving Name Change from John Comer, dba Action Movers
T-4088, Sub 1 (07-26-96)

Triangle Moving Service, Inc. - Order Approving Name Change from Martin Amos, dba Triangle Moving Service
T-3809, Sub 1 (08-20-96)

MOTOR TRUCKS - RATES

Rates-Truck - Order Approving Agreements Between and Among Carriers Participating in the North Carolina Intrastate Household Goods Tariff of the North Carolina Trucking Association, Inc.
T-825, Sub 331 (03-21-96)

MOTOR TRUCKS - SALES AND TRANSFER/CHANGE OF CONTROL

Jack Bartlett Moving Company; Jack Bartlett Moving Company, Inc., dba - Order Approving Transfer of Certificate No. C-646 from Bartlett-Ramsey Transfer Company, Inc., dba Jack Bartlett Moving
T-1863, Sub 6 (02-16-96)

Beltmann Moving and Storage Company; Irving Kirsch Corporation, dba - Recommended Order Granting Application for Sale and Transfer of Certificate No. C-1437 from Ace World Wide Moving & Storage Company of Raleigh, Inc.
T-4084 (03-07-96)

Covan World Wide Moving, Inc. - Order Approving Sale and Transfer of Certificate No. C-473 from Henderson Jones, Jr.
T-4085 (01-22-96)

Dunmar Moving Systems; Brown-Thomas Corp., dba - Order Approving Transfer of Control by Stock Transfer from Vaughan Dunnavant and Dwight Thomas to Flay Vernon Smith
T-2330, Sub 1 (09-25-96)

Glen's Moving & Storage; J. Keith Stark, dba - Order Approving Sale and Transfer of Certificate No. C-2066 from the Rosemyr Corporation, dba Glen's Moving & Storage
T-3768, Sub 2 (11-22-96)

Kannapolis-Concord Moving Co.; Tommy Haney, dba - Order Approving Sale and Transfer of Certificate No. C-1703 from Charles R. Fox, Sr., dba The Kannapolis & Concord Moving Co.
T-3829, Sub 1 (02-16-96)

Magnum Moving & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-697 from Hood Moving & Storage, Inc.
T-4089 (04-19-96)

Queen City Transfer & Storage; Lawrence Transit Systems, Inc., dba - Order Approving Sale and Transfer of Certificate No. C-655 from Queen City Moving and Storage Company
T-4094 (10-17-96)

Two Men and A Truck; Soaring Eagle, Inc. dba - Order Approving Sale and Transfer of Certificate No. C-126 from M. H. Movers, Inc.
T-4086 (03-20-96)

RAILROADS

RAILROADS - COMPLAINTS

Norfolk Southern Railway - Order Staying Proceedings Indefinitely in Complaint of George W. Fields
R-4, Sub 174 (04-04-96) Order Canceling Hearing, Dismissing Complaint and Closing Docket (07-30-96)

Seaboard Railroad (CSX Transportation, Inc.) - Order Canceling Hearing, Dismissing Complaint of Mavis B. Kornegay, and Closing Dockets
R-71, Sub 214; R-100, Sub 3 (07-30-96)

TELEPHONE

APPLICATIONS CANCELLED, TERMINATED, WITHDRAWN OR DENIED

BellSouth Telecommunications, Inc. - Order Closing Docket in Petition for Affiliated Contract with BellSouth Applied Technologies, Inc.
P-55, Sub 1016 (08-06-96)

Carolina Telephone and Telegraph Company - Order Closing Docket in Petition for Affiliated Contract with Central Telephone Company
P-7, Sub 820 (08-06-96)

Central Telephone Company - Order Closing Docket in Petition for Affiliated Contract with Central Telephone Company of Virginia
P-10, Sub 478 (08-06-96)

DCC Long Distance Services; Discount Calling Card, Inc., dba - Order Allowing Withdrawal of Application and Closing Docket
P-458 (02-28-96)

GTE South, Inc. - Order Closing Docket in Petition for Affiliated Contract with GTE Mobilnet Services Corporation
P-19, Sub 284 (07-22-96)

Global Wats One, Inc. - Order Dismissing Application and Closing Docket
P-406 (07-26-96)

Home Owners Long Distance, Inc. - Order Allowing Withdrawal of Application
P-425 (03-21-96)

Interstate Savings, Inc. - Order Allowing Withdrawal of Application Subject to Conditions
P-442 (03-12-96) Order Allowing Withdrawal of Application and Closing Docket (07-09-96)

Long Distance Charges; Least Cost Routing, Inc., dba - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate Interexchange Long Distance Service as a Switchless Reseller
P-546 (12-23-96)

One to One Communications - Order Dismissing Application and Closing Docket
P-440 (07-26-96)

Phone Calls, Inc. - Order Allowing Withdrawal of Application and Closing Docket
P-512 (10-09-96)

USA Calling, Inc. - Order Dismissing Application and Closing Docket
P-493 (07-26-96)

US LEC of North Carolina, L.L.C. - Order Allowing Withdrawal of Petitions for Arbitration of Interconnection with Central Telephone Company and Carolina Telephone and Telegraph Company
P-561, Sub 2; P-561, Sub 3 (12-13-96)

WorldCom Network Services, Inc.; Communications Network Corporation - Order Allowing Motion to Withdraw Application and Closing Docket
P-286, Sub 7; P-496, Sub 1 (10-23-96)

XIEX Telecommunications, Inc. - Order Denying Motion to Reopen Docket
P-427 (04-10-96)

TELEPHONE - CERTIFICATES

Business Telecom, Inc. - Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-165, Sub 20 (05-21-96)

Commonwealth Long Distance Company - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services as a Reseller
P-486 (03-19-96)

Concord Telephone Long Distance Company - Order to Amend Certificate to Grant Switched Reseller Authority
P-295, Sub 9 (10-15-96)

Dial & Save; Dial & Save of North Carolina, Inc., dba - Recommended Order Amending Certificate of Public Convenience and Necessity to Operate as a Competing Local Provider of Local Exchange Services
P-414, Sub 1 (12-17-96)

Excel Telecommunications, Inc. - Recommended Order Amending Certificate to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-270, Sub 6 (10-16-96) Errata Order (10-29-96)

FiberSouth, Inc. - Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-482, Sub 1 (05-21-96)

Gulf Long Distance, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services as a Facilities Based Reseller
P-499 (03-20-96)

Interlink Telecommunications, Inc. - Recommended Order Granting Certificate to Provide Long Distance Telecommunications Services as a Non-Facilities Based Reseller
P-478 (05-08-96) Order Allowing Recommended Order to Become Final (05-08-96)

Intermedia Communications of Florida, Inc. - Order Granting Certificate to Provide Intrastate IntraLATA and InterLATA Long-Distance Telecommunication Services
P-504 (08-07-96)

Intermedia Communications of Florida, Inc. - Order Granting Certificate to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-504, Sub 1 (08-07-96)

MCImetro Access Transmission Services, Inc. - Recommended Order Granting Certificate to Provide Interexchange and Intraexchange Special Access and Private Line Telecommunications as a Competing Local Provider
P-474 (03-05-96)

Preferred Carrier Services, Inc. - Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-544, Sub 1 (08-27-96)

Time Warner Connect - Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-481, Sub 1 (09-16-96)

US LEC of North Carolina, L.L.C. - Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-561 (09-27-96)

US LEC of North Carolina L.L.C. - Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange Long Distance Telecommunications Services
P-561, Sub 1 (09-27-96)

US West Interprise America, Inc. - Recommended Order Granting Certificates to Provide (1) Intrastate Interexchange Long Distance Telecommunications Services as a Reseller and (2) Local Exchange and Exchange Access
P-572; P-572, Sub 1 (11-26-96)

WinStar Wireless of North Carolina, Inc. - Order Granting Certificates to Provide (1)Intrastate Facilities-Based Interexchange Telecommunications Services and (2) Non-Switched Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-507; P-507, Sub 1 (08-14-96)

Telephone Certificates (Intrastate Interexchange Telephone Service by Switchless Resellers)

Certificate No	Company	Date
P-363, Sub 1	The Furst Group, Inc.	11-15-96
P-405, Sub 1	Intelicom International Corporation	07-01-96
P-420	Telecommunications Service Center, Inc.	08-15-96
P-431	GTE Telecommunications Services, Inc.	02-21-96
P-437	LDM Systems, Inc.	10-08-96
P-446	GTE Card Services Incorporated	03-08-96
P-450	QCC, Inc.	05-13-96
P-451	Primus Telecommunications, Inc.	07-31-96

P-456	LDD, Inc., dba Long Distance Discount	06-04-96
P-460	Florida Network, U.S.A., Inc.	05-16-96
P-461	V.I.P. Telephone Network, Inc.	03-08-96
P-466	Value Tel, Inc.	06-11-96
P-470	LDC Telecommunications, Inc.	02-09-96
P-471	Easton Telecom Services, Inc.	03-25-96
P-480	Pantel Communications, Inc.	04-08-96
P-481	Time Warner Integrated Services Co., d/b/a Time Warner Connect	03-11-96
P-482	IdealDial Corporation	05-13-96
P-483	Budget Call Long Distance, Inc.	03-08-96
P-488	MTC Telemanagement Corporation	04-17-96
P-489	Advanced Telecommunication Network, Inc.	05-23-96
P-492	Ustel, Inc.	12-09-96
P-494	US South Communications, Inc., dba US South and dba INCOMM	08-09-96
P-495	ATCALL, Inc.	12-18-96
P-497	DeltaTel, Inc.	04-08-96
P-499	Gulf Long Distance, Inc.	02-19-96
P-500	Deltacom, Inc., dba Deltacom Long Distance Services	08-20-96
P-502	America's Tele-Network Corporation	06-25-96
P-503	Starlink Communications, LLC	07-01-96
P-505	CRG International, Inc., dba Network One	08-26-96
P-506	Lyrihn Communications, Inc., d/b/a Community Spirit and Blue Earth Communications	03-26-96
P-508	TLX Communications, Inc., d/b/a TelAmerica	04-23-96
P-511	Gillette Global Network, Inc.	02-26-96
P-514	ALLTEL Long Distance, Inc.	05-03-96
P-517	Bell Atlantic Communications, Inc.	03-11-96
P-518	Minimum Rate Pricing, Inc.	05-24-96
P-519	Apollo Communications Services, LLC	10-28-96
P-521	Host Network, Inc.	05-13-96
P-523	Telecom One, Inc.	05-13-96
P-524	Preferred Telecom, Inc.	05-03-96
P-525	Athena International - North Carolina, L.L.C.	03-28-96
P-526	Americom Technologies, Inc., dba Network Utilization Services	05-20-96
P-527	L.D. Services, Inc.	10-29-96
P-529	Business Options, Inc.	06-27-96
P-530	Eastern Telecommunications Incorporated, dba ETI-Telecommunications	07-19-96
P-531	Citizens Telecommunications Company, dba Citizens Telecom	05-24-96
P-532	Atlas Communications, Ltd.	05-06-96
P-533	Alternative Long Distance, Inc., dba Money Savers	05-24-96

P-538	Coastal Telecom Limited Liability Company	11-12-96
P-539	North American Telephone Network, LLC.	10-01-96
P-540	American International Telephone, Inc., dba Oasis Telecom	08-21-96
P-542	Trescom U.S.A., Inc.	08-16-96
P-543	PNG Telecommuinications, Inc.	09-20-96
P-544	Preferred Carrier Services, Inc.	07-19-96
P-545	Common Concerns, Inc.	08-23-96
P-547	North State Telephone Long Distance Company	07-10-96
P-548	Optex, Inc.	07-29-96
P-549	The Phonco, Inc., dba Network Services Long Distance	07-25-96
P-550	American Telco, Inc.	07-29-96
P-551	International Telecommunications Corporation, dba Total Communication Network, Inc.	07-17-96
P-552	CTN Telephone Network, Inc.	10-09-96
P-555	Crystal Communications, Inc.	10-11-96
P-557	A.B.T.S. International Corporation, dba Intelnet	08-15-96
P-559	Intetech, L.C.	08-15-96
P-560	Zenex Long Distance, Inc.	09-20-96
P-562	Amerinet International, Inc.	07-17-96
P-563	Anchor Communications Corporation	10-17-96
P-565	Econophone, Inc.	10-11-96
P-568	360° Long Distance Company, Inc.	08-09-96
P-569	TelSave Corporation, dba Independent Network Services	10-01-96
P-570	Access Point, Inc.	08-21-96
P-571	Touch 1 Communications, Inc.	09-18-96
P-573	Prime Telecom of North Carolina, Inc.	10-14-96
P-580	TELCAM, Telecommunications Company of the Americas, Inc.	10-22-96
P-581	International Telephone Group, Inc.	11-12-96
P-583	Utmost, Inc., a Communications Service Company	12-09-96
P-584	Telec, Inc.	12-20-96
P-586	International Telcom Ltd.	11-19-96
P-589	Telscape USA, Inc.	11-14-96
P-590	Family Telecommunications Incorporated	12-19-96
P-603	U S West Long Distance, Inc.	12-19-96

TELEPHONE - CERTIFICATES CANCELLED

American Express Telecom, Inc. - Order Canceling Certificate and Allowing Withdrawal of Tariff
P-476, Sub 1 (06-28-96)

American Telephone Network, Inc. - Order Canceling Certificate
P-256, Sub 3 (03-13-96)

BLT Technologies, Inc. - Order Allowing Withdrawal of Tariff and Canceling Certificate
P-411, Sub 1 (11-12-96)

Carolina Network Corporation - Order Allowing Withdrawal of Motion to Reinstate Operating Authority and Allowing Withdrawal of Tariffs
P-188, Sub 1 (02-13-96)

Great Lakes Telecommunications Corporation - Order Affirming Previous Commission Order Canceling Operating Authority
P-377, Sub 1 (11-27-96) Order Vacating Orders of October 3, 1996, and November 27, 1996, and Reinstating Operating Authority (12-11-96)

Interstate FiberNet - Order Canceling Certificate, Allowing Withdrawal of Tariff, and Closing Docket
P-430, Sub 1 (01-11-96)

Mid Atlantic Telephone Company - Order Affirming Previous Commission Order Canceling Operating Authority
P-176, Sub 1 (11-27-96)

Premier Billing Services, Inc. - Order Affirming Previous Co ssion Order Canceling Operating Authority
P-357, Sub 1 (11-27-96)

RD&J Communications Management, Inc. - Order Affirming Pre ous Commission Order Canceling Operating Authority
P-316, Sub 2 (11-27-96)

TelaLeasing Enterprises, Inc. - Order Canceling Certificate
P-394, Sub 1 (02-07-96)

Total-Tel USA Communications, Inc. - Order Affirming Previous Commission Order Canceling Operating Authority
P-417, Sub 1 (11-27-96) Order Vacating Orders of October 3, 996, and November 27, 1996 and Reinstating Operating Authority (12-10-96)

WATS International Corporation - Order Affirming Previous Commission Order Canceling Operating Authority
P-401, Sub 1 (11-27-96)

TELEPHONE - COMPLAINTS

AT&T - Order Allowing Withdrawal of Complaint and Closing Docket in Complaint of Millwork Specialties
P-140, Sub 46 (01-31-96)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint of Sandra Allred and Closing Docket
P-55, Sub 1014 (07-02-96)

BellSouth Telecommunications, Inc. - Order Granting Right to Cross-Examine in Complaint of Embassy Suites
P-55, Sub 1015 (04-10-96)

BellSouth Telecommunications, Inc. - Recommended Order Dismissing Complaint of Embassy Suites and Closing Docket
P-55, Sub 1015 (06-06-96)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint of Mrs. Lee D. Jackson
P-55, Sub 1018 (07-02-96) Order Denying Reconsideration (08-14-96) Order Denying Reconsideration (10-10-96) Errata Order (10-14-96)

BellSouth Telecommunications, Inc. - Order Giving Notice of Settlement and Closing Docket in Complaint of Robert D. Bryant, dba Bryant Real Estate
P-55, Sub 1019 (08-26-96)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint of Robert A. Gross
P-55, Sub 1020 (08-15-96)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Pansy McCamie, dba McCamie's Trash Removal
P-7, Sub 826 (02-16-96)

Carolina Telephone and Telegraph Company - Order Reopening Docket and Scheduling Hearing for Wednesday, August 21, 1996 at 10:00 A.M.
P-7, Sub 826 (07-03-96) (Commissioners Charles H. Hughes and Allyson K. Duncan did not participate in this decision.)

Carolina Telephone and Telegraph Company - Recommended Order Denying Complaint of Pansy McCamie, dba McCamie's Trash Removal and Closing Docket
P-7, Sub 826 (11-12-96)

Carolina Telephone and Telegraph Company - Order Reopening Docket for the Limited Purpose of Conducting an Independent Survey
P-7, Sub 826 (12-10-96)

Carolina Telephone and Telegraph Company - Order Dismissing Complaint of Donna M. Jones and Closing Docket
P-7, Sub 828 (07-31-96)

Central Telephone Company - Order Closing Docket in Complaint of Wilson Paschall
P-10, Sub 481 (05-01-96)

Central Telephone Company - Order Dismissing Complaint of Barry and Julie Blount
P-10, Sub 483 (07-31-96)

Complaint-Telephone - Order Serving Notice of Settlement and Closing Docket in the Matter of Steven T. Kirkman, CPA v. GTE
P-89, Sub 52 (09-16-96)

Excel Telecommunications, Inc. - Recommended Order in Favor of Complainant, Richard L. Boles
P-270, Sub 5 (07-15-96)

GTE South Incorporated - Order Denying Complaint of James R. Infanger
P-19, Sub 283 (05-21-96)

HCC Telemanagement; Hospitality Communications Corp., dba - Order Holding Docket in Abeyance in the Complaint of Richard C. Flynt, dba Town and Country Real Estate
P-403, Sub 2 (08-28-96)

TELEPHONE - EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company - Order Authorizing Extended Area Service - Angier to Benson InterLATA Extended Area Service
P-7, Sub 824 (01-17-96)

Carolina Telephone and Telegraph Company - Order Authorizing No-Protest Notice - Fuquay-Varina to Lillington Extended Area Service
P-7, Sub 829 (04-30-96) (Commission Allyson K. Duncan dissents)

Carolina Telephone and Telegraph Company - Order Approving Fuquay-Varina to Lillington Extended Area Service
P-7, Sub 829 (07-30-96)

Central Telephone Company - Order Requiring GTE Economic Cost Study - Roxboro to Durham InterLATA Extended Area Service
P-10, Sub 482 (04-23-96)

Central Telephone Company - Order Authorizing Polling and Instituting InterLATA EAS Moratorium - Roxboro to Durham InterLATA Extended Area Service
P-10, Sub 482 (10-30-96)

TELEPHONE - MERGER

ADNET Telemanagement, Inc.; MIDCOM Communications, Inc. - Order Approving Merger of ADNET Telemanagement, Inc. Into MIDCOM Communications, Inc.
P-443, Sub 1; P-308, Sub 11 (01-24-96)

Midwest Fibernet, Inc.; Consolidated Communications Telecom Services, Inc. - Order Approving Intracorporate Merger
P-429, Sub 1; P-516 (03-05-96)

Overlook Communications International Corporation - Order Approving Transfer of Control to Charter Communications International, Inc.
P-479, Sub 1 (09-24-96)

Phoenix Network, Inc.; AC America, Inc. - Order Approving Sale of Assets from Automated Communications, Inc. To Phoenix Network, Inc.
P-239, Sub 6; P-333, Sub 1 (03-06-96)

WorldCom, Inc. - Order Approving Merger with MFS Communications Company, Inc. and Related Transactions
P-283, Sub 15 (10-17-96)

TELEPHONE - PENALTIES

Advanced Telecommunications Network - Order Concerning Penalty
P-489 (04-30-96)

America's Tele-Network Corporation - Order Concerning Penalty
P-502 (05-16-96) Order Regarding Penalty (06-25-96)

DeltaCom, Inc. - Order Requiring Penalty
P-500 (08-13-96)

The Furst Group, Inc. - Order Requiring Report
P-363, Sub 1 (08-21-96) Order Requiring Penalty (10-08-96) Order Modifying Penalty Payment Schedule (11-12-96)

LDD, Inc. - Order Concerning Penalty
P-456 (05-14-96) Order Concerning Report (06-04-96)

LDM Systems, Inc. - Order Concerning Penalty
P-437 (04-29-96) Order Extending Time for Penalty Report (05-23-96)

Long Distance, Inc. - Order Requiring Report
P-575 (10-18-96)

Long Distance of Michigan, Inc. - Order Concerning Penalty
P-520 (05-14-96) Second Order Concerning Penalty (05-22-96)

MTC Telemanagement Corporation - Order Concerning Penalty
P-488 (04-17-96)

NeTel, Inc. - Order Concerning Penalty
P-464 (05-24-96) Order Regarding Penalty (07-02-96)

PNG Telecommunications - Order Accepting Penalty
P-543 (09-20-96)

Primus Telecommunications, Inc. - Order Requiring Report
P-451 (06-11-96) Order Requiring Penalty (07-16-96)

QCC, Inc. - Order Concerning Penalty
P-450 (04-26-96)

UStel, Inc. - Order Requiring Report
P-492 (10-17-96)

Value Tel, Inc. - Order Concerning Penalty
P-466 (05-03-96) Second Order Concerning Penalty (05-22-96)

TELEPHONE - SALES AND TRANSFER

Capital Network System, Inc.; AMNEX, Inc. - Order Approving Transfer of Control of Capital Network System, Inc. To AMNEX, Inc.
P-385, Sub 1; P-554 (06-25-96)

GE Capital Communication Services Corporation; Midcom Communications, Inc. - Order Approving Transfer of Customers from GE Capital Communication Services Corporation to Midcom Communications, Inc.
P-348, Sub 1; P-308, Sub 12 (03-06-96)

Hospitality Communications Corporation; Allnet Communications Services, Inc. - Order Approving Transfer of Customers from Hospitality Communications Corporation to Allnet Communications Services, Inc.
P-403, Sub 1; P-244, Sub 11 (02-09-96)

International Telemanagement Group, Inc. - Order Approving Transfer of Ownership and Control
P-393, Sub 1 (02-09-96)

LCI International Telecom Corp. - Order Approving Transfer of Assets from Teledial America, Inc. dba U.S. Signal to LCI International Telecom Corp. and Related Transactions
P-386, Sub 7 (01-19-96)

LCI International Telecom Corp. - Order Approving Transfer of Assets from Pennsylvania Alternative Communications, Inc. To LCI International Telecom Corp.
P-386, Sub 9; P-407, Sub 1 (06-25-96)

North State Telephone Company; North State Telephone Long Distance Company - Order Approving Plan of Reorganization and Share Exchange and Transfer of Control
P-42, Sub 119; P-547, Sub 1 (08-28-96)

TELEPHONE - SECURITIES

ACC National Long Distance Corp. - Order Granting Authority to Incur Certain Debt Obligations
P-435, Sub 2 (12-31-96)

Intellical Operator Services, Inc. - Order Approving Stock Transfer to ILD Communications, Inc.
P-390, Sub 2 (10-10-96)

LCI Telemanagement Corp. - Order Approving Sale of Certain Assets of WorldTel to LCI Telemanagement
P-252, Sub 11 (05-31-96)

PhoneTel Technologies, Inc. - Order Granting PhoneTel Technologies, Inc. Exemption of Securities Regulation
SC-485, Sub 2 (08-28-96)

WorldCom, Inc. - Order Approving Issuance of Shares of Common Stock
P-283, Sub 12 (05-29-96)

WorldCom, Inc. - Order Approving Financing
P-283, Sub 13 (06-25-96)

TELEPHONE - SPECIAL CERTIFICATES (Issued and Reinstated)

Docket Number	Date	Company
SC-245, Sub 2	11-27-96	Hal K. Snyder
SC-754, Sub 2	04-03-96	James E. Taylor, Jr., dba Taylor Maid Payphone Service

SC-851, Sub 2	12-18-96	Neuse Baptist Church
SC-903, Sub 2	05-24-96	Henderson County Public Schools
SC-1192	01-03-96	Beth M. Wrege, dba Environmental & Educational Enterprises
SC-1193	01-05-96	Omayma S. Gouda
SC-1194	01-29-96	James Allen Spencer
SC-1195	01-25-96	James E. Strother
SC-1196	01-22-96	Joe H. Walden, dba TJ's Billiards
SC-1197	01-22-96	James W. Kornegay
SC-1198	01-22-96	David H. Townley
SC-1199	01-22-96	J. B. Davis Electric Co., Inc.
SC-1200	01-22-96	Stan C. Lee, dba Telephone Communication Services
SC-1201	01-23-96	Russell J. Holt
SC-1202	01-23-96	Prakash and Loretta Ramsingh, dba Ramsingh Enterprises
SC-1203	01-24-96	Jim Rafferty, dba System Paytel
SC-1204	02-01-96	Michael Rezek
SC-1205	02-01-96	Johnny Eugene Chapman, Jr., dba Carolina Phone
SC-1206	02-01-96	BLL Enterprises, Inc. dba Leather & Lace South
SC-1207	02-01-96	ALJO Enterprises, Inc.
SC-1208	02-08-96	Malcolm M. Murphy
SC-1209	02-12-96	Henry N. Banks, dba HNB Communications
SC-1210	02-16-96	Anthony W. Boahn
SC-1211	02-21-96	Brian Anon Haynes
SC-1212	02-21-96	Pieter G. Schepp, dba PGS-Phones
SC-1213	02-23-96	Michael J. Volker, dba DP Telecom
SC-1214	02-22-96	Gayle M. Wylie
SC-1215	02-27-96	Aaron G. Walp, dba A&T Coin Phones
SC-1216	03-08-96	Robert Allen Flaherty
SC-1217	03-08-96	Donna S. Graham, dba General Payphone & Electronics
SC-1218	03-08-96	William Shipley
SC-1219	03-08-96	Robert M. Reid, dba Pro Talk Communications
SC-1220	03-12-96	David P. Pyka
SC-1221	03-13-96	Advance Pay Systems, Inc.
SC-1222	03-13-96	Mohamed Nabil Houbi
SC-1223	03-18-96	Rainbow Station, Inc. dba Bellcomm S.E.
SC-1224	03-18-96	George Moulder
SC-1225	03-18-96	Tony D. Calhoun
SC-1226	03-22-96	Russell Grant, dba Roanoke Valley Telephone
SC-1227	03-27-96	Alan T. Grizzard
SC-1228	03-27-96	George Streeter and Frances Streeter
SC-1229	03-27-96	Stephen Zrebiec
SC-1230	03-28-96	Mark A. Meyer
SC-1231	04-03-96	Candace Y. Cooper
SC-1232	04-03-96	John and Patricia Bishop

SC-1233	04-03-96	Universal Telephone, Inc.
SC-1234	04-15-96	Bradley E. Whitley, dba Telelinc Communications
SC-1235	04-15-96	Sandra L. Carpenter, dba CCC Enterprises
SC-1236	04-15-96	James L. Burns, dba Eastern Telecom
SC-1237	04-22-96	Piedmont Communication, Inc.
SC-1238	04-24-96	Martha Cooper
SC-1239	04-24-96	Christopher McGouey
SC-1240	04-30-96	United Vending Systems of Charlotte, Inc.
SC-1241	04-30-96	JJL Enterprises, Inc.
SC-1242	05-01-96	Apparel Sales and Printing, Inc.
SC-1243	05-01-96	W. Christopher
SC-1244	05-01-96	Leonard and Annette Graves, dba Lincoln Grove Laundry Express Service
SC-1245	05-09-96	Kenneth E. Walker
SC-1246	05-09-96	Lions Services, Inc.
SC-1247	05-09-96	Royal Payphones, Inc.
SC-1248	05-24-96	Barb Welter
SC-1249	06-28-96	Carolina Telephone and Telegraph Company
SC-1250	05-24-96	Charles Lavern Robinson, dba Robinsons Communications
SC-1251	05-24-96	Mark Scruggs
SC-1252	05-24-96	Charles A. Mandeville
SC-1253	05-24-96	Tammy M. Vigliarolo
SC-1254	05-24-96	Louis E. Sieber, dba Cap-Tel
SC-1255	05-30-96	James E. Strother, dba A B COMM
SC-1256	06-06-96	Cynthia T. Brown, dba TerryCom PayTel Co.
SC-1257	06-06-96	United TelCom Services, Inc.
SC-1258	06-18-96	Glennie L. Lowery
SC-1259	06-17-96	Richard Ira Flye, Jr., dba Flye Telephone Company
SC-1260	06-17-96	Shawn Harvey
SC-1261	06-17-96	Billy J. Withrow
SC-1262	06-17-96	Leo Reger
SC-1263	06-17-96	Octavious D. Spruill
SC-1264	06-28-96	Mike Jaroush
SC-1265	07-12-96	Harry S. Garman, III, dba H.G. Communications
SC-1266	07-12-96	Ellen Boyles, dba Teleconnections
SC-1267	07-12-96	Jeffrey Fernald, dba Carolina Tel-Com
SC-1268	07-25-96	Richard A. Workman
SC-1269	07-25-96	Fulton Happy Holiday, Inc., dba Happy Holiday Campground
SC-1270	07-25-96	Alexis C. Pearce, dba ACP - SAV
SC-1271	07-25-96	Tim Wood
SC-1276	08-05-96	James T. Hoyle III, dba D-Tel
SC-1277	08-05-96	Jonathan Bennett, dba JB Enterprises
SC-1278	08-06-96	Barbara King

SC-1279	08-06-96	Vann B. Sapp
SC-1280	08-14-96	Johnny O. Milam, Jr., Jay S. Milam, Joel B. Milam, and Freddy L. Brown, dba M & B Communications
SC-1281	08-14-96	Hiep Q Le
SC-1282	08-14-96	Earl R. Betts, dba Computronic Payphones
SC-1283	08-14-96	Short Enterprises, Inc.
SC-1284	08-26-96	Sean Trainor
SC-1285	08-26-96	Adventure Golf & Games, Inc.
SC-1286	08-26-96	Thomas J. Jamison
SC-1287	09-05-96	Jane A. Clark, dba Cribleman-Pary Group
SC-1288	09-05-96	R. Kenneth Jamison
SC-1289	09-05-96	Jenny Butler Jenkins
SC-1290	09-19-96	Furniture Associates, Inc.
SC-1291	09-19-96	The Moreland Corporation, Inc.
SC-1292	09-19-96	Canton Management, Inc.
SC-1293	09-19-96	Marshall Ray Wilder, dba MRW Enterprises
SC-1294	09-19-96	Vernon E. Jones
SC-1295	09-19-96	Dennis David Kid
SC-1296	09-19-96	Mohammad Keshavarz
SC-1297	09-19-96	Keith A. Wilson
SC-1298	09-19-96	TMC Restaurant of Charlotte, L.L.C., dba The Men's Club
SC-1299	09-19-96	Mark Goodnight, dba Goodcount Communications
SC-1300	09-24-96	Olga M. Friend
SC-1301	09-24-96	Fredrick M. Harris, Jr., dba Computer Electronic Telecom Services
SC-1302	09-24-96	William M. Rast III, dba Rastcom
SC-1303	10-03-96	Bobby Glen Mills
SC-1304	10-03-96	Chhabil Tailor
SC-1305	10-08-96	Jefferson Motel, Inc.
SC-1306	10-08-96	Larry M. Jones/Joyce P. Jones dba QuinTel Com
SC-1307	10-16-96	Alvaro de Jesus Durango V.
SC-1308	10-16-96	Charles P. Bunting, dba P & M Communications
SC-1309	10-16-96	Mr. Wiley Wells
SC-1310	10-16-96	David Schopper
SC-1311	10-22-96	Donald E. Harris, dba Maximum Communications (MaxCom)
SC-1312	10-22-96	Trent Blalock
SC-1313	10-22-96	Lance E. Johnson
SC-1314	10-28-96	Michael L. Wester
SC-1315	10-28-96	Timothy Donaldson
SC-1316	10-28-96	Anastasios Vogiatzis
SC-1317	10-28-96	David Daugherty, Jr., dba Piedmont Payphone Company
SC-1318	11-06-96	Charles D. McKinney
SC-1319	11-06-96	Alamo Motel & Cottages, L.L.C.

SC-1320	11-18-96	Gerlach Enterprises, Inc., dba "G" Communications, Inc.
SC-1321	11-18-96	Quentin Lamm, Jr.
SC-1322	11-18-96	Atlantic Coast Communications, Inc.
SC-1323	11-18-96	Infinitel, Inc.
SC-1324	11-18-96	Randall D. Veselka
SC-1325	11-15-96	MCI Telecommunications Corporation
SC-1326	11-27-96	Bob Ross, dba Ross Telecommunications
SC-1327	11-27-96	Southwest Pay Telephone Corporation
SC-1328	12-09-96	Douglas M. Adkins and Robert E. White, Jr.
SC-1329	12-05-96	Lynn Huang
SC-1330	12-09-96	Standing Properties, Inc., dba Atlantic Telecommunications
SC-1331	12-09-96	Koretizing of Wilson, Incorporated
SC-1332	12-23-96	Joseph J. and Kay N. Scharnow, dba The Sun Company Telecommunications
SC-1333	12-23-96	Travel Resorts of America, Inc.
SC-1334	12-31-96	Toni and Jeffrey Shue, dba All Type Vending

TELEPHONE - SPECIAL CERTIFICATES AMENDED AND REISSUED

Docket No	Date	Company
SC-178, Sub 1	10-08-96	SAV-WAY Food Stores
SC-277, Sub 1	10-03-96	Daniel Payphones, Inc.
SC-332, Sub 2	10-08-96	Computerized Payphone Systems
SC-403, Sub 1	11-06-96	Mei Fone-Tek, Inc.
SC-556, Sub 1	10-08-96	Nautilus Fitness Center
SC-614, Sub 4	04-30-96	Equal Access Corporation
SC-663, Sub 1	03-18-96	Nolan Leonard
SC-670, Sub 1	10-08-96	Carlson S. Howerton, dba CSH Communications
SC-802, Sub 1	04-30-96	Inmate Phone Systems Corporation
SC-804, Sub 1	04-24-96	Value-Added Communications, Inc.
SC-864, Sub 3	09-20-96	Talton Telecommunications of Carolina, Inc
SC-921, Sub 1	09-24-96	Interstate Coin Telephone Incorporated
SC-937, Sub 1	01-24-96	Cherokee Payphone, Inc.
SC-942, Sub 1	09-19-96	T-NETIX, Inc.
SC-942, Sub 2	12-18-96	T-NETIX, Inc.
SC-945, Sub 1	10-28-96	Diamond Communication Services, Inc.
SC-993, Sub 1	10-09-96	Dale B. Harris, dba Central Piedmont Payphone Company
SC-1002, Sub 1	09-19-96	James Stephen Lassier, dba VFT Phones
SC-1032, Sub 1	10-28-96	Rodney O. Davis, dba ALK Phones
SC-1036, Sub 1	08-14-96	Jerry Montoya, dba QuarterCom

SC-1062, Sub 1	08-26-96	R.S. McKee, Inc.
SC-1063, Sub 1	10-08-96	William C. Cushman
SC-1132, Sub 1	07-25-96	Shawn Bippley
SC-1186, Sub 1	02-21-96	Charles W. Ivins, dba C.J.I. Telecom
SC-1200, Sub 1	10-08-96	Stan C. Lee, dba Telephone Communication Services
SC-1209, Sub 1	09-24-96	Henry N. Banks, dba HNB Communications
SC-1214, Sub 1	03-08-96	Gayle M. Wylie and Anne Wylie, dba North South Telecom
SC-1219, Sub 1	11-27-96	Robert M. Reid, dba Pro Talk Communications

TELEPHONE - SPECIAL CERTIFICATES REVOKED, CANCELLED OR CLOSED

Docket No	Date	Company
SC-95, Sub 1	08-01-96	Rufus Davis Pritchard, Jr.
SC-174, Sub 3	11-08-96	Michael Karaman, dba The Phone Network
SC-247, Sub 1	05-03-96	Just Seven Numbers Communications, Inc.
SC-268, Sub 1	11-12-96	Charter Pines Hospital
SC-321, Sub 1	04-08-96	Lanny Miller, dba B-Comm
SC-322, Sub 3	03-01-96	Richard H. Raybon
SC-396, Sub 3	03-13-96	International Payphones of North Carolina
SC-400, Sub 1	02-12-96	The Hot Dog King
SC-438, Sub 1	08-16-96	Sherrill's University of Hairstyling
SC-446, Sub 1	11-18-96	Charlotte Mecklenburg Hospital Authority
SC-469, Sub 1	08-26-96	Raleigh Putt Putt Golf & Games
SC-527, Sub 3	05-22-96	West Henderson High School
SC-610, Sub 4	01-10-96	Robert Cefail & Associates, American Inmate Communications, Inc.
SC-637, Sub 1	09-16-96	Tim Lewis
SC-660, Sub 1	01-11-96	Tyrone and Janene Shackleford
SC-673, Sub 1	11-12-96	Edward L. Holt
SC-678, Sub 1	06-17-96	BHB Payphone, Inc.
SC-686, Sub 1	03-06-96	Garry Kennedy
SC-712, Sub 3	05-01-96	EXECUTONE Information Systems, Inc.
SC-713, Sub 1	09-16-96	Larry E. Scott
SC-726, Sub 1	01-24-96	Larry G. Baber
SC-727, Sub 2	05-29-96	Atlantic Diversified Technologies, Inc.
SC-784, Sub 1	01-19-96	Global Hospitality, Inc.
SC-788, Sub 1	06-04-96	World Communications, Inc.
SC-844, Sub 1	01-19-96	Hospitality Communications, Inc., dba Hospitality Telecom, Inc.
SC-846, Sub 1	09-16-96	Joseph F. Balzano, dba National Security Associates
SC-853, Sub 1	11-18-96	Happy Holiday Enterprises, Inc., dba Happy Holiday Campground

SC-859, Sub 1	11-27-96	William F. Meares, dba Meares Phone Service
SC-865, Sub 1	10-14-96	RJV Enterprises, Inc.
SC-873, Sub 2	09-17-96	Hal K. Snyder, dba Ocracoke Telephone Company
SC-890, Sub 1	02-12-96	Michael J. Brooks
SC-893, Sub 1	03-15-96	Larry L. Rollans
SC-897, Sub 1	05-22-96	U.S. Payphones, Inc.
SC-900, Sub 1	11-18-96	Earl R. Queen
SC-916, Sub 1	02-28-96	Patricia A. Marler
SC-924, Sub 1	07-26-96	Ruth A. Stewart
SC-934, Sub 1	01-16-96	Howard Collins, dba Telephone Service & Equipment Company
SC-935, Sub 1	01-19-96	Anne W. Keck
SC-941, Sub 2	11-18-96	Greorges H. Francis/Elias G. Francis, dba HUP Communications
SC-959, Sub 1	05-22-96	Jeff and Carol Childress
SC-961, Sub 1	01-19-96	Thomas L. Denski
SC-965, Sub 1	01-24-96	Philip M. Godwin
SC-967, Sub 1	03-15-96	Phillip E. Jansen, dba Ding-A-Ling Tele-Communications Company
SC-978, Sub 1	01-19-96	T. Tod O'Briant
SC-980, Sub 1	08-28-96	Carrie L. Kleinjan
SC-989, Sub 1	12-23-96	Suburban Telephone Company
SC-1003, Sub 2	02-23-96	David I. Park, dba DP Telecom
SC-1009, Sub 1	01-19-96	James E. Halas
SC-1012, Sub 1	01-10-96	Pleasant Ridge Communications, Inc.
SC-1017, Sub 1	11-01-96	Gary Dennis Marlow, dba T & G Enterprises
SC-1022, Sub 1	01-19-96	Robert Bohn, Jr./Alison A. Bohn, dba Pro-Tel Communications
SC-1023, Sub 2	01-19-96	James A. Vansickle, Jr.
SC-1027, Sub 1	05-02-96	Richard F. Brown, dba RK Investments
SC-1033, Sub 1	10-14-96	Terry Blankinship and Brenda Blankinship-Blankinship Enterprises, dba Phoneworks
SC-1035, Sub 1	10-14-96	Jeffrey A. Morgan
SC-1056, Sub 1	01-16-96	Garlock, Inc. dba Fluidtec Engineered Products
SC-1060, Sub 1	07-12-96	McManus Telecommunications, Inc.
SC-1073, Sub 1	08-12-96	CAP Enterprises, Inc.
SC-1074, Sub 1	09-03-96	Chuck Bonner
SC-1076, Sub 1	01-19-96	Daryl Kilian
SC-1077, Sub 1	10-14-96	Linda Arledge
SC-1078, Sub 1	04-22-96	Sue Ellen Oetken
SC-1087, Sub 1	05-01-96	Rodney B. Paul, dba Paul's Phones
SC-1089, Sub 1	02-12-96	Capital Pay Phone Group, LLC
SC-1090, Sub 1	08-16-96	Wyman Rankin Haywood, Sr.
SC-1102, Sub 1	06-17-96	Markques Council
SC-1122, Sub 1	01-19-96	Emily I. Onuzuruike, dba Jasrone Tropicana Mart

SC-1124, Sub 1	07-12-96	Morris L. Cruse
SC-1127, Sub 1	01-19-96	Roy Randy Pierce
SC-1129, Sub 1	08-14-96	Jay S. Milam
SC-1130, Sub 1	08-14-96	Johnny O. Milam, Jr.
SC-1135, Sub 1	06-13-96	Spencer S. Fitts
SC-1140, Sub 1	04-22-96	Dennis Tarlton
SC-1153, Sub 1	02-16-96	Xiaoming Zhou
SC-1154, Sub 1	06-12-96	Dianne D. Robinson
SC-1155, Sub 1	04-22-96	Jerry Leon Brown, dba J&B Telecom Systems & Equipment Co.
SC-1156, Sub 1	01-19-96	Charles E. Britt
SC-1158, Sub 1	10-14-96	Kenneth L. Huffman, Jr.
SC-1164, Sub 1	05-01-96	Gary w. Robbins, dba GWR Communications
SC-1168, Sub 1	04-08-96	Mikel James Fogt
SC-1176, Sub 1	10-21-96	NC Telco, L.L.C.
SC-1181, Sub 1	01-18-96	William Wade Hamilton
SC-1186, Sub 2	08-22-96	Charles W. Ivins, dba C.J.I. Telecom
SC-1191, Sub 1	08-22-96	Waheed & Taiwo Tijani, dba Carolina Payphone Company
SC-1193, Sub 1	04-08-96	Omayma S. Gouda
SC-1195, Sub 1	10-21-96	James E. Strother
SC-1196, Sub 1	07-18-96	Joe H. Walden, dba TJ's Billiards
SC-1199, Sub 1	04-22-96	J.B. Davis Electric Co., Inc.
SC-1208, Sub 1	11-08-96	Malcolm M. Murphy
SC-1210, Sub 1	10-21-96	Anthony W. Boahn
SC-1217, Sub 1	06-12-96	Donna S. Graham, dba General Payphone & Electronics
SC-1251, Sub 1	10-21-96	Mark Scruggs
SC-1254, Sub 1	07-18-96	Louis E. Sieber, dba Cap-Tel
SC-1258, Sub 1	10-21-96	Glennie L. Lowery
SC-1269, Sub 1	11-08-96	Fulton Happy Holiday, Inc., dba Happy Holiday Campground
SC-1285, Sub 1	10-21-96	Advenutre Golf & Games, Inc.

TELEPHONE - TARIFFS

BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company - Order on Reconsideration of Proposals to Offer Call Return, Repeat Dialing and Call Trace Under a Per-Call Billing Arrangement (Commissioners Laurence A. Cobb and Judy Hunt dissents, Commission Jo Anne Sanford concurs)
P-55, Sub 1021; P-7, Sub 831; P-10, Sub 484 (08-05-96) Order Approving Scripts (09-18-96)(Judy Hunt dissents.)

Intellicall Operator Services, Inc. - Order Granting Request to Withdraw Tariff and Retain Certificate P-390, Sub 1 (03-08-96)

SouthernNet, Inc. - Order Approving Joint Stipulation of the Public Staff and SouthernNet, Inc. regarding the Provision of Service at Non-Tariffed Rates by SouthernNet, Inc.
P-156, Sub 25 (04-30-96) Order Closing Docket (06-18-96)

Time Warner Communications of North Carolina, L.P. - Order Allowing Deferral of Tariff Filing
P-472, Sub 1 (02-13-96)

WorldCom, Inc.; AT&T Communications of the Southern States, Inc. - Order Suspending Tariffs and Requesting Further Comment
P-283, Sub 10; P-140, Sub 49 (04-09-96)

WorldCom, Inc.; AT&T Communications of the Southern States, Inc. - Order Allowing Tariffs and Requiring Notice Through Recorded Announcements
P-283, Sub 10; P-140, Sub 49 (05-15-96)

TELEPHONE - MISCELLANEOUS

ALLTEL Carolina Incorporated - Order Accepting Affiliated Contracts for Filing and Permitting Operations Thereunder Pursuant to G.S. 62-153
P-118, Sub 80 (08-07-96)

John W. Beach, Jr. - Recommended Order Approving Stipulation
SC-252, Sub 1 (03-04-96)

John W. Beach, Jr. - Order Dismissing Show Cause Proceeding and Closing Docket
SC-252, Sub 1 (05-22-96)

BellSouth Telecommunications, Inc. - Order Ruling on Motions for Reconsideration
P-55, Sub 1013 (01-17-96)

BellSouth Telecommunications, Inc. - Order Denying Motion to Dismiss
P-55, Sub 1013 (02-01-96)

BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company; GTE South Incorporated - Order Requiring Flow Through Proposals and Tariff Filings and Requesting Comments
P-55, Sub 1013; P-7, Sub 825; P-10, Sub 479; P-19, Sub 277 (06-04-96)

BellSouth Telecommunications, Inc. - Procedural Order in the Matter of Application of BellSouth to Provide In-Region InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996
P-55, Sub 1022 (08-21-96)

BellSouth Telecommunications, Inc. - Order Denying Petition by Sprint Communications Company, L.P. for a Generic Proceeding on Rates of BellSouth Telecommunications, Inc. For Interconnection, Unbundled Elements, Transport and Termination and Resale
P-55, Sub 1023 (09-23-96)

Carolina Telephone and Telegraph Company - Order Accepting Amended Agreement for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153
P-7, Sub 779 (04-02-96)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order of Clarification Regarding Discovery Procedures
P-7, Sub 825; P-10, Sub 479 (01-19-96)

Citizens Telephone Company - Order on Negotiated Service Agreements in the Matter of Cellular Contracts between Citizens Telephone Company and Cellco Partnership
P-12, Sub 94 (08-20-96)

Equal Access Corporation - Order Closing Docket
SC-614, Sub 3 (03-07-96)

EqualNet Corporation - Order Approving Joint Stipulation between the Public Staff and EqualNet Corporation and Closing Dockets
P-383, Sub 1; P-383, Sub 3 (09-26-96)

Excel Telecommunications, Inc. - Order Approving Corporate Reorganization
P-270, Sub 4 (01-18-96)

Faw, T. Todd - Order Requiring Report in the Matter of Investigation of COCOT Rule and General Statute Violations
SC-1092, Sub 1 (11-05-96)

GTE South Incorporated - Order Accepting Amended Agreement for Filing and Permitting Operation Thereunder Pursuant to G.S. 62-153
P-19, Sub 235 (04-02-96)

GTE South Incorporated - Order Classifying Local Calling Plan
P-19, Sub 277; P-100, Sub 126 (07-31-96)

Hair Cuttery; Creative Hairdressers, Inc., dba - Order Dismissing Public Staff Petition for Order to Show Cause in the Matter of Investigation of COCOT Rule Violations
SC-1061, Sub 1 (12-09-96)

MIDCOM Communications, Inc. - Order Concerning Request of MIDCOM to Amend its Certificate of Public Convenience and Necessity
P-308, Sub 10 (01-09-96)

Payphone Service, Inc. - Recommended Order Approving Joint Motion
SC-837, Sub 1 (04-26-96)

Payphone Services, Inc. - Order Dismissing Show Cause Proceeding, Canceling Hearing and Closing Docket
SC-837, Sub 1 (06-11-96)

Telaleasing Enterprises, Inc. - Recommended Order Approving Joint Stipulation
SC-473, Sub 2 (08-08-96) Order Dismissing Petition to Show Cause (08-21-96)

Telecare, Inc. - Order Requiring Revisions
P-302, Sub 1 (03-26-96)

Telecare, Inc. - Order Dismissing Show Cause Petition and Closing Docket
P-302, Sub 1 (05-20-96)

Winstar Gateway Network - Order Approving Joint Stipulation between the Public Staff and Winstar Gateway Network
P-317, Sub 7 (08-27-96)

WATER AND SEWER

WATER AND SEWER - APPLICATIONS WITHDRAWN, DENIED, OR DISMISSED

Carolina Pines Utility Company, Inc. - Order Allowing Withdrawal of Application and Closing Docket
W-870, Sub 3 (10-11-96)

D & W Water Systems - Order Allowing Withdrawal of Application and Closing Docket
W-929, Sub 3 (09-05-96)

Envirotech Utility Management Services; DBK, Inc. dba - Order Closing Docket
W-1062 (03-08-96)

Frit Environmental, Inc. - Recommended Order Allowing Withdrawal of Application for Rate Increase and Closing Docket
W-965, Sub 1 (12-13-96) Order Allowing Recommended Order to Become Effective and Final (12-16-96)

Heater Utilities, Inc. - Order Dismissing Application in Docket No. W-274, Sub 111 to Begin Operations in an Area Contiguous to Present Water Utility Service in Creekwood Bluffs Subdivision in Wake County and Closing Docket
W-274, Sub 111; W-274, Sub 113 (04-17-96)

Hydrotech - Order Canceling Utility Status, Requiring Customer Notice, and Closing Docket
W-1033 (01-03-96)

WATER AND SEWER - CANCELLED, CLOSED OR REVOKED

A&D Water Service, Inc. - Order Closing Docket
W-1049 (07-22-96)

Albert L. Bolick - Order Canceling Water Utility Franchise in Eastway Subdivision in Catawba County
W-430, Sub 3 (04-09-96)

CWS Systems, Inc. - Order Accepting Refund Report and Closing Docket
W-778, Sub 20; W-778, Sub 22; W-778, Sub 23 (08-30-96)

Cape Fear Utilities, Inc.; Quality Water Supplies, Inc. - Order Closing Dockets
W-279, Sub 22; W-225, Sub 20 (07-26-96)

Carolina Water Service, Inc. Of North Carolina - Order Accepting Refund Report and Closing Docket
W-354, Sub 128 (08-30-96)

Coastal Carolina Utilities, Inc. - Order Closing Docket
W-917, Sub 4 (01-04-96)

G & F Utilities, G & F Construction, Inc. dba - Order Closing Docket
W-940, Sub 1 (01-04-96)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 101 (05-31-96)

HydroLogic, Inc. - Order Requiring Customer Notice, and Closing Docket
W-988, Sub 12 (01-04-96)

Harmony Heights Water Company; George F. Boahn, dba - Order Canceling Franchise to Provide Water Utility Service in the Harmony Heights Subdivision in Hoke County and Closing Docket
W-896, Sub 1 (07-16-96)

Independence Water System; Gerald T. Smith, dba - Order Canceling Franchise to Provide Water Utility Service in the Independence Village Subdivision in Union County
W-858, Sub 2 (05-24-96)

Mid South Water Systems, Inc. - Order Canceling Franchise for Water Utility Service in Shook Springs Subdivision in Burke County and Closing Docket
W-720, Sub 155 (10-30-96)

Springfield Village - Order Canceling Water Utility Franchise for Providing Water Utility Service in Springfield Village Subdivision in Scotland County
W-650, Sub 2 (11-22-96)

Viewmont Acres Water System - Order Closing Docket
W-856, Sub 3 (05-15-96)

Wake Utilities, Inc. - Order Canceling Franchise for Water and Sewer Utility Serivce in Fieldstream Subdividion, Wake County, and Closing Docket
W-891 (02-13-96)

WATER AND SEWER - CERTIFICATES

Alpha Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Phillips Landing Subdivision in Wake County, Approving Rates, and Requiring Customer Notice
W-862, Sub 15 (05-07-96) Order Requiring Gross-Up Affidavit and Metering Status Report (08-28-96) Order Closing Docket (09-23-96)

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