EIGHTY-SEVENTH REPORT

OF THE

NORTH CAROLINA
UTILITIES COMMISSION
ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1997 THROUGH DECEMBER 31, 1997

EIGHTY-SEVENTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1997, through December 31, 1997

*Jo Anne Sanford, Chair

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

*William R. Pittman, Commissioner

*J. Richard Conder, Commissioner

*Robert V. Owens, Jr., 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.

* Chairman Hugh A. Wells resigned December 31, 1996. Jo Anne Sanford appointed Chair February 1, 1997 and reappointed to a four year term July 1, 1997.

* William R. Pittman, appointed January 28, 1997

*J. Richard Conder, appointed July 18, 1997, replacing Laurence A. Cobb

*Robert V. Owens, Jr., appointed August 29, 1997, replacing Charles H. Hughes

LETTER OF TRANSMITTAL

December 31, 1997

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, 1997, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1997, and ending December 31, 1997.

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

Jo Anne Sanford, Chair

Allyson K. Duncan, Commissioner

Ralph A. Hunt, Commissioner

Judy Hunt, Commissioner

William R. Pittman, Commissioner

J. Richard Conder, Commissioner

Robert V. Owens, Jr., Commissioner

Geneva S. Thigpen, Chief Clerk

TABLE OF CONTENTS

TABLE OF ORDERS AND DECISIONS PRINTED i

GENERAL ORDERS 1
GENERAL ORDERS - GENERAL 1
M-100, SUB 89 1
M-100, SUB 89 2
GENERAL ORDERS - ELECTRICITY 3
E-100, SUB 79 3
GENERAL ORDERS - GAS 25
G-100, SUB 44 25
G-100, SUB 44 31
G-100, SUB 74 32
GENERAL ORDERS - TELEPHONE 34
P-100, SUB 72 34
P-100, SUB 84 36
P-100, SUB 84a 41
P-100, SUB 114 92
P-100, SUB 124 92
P-100, SUB 133 93
P-100, SUB 133 95
P-100, SUB 133 96
P-55, SUB 1022 97
P-100, SUB 133 97
P-100, SUB 133a 98
P-100, SUB 133a 100
P-100, SUB 133c 101
P-100, SUB 133e 103
P-100, SUB 133f 105
P-100, SUB 137 107
P-100, SUB 137 130
P-100, SUB 137 132
GENERAL ORDERS - WATER AND SEWER 137
W-100, SUB 5 137
W-100, SUB 17 137
W-100, SUB 30 139

ELECTRICITY 144
ELECTRICITY - CERTIFICATES 144
E-2, SUB 700 144
E-2, SUB 713 151
ELECTRICITY - COMPLAINTS 154
E-2, SUB 699 154
ELECTRICITY - RATES 156
E-2, SUB 712 156
E-7, SUB 598 164
E-7, SUB 598 175
E-22, SUB 373 176

ELECTRICITY - SECURITIES 189
E-7, SUB 596 189

GAS 206
GAS - CERTIFICATES 206
G-38, SUB 1 206
G-39; G-37, SUB 1; G-5, SUB 327; G-9, SUB 351 218
GAS - RATES 238
G-3, SUB 202 238
G-5, SUB 377 244
G-9, SUB 393 251
G-21, SUB 355 259
GAS - MISCELLANEOUS 267
G-5, SUB 372 267
G-21, SUB 347 272

TELEPHONE 277
TELEPHONE - INTERCONNECTION AGREEMENTS 277
P-140, SUB 50 277
P-140, SUB 50 311
P-140, SUB 51 312
P-140, SUB 51 372
P-141, SUB 29 451
P-141, SUB 29 492
P-141, SUB 30 494
P-141, SUB 30 554
P-141, SUB 31 613
P-141, SUB 31 631
P-294, SUB 8 635
P-294, SUB 8 647
P-294, SUB 9 657
P-294, SUB 9 687
P-141, SUBS 30 & 31, P-140, SUB 51, P-294, SUBS 8 & 9 700
TELEPHONE - RATES 703
P-16, SUB 181 703
P-55 SUB 1013; P-7, SUB 825; P-10, SUB 479; P-19, SUB 277 726

WATER AND SEWER 729
WATER AND SEWER - EMERGENCY OPERATORS 729
W-796, SUB 12 729
W-796, SUB 13 738
W-848, SUB 16 749
W-848, SUB 16 757
W-957, SUB 1 766
WATER AND SEWER - RATES 775
W-778, SUB 31 775

INDEX OF ORDERS PRINTED 854

ORDERS AND DECISIONS LISTED 860

ORDERS AND DECISIONS PRINTED

1997 ANNUAL REPORT OF ORDERS AND DECISIONS OF THE NORTH CAROLINA UTILITIES COMMISSION

TABLE OF ORDERS AND DECISIONS PRINTED

NOTE: For General Orders, see Index on page 854

PAGE

AT&T Communications of the Southern States, Inc.
P-140, Sub 50 - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (04-11-97) 277
P-140, Sub 50 - Order Approving BellSouth/AT&T Interconnection Agreement (05-12-97) 311
P-140, Sub 51 - Recommended Arbitration Order (02-04-97) 312
P-140, Sub 51 - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-03-97) 372
P-140, Sub 51 - Order Deferring Rulings (09-16-97) 700

BellSouth Telecommunications, Inc.
P-55, Sub 1013 - Order Regarding Financial Reports and Claims of Confidentiality (04-15-97) 726
P-55, Sub 1022 - Order Clarifying Report Requirements (11-21-97) 97

CWS Systems, Inc.
W-778, Sub 31 - Order Granting Partial Rate Increase (11-26-97) 775

Cardinal Extension Company, LLC
G-39 - Order Granting Certificate and Approving Rates, Terms and Conditions, Merger and Transfer and Abandonment of Gas Service (11-06-97) 218

Cardinal Pipeline Company, LLC
G-37, Sub 1 - Order Granting Certificate and Approving Rates, Terms and Conditions, Merger and Transfer and Abandonment of Gas Service (11-06-97) 218

Carolina Power & Light Company
E-2, Sub 699 - Further Order on Petition for Investigation and Complaint (02-06-97) 154
E-2, Sub 700 - Order Granting Certificate of Public Convenience and Necessity (08-01-97) 144
E-2, Sub 712 - Order Approving Net Fuel Charge Decrease (09-08-97) 156

E-2, Sub 713 - Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity and Waiving Public Notice and Hearing (07-31-97) 151

Carolina Telephone and Telegraph Company
P-7, Sub 825 - Order Regarding Financial Reports and Claims of Confidentiality (04-15-97) 726

Central Telephone Company
P-10, Sub 479 - Order Regarding Financial Reports and Claims of Confidentiality (04-15-97) 726

Concord Telephone Company
P-16, Sub 181 - Order Authorizing Price Regulation (05-30-97) 703

Duke Power Company
E-7, Sub 596 - Order Approving Merger and Issuance of Securities (04-22-97). 189
E-7, Sub 598 - Order Approving Fuel Charge Adjustment (06-17-97) 164
E-7, Sub 598 - Errata Order (06-24-97) 175

Frontier Utilities of North Carolina, Inc.
G-38, Sub 1 - Order Awarding Certificate and Approving Rates for Warren County (03-27-97) 206

GTE South Incorporated
P-19, Sub 277 - Order Regarding Financial Reports and Claims of Confidentiality (04-15-97) 726

Harrco Utility Corporation
W-796, Sub 12 - Order Appointing Emergency Operator and Approving Rates (01-31-97) 729
W-796, Sub 13 - Recommended Order Denying Request for Assessment (06-26-97) 738

Intech Utilities, Inc.
W-957, Sub 1 - Order Appointing New Emergency Operator and Approving Rates (01-31-97) 766

MCI Telecommunications Corporation
P-141, Sub 29 - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (04-11-97) 451
P-141, Sub 29 - Order Approving Interconnection Agreement (05-12-97) 492
P-141, Sub 30 - Recommended Arbitration Order (02-04-97) 494
P-141, Sub 30 - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-03-97) 554
P-141, Sub 31 - Recommended Arbitration Order (05-01-97) 613
P-141, Sub 31 - Order Ruling on Objections and Composite Agreement (07-01-97) 631
P-141, Subs 30 & 31 - Order Deferring Rulings (09-16-97) 700

North Carolina Gas Service, a Division of NUI Corporation
G-3, Sub 202 - Order on Annual Review of Gas Costs (10-14-97) 238

North Carolina Natural Gas Corporation
G-21, Sub 347 - Order Approving Stipulation on E&D Activities (02-07-97)........ 272
G-21, Sub 355 - Order on Annual Review of Gas Costs (06-13-97) 259

North Carolina Power
E-22, Sub 373 - Order Approving Fuel Charge Adjustment (12-29-97) 176

North State Utilities, Inc.
W-848, Sub 16 - Order Appointing New Emergency Operator and Approving Rates (Monticello and Saddleridge Subdivisions) (01-31-97) 749
W-848, Sub 16 - Order Appointing New Emergency Operator and Approving Rates (Manchester, Banbury Woods, Woods of Ashbury and Hollybrook Subdivisions) (01-31-97) 757

Piedmont Natural Gas Company, Inc.
G-9, Sub 351 - Order Granting Certificate and Approving Rates, Terms and Conditions, Merger and Transfer and Abandonment of Gas Service (11-06-97) 218
G-9, Sub 393 - Order on Annual Review of Gas Costs (12-11-97) 251

Public Service Company of North Carolina, Inc.
G-5, Sub 327 - Order Granting Certificate and Approving Rates, Terms and Conditions, Merger and Transfer and Abandonment of Gas Service (11-06-97) 218
G-5, Sub 372 - Order Approving Expansion Project for Funding from Expansion Fund (04-22-97) 267
G-5, Sub 377 - Order on Annual Review of Gas Costs (10-09-97) 244

Sprint Communications Company, L.P.
P-294, Sub 8 - Recommended Arbitration Order (04-07-97) 635
P-294, Sub 8 - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-02-97) 647
P-294, Sub 9 - Recommended Arbitration Order (04-07-97) 657
P-294, Sub 9 - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-02-97) 687
P-294, Subs 8 & 9 - Order Deferring Rulings (09-16-97) 700

GENERAL ORDERS
GENERAL ORDERS - GENERAL

DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of		
Revision of Commission's Safety	)	ORDER ADOPTING
Rules R8-26 and R9-1	)	REVISED SAFETY
	)	RULES

BY THE COMMISSION: The American National Standards Institute (ANSI) has updated its 1993 Edition of the National Electrical Safety Code, said update being ANSI C2.1997. The Commission is of the opinion that, unless significant cause is shown otherwise, the 1997 Edition of the National Electrical Safety Code should be adopted as the safety rules of this Commission for electric and communications utilities under its jurisdiction.

By Order issued October 20, 1992, in Docket No. M-100, Sub 89, the Commission published proposed revisions to its Rules R8-26 and R9-1, and specified that unless protests or requests for hearing were received within 90 days after the date of said Order, the Commission would determine the matter without public hearing. No comments were received.

IT IS, THEREFORE, ORDERED as follows:

1. That revised Rules R8-26 and R9-1, attached hereto as Appendix A, are hereby adopted effective the date of this Order.

2. That the Chief Clerk shall mail a copy of this Order to all regulated electric and telephone companies operating in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of January, 1996.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R8-26. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2. 1997, 1997 Edition, are hereby adopted by reference as the electric safety rules of this Commission and shall apply to all electric utilities which operate in North Carolina under the jurisdiction of the Commission.

Rule R9-1. Safety Rules and Regulations - The rules and regulations of the American National Standards Institute entitled "National Electrical Safety Code", ANSI C2. 1997, 1997 Edition, are hereby adopted by reference as the communication safety rules of this Commission and shall apply to all telephone and telegraph utilities which operate in North Carolina under the jurisdiction of the Commission.

DOCKET NO. M-100, SUB 89

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of Revision of Commission's Safety Rules R8-26 and R9-1	)))	ERRATA ORDER

BY THE COMMISSION: The Order Adopting Revised Safety Rules in the above-captioned matter was issued on January 7, 1997, but contained an issue date of January 7, 1996. The Commission is of the opinion that this Errata Order should be issued correcting the issue date of said Order Adopting Revised Safety Rules to January 7, 1997.

IT IS THEREFORE ORDERED that the Order Adopting Revised Safety Rules is hereby revised as described herein.

ISSUED BY ORDER OF THE COMMISSION
This the 8th day of January 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-100, SUB 79

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Biennial Determination of Avoided Cost	)	ORDER ESTABLISHING STANDARD
Rates for Electric Utility Purchases	)	RATES AND CONTRACT TERMS FOR
from Qualifying Facilities - 1996	)	QUALIFYING FACILITIES

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, February 4, 1997.

BEFORE: Commissioner Allyson K. Duncan, Presiding, Jo Anne Sanford, Chair, Commissioners Charles H. Hughes, Laurence A. Cobb, Ralph A. Hunt, Judy Hunt, and William R. Pittman

APPEARANCES:

For Carolina Power & Light Company:

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

For Duke Power Company:

Mary Lynne Grigg, Senior Attorney I, 422 South Church Street, PB05E, Charlotte, North Carolina

Robert W. Kaylor, Attorney at Law, 225 Hillsborough Place, Suite 480, Raleigh, North Carolina 27603

For Nantahala Power & Light Company:

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

For North Carolina Power:

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

Robert W. Kaylor, Attorney at Law, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27603

For Western Carolina University:

Richard Kurcharski, Attorney at Law, Office of the Legal Counsel, Western Carolina University, Room 530, H. F. Robinson Building, Cullowhee, North Carolina 28723

For the Using and Consuming Public:

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

For Carolina Industrial Groups for Fair Utility Rates I & 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:

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 Consolidated Hydro Southeast, Inc.:

Bradford W. Wyche, Attorney at Law, Wyche, Burgess, Freeman & Parham, P. A., P. O. Box 728, Greenville, South Carolina 29602

Robert A. Meynardie, Attorney at Law, Moore & Van Allen, P. O. Box 26507, Raleigh, North Carolina 27611

For Fayetteville Public Works Commission:

Marland C. Reid, Attorney at Law, Reid, Lewis, Deese, Nance & Person, L.L.P., P. O. Box 1358, Fayetteville, North Carolina 28302

For Hydrodyne Industries, L.L.C.:

No attorney

For South Yadkin Power, Inc.:

Jeffrey E. Oleynik, Attorney at Law, John M. Cross, Jr., Attorney at Law, Brooks, Pierce, McLendon, Humphrey & Leonard, P. O. Box 26000, Greensboro, North Carolina 27420

For Southeastern Hydro-Power, Inc.:

No attorney

BY THE COMMISSION: These are the current biennial proceedings held by the North Carolina Utilities Commission pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) and the Federal Energy Regulatory Commission (FERC) regulations implementing those provisions which delegated responsibilities in that regard to this Commission. These proceedings are also held pursuant to the responsibilities delegated to this Commission pursuant to N.C.G.S. 62-156(b) to establish rates for small power producers as that term is defined in N.C.G.S. 62-3(27a).

Section 210 of PURPA and the regulations promulgated pursuant thereto by the FERC prescribe the responsibilities of the FERC and of State regulatory authorities, such as this Commission, relating to the development of cogeneration and small power production. Section 210 of PURPA requires the FERC to prescribe such rules as it determines necessary to encourage cogeneration and small power production, including rules requiring electric utilities to purchase electric power from, and to sell electric power to, cogeneration and small power production facilities. Under Section 210 of PURPA, cogeneration facilities and small power production facilities which meet certain standards and which are not owned by persons primarily engaged in the generation or sale of electric power can become "qualifying facilities," (hereinafter often referred to as QFs) and thus become eligible for the rates and exemptions established in accordance with Section 210 of PURPA.

Each electric utility is required under Section 210 of PURPA to offer to purchase available electric energy from cogeneration and small power production facilities which obtain qualifying facility status under Section 210 of PURPA. For such purchases, electric utilities are required to pay rates which are just and reasonable to the ratepayers of the utility, which are in the public interest, and which do not discriminate against cogenerators or small power producers. The FERC regulations require that the rates electric utilities pay to purchase electric energy and capacity from qualifying cogenerators and small power producers shall reflect the cost that the purchasing utility can avoid as a result of obtaining energy and capacity from these sources, rather than generating an equivalent amount of energy itself or purchasing the energy or capacity from other suppliers. The implementation of these rules was delegated to the State regulatory authorities. Implementation may be accomplished by the issuance of regulations on a case-by-case basis or by any other means reasonably designed to give effect to the FERC's rules.

The Commission at the outset determined to implement Section 210 of PURPA and the related FERC regulations by holding biennial proceedings. The instant proceeding is the latest such proceeding to be held by this Commission since the enactment of PURPA. In prior biennial proceedings, the Commission has determined separate avoided cost rates to be paid by five electric utilities to the QFs which are interconnected with them. The Commission has also reviewed and approved other related matters involving the relationship between the electric utilities and the QFs interconnected with them, such as terms and conditions of service, contractual arrangements, and interconnection charges.

This proceeding also involves the carrying out of the Commission's duties under the mandate of G.S. 62-156, which was enacted by the General Assembly in 1979. G.S. 62-156 provides that "no later than March 1, 1981, and at least every two years thereafter" this Commission shall determine the rates to be paid by electric utilities for power purchased from small power producers according to certain standards prescribed therein. Such standards generally approximate those which are

prescribed in the FERC regulations regarding factors to be considered in the determination of avoided cost rates. The definition of the term small power producer is more restrictive in G.S. 62-156 than the PURPA definition of that term, in that it includes only hydroelectric facilities of 80 megawatts or less, thus excluding users of other types of renewable resources.

On July 30, 1996, the Commission issued its Order Establishing Biennial Proceeding, Requiring Data and Scheduling Public Hearing. That Order made Carolina Power & Light Company (CP&L), Duke Power Company (Duke), Virginia Electric and Power Company d/b/a North Carolina Power (NC Power), Nantahala Power and Light Company (Nantahala), and Western Carolina University (WCU) parties to the proceeding to establish the avoided cost rates each is to pay for power purchased from QFs and small power producers pursuant to Section 210 of PURPA and the FERC regulations associated therewith, and G.S. 62-156. The Order also required each electric utility to file proposed rates, proposed standard form contracts, and to respond to the following questions raised in the previous biennial avoided cost proceeding: (1) the appropriate performance adjustment factor to use in establishing avoided cost rates; (2) the reasonableness of requiring utilities to continue to offer long-term levelized rates and the reasonableness of basing the availability of long-term levelized rates on the nameplate capacity of the qualifying facility versus such availability being based on the capacity the qualifying facility contracts to sell; and (3) the appropriate treatment of direct and indirect costs of air pollution, nuclear decommissioning, and other costs that may be avoided by hydro generation and the merits of encouraging hydro generation by calculating avoided cost rates for hydro qualifying facilities based on higher performance adjustment factors. The Order also stated that the Commission would attempt to resolve all issues arising in this docket based on a record developed through public witness testimony, written statements, exhibits and avoided cost schedules verified by persons who would otherwise be qualified to present expert testimony in a formal hearing, and written comments on the statements, exhibits and schedules, rather than a full evidentiary hearing. CP&L, Duke, NC Power Nantahala and WCU were required to file their statements and exhibits. Other persons desiring to become parties were allowed to intervene and to file their statements and exhibits. All parties were allowed to file reply comments and proposed orders. The Commission scheduled a public hearing for February 4, 1997, solely for the purpose of taking nonexpert public witness testimony.

On August 13, 1996, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. By Order dated August 16, 1996, the Commission allowed CUCA to intervene.

On August 15, 1996, NC Power filed a request for modification of the applicability of Schedule 19, its avoided cost rate schedule for long-term contracts. NC Power sought to modify the applicability of Schedule 19 by limiting it to non-hydroelectric qualifying facilities with capacity of 100 kW or less or to hydroelectric qualifying facilities with capacity of 80 mW or less. NC Power argued that factors such as technological advances are reducing the cost of capacity, and causing administratively determined avoided cost rates to exceed actual avoided costs. On September 20, 1996, the Public Staff filed a response to NC Power's request of August 15, 1996, asking that it be denied. On October 14, 1996, the Commission issued its Order which deferred ruling on NC Power's request.

On August 22, 1996, the Public Works Commission of the City of Fayetteville (PWC) filed a Petition to Intervene and by Order dated August 27, 1996, was allowed to do so.

On October 18, 1996, Duke Power filed a motion to suspend the availability of its avoided cost rates previously approved in Docket No. E-100, Sub 74. Duke argued that current avoided costs are lower than those on which the Sub 74 rates are based, and that overpayments could therefore result. On October 25 and November 22, CP&L and NC Power, respectively, filed motions to suspend the availability of their current avoided cost rates on essentially the same grounds as Duke. The Commission issued an Order on December 13, 1996, suspending the long-term contract rates approved in Sub 74 with the following exemption: "the suspensions would not apply to QFs that have obtained certificates of public convenience and necessity or have applied for such certificates prior to the following respective dates: October 28, 1996, for CP&L; October 18, 1996, for Duke; and November 22, 1996, for N.C.Power." The Order provided that except for the exemption, the new long-term rates proposed in the present docket would be applicable during the suspension, with the proviso that a QF contracting during the suspension period would be able to switch to a longer-term contract if the Commission does not eliminate the longer-term rates as proposed.

On October 31, 1996, the Carolina Industrial Groups for Fair Utility Rates I & II (CIGFUR), filed a Petition to Intervene. By Order dated November 27, 1996, the Petition to Intervene was granted.

On November 1, 1996, Southeastern Hydro Power, Inc. filed a Petition to Intervene and by Order dated November 27, 1996, was allowed to do so.

On November 4, 1996, CP&L, Duke, NC Power and WCU filed their initial statements and exhibits.

On December 3, 1996, the Commission issued an Order Excusing Nantahala From Compliance in which the Commission indicated that the FERC had granted the request that Nantahala be excused from any further obligation to purchase electric power from qualifying facilities and ordered that Nantahala should be excused from compliance with this Commission's July 30, 1996, Order consistent with the terms and conditions cited in Nantahala's motion.

On December 23, 1996, and January 8, 1997, Consolidated Hydro Southeast, Inc. filed a Petition to Intervene and by Order dated January 10, 1997, was allowed to do so.

On January 10 and January 13, 1997, South Yadkin Power, Inc. And Hydrodyne Industries, LLC, respectively, filed Petitions to Intervene, which the Commission granted on January 17, 1997.

On February 4, 1997, the Commission held a public hearing solely for the purpose of taking nonexpert public witness testimony.

Based on the foregoing, all of the parties' comments and exhibits, the public witness testimony at the hearing and the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. CP&L shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 mW or less

capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 mW or less capacity. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration. CP&L shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 mW or less capacity.

2. Duke shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 mW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 mW or less capacity. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration. Duke shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 5 mW or less capacity.

3. NC Power shall offer long-term levelized capacity payments and energy payments based on a long-term levelized generation mix with adjustable fuel prices for 5-year, 10-year and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 mW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 mW or less capacity. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration. NC Power shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 100 kW or less capacity. NC Power shall offer long-term levelized energy payments as an additional option for small qualifying facilities rated at 100 kW or less capacity.

4. CP&L, Duke and NC Power shall offer qualifying facilities not eligible for the standard long-term levelized rates the options of contracts to sell energy only at the variable rates established by the Commission or, as appropriate, contracts and rates derived by free and open negotiations with the utility or participation in the utility's competitive bidding process for obtaining additional capacity. The Commission expects all utilities to negotiate in good faith with qualifying facilities. The Commission will set no specific guidelines in this proceeding for such negotiations.

5. Duke and CP&L use the peaker method to develop avoided capacity costs. NC Power uses the differential revenue requirement (DRR) methodology. Both the peaker method and the DRR method are generally accepted and used throughout the electric utility industry and are reasonable for use in this proceeding.

6. The utilities should not be allowed to limit the availability of their standard long-term levelized rate options based on the nameplate capacity of the applicable generating unit.

7. A performance adjustment factor of 2.0 should be utilized by both CP&L and Duke for their respective avoided cost calculations for hydroelectric facilities with no storage capability and no other type of generation.

8. A performance adjustment factor of 1.2 should be utilized by both CP&L and Duke for their respective avoided cost calculations for all QFs in this proceeding except hydroelectric facilities with no storage capability and no other type of generation.

9. CP&L should offer one set of standard avoided cost rates for QFs that connect to CP&L's system at the transmission level and another set of such rates for QFs that connect to its system at the distribution level.

10. CP&L's 1% extra facilities charge is reasonable for purposes of this docket; however, Hydrodyne may file a complaint if it wishes a further examination of the issue than that conducted in this proceeding.

11. Duke should be allowed to limit the availability of its standard avoided cost rates and contracts established in this proceeding to QFs who execute such contracts by November 4, 1998, and who begin delivery by May 4, 2001.

12. Duke should be allowed to limit the availability of its standard avoided cost rates to one operational facility per site, with exceptions determined by the Commission on a case-by-case basis.

13. NC Power should not be required to offer capacity credits to QFs prior to 1999 for purposes of this proceeding.

14. NC Power should not be allowed to offer avoided cost rates to QFs that are based on the QF being operated in either a baseload or a peaking mode for purposes of this proceeding.

15. Duke should purchase all QF power offered to Nantahala pursuant to the criteria under which Duke purchases energy and capacity from QFs for its own system including standard rates and contracts, negotiated rates and contracts, the availability criteria for each, and Duke's competitive bidding program.

16. The rate schedules and standard contract terms and conditions proposed by CP&L, Duke, and NC Power in this proceeding should be approved subject to the modifications discussed herein.

17. WCU's proposed Small Power Production Supplier Reimbursement Formula is reasonable and appropriate. WCU should not be required to offer any long-term levelized rate options to qualifying facilities.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 THROUGH 3

Whether the Commission should require the electric utilities to offer long-term levelized rates to QFs as standard rate options has been an issue in prior avoided cost proceedings, and it is an issue in this proceeding as well. Long-term levelized rates are permitted, but not required, by the regulations implementing Section 210 of PURPA. Long-term contracts are "encouraged in order to enhance the economic feasibility of small power production facilities" by G.S. 62-156(b)(1).

Prior to the 1984 avoided cost proceeding in Docket No. E-100, Sub 41A, CP&L and Duke were required to offer standard long-term levelized rate options to all QFs, and NC Power was required to offer such options only to small power producers as defined in G.S. 62-3(27a), i.e., hydroelectric facilities of 80 megawatts or less capacity. The standard long-term levelized rate options were required by this Commission in order to encourage the development of cogeneration and small power production facilities. However, in the 1984 proceedings both the Public Staff and the utilities raised concerns about these options, and the Commission undertook a reexamination of the issue. The Commission sought a balance between the policy of encouraging QF development, especially the development of small power producers under G.S. 62-156, and the risks posed by defaults and by the uncertainty of the long-term projections on which long-term rates are based. The Commission resolved these concerns by requiring CP&L, Duke and NC Power to offer long-term levelized rates for 5-, 10-, and 15-year periods as standard options to hydro QFs of 80 megawatts or less capacity, i.e., small power producers under G.S. 62-3(27a), and to non-hydro QFs contracting to sell five megawatts or less capacity. Non-hydro QFs contracting to sell capacities of more than five megawatts were given the options of contracts at the variable rates set by the Commission or contracts negotiated with the utility. This Commission has continued this basic framework of long-term levelized rate options up until the present proceeding with two changes: (1) starting with the 1988 proceeding in Docket No. E-100, Sub 57, NC Power was allowed to change from a long-term levelized energy payment to energy payments based on a long-term levelized generation mix with adjustable fuel prices (NC Power was required to offer a long-term levelized energy payment as an additional option for small QFs of 100 kW or less) and (2) as utilities began to pursue competitive bidding (first NC Power in Docket E-100, Sub 57 in 1988, then Duke in Docket No E-100, Sub 64 in 1994, finally CP&L in Docket No E-100, Sub 74 on April 25, 1996), non-hydro QFs desiring to sell capacities of five megawatts or more were required to participate in the bidding (rather than negotiating a contract with the utility).

In this proceeding, CP&L, Duke, and NC Power all proposed eliminating the 10- and 15-year levelized rate options from their standard rates available to QFs. The Public Staff contended that eliminating the 10- and 15-year levelized rate options would be inconsistent with prior Commission rulings, especially with regard to encouraging hydro development. In addition, the Public Staff cites State policy encouraging reduction of landfill size and control of associated methane gas and argues that long-term levelized rate options should be retained for these types of facilities also.

In its initial comments CP&L proposed to eliminate altogether its 10- and 15-year levelized rate options and to restrict the availability of the 5-year levelized rate option to hydro QFs of 80 mW or less capacity and to non-hydro QFs of 100 kW or less capacity. CP&L pointed out that the 10- and 15-year levelized rates are based on long-term projections of costs which are inherently unstable. Furthermore, CP&L pointed out that its 15-year projections made in the early 1980s have grossly overstated actual avoided costs, resulting in overpayments for the purchase of power from QFs. It

said that such overpayments are even more of a problem in today's more competitive environment. In its proposed order, CP&L described a compromise agreement reached with the Public Staff, pursuant to which CP&L will offer 5-, 10-, and 15-year levelized rates to hydro QFs of 5 mW or less capacity and to QFs of 5 mW or less capacity fueled by trash or methane from landfills or hog waste. (Although both the Public Staff and CP&L describe this part of their agreement in terms of QFs "with 5 mW or less generating capacity," it seems more appropriate in light of the Commission's decision with respect to nameplate capacity to restrict these long-term rate options based on QFs "contracting to sell 5 mW or less capacity.") They also agreed that CP&L will offer 5-year levelized rates to all other QFs with 3 mW or less capacity.

Duke proposed to eliminate its 10- and 15-year levelized rate options; Duke proposed to continue offering a 5-year levelized rate option to hydro QFs of 80 mW or less capacity and to non-hydro QFs contracting to sell 5 mW or less capacity. Duke argued that repeal of the mandatory purchase provisions of PURPA has been a part of virtually all recent electric industry restructuring proposals in Congress, and that the former long-term planning horizon is no longer compatible with the increasingly competitive environment. In its proposed order, Duke contended that the compromise agreement between CP&L and the Public Staff is inappropriate for Duke. Duke argues that such an agreement favors certain types of facilities and would lead to other types of facilities also claiming environmental benefits in order to obtain 10- and 15-year levelized rates.

NC Power proposed to eliminate altogether the 10- and 15-year levelized rate options and to restrict the availability of the 5-year levelized rate option to hydro QFs of 80 mW or less capacity and to non-hydro QFs of 100 kW or less capacity. It has not reached any compromise agreement with the Public Staff. Its arguments are similar to those of Duke..

CUCA opposed reducing the availability of long-term levelized rates. It contended that the Commission's decision not to proceed with its retail competition investigation renders the utilities' arguments about the "competitive environment" invalid and that the reasons given in previous biennial proceedings for not eliminating or reducing the availability of long-term levelized rates are still valid. CUCA also opposed offering long-term levelized rates to certain QFs but not others, arguing that Congress has deemed all QFs worthy of encouragement.

In reexaming the availability of long-term levelized rate options in this docket, the Commission must balance concerns similar to those considered in the 1984 proceeding -- encouragement of QFs on the one hand and the risks of overpayments and stranded costs on the other. The increasingly competitive nature of the electric utility industry makes the latter considerations more compelling today than in 1984. The Commission concludes that to the extent CP&L's agreement provides long-term levelized rate options of 5-, 10-, and 15-years to hydro QFs of 5 mW or less and to non-hydro QFs of 5 mW or less fueled by trash or methane from landfills or hog waste, it strikes an appropriate balance of these concerns, and the Commission concludes that this aspect of the agreement should be ordered as to Duke and NC Power. The Commission concludes that CP&L, Duke, and NC Power should each offer long-term levelized rate options of 5-, 10-, and 15-year terms to hydro QFs of 5 mW or less and to non-hydro QFs of 5 mW or less fueled by trash or methane from landfills or hog waste. These long-term rate options are more limited than in the past; these limitations serve important statewide policy interests while reducing the utilities' exposure to overpayments. The policy interests to be served are those such as G.S. 62-156(b)(1), which specifically provides that long-term contracts "shall be encouraged in order to enhance the

economic feasibility of small power production facilities." This is a statewide policy and it supports our requiring long-term rate options for hydro QFs. G.S. 130A-309.01 et al, provides a statewide policy of reducing and managing solid waste landfills, and we believe that it supports extending these options to facilities fueled by trash or methane from landfills. Although there is no specific statute as to hog waste (and although the Commission knows of no such generating facility yet), the Commission nonetheless believes that there is an environmental policy to be served by encouraging facilities fueled by methane from hog waste. While the Commission believes that these policies should be furthered, the Commission is also concerned about reducing the utilities' exposure to overpayments, and our decision does this as well. The facilities entitled to long-term rates are generally of limited number and size. Few new hydro facilities are being certificated; most sites are already developed. The number of trash and methane sites large enough to support generation is also probably limited. Although G.S. 62-156(b)(1) applies to hydros of 80 mW or less, there are few large hydro sites available in North Carolina, and the Commission has limited long-term rates to hydros contracting to sell 5 mW or less in order to further reduce the exposure inherent in rates based on long-term forecasts of the utilities' costs. Reducing the utilities' risks in this way is an appropriate response to the more competitive environment of the electric utility industry today.

As to QFs other than hydros of 5 mW or less and non-hydros of 5 mW or less fueled by trash or methane from landfills or hog waste, the Commission believes that the utilities should be allowed to pursue the individual approaches that they have proposed. PURPA allows the states and utilities a great deal of flexibility, and there is no statewide policy applicable here, such as with hydro. CP&L has agreed to offer a standard 5-year levelized rate option to other QFs who contract to generate 3 mW or less capacity, Duke has proposed a 5-year levelized rate option for all QFs who contract to sell 5 mW or less capacity, and NC Power has proposed to restrict its standard 5-year levelized rate option to nonhydro QFs who desire to sell 100 kW or less generating capacity. As in previous proceedings, NC Power proposes to offer a fixed long-term levelized energy payment as an option to small QFs rated at 100 kW or less capacity. Except as modified above, all of these proposals are approved.

As in previous proceedings, the Commission also concludes that the standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

In earlier proceedings the Commission ordered that QFs not entitled to the standard long-term levelized rate options had the options of selling energy only at the variable rates set by the Commission or of negotiating contracts and rates with the utility. As utilities began to pursue competitive bidding for new capacity needs, the Commission ordered that utilities could require QFs not entitled to the standard long-term levelized rate options to participate in the bidding, rather than negotiating contract rates and terms. The Commission discussed this issue in the last proceeding Docket No. E-100, Sub 74 and concluded that the exact point at which a utility could invoke a refusal to negotiate and require a QF to participate in bidding should be resolved by motion to the

Commission. CP&L filed just such a motion in the last proceeding and received an order from the Commission dated April 25, 1996.

Consistent with these earlier decisions, the Commission concludes in this proceeding that QFs not eligible for the standard long-term levelized rates established herein should have the options of contracts to sell energy only at the variable rates established by the Commission or, as appropriate, contracts and rates derived by free and open negotiations with the utility or participation in the utility's competitive bidding process for obtaining additional capacity.

If the QF undertakes negotiations with the utility, the Commission has stated in previous orders that the utility should negotiate in good faith for terms fair to the QF and ratepayers, that a QF may file a complaint if it feels that a utility is not negotiating in good faith, and that various factors listed by the Commission should be considered. There is no need to repeat these guidelines; they have been stated numerous times in past orders (see, e.g., the discussion of Findings 34 and 35 in the June 23, 1995 Order in Docket No. E-100, Sub 74); and these provisions remain in effect.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

CP&L and Duke have used the peaker methodology to develop their avoided costs in each of the past several avoided cost proceedings; NC Power has used the differential revenue requirement (DRR) methodology. Each utility proposes to continue using the same respective methodology in this proceeding. Various concerns have been expressed in these biennial proceedings concerning the divergence between the utilities' retail rates and their avoided cost rates, the utilities' short-term need for more peaking capacity versus their long-term need for more base load capacity, the appropriate application of the peaker and DRR methodologies in a manner that would avoid understating avoided costs, and the low level of QF activity occurring in the State. As a result, in the last biennial avoided cost proceeding (Docket No. E-100, Sub 74), the Commission made a detailed reexamination of avoided cost methodologies. The reexamination focused on three primary methods that have been used to estimate the cost of avoided capacity and energy: the peaker method, the DRR method, and the proxy unit method.

The peaker methodology used by CP&L and Duke is based on a method for estimating marginal costs developed by the National Economic Research Associates, Inc. (NERA). The method was described in detail in what became known as the "Grey Books" series of publications, jointly sponsored by the National Association of Regulatory Utility Commissioners, the Electric Power Research Institute, the Edison Electric Institute, the American Public Power Association, and the National Rural Electric Cooperative Association. It is one of four marginal costing methodologies developed in the "Electric Utility Rate Design Study" portion of the "Grey Books" series (Topics 1.3 and 1.4).

According to the theory underlying the peaker method, if the utility's generating system is operating at equilibrium (i.e., at the optimal point), the cost of a peaker (a combustion turbine or CT) plus the marginal running costs of the system will produce the utility's avoided cost. Theoretically, it will also equal the avoided cost of a baseload plant, despite the fact that the capital costs of a peaker are less than those of a baseload plant.

In theory, the lower capital costs of the CT are offset by the fuel and other operation and maintenance expenses included in system marginal running costs, which are higher for a peaker than for a new baseload plant. The theory indicates that the summation of the peaker capital costs plus the system marginal running costs will match the cost per KWh of a new baseload plant -- assuming the system is operating at the optimum point. Put another way, the fuel savings of a baseload plant will offset its higher capital costs, producing a net cost equal to the capital costs of a peaker.

The DRR methodology involves a comparison of the revenue requirements which result from two alternative system expansion plans -- one including a block of new QF capacity and the other excluding such a block. The utility's generation costs are calculated on a yearly basis for an extended period of time for each of these two scenarios. The difference between the two scenarios is then computed for each year, and the results converted into present value terms, thereby providing an estimate of the present value of the total avoided cost of the assumed block of QF capacity.

The proxy unit methodology uses a specific plant as a proxy unit for calculating avoided costs. It argues that the peaker and DRR methods both mismatch low baseload fuel costs with low peaker capital costs, and that either (1) the higher fuel costs of a peaker should be used with the lower capital cost of a peaker, or (2) the lower fuel cost of a baseload unit should be used with the higher capital cost of a baseload unit.

In this proceeding, the Public Staff comments referred to the testimony of its witness Johnson in Docket No. E-100, Sub 74, in which he opposed the use of the peaker method by CP&L and Duke for future proceedings, and he opposed the use of the DRR method by NC Power for future proceedings unless modified by elements of the peaker method. However, the Public Staff did not specifically challenge the adoption of the peaker and DRR methods for use in this proceeding.

CUCA continues to oppose the peaker method and the DRR method for determining avoided capacity costs. It recommends the proxy unit method, in which all avoided costs are based on a specific avoidable generating unit. It contends that a unit-specific method more accurately reflects marginal energy or capacity costs.

Hydrodyne also stated its opposition to the methodology used by the Commission to calculate avoided costs, but did not elaborate on the reasons other than a statement that the methodology was unfair.

The Order Establishing Standard Rates and Contract Terms for Qualifying Facilities issued on June 23, 1995, in Docket No. E-100, Sub 74, contained approximately eight pages of discussion on this issue, leading to the following conclusions:

The Commission concludes that it should not require CP&L, Duke, and NC Power to utilize a common methodology in the next biennial proceeding for calculating avoided costs. There are obviously widely divergent opinions among even those who are most expert in these matters as to what costs are actually avoided and what methodologies will best identify those costs. For purposes of this proceeding, the Commission is of the opinion that each utility should be allowed to pursue its own preferred method for calculating avoided costs, subject to the ongoing review and discussion that takes place in these biennial proceedings.

The peaker method and the DRR method are generally accepted and used throughout the electric utility industry. The Public Staff did not challenge the adoption of either method in this biennial proceeding or in the previous biennial proceeding. Furthermore, NC Power's comparison of the results of the peaker and DRR methodologies as applied to them herein showed very little difference between the methodologies.

The Commission also concludes that it should not require the utilities to adopt a specific generating unit or type of unit for calculating avoided costs in this proceeding. The Commission has consistently found in previous biennial proceedings that the avoided cost of a utility system is not necessarily unit specific. Addition or deletion of a given generating unit affects how the remaining generating units are run. The economics of a generation mix is usually determinative, not the economics of a single unit....

For the purposes of this proceeding, the Commission concludes that both the peaker method and the DRR method are still generally accepted and used throughout the electric utility industry and are reasonable for use herein. The comments received in this docket have not provided new insights which would cause the Commission to revise its conclusions in the previous biennial proceeding regarding appropriate methodologies.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

In the previous proceeding, Docket No. E-100, Sub 74, CP&L and Duke proposed to limit the availability of standard avoided cost contract rates based on the nameplate capacity of the applicable generating unit. The Commission denied the proposal in that proceeding, but stated that it desired a fuller discussion of the issue. The Commission directed CP&L, Duke and NC Power to discuss more fully in the present proceeding the issue of whether the availability of standard contract rates should be based on nameplate capacity of the generating unit or the capacity that the QF contracts to sell to the utility.

The Public Staff's initial comments opposed the use of nameplate capacity. The Public Staff's objection to use of nameplate capacity recognizes that some power from a generating unit is often used internally at the site of the unit, and therefore even a QF with a nameplate capacity exceeding 5 mW should be able to qualify for the standard contract rates by contracting to deliver only 5 mW to the utility.

CP&L's initial comments stated that generator nameplate capacity should be used to determine a QF's eligibility for standard contract rates, rather than the actual mW capacity the QF contracts to sell. CP&L stated that nameplate capacity is an industry standard, is a readily knowable quantity, and is the most convenient and defensible determination of a project's qualification for a standard contract. However, CP&L's proposed order states that CP&L has now agreed with the Public Staff that eligibility for standard contract rates should not be based on nameplate capacity, provided that CP&L's standard 5-, 10-, and 15-year contract rates are limited as discussed elsewhere herein.

Duke's initial comments also supported use of nameplate capacity, but its proposed order states that it has reached an agreement with the Public Staff to base availability of standard contract rates for non-hydro QFs on the capacity and energy contracted to sell, rather than on nameplate

capacity. As part of this agreement, Duke modified its standard contract terms to set forth the maximum energy and capacity that can be provided under the contract. Duke added contract provisions to the following effect:

> (d) The maximum amount of electric power to be delivered by Supplier to the Company under this Agreement should be _______ kilowatts.
>
> (e) The maximum On-Peak Energy per Month to be delivered by Supplier and purchased by the Company under this Agreement in each Month shall be ______ kilowatts multiplied by the number of On-Peak Hours in the Month. Any On-Peak Energy per Month in excess of said maximum shall be purchased by the Company pursuant to the then-applicable variable on-peak energy rates and shall not be eligible for any Capacity Credit payments.
>
> (f) The maximum Off-Peak Energy per Month to be delivered by Supplier and purchased by the Company under this Agreement in each Month shall be ________ kilowatts multiplied by the number of Off-Peak Hours in the Month. Any Off-Peak Energy per Month in excess of said maximum shall be purchased by the Company pursuant to the then-applicable variable off-peak energy rates.

NC Power's comments and proposed order support limiting the availability of standard contract rates based on the nameplate capacity of the applicable generating unit. NC Power noted that nameplate capacity is a readily determined, less debatable value. It argues that the contract capacity standard can be misused to enable a QF larger than 5 mW to circumvent the availability limitations of the standard rates. For example, a QF could obtain the standard rates under a 4.9 mW contract capacity and subsequently construct a 10 mW or larger facility.

CUCA opposed the use of nameplate capacity. CUCA contended that none of the utilities have advanced any new argument supporting the nameplate capacity proposal, and that imposition of the nameplate capacity requirement would significantly reduce the availability of standard rates to QFs.

The Commission recognizes the utilities' concern that QFs whose facilities exceed 5 mW capacity may "game" the system in order to obtain the standard rates by contracting to deliver 5 mW of power and then exceeding the contracted amount from time to time in order to achieve an "average" 5 mW capacity even after forced or maintenance outages. The Commission believes, however, that appropriate safeguards other than use of nameplate capacity are available to the utilities to control such "gaming" of contracts. One example is the contract provisions agreed to by Duke and set forth above. Therefore, the Commission concludes that the utilities should not be allowed to limit the availability of their standard long-term levelized rate options based on the nameplate capacity of the applicable generating unit.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 AND 8

This issue was also raised in prior Docket No. E-100, Sub 74, and the Commission concluded that the matter of performance adjustment factors should be discussed in greater detail in the present proceeding. In that connection, the Commission stated that it was open to further discussion on the merits of encouraging hydro generation by utilizing a higher performance adjustment factor for hydro. The Commission also stated in the prior proceeding that the utilities should discuss in this proceeding

the direct and indirect costs of air pollution, nuclear decommissioning, and other environmental costs that are avoided because of hydro generation on their systems.

Avoided cost capacity rates established by the Commission using the peaker methodology have traditionally included a performance adjustment factor, the function of which is to allow a QF to experience some level of outages and yet still recover its full capacity credits. The calculation of a performance adjustment factor is a critical part of developing avoided cost capacity rates under the peaker methodology. A performance adjustment factor is not an essential part of calculating avoided cost capacity rates under the DRR method, and this is therefore not an issue as to NC Power. The Commission has previously found that a performance adjustment factor of 1.2 is appropriate for CP&L and Duke. The use of a 1.2 performance adjustment factor requires a QF to operate 83% of the time in order to collect its entire capacity credit. All parties agree that a QF should be allowed to have some appropriate level of outages without losing the ability to earn full capacity credits; the issue is the appropriate outage level to incorporate into the avoided cost capacity rate through the performance adjustment factor.

The Public Staff contends that the Commission should continue to prescribe a 1.2 performance adjustment factor for calculating avoided capacity costs, just as in previous proceedings. This performance adjustment factor allows a QF to experience up to 17% outages and still receive its full capacity credits. The Public Staff pointed out that CP&L and Duke run their baseload nuclear units at capacity factors in the low 80% range and still recover the total cost of the units from ratepayers. They each have system-wide capacity factors near 60%. According to the Public Staff, it would be discriminatory to require QFs to operate at an average capacity factor of 85% to 90% in order to receive the total capacity payments to which they are entitled.

The Public Staff further pointed out that G.S. 62-156 encourages hydro generation, that hydro generation is environmentally friendly, and that hydro facilities are generally unable to control the availability of their "fuel" and thus the timing of their capacity deliveries. The Public Staff therefore supported use of a 2.0 performance adjustment factor for hydro facilities with no storage capability and no other type of generation. The Public Staff argued that use of a higher factor does not change the avoided costs of the utility; it merely changes the manner of pricing out such avoided costs in payments to the QF.

Duke contended that the performance adjustment factor should be 1.129, which is comparable to the approximate 89% availability of its peaking units. Duke stated that the performance adjustment factor should be based upon neither a planning reserve margin (because a reserve margin incorporates factors such as load forecast error, weather variations and other unexpected operating conditions), nor upon the capacity factors of the utility's units or system (because the utility's capacity factors are influenced primarily by economic dispatch, not forced and schedule outages). In Duke's opinion, the fact that utilities are able to recover the full costs of their generating units that operate at low capacity factors is irrelevant to the establishment of an appropriate performance adjustment factor for a QF since utilities must build generation units that are idle for many hours of the year in order to meet reserve requirements when demand is high or other units are out of operation. Duke stated that the performance adjustment factor should be based on the capacity that Duke avoids by the presence of a QF, i.e. that the performance adjustment factor should be derived from the availability of a combustion turbine. Duke opposed the establishment of a separate performance adjustment factor for small hydroelectric qualifying facilities on the grounds, among others, that there is no basis in

PURPA or state law to support special treatment of small hydroelectric projects through rates that exceed the utility's avoided cost. Duke contended that using a higher performance adjustment factor for certain types of QFs could eventually result in higher rates for all QFs, because each type of QF has some unique characteristics that might be addressed by higher performance adjustment factors.

CP&L's initial comments also contended that the prescribed 1.2 performance adjustment factor should be reduced. It pointed out that relating performance adjustment factors to unit capacity factors includes not only unit outages but also variations in weather extremes, forecast error and other contingencies not related to unit availability. CP&L proposed a performance adjustment factor of 1.067, which it said was comparable to the outage rate of the combustion turbine capacity that can be avoided. CP&L's proposed order stated that it had reached an agreement with the Public Staff that a performance adjustment factor of 1.2 would continue to be used for all QFs except hydro facilities with no storage capability and no other type of generation and that a performance adjustment factor of 2.0 should be used for such hydro facilities.

CUCA pointed out that the avoided costs of a utility do not vary depending on the type of QF it purchases from, and that the type of QF should not affect the rates established in the avoided cost proceeding. CUCA supported the 1.2 performance adjustment factor and opposed a separate performance adjustment factor for hydro QFs.

The Commission has carefully reviewed all of the comments on this issue and concludes that a performance adjustment factor of 1.2 should continue to be used by CP&L and Duke in determining the avoided capacity cost rates for all QFs other than hydroelectric facilities with no storage capability and no other type of generation. This decision is generally based on the comments of the Public Staff and CUCA. It is also consistent with previous Commission decisions as well as the agreement reached between CP&L and the Public Staff. CP&L and Duke propose lower performance adjustment factors based on the projected availability of the capacity which is avoided by the presence of QFs, and therefore they contend such factors should be based solely on the availability of a combustion turbine. While the peaker methodology employed by CP&L and Duke relies on the cost of a combustion turbine to provide the purest estimate of avoided capacity costs, correct application of this method does not rely solely on a combustion turbine to determine a utility's avoided costs. For example, the peaker methodology does not rely only on the cost of fuel for a combustion turbine to determine avoided energy costs. Therefore, there is not necessarily any connection between use of the peaker methodology to determine avoided costs and the use of a combustion turbine to determine the appropriate performance adjustment factor. The Commission is unpersuaded by the utilities' arguments and concludes that a performance adjustment factor of 1.2 should continue to be used by CP&L and Duke for their respective avoided capacity cost calculations for all QFs other than hydroelectric facilities with no storage capability and no other type of generation.

The Commission also concludes that a performance adjustment factor of 2.0 should be utilized by CP&L and Duke in determining the avoided capacity cost rates for hydroelectric facilities with no storage capability and no other type of generation. This is consistent with the agreement between CP&L and the Public Staff, but the Commission concludes that it should be ordered for Duke as well based on the statewide policy of encouraging hydro generation as expressed in G.S. 62-156. Some parties comment that a higher performance adjustment factor for certain QFs is discriminatory or in excess of avoided costs decreed by PURPA. These QFs are unique since their ability to generate is beyond the control of their operators because their fuel is essentially stream flow which is influenced

by rainfall and since G.S. 62-156 establishes a policy of encouraging hydro generation. Further, use of a higher performance factor for these hydro facilities does not exceed avoided costs; it simply changes the method by which avoided costs are paid. It allows these QFs to operate less in order to receive the full capacity payments to which they are entitled, and this seems appropriate and reasonable considering the limitations on their control of their generation.

With respect to the issue of whether direct and indirect costs of air pollution, nuclear decommissioning, and other environmental costs can be avoided by hydro generation, CP&L, Duke, and NC Power pointed out that the costs of compliance with various environmental regulations, such as air pollution requirements, is already factored into the operating costs of their own generating units, and are therefore included in their avoided cost rates. They stated that hydro QFs receive credit for these avoided costs the same as other QFs. They also pointed out that nuclear decommissioning costs are associated with existing nuclear facilities and cannot be avoided. The Public Staff contended that environmental compliance costs should be included in avoided costs to the extent they are quantifiable, but conceded the difficulty of quantifying them to a greater extent than they now are. CUCA contended that only directly avoidable environmental compliance costs should be included. The Commission finds no basis upon which to quantify costs avoided by hydro generation beyond those already included in the rates approved herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

The Public Staff's initial comments stated that CP&L should be required to develop standard avoided cost rates for QFs that connect to CP&L's system at the transmission level rather than the distribution level. CUCA also supported such a requirement. CP&L's reply comments stated that it does not object to doing so provided the standard 5-, 10-, and 15-year levelized rates for purchases from QFs are limited as discussed elsewhere herein. CP&L's proposed order states that the Public Staff agrees with CP&L's position. CUCA recommended that such a requirement be ordered whether or not CP&L's agreement with the Public Staff is approved.

The Commission notes that Duke already has its standard rates broken down into one set of rates for distribution level connections and another set of rates for transmission level connections, and the Commission concludes that CP&L should likewise offer one set of standard avoided cost rates for QFs that connect to CP&L's system at the transmission level and another set of such rates for QFs that connect to its system at the distribution level. CP&L included such rates in its revised rate schedule filed along with its proposed order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Hydrodyne's initial comments stated an objection to CP&L's 1% extra facilities charge at its Little River Project, which was formerly operated by American Hydro. Hydrodyne asserts that the charge is excessive and that it should be reexamined in light of the operating experience since the charge was first set. CP&L's reply comments state that the 1% charge is a standard option for customers who make a contribution in aid of construction for extra facilities under CP&L's approved service regulations, that it has been found reasonable by the Commission, and that it includes operation and maintenance costs, taxes, administrative and general expenses, working capital, and replacement of equipment as necessary. The Public Staff comments that it has not investigated the

objection but has concerns about the issue. It recommended that the Commission investigate the issue and determine how to proceed in the absence of a factual record in this docket.

This proceeding was conducted on the basis of comments and reply comments. The allegations raised by Hydrodyne are factual in nature and do not lend themselves to resolution by comments. The Commission concludes for purposes of this proceeding that CP&L's 1% extra facilities charge is reasonable; there is no basis in this record to find that it is not. However, if Hydrodyne wishes to pursue its allegations, it may file a formal complaint regarding the extra facilities charge in a separate docket, and any such complaint will be processed in the usual manner for complaints.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11 AND 12

Duke proposed in this proceeding that standard contracts be available only to QFs entering such contracts on or before November 4, 1998, for delivery on or before May 4, 2001, in order to ensure that rates contained in the contracts would not become excessively outdated before actual delivery begins. Duke pointed out that the Commission approved a similar provision for another utility in the previous proceeding and that no one opposed the limitation in this docket.

Consistent with its determination in the previous biennial proceeding, the Commission concludes that Duke should be allowed to limit the availability of its standard avoided cost rates and contracts established in this proceeding to QFs who execute such contracts by November 4, 1998, and who begin delivery by May 4, 2001.

Duke proposed in this proceeding to limit the availability of its standard contract to one QF per site, similar to the provision approved for NC Power in the last proceeding. Unlike NC Power's provision, Duke proposed no specific exceptions to the limitation, proposing instead that exceptions be granted by the Commission on a case-by-case basis. Duke contended that allowing specific exceptions would provide an opportunity for QFs to "game" the limitations, thereby increasing costs and risks for the ratepayers. For example, Duke cited the possibility that multiple small facilities of less than 5 mW each at a single site might be installed to circumvent the provision that non-hydro QFs larger than 5 mW must participate in a competitive bidding process in order to receive capacity payments.

The Public Staff proposed specifying the same exceptions to the limitation for Duke as were specified for NC Power in the previous proceeding, i.e., multiple facilities would be allowed at the same site if (1) each facility provides thermal energy to different unaffiliated hosts, or (2) each facility provides thermal energy to multiple operations with distinctly different needs, or (3) each facility utilizes a renewable resource subject to geographic siting limitations.

CUCA recommended that the Public Staff's proposed exceptions to the limitation be adopted, contending that determination of exceptions on a case-by-case basis would substantially increase the regulatory burden by requiring litigation of all such requests and by depriving affected parties of any indication of the circumstances under which an exception is likely to be granted.

The Commission concludes for the purposes of this proceeding that Duke should be allowed to limit the availability of its standard avoided cost rates to one operational facility per site, and that exceptions to such limitation will be determined by the Commission on a case-by-case basis.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 AND 14

The issue of NC Power being required to offer capacity credits prior to 1999 was raised in the previous proceeding. The proposal was opposed by CUCA and the Public Staff. The Commission approved NC Power's proposal to withhold capacity credits from QFs until 1999 based on its having no additional capacity needs until 1999. In this proceeding, CUCA opposes NC Power's offering no capacity credits prior to 1999, citing on NC Power's need for additional capacity "in the near future." CUCA contends that refusal to pay capacity credits during 1997 and 1998 would discriminate against QF development during that period.

Consistent with its determination in the previous proceeding, the Commission concludes that NC Power should not be required to offer capacity credits to QFs prior to 1999. There has been no showing in this proceeding that NC Power will need additional capacity prior to that time or that its current sunk capacity costs will be avoidable before that time.

The issue of NC Power being allowed to offer avoided cost rates to QFs based on the QF being either a baseload or a peaking operation was raised by NC Power in the previous proceeding. The Commission rejected NC Power's proposal with the observation that such limitations would unduly discourage QF development.

In this proceeding, NC Power again proposes to offer avoided cost rates based on several optional modes of operation: (1) a non-reimbursement mode, (2) a non-firm mode (further subdivided into time-of-use and non-time-of-use modes), and (3) a firm mode (further subdivided into baseload and peaking modes). In discussing the baseload versus peaking modes of operation, NC Power contended that it does not need additional intermediate capacity over the study period, only baseload and peaking capacity. It therefore argues that no intermediate capacity can be avoided by purchases from QFs.

The Public Staff commented that all QFs may not fall neatly into baseload or peaking categories. CUCA agreed with the Public Staff concern, and pointed out that power generated from a QF operating as an intermediate plant still has value to the utility.

The Commission concludes that NC Power should not be allowed to offer standard avoided cost rates to QFs based on the QF being either a baseload or a peaking operation. The Commission's conclusion herein is consistent with its decision in the previous proceeding, and it recognizes that intermediate generation has value to the generation mix, just as peaking and baseload generation do.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

In the previous biennial proceeding, the Commission found that "Duke has agreed to purchase all QF power offered to Nantahala pursuant to the criteria under which Duke purchases energy and capacity from QFs for its own system, including standard rates and contracts as approved in this docket, negotiated rates and contracts, the availability criteria for each, and Duke's competitive

bidding program. Based upon this commitment and the specific circumstances of this case, including Duke's ownership of Nantahala, Nantahala being within Duke's control area and Nantahala's lack of current plans to build generation, it is appropriate for Duke to assume Nantahala's obligation to purchase from QFs (with Nantahala retaining the obligation to sell to QFs.)"

The Commission also found that "Duke's assumption of Nantahala's obligation to purchase QF energy and/or capacity pursuant to Duke's approved avoided cost rate schedules produces QF rates that are just and reasonable to Nantahala's ratepayers, are in the public interest, and do not discriminate against QFs, as required by §210 of PURPA and the FERC's implementing regulations. Because long-term levelized avoided cost rates have not been found to be appropriate for Nantahala, Duke's assumption of Nantahala's obligation may actually encourage greater QF development than if Nantahala retained the obligation."

The Commission required in the previous biennial proceeding that Duke should offer to purchase all QF power offered to Nantahala pursuant to the criteria under which Duke purchases energy and capacity from QFs for its own system, including standard rates and contracts, long-term levelized rates, negotiated rates and contracts, the availability criteria for each, and Duke's competitive bidding program.

The Commission concludes for the purposes of this proceeding that it should continue to require Duke to purchase all QF power offered to Nantahala in a similar manner. No party to this proceeding opposed such an arrangement.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The rate schedules and standard contracts proposed by CP&L, Duke, and NC Power in this proceeding are reasonable except as discussed herein, and they should be approved subject to the modifications required by this Order. Duke, CP&L, and NC Power will need to file new versions of their rate schedules and standard contracts within 10 days after the date of this Order in order to implement this Order. CP&L, Duke and NC Power shall also file supporting documentation showing the calculations made to arrive at their avoided cost rates. Additionally, to the extent the filings by the utilities include new rates or contract terms required by this Order, the Commission will receive written comments thereon from other parties within 20 days after the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

The evidence pertaining to WCU's calculation of avoided costs is contained in the testimony and exhibits of WCU witness Wooten, which were stipulated into the record without witness Wooten being called to testify. WCU does not generate its own electricity but buys its power wholesale from Nantahala at rates approved by the FERC. The avoided cost formula proposed by WCU would reimburse a QF based on the rates charged to WCU by Nantahala at any point in time, and it is the same formula approved by the Commission in previous avoided cost proceedings. No party challenged the avoided cost formula proposed by WCU. The Commission concludes that WCU's proposed Small Power Production Supplier Reimbursement Formula should be approved. Consistent with our conclusions in past proceedings, WCU should not be required to offer any long-term levelized rate options.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 mW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 mW or less capacity. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration. CP&L shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 3 mW or less capacity.

2. That Duke shall offer long-term levelized capacity payments and energy payments for 5-year, 10-year, and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 mW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 mW or less capacity. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration. Duke shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 5 mW or less capacity.

3. That NC Power shall offer long-term levelized capacity payments and energy payments based on a long-term levelized generation mix with adjustable fuel prices for 5-year, 10-year and 15-year periods as standard options to (a) hydroelectric qualifying facilities owned or operated by small power producers as defined in G.S. 62-3(27a) contracting to sell 5 mW or less capacity and (b) non-hydroelectric qualifying facilities fueled by trash or methane derived from landfills or hog waste contracting to sell 5 mW or less capacity. The standard levelized rate options of 10 or more years should include a condition making contracts under those options renewable for subsequent term(s) at the option of the utility on substantially the same terms and provisions and at a rate either (1) mutually agreed upon by the parties negotiating in good faith and taking into consideration the utility's then avoided cost rates and other relevant factors or (2) set by arbitration. NC Power shall offer its standard 5-year levelized rate option to all other qualifying facilities contracting to sell 100 kW or less capacity. NC Power shall offer long-term levelized energy payments as an additional option for small QFs rated at 100 kW or less capacity.

4. That CP&L, Duke and NC Power shall offer qualifying facilities not eligible for the standard long-term levelized rates the options of contracts to sell energy only at the variable rates established by the Commission or, as appropriate, contracts and rates derived by free and open negotiations with the utility or participation in the utility's competitive bidding process for obtaining additional capacity.

5. That Duke shall purchase all QF power offered to Nantahala pursuant to the criteria under which Duke purchases energy and capacity from QFs for its own system including standard rates and contracts, negotiated rates and contracts, the availability criteria for each, and Duke's competitive bidding program.

6. That the rate schedules and standard contract terms and conditions proposed in this proceeding by CP&L, Duke, NC Power, and WCU are hereby approved except as otherwise discussed herein.

7. That Duke, CP&L, NC Power, and WCU shall file within ten (10) days after the date of this Order rate schedules and standard contract terms and conditions implementing the findings, conclusions and ordering paragraphs herein. Additionally, CP&L, Duke and NC Power shall file supporting documentation showing the calculations made to arrive at their avoided cost rates.

8. To the extent the filings by the utilities include new rates or terms as required by this Order, the Commission will receive written comments thereon from other parties within 20 days after the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of June, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-100, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Amendment of North Carolina Utilities Commission) ORDER AUTHORIZING
Form G-1 Rate Case Information Report) MODIFICATIONS TO FORM G-1

BY THE COMMISSION: On July 14, 1997, the Public Staff filed a Motion asking that the Commission request comments on the Public Staff's proposed modifications to the Commission's Form G-1 Rate Case Information Report (Form G-1), which was attached as Appendix A to the Motion. In support of its Motion, the Public Staff stated that the Commission's Form G-1 was last revised in 1985 and, for a number of reasons, additional changes, including some that simplify and update the required informational filings, are now appropriate.

Comments and Reply Comments have been filed by the local distribution companies (LDCs) and Enron Capital & Trade Resources Corp. (Enron).

The LDCs state that they are pleased with the Public Staff's proposed changes to the Form G-1 Report and appreciate the Public Staff's efforts to simplify and update Form G-1 and, in general, support the recommended modifications. However, they feel further modifications are warranted. The comments filed by the LDCs raise a number of concerns about specific items in the Form G-1. Enron's comments requested that the LDCs be required to include certain customer specific information in the Form G-1. The Commission's discussion and conclusions with respect to each of the contested modifications to the Form G-1 are addressed by item below.

Items 3a, b, and c - Cost of Service Study

Piedmont is the only LDC to object to Items 3a, b, and c, which require the LDCs to file cost of service studies as part of their rate case filings. A cost of service study is currently not required in the Form G-1 but has been provided in response to Public Staff data requests. While acknowledging that it had filed such a study in each of its last several rate cases, Piedmont asserts that each of the parties to a general rate case should have the option of filing a cost of service study. In addition, Piedmont believes it should not be a requirement because the Commission does not set rates based solely on such studies.

The Public Staff states that it believes, and the Commission has recognized, that cost of service studies are an integral and important part of the rate design process. The Public Staff asserts that it is not trying to change the way in which rates are designed, but rather it is simply seeking to expedite the receipt of the cost of service study which currently has to be sought through data requests after a rate increase application is filed. While it is true, as Piedmont points out, that the North Carolina appellate courts have held that the Commission can properly consider other factors in setting rates, the courts have never implied that cost of service studies should be given less weight than the Commission currently gives them. Cost of service studies, in fact, are likely to become more important in the future. Further, the Public Staff states that the LDCs should be required to provide

at least one cost of service study in the Form G-1 because such studies are absolutely necessary to the appropriate consideration of the LDCs' applications to increase rates. According to the Public Staff, the early filing of such a study will make its investigation more efficient and productive.

The Commission concludes that the LDCs should be required to provide a cost of service study in the Form G-1. Such studies are necessary to the appropriate consideration of an LDC's application for a general rate increase and are currently being provided through data requests. Accordingly, Item 3 as proposed by the Public Staff in its recently filed revised Form G-1 should be approved.

Items 6b and c - Weather Normalization

Form G-1 currently requires an LDC to "provide billing data in a format which enables the calculation to adjust sales to normal temperature conditions." Piedmont is the only LDC to object to the Public Staff's recommendation that weather normalization statistics be filed by district and by billing cycle. Piedmont asserts that the Commission has never set rates using weather information by district and that the Public Staff's recommendation, "puts the cart before the horse." Piedmont believes that the Commission should decide how it will normalize weather and then require the necessary data.

The Public Staff states that its recommendation is, in fact, based on an in-depth review to determine and construct the appropriate framework within which to normalize weather for a test year. The Public Staff believes matching districts with the closest reporting weather bureau by billing cycle produces a closer match to the degree days experienced by customers. In addition, the format requested in the Form G-1 is the same format the Public Staff has used in data requests to the LDCs during discovery in all recent general rate case proceedings. According to the Public Staff, weather normalization is a time-consuming and labor-intensive task, and it is important that this data be provided at the time an application for a rate increase is filed.

It appears from the comments in this docket that the format proposed for the Form G-1 with respect to weather normalization data is no different than that currently provided through Public Staff data requests. Accordingly, the Commission concludes that Item 6 as proposed by the Public Staff in its recently filed Form G-1 should be approved.

Item 11 - Miscellaneous General Expenses and Item 12 - Advertising Expenses

PSNC proposes that the minimum level for detailed analysis for Items 11 and 12 be increased from $1,000 to $10,000. The Public Staff believes that this proposal is reasonable for Piedmont, PSNC, and NCNG and should be adopted for these three LDCs. According to the Public Staff, the $1,000 minimum continues to be appropriate for Frontier Utilities of North Carolina, Inc., and NUI Corporation and should be retained for these two LDCs.

The Commission does not feel that it is appropriate to adopt differing levels of reporting requirements for the LDCs. Accordingly, the Commission concludes that the minimum level for detailed analysis for Items 11 and 12 should be increased to $10,000 for all LDCs.

Item 25 - Accounts Payable

Piedmont objects to providing the requested accounts payable-O&M expense information, which is currently not required, because it believes that the ratemaking impact of the item is properly handled through the lead-lag study. While the Public Staff concedes this item is normally addressed in the lead-lag study, it states that the other major categories of accounts payable information (accounts payable-construction and accounts payable-materials and supplies) are not. They are reflected as rate base deductions. According to the Public Staff, a breakdown of the total accounts payable by category is necessary to facilitate a comprehensive understanding of the procedures used to apportion accounts payable into the various categories. This breakdown of the total accounts payable by category is essential for determining the appropriate rate base deductions for accounts payable.

The Commission is not persuaded that the reporting of this item is overly burdensome. The LDCs are currently required to file accounts payable information related to plant, plant under construction, and materials and supplies. Accordingly, the Commission concludes that Item 25, as proposed by the Public Staff in its recently filed revised Form G-1 should be approved.

Item 29 - Affiliates

Piedmont suggests in its comments that each LDC should determine whether its information on affiliates relates either directly or indirectly to the provision of intrastate service and file only the information that is relevant. NCNG objects to providing a comparative balance sheet and income statement (currently required in Form G-1) for affiliates and information related to intercompany billings and transfers. However, if the information is required at all for ratemaking purposes, NCNG suggests that it could provide the data to the Public Staff and Attorney General through data requests that would be filed on a confidential basis. PSNC does not object to the information, but contends that the information should be filed with the Commission under a non-disclosure agreement or protective order.

According to the Public Staff, the only "new" information requested in the revised Form G-1 is the information related to intercompany billings and transfers, which is information that it has requested and received through data requests with varying levels of success during its rate case audits over the last several years. The Public Staff asserts that the receipt of this information in the Form G-1 is now necessary because the LDCs have become more involved in nonregulated businesses, which has caused this information to become increasingly important and relevant. Because it is now more likely that an LDC and its affiliates will share assets, human resources, and/or financial resources, or enter into less than arm's length transactions, the Public Staff and the Commission must be able to understand how each affiliate interacts with the LDC in order to determine the cost of providing regulated gas service. According to the Public Staff, all of the information requested in this item is necessary to evaluate the potential cost of service impact of affiliates, and its relevance cannot be determined until after it has been examined by the Public Staff, and if contested, by the Commission.

In support of its recommendation, the Public Staff states that G.S. 62-51 grants the Commission and the Public Staff the authority to inspect the books and records of corporations affiliated with public utilities. The North Carolina Supreme Court has held this authority and the authority to

investigate transactions between affiliates is quite broad. Further, the Commission, in its Interim Protective Order Requiring Production of Information issued on October 5, 1987, in Docket No. P-55, Sub 834, stated that it had an obligation to carefully examine the reasonableness of all transactions between regulated public utilities and companies affiliated with such utilities. The Commission emphasized that it must not only be concerned with the value of revenue and expense allocations in a relative and/or absolute sense, but it also must make certain that no cost savings have been unduly diverted from the regulated segment of a business enterprise to an unregulated segment or an affiliated interest. The Order further stated that, for the Commission and the Public Staff to fulfill their respective obligations in this regard, **access to all** books and records of all public utilities, affiliated companies, and all affiliated interests of public utilities is **essential**. (emphasis added) <u>In Re Southern Bell Telephone and Telegraph Company's Application for Adjustment In Rates and Charges</u>, 77 NCUC 494, 501 (1987).

With respect to the LDC's concerns about the confidentiality of the information, the Public Staff states that those concerns can be easily resolved by permitting the filing of any such information in a sealed envelope, which would be placed in the Clerk's safe and made available only pursuant to an appropriate non-disclosure agreement or protective order. G.S. 132-1.2 expressly exempts trade secrets from North Carolina's public records law. According to the Public Staff, this procedure has worked very well in the self-generation deferral rate dockets, for example, and in several natural gas dockets.

The Commission concludes that the LDCs should be required to provide the information regarding the LDC's investments in affiliates as set forth in the proposed revised Form G-1 for the reasons set forth by the Public Staff. Accordingly, Item 29, as proposed by the Public Staff in its recently filed Form G-1 should be approved; however, such information will be allowed to be filed on a confidential basis if so desired by the LDCs.

<u>General Comments on Items 31 b and c, 32, 34f, and 36e - Financial Information</u>

With respect to the requirement that certain financial information be provided, PSNC expressed a concern over confidentiality, asserting that the LDCs should be permitted to file responses to Items 31-32 and 34-39 under non-disclosure agreements or protective orders. Piedmont objected to specific items, based on confidentiality concerns and other grounds. The issue of confidentiality has been addressed earlier and the Public Staff appears to be willing to have these items filed on a confidential basis. As indicated earlier, the Commission will allow these items to be filed on a confidential basis if so desired by the LDCs. The other specific concerns expressed by Piedmont and PSNC are addressed by item, below.

<u>Items 31b and c - Financial Forecasts</u>

Piedmont objects to providing a proforma balance sheet (Item 31b) and proforma statement of cash flow (Item 31c) for the following reasons: (1) such statements are not currently being prepared, (2) the information is of questionable value because it reflects Piedmont's multi-state operations, (3) preparation time and expense are too high, and (4) the projections are speculative in nature. Form G-1 currently requires the filing of financial forecasts for the test year and the next two years.

According to the Public Staff, all four objections are refuted by an examination of both Piedmont's and PSNC's responses to the Form G-1 in their last general rate cases. In Docket No. G-9, Sub 382 (filed May 14, 1996), Piedmont filed a proforma balance sheet for three years as Item 23, page 2 of 2, and a proforma statement of cash flow for three years as Items 23-2a and 23-2b, page 1 of 1. In Docket G-5, Sub 386 (filed March 1, 1996), PSNC made available at its corporate office its operating budgets (balance sheets) for the test year and the next year as Item 23, page 4 of 4, and filed a proforma statement of cash flow for one year with the second and third years available at PSNC's office as Item 23, page 2 of 4. Clearly, Piedmont and PSNC have and are able to prepare these statements. In its proposed Form G-1 requirement, the Public Staff has greatly reduced the proforma time period from three years to only "the current fiscal year." The previous requirement that two years of forecasts be provided has been eliminated.

In its second objection, Piedmont questions the value of these projections since they are based on its multi-state operations. The Public Staff states that because this information is used to evaluate the capital structure and financings of parent corporations, projections at this level are relevant. Both equity security and debt rating analysts evaluate Piedmont at the parent company level and use the same type of corporate projections that Piedmont has provided in rate cases.

With respect to Piedmont's third objection, the Public Staff asserts that sound corporate planning requires that the information asked for in this item be developed. In addition, as indicated above, Piedmont provided this information in its last rate case. Therefore, the Public Staff does not believe that preparation of the information requested in this item requires any undue preparation time or expense. In any event, the value of this information to the Public Staff, the Commission, and other parties in general rate cases outweigh any increased preparation time or expense according to the Public Staff.

With respect to Piedmont's fourth objection, the Public Staff understands and accepts that the requested proformas are speculative in nature. All forecasts are speculative and subject to change as the underlying assumptions change.

The Commission is of the opinion that Piedmont's comments are not sufficient to warrant the elimination of these items from Form G-1. Accordingly, the Commission concludes that Item 31, as proposed by the Public Staff in its recently filed Form G-1 should be approved; however, such information will be allowed to be filed on a confidential basis if so desired by the LDCs.

<u>Item 32 - Capital Budgeting Forecasts</u>

Piedmont objects to providing projected capital budget information for three years on the grounds of (1) the speculative nature of projections and (2) confidentiality of the information (divulgence of trade secrets). Item 32 of the current Form G-1 now reads "Provide a capital budgeting forecast for five (5) year period beginning after the end of the most recent year."

According to the Public Staff, both Piedmont and PSNC have provided three years of construction costs or capital requirement estimates in the Form G-1 filed in their last general rate cases. Piedmont provided three years of construction cost estimates as Item 23-1a, page 1 of 1, in Docket No. G-9, Sub 382 (filed May 14, 1996). PSNC provided three years of estimated capital requirements as Item 23, page 1 of 4, in Docket No. G-5, Sub 356 (filed March 1, 1996). Both of

them provided information of this type to the Public Staff for its 1996 report to the Joint Legislative Utility Review Committee pursuant to G.S. 62-36A.

With respect to Piedmont's first objection, the Public Staff understands and accepts that these proformas are speculative in nature. All forecasts are speculative and subject to change as the underlying assumptions change. Nevertheless, they are valuable for corporate and regulatory purposes. With respect to Piedmont's second objection, the appropriate treatment of confidential information has been addressed earlier.

The Commission is of the opinion that Piedmont's comments are not sufficient to warrant the elimination of these items from Form G-1. Accordingly, the Commission concludes that Item 32, as proposed by the Public Staff in its recently filed Form G-1 should be approved; however, such information will be allowed to be filed on a confidential basis if so desired by the LDCs.

Item 36e - Short-term Debt

Piedmont objects to providing forecasts of the amounts of short-term borrowings and related interest at the end of the first quarter and second quarter of the next fiscal year because of (1) the speculative nature of forecasts and (2) confidentiality of the information.

The first objection has been addressed previously and the Public Staff asserts that it is no more valid in this context than in the others. The objection related to confidentiality has been addressed previously above.

The Commission is of the opinion that Piedmont's comments are not sufficient to warrant the elimination of these items from Form G-1. Accordingly, the Commission concludes that Item 36, as proposed by the Public Staff in its recently filed Form G-1 should be approved; however, such information will be allowed to be filed on a confidential basis if so desired by the LDCs.

Enron's Comments

Enron proposes that each LDC be required to provide a list of all eligible transportation customers electronically to all marketers on each LDC's system as part of its rate case filing. Enron requests that this list include the name, address, and usage data for the past two years for each customer. The stated reason for requiring the LDCs to file this information in the Form G-1 is to encourage competition. According to the Public Staff, Enron's interest clearly is an increase in its opportunities to market natural gas, rather than in rate case issues and, therefore, the Public Staff did not believe that its comments should be pursued in this docket.

All the LDCs strenuously object to Enron's proposal. They state the purpose of this proceeding was to determine whether provisions of Form G-1 should be revised. Form G-1 is a form filed by LDCs in connection with general rate cases. The purpose of the form is to provide the Commission with information pertinent to the setting of rates. The purpose is not to provide confidential and proprietary information constituting a trade secret to competitors. Further, information LDCs have obtained from their customers such as that sought by Enron was obtained in the normal course of business and is proprietary to the LDCs and each customer. Many customers do not want competitors in the same industry (e.g. textiles) to have such information. If Enron truly believes that

the information belongs to customers, Enron can obtain the same from customers. From the LDCs' perspective, they would breach the trust of their customers if they made the information available to others as Enron requests.

The Commission finds that the purpose of this docket is to update and streamline the general rate case procedures for those directly engaged in the process of setting regulated rates, not to assist the competitors of the regulated utilities in enhancing their competitive positions. Accordingly, the Commission concludes that the proposal of Enron should be rejected.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Form G-1 Rate Case Information Report is hereby modified in accordance with the findings and conclusions set forth in this Order.

2. That the Public Staff is requested to make the necessary changes to the Form G-1 in accordance with the provisions of this Order and file a copy thereof within 10 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of December, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-100, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Amendment of North Carolina Utilities Commission) ORDER ADOPTING
Form G-1 Rate Case Information Report) FORM G-1

BY THE COMMISSION: On December 3, 1997, the Commission entered an Order which authorized modifications to the Commission's Form G-1 Rate Case Information Report and requested that the Public Staff make the necessary changes to the Form G-1 in accordance with the provisions of the Order and file a copy with the Commission.

On December 11, 1997, the Public Staff filed the Form G-1 modified in accordance with the December 3, 1997 Order in this docket.

Accordingly, the Commission concludes that the Form G-1 as filed with the Commission on December 11, 1997, should be adopted.

IT IS, THEREFORE, ORDERED as follows:

1. That the Commission's Form G-1 Rate Case Information Report as modified and filed with the Commission on December 11, 1997, by the Public Staff is hereby adopted by the Commission.

2. The Form G-1 filing requirements shall be effective for filings made on and after the date of this Order and shall be subject to the confidentiality issues addressed in the Commission December 3, 1997 Order.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of December, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-100, SUB 74

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Correct	)	ORDER OF THE CHAIR
and Update Commission Rules and	)	AMENDING RULES
Regulations regarding Natural Gas	)	

BY THE CHAIR: It has come to the attention of the Chair that certain amendments should be made to Chapters 1 and 6 of the Rules and Regulations of the North Carolina Utilities Commission in order to correct certain minor errors and outdated phrases in the present rules. In the opinion of the Chair, the following amendments are not controversial and can be made by Order of the Chair without prior notice.

The Chair therefore finds good cause to order the following amendments:

In Commission Rule R1-17(k)(6)(a) and (b), the phrase "North Carolina Gas Service, Division of Pennsylvania & Southern Gas Company" shall be replaced by the phrase "North Carolina Gas Service, a Division of NUI Corporation" to reflect the current status of the company.

In Commission Rule R6-4, the phrase "National Association of Railroad and Utilities Commissioner's publication" shall be replaced by the phase "National Association of Regulatory Utility Commissioners' publication" in order to reflect the current name of the organization producing the publication in question.

In Commission Rule R6-5(11), the phrase "Each franchised natural gas distribution company (LDC)" shall be replaced by the phrase "Each franchised natural gas local distribution company (LDC)" in order to correct an omission.

GENERAL ORDERS - GAS

In Commission Rule R6-7, the phrase "The meter reading sheets or cards shall show:" shall be replaced by the phrase "The meter reading sheets, cards or data shall show:" in order to reflect current recordkeeping practice.

In Commission Rule R6-36(c), the term "telegram" shall be replaced by the term "facsimile" to reflect current technology and practice.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE CHAIR.
This the 4th day of December, 1997.

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	)	
Intrastate Offering of Long Distance Telephone	)	ORDER REVISING
Companies Should Be Allowed in North Carolina	)	AGGRAVATING
and What Rules and Regulations Should Be	)	CIRCUMSTANCES
Applicable if Authorized	)	PENALTY

BY THE COMMISSION: On April 9, 1996, the Commission issue an Order Concerning Penalties for Aggravating Circumstances with respect to the falsification of information in applications by switchless resellers 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.

The aggravating circumstances penalty is in addition to other penalties imposed on the basis of length of time in violation ($3,000 for the first month and $2,000 for each month thereafter) or, at the option of the company, the amount of intrastate revenues realized.

The purpose of the system of levels was to create a graduated scale whereby "lesser" offenders would receive lesser penalties and "greater" offenders would receive higher penalties. The factors relate to number of customers, length of time in violation, or amount of intrastate revenues realized. Very often, the factors correlate--e.g., an applicant providing service to numerous customers is apt to have built up that customer base over a relatively long period of time and will have realized significant revenues.

The system of levels as currently stated, however, can lead to anomalies. For example, suppose an interexchange carrier reports less than 10 customers (Level 1) for a period of four months

(Level 2), with revenues of more than $10,000 (Level 4). What would be the appropriate aggravating circumstances penalty? At this point, it is unclear.

There are essentially three options to deal with this problem while maintaining the factors and the scale. They are:

1. Default to the highest level. In the above case, this would be Level 4 ($10,000).

2. Default to the lowest level. In the above case, this would be Level 1 ($1,000).

3. Default to the average level. Under this method, the applicable level numbers would be added together and divided by the number of factors reported. This number would be rounded up or down according to usual rounding principles. In the above case, the appropriate aggravating circumstances would be derived by adding 1 plus 2 plus 4, equaling 7. This would be divided by 3, equaling 2.33. The appropriate level would be Level 2 and the penalty would be $5,000. (If the number were 2.5 or greater, the appropriate level would be Level 3).

Frequently, an applicant will report only two factors. The averaging method can accommodate this eventuality. Suppose an applicant reports providing service for less than three months (Level 1) to 75 customers (Level 3). The appropriate level would be derived by adding 1 plus 3 and dividing by 2, which equals 2. The appropriate penalty would be Level 2, $2,500.

The Commission concludes that the averaging method should be adopted. Defaulting to the highest or lowest level may lead to anomalous results, while the averaging method allows for the weighting of the factors.

Accordingly, the Commission concludes that the aggravating circumstances matrix be modified according to the following schedule:

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

Level 2: $2,500
Service was provided to at least 10 but less than 50 customers or locations, or for at least three but less than six months, or for revenues of at least $1,000 but less than $5,000; or

Level 3: $5,000
Service was provided to at least 50 but less than 100 customers or locations, or for at least six but less than 12 months, or for revenues of at least $5,000 but less than $10,000; or

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

Provided, however, that when an interexchange carrier reports factors that relate to more than one level, the appropriate aggravating circumstances penalty shall be derived by averaging the

applicable level numbers, with the result being rounded up or down according to usual rounding principles.

Finally, the Commission concludes that a copy of this Order should be sent to all parties to this docket and to all persons with pending applications for long distance certificates.

IT IS THEREFORE SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 5th day of March, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 84

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Issuance of Special Certificates for the	)	ORDER DENYING INVISION
Provision of Payphone Service By	)	FRAUD PREVENTION
Means of Customer-Owned Pay	)	PROGRAM PROPOSAL
Telephones	)	

BY THE COMMISSION: On January 31, 1997, InVision Telecom, Inc. (InVision), a subsidiary of Communications Central, Inc., an independent payphone provider, filed a Petition for Declaratory Ruling and Request for Expedited Consideration applicable only in connection to collect-call payphone service from confinement facilities.

InVision provides payphone service to confinement facilities and identified what it called "fraudulent and reckless use of inmate calling services" causing InVision to experience a high level of uncollected charges from collect calls. InVision proposes a Fraud Prevention Program (FPP) detailed in an attachment to its filing. The FPP includes an initial credit limit, notice to the called party of the initial credit limit, and direct billing with deposit if the called party wishes to exceed the initial credit limit. The FPP also includes the possible sanction of suspension of collect inmate calls to the called party's number over InVision's network if the credit limit is reached or exceeded.

InVision requested a declaratory ruling that Rules R12-1 et. seq. (Customer Deposits for Utility Services; Disconnecting of Service) do not apply to its proposed FPP; or, if Rule R12-1 et. seq. do apply, that a waiver be granted as to Rules R12-2, R12-3, R12-4(a), R12-5, R12-7, and R12-8. InVision also requested consideration on an expedited basis and a temporary waiver or ruling pending the outcome of further proceedings.

On February 7, 1997, the Chair issued an Order Requesting Comments from interested persons and denied InVision's request for interim relief. The Chair propounded the following questions for comment and reply comment:

1. The merits of InVision's proposal, together with any proposed modifications thereto.

2. Whether Rules R12-1 et. seq. are applicable to InVision's proposal; and, if the answer is affirmative, whether a waiver should be granted or whether Rules R13-1 et. seq. (Provision of Telephone Service by Means of Customer-Owned Pay Telephone Instruments) should be amended instead. Parties proposing amendments to Rule R13 should provide a proposed text of such amendments.

3. Whether InVision's FPP either as originally stated or as a party proposes to modify it, should be generically available to providers of payphones to confinement facilities. Parties answering in the affirmative should provide a text setting out the terms and conditions for such authority with rule references if appropriate.

4. Other relevant observations, including the possible impact of payphone regulatory reform under Section 276 of the Telecommunications Act of 1996 (TA96) and proceedings thereunder, on whether InVision's proposal should be considered at the present time.

The following persons filed comments and/or reply comments: the Public Staff; Sprint Communications Company, L.P.; the North Carolina Payphone Association jointly with PayTel Communications, Inc. (collectively NCPA); MCI Telecommunications Corporation (MCI); and BellSouth Telecommunications, Inc. (BellSouth).

The comments and reply comments were as follows:

COMMENTS

1. The merits of InVision's proposal, together with any proposed modifications thereto.

Public Staff. The Public Staff believes that arrangements such as those proposed by InVision are in the public interest by reasonably limiting the exposure of COCOT providers from losses for uncollectibles and protecting call recipients from inadvertently incurring excessively large bills. The Commission should not at this time require providers to file information regarding deposit arrangements, nor should it adopt new rules to regulate them. The administration and implementation of such plans is best left to the discretion of the confinement facility administration and the COCOT provider therein. The Commission has broad authority concerning the extent to COCOT regulation under G.S. 62-110(c) and should take into account the current regulatory environment, especially the enactment of TA96 and the FCC's Report and Order in CC Docket No. 96-128 (September 20, 1996) and the Order on Reconsideration (November 8, 1996) envisioning the eventual substantial deregulation of payphone service.

NCPA. InVision's proposal is very much in the public interest. It will reduce fraud and enable the called party to establish realistic and affordable levels of calling.

MCI. MCI supports InVision's petition.

BellSouth. BellSouth supports InVision's proposal as a "necessary and integral part of a properly developed fraud prevention program."

2. Whether Rules R12-1 et. seq. are applicable to InVision's proposal; and, if the answer is affirmative, whether a waiver should be granted or whether Rules R13-1 et. seq. (Provision of Telephone Service by Means of Customer-Owned Pay Telephone Instruments) should be amended instead. Parties proposing amendments to Rule R13 should provide a proposed text of such amendments.

Public Staff. The Public Staff does not believe that Rule R12 applies to COCOT service, because, among other points, the Commission enacted Rule R13 as a comprehensive regulation of COCOTs. Rule R13 does not address deposit plans such as the one proposed by InVision.

Sprint. Sprint urged that the Commission consider that collect calls placed from confinement facilities fall outside the scope of routine rules and regulations and should, to the extent necessary, grant exceptions and waivers. Specifically, Rule R12 does not apply to InVision's FPP.

NCPA. Rule R12 does not apply to the provision of payphone service in confinement facilities. In the event the Commission determines that an amendment to Rule R13 is appropriate, NCPA proposed some suggested language.

MCI. Rule R12 is not applicable to inmate payphone services. There is no traditional customer-vendor relationship in the inmate services context.

BellSouth. Rule R12 is not applicable InVision's proposal, since, among other points, the current deposit policy was designed to minimize the credit risk associated with services to an access line subscriber who is normally the billed party. BellSouth proposed amendments to Rule R13 to authorize customer deposit for collect call service.

3. Whether InVision's FPP either as originally stated or as a party proposes to modify it, should be generically available to providers of payphones to confinement facilities. Parties answering in the affirmative should provide a text setting out the terms and conditions for such authority with rule references if appropriate.

Public Staff. If the Commission chooses to regulate deposit billing plans, it must do so generically in order to satisfy FCC requirements.

NCPA. Other payphone providers should be able to institute their own fraud prevention programs as long as appropriate notice is given to consumers.

BellSouth. The fraud prevention program such as that proposed by InVision should be generally available.

4. Other relevant observations, including the possible impact of payphone regulatory reform under Section 276 of the Telecommunications Act of 1996 and proceedings thereunder on whether InVision's proposal should be considered at the present time.

Public Staff. See answer to Issue No. 1. The enactment of new rules or the extension of existing rules might negatively affect payphone competition and would be inconsistent with the FCC payphone orders. The Commission should forbear to regulate such plans, absent a clear and compelling need for regulation.

NCPA. The institution of fraud prevention programs is consistent with the underlying goals of TA96, Section 276, and implementation of reforms under Section 276 should not delay approval of the petition. Should the Commission decide that further study is needed, it should allow fraud prevention programs on an interim basis.

BellSouth. The institution of a fraud prevention program is entirely consistent with Section 276 of TA96.

REPLY COMMENTS

InVision noted that the commenters agreed that Commission Rule R12 does not apply to fraud prevention programs such as that proposed by InVision and such programs should be allowed in the public interest. InVision agreed with the Public Staff's recommendation that the Commission forbear from adopting specific rules.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that the InVision FPP and, by extension, any similar programs of this nature are not in the public interest. While the Commission believes that Rules R12 et seq. are not applicable to such a program, the Commission does believe that such a program can only be allowed either by amendment to Rules R13 et seq. or by a specific or general dispensation from R13. The Commission declines to do either of those things at the present time.

There are several reasons for the Commission's decision. First, while recognizing that there are problems with uncollectibles in the confinement facility context, the Commission is not persuaded that the case here is so special and compelling as to warrant a significant departure from usual and regular collection practices. Uncollectibles are a risk of doing business, and COCOTs are not without recourse at the present time. If the billing is done by a local exchange company, the COCOT can utilize its rights under the billing and collection agreement and Commission rules. If the billing is direct, then the COCOT may have recourse to the usual legal processes.

Second, the Commission notes that the regulation of COCOTs generally is in a state of flux due to the enactment of Section 276 of TA96 and the associated FCC payphone orders. It is unclear what the nature and extent of the Commission's authority will be in this matter. It would be

imprudent to authorize these programs without a clearer understanding of the limits of Commission authority.

Third, as for the proposal as presented, the Commission believes that the InVision FPP proposal was inadequately descriptive of the exact step-by-step process by which the program would be implemented and all the contingencies that would need to be addressed. For instance, the FPP description cited a $50.00 initial credit limit, but it was unclear whether this would be a fixed standard or could vary, depending upon the identity of the called party. The Commission is also concerned about inmate access to counsel and how this might be affected by a deposit requirement on the called party who is an attorney.

IT IS, THEREFORE, ORDERED that Rule R12 does not apply to InVision's proposed FPP but that InVision's proposed FPP shall not otherwise be authorized.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of April 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Allyson K. Duncan dissents.
Commissioner Laurence A. Cobb did not participate.

COMMISSIONER ALLYSON K. DUNCAN, dissenting

I must respectfully dissent from the majority's opinion in this docket. The appropriate response to the majority's stated concerns, in my opinion, would be to issue a request for additional information.

Although I completely share and support the majority's desire to protect the inmates of confinement facilities from extortionate business practices, I do not believe that this order serves that goal. To the contrary, it will only put upward pressure on the rates charged in those situations in the very near future. This would mean higher bills for the very parties the majority purports to protect.

I will briefly address the majority's three reasons for its decision that the InVision proposal is not in the public interest. Preliminarily, I note that the Public Staff, which has the statutory authority to represent and protect the using and consuming public, believes that such arrangements do serve the public interest by reasonably limiting the exposure of COCOT providers from losses for uncollectibles and protecting call recipients from inadvertently incurring excessively large bills.

First, the majority recognizes that there are problems with uncollectibles in confinement facilities, but is unpersuaded that they are unique. However, the facts as we know them are to the contrary. It is undisputed that InVision's rate of uncollectibles ranges from 16% to 30%, or three to five times higher than the 6% bad debt percentage from non-inmate operator serves offered to the general public.

Second, the majority says that the state of COCOT regulation is in flux and that we should not implement programs without a clearer understanding of our authority. However, not a single party argues, nor does the majority find, that the proposed program exceeds the scope of our authority. In fact, when the regulation of COCOTS is liberalized, InVision will probably be able to implement its proposal without our approval.

Finally, the majority is concerned that the InVision proposal was "inadequately descriptive of the exact step-by-step process by which the program would be implemented." The appropriate response to this concern, and it is a legitimate one, would be to request additional information.

I must, therefore, respectfully dissent from the majority's conclusion.

\s\ Allyson K. Duncan
Allyson K. Duncan

DOCKET NO. P-100, SUB 84a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Amendments to Regulations	)	ORDER AMENDING
Applicable to Payphone Service	)	COMMISSION RULE R13

BY THE COMMISSION: Section 276 "Provision of Payphone Service" of the Telecommunications Act of 1996 (TA96 or the Act) has several key provisions concerning pay telephone service. First, Section 276(d) states that within nine months of the enactment of the TA96, the Federal Communications Commission (FCC) must take all actions necessary to prescribe certain regulations concerning the provision of pay telephone service. Additionally, Section 276(c) specifically states that to the extent that any State requirements are inconsistent with the FCC's regulations, the FCC's regulations on such matters shall preempt such State requirements.

On September 20, 1996, the FCC issued its Report and Order, FCC 96-388, In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, implementing Section 276 "Provision of Payphone Service" of TA96. On November 8, 1997 the FCC issued its Order on Reconsideration in the docket. Additionally, the FCC released two subsequent orders on April 4 and April 15, 1997, one granting waiver and the other a clarification order.

Specifically, paragraph 49 of the FCC's Report and Order states:

> "We conclude that each state should, in light of the instant proceeding, examine and modify its regulations applicable to payphones and PSPs, particularly those rules that impose market entry or exit requirements, and others that are not competitively neutral and consistent with the requirements of Section 276 of the Act (the

> Telecommunications Act of 1996). We conclude that, for purposes of ensuring fair compensation through a competitive marketplace, states need only remove those regulations that restrict competition, and they need not address those regulations that, on a competitively neutral basis, provide consumers with information and price disclosure."

On March 17, 1997, the North Carolina Payphone Association (NCPA) filed a Petition for Rule Making with the North Carolina Utilities Commission. The NCPA stated that in order to conform its rules and regulations to the requirements of the Communications Act of 1934, as amended by TA96, and the orders adopted by the FCC, the Commission should initiate a rulemaking proceeding to revise Rule R13 of the Commission's rules.

On April 11, 1997, the Commission issued an Order Initiating RuleMaking and Requesting Comments. The Commission outlined a schedule for submittal of comments, reply comments, and proposed orders by the parties.

Initial comments in the matter were filed by the Public Staff, BellSouth Telecommunications, Inc. (BellSouth), AT&T Communications of the Southern States, Inc. (AT&T), Carolina Telephone and Telegraph Company and Central Telephone Company (Carolina and Central), MCI Telecommunications Corporation (MCI), and GTE South, Incorporated (GTE) on June 27, 1997. Reply Comments were filed by the Public Staff, BellSouth, AT&T, Carolina and Central, GTE, and the North Carolina Payphone Association (NCPA) on July 24, 1997. By Order dated August 21, 1997, the Commission granted an extension until August 28, 1997 for all parties to file Proposed Orders. Proposed Orders were filed by the Public Staff, BellSouth, AT&T, Carolina and Central, and the NCPA.

The Commission has carefully considered each of the proposals submitted by the NCPA and other parties in this docket. We discuss below the evidence presented by each of the parties and set forth our conclusions.

I. <u>Provisions of the Chapter 13 rules which are arguably inconsistent with federal law</u>

A. <u>Application of Rules to all LECs and terminology</u>

In its Orders, the FCC established procedures for compensating providers for access code calls, international calls, and toll-free number calls made from their payphones, requiring all local exchange companies (LECs) to reclassify their pay telephones as detariffed customer premises equipment and to remove all basic exchange service and exchange access service subsidies to their payphone service prior to becoming eligible for compensation. (<u>Order on Reconsideration</u> ¶¶ 5, 7, 142, 143) The FCC also required LECs to offer central office coin line services and certain other services to independent payphone providers if they provided these services to their own payphone operations. (<u>Report and Order</u> ¶¶ 146, 149) In paragraph 140 of the <u>Order on Reconsideration</u>, the FCC also stated that, in order to be consistent with federal law, "any state (payphone) regulations must treat all competitors in a nondiscriminatory and equal manner."

The NCPA's petition proposed introducing several new terms and definitions into Chapter 13 in order to conform the terminology of the COCOT rules to the terminology which the FCC adopted

in its Report and Order. The NCPA proposed replacing the terms "Provider," "COCOT Provider," and "PTAS Subscriber" with the phrase "Payphone Service Provider (PSP), "PTAS Line" with "PSP Access Line," and "PTAS Instrument" with "PSP Instrument."

The NCPA explained that the use of the term "PTAS" in LEC tariffs had become synonymous with the provision of service to pay telephone instruments over "dumb" PTAS lines. The NCPA argued that the availability of "coin" or "smart" payphone lines and the possibility that LECs might offer other types of payphone access lines in the future could create confusion about what types of lines payphone providers were authorized to use. To eliminate this problem, the NCPA recommended removing the acronym "PTAS" and revising or replacing any terms containing this acronym.

In initial comments, the Public Staff opposed the NCPA's proposal, arguing that consistency between state and federal terminology was not required, and that the Commission should avoid unnecessary changes to rules that have served the state well for many years, are consistent with the LEC tariffs, and are familiar to the Commission, the telephone industry, and other parties that have frequent contact with the Chapter 13 rules. The Public Staff argued that the requirement that "any state (payphone) regulations must treat all competitors in a nondiscriminatory and equal manner" was satisfied when the LECs deregulated their payphone CPE. At that time, the entities which were responsible for operating the former LEC paystations were required to obtain COCOT certification and to operate their phones in accordance with the COCOT rules.

All of the other parties in this docket generally supported the NCPA's proposed nomenclature changes. In initial comments, CT&T/Centel agreed with the Public Staff that changes in terminology were not required pursuant to the FCC's orders, but suggested that such changes would help to avoid confusion in the future concerning payphone service and that changes in tariff language could be made concurrent with any other required tariff changes.

Conclusions. While the Commission concedes that there would be some value in retaining the current terminology of Chapter 13, we believe it is reasonable to adopt most of the changes proposed by the NCPA. This will help to ensure that North Carolina's payphone terminology is consistent with that of the FCC, other states, payphone providers, and carriers. Most of the parties who would be affected by such changes -- including payphone providers that would have to conform to the altered rules and LECs that would be forced to revise their tariffs --supported the changes. Accordingly, we modify the *Definitions* section (Rule R13-1) by approving the following revisions:

(1) Adopt the definitions of "Pay Telephone Service," "PSP Access Line," and "PSP Trunk" exactly as these are proposed in the NCPA's petition.

(2) Adopt this definition of "Payphone Service Provider":

Payphone Service Provider (PSP). The subscriber to a PSP access line or trunk who offers telephone service to the public by means of a coin, coinless, or key-operated PSP instrument.

(3) Adopt this definition of "PSP Instrument":

PSP Instrument. A coin, coinless, or key-operated telephone or facsimile device, other than a voiceless-facsimile device, capable of originating and receiving voice telephone calls.

(4) Amend Rules R13-2 (a), R13-2(c), R13-2(d), R13-2(e), R13-4(a)(4), and R13-4(b)(4) so that they refer to both COCOT and PSP certificates.

We also require that certificates issued for provision of payphone service on and after October 7, 1997, be renamed "PSP certificates," alter the title of Chapter 13 to read "Provision of Pay Telephone Service," and revise Rules R13-1 through R13-10 consistent with these changes in terminology.

B. Semipublic Service

The FCC's Report and Order directed LECs to detariff their public and semipublic paystation services and transfer the CPE to nonregulated status. As a result of this change, the Public Staff's initial comments raised concerns about the future availability of semipublic service.

The Public Staff stated that LEC semipublic service offerings had for decades addressed the need for telephone service at locations where the revenues generated at the paystation were inadequate to support a regular public paystation. With semipublic service a subscriber paid or guaranteed a monthly amount to the LEC to support the cost of providing the service. The monthly revenue requirement was typically 100% to 175% of the business individual line rate. Touchtone rates, rates for booths, and rates for other features applied, as well, if the semipublic subscriber requested those features.

The Public Staff suggested that the existing subscribers to semipublic service might not have an alternative provider. In order to ensure the continuity of semipublic service for the subscribers who depended on it, the companies that inherited the LECs' semipublic CPE continued to offer a similar service after detariffing, under the previously tariffed rates and conditions. The Public Staff recognized the need to continue regulation of the service, and proposed adding rules to Chapter 13 to govern the provision of semipublic service. The Public Staff argued that price cap regulation, which was applicable to other payphone services, was not well suited to semipublic rates, because the existing rates for semipublic service varied from company to company and from exchange to exchange.

The Public Staff proposed a set of rules which defined semipublic payphone service and established procedures for setting initial rates and increasing those rates, and protections against rate discrimination. These rules would require providers of semipublic service to meet the requirements of Rule R13 and portions of Rules R12 and R17. The Public Staff argued that special regulations to safeguard consumers and ensure service quality were appropriate, since COCOT providers had never previously been authorized to offer customers an exchange access line, or any service for which a subscriber pays a monthly rate.

In reply comments, local exchange companies BellSouth, CT&T/Centel, and GTE South vigorously opposed the Public Staff's proposals to continue to regulate semipublic service. BellSouth asserted that regulation of semipublic service was contrary to the goals the FCC cited in its Report

and Order, and that the Public Staff's proposed price regulations would inhibit the ability of PSPs to enter and exit the payphone marketplace.

BellSouth stated that the FCC intended

> "to treat the provision of the set used for semipublic-like service as deregulated CPE. Because the charge to the location provider is at least in part a maintenance fee for the deregulated, detariffed CPE, the state Commission should not set the monthly rate to be paid by the location provider to the pay telephone service provider. Establishment of the monthly rate by the North Carolina Utilities Commission would be inconsistent with the stated goals of the Act and the FCC Order." (*Reply Comments of BellSouth*, page 4)

The Company contended that the Public Staff's proposed semipublic rates would not adequately compensate payphone providers for CPE installation, maintenance, collection and repair costs, and argued that no new payphone providers would be likely to enter this market segment and that some who were already providing semipublic service would discontinue this offering. These changes, according to BellSouth, would decrease competition and limit the availability of payphone services.

BellSouth asserted that G.S. 62-140, which it assumed was the basis for the Public Staff's proposed Rule R13-9(b), "has no application to a deregulated, detariffed service offered by a PSP," and that this statute prohibited only "unreasonable" differences in treatment. (*Reply Comments of BellSouth*, page 5) BellSouth also opposed importing rules from outside of Chapter 13 to regulate the provision of semipublic service.

GTE South opposed the Public Staff's proposed Rule R13-9, arguing that the rates for semipublic service should be set by the market. GTE viewed the Public Staff's proposed regulations as inconsistent with the Telecommunications Act of 1996 and the FCC requirement that "LEC payphones must be treated as unregulated, detariffed CPE in order to ensure that no subsidies are provided from basic exchange and exchange access revenues or access charge payphone service elements." (Report and Order ¶142)

GTE questioned whether the semipublic rates which were effective when the service was detariffed in April 1997 would be sufficient to cover existing or future costs for providing the service:

> "LEC payphone providers are now required to pay or impute the costs of all network services used in the provision of payphone service. For semipublic service, GTE's payphone operations must bear the cost of a PTAS Coin Line and the multiline subscriber line charge. In addition it must then recover the costs of installing, collecting and maintaining the payphone equipment as well as depreciation, contribution to overhead and, hopefully, a profit. If initial rates are not sufficient to cover all costs, and annual increases are limited, semipublic service will be subsidized. Under these circumstances, LEC payphone providers can be expected to discontinue the provision of semipublic service, a result which is inconsistent with the Public Staff's goal of improving the semipublic customers' chances of continuing to receive the service at affordable rates. To avoid such subsidies, the LEC payphone provider could significantly increase the price of a local call at these locations, a result which is also undesirable." (*Reply Comments of GTE*, page 6)

GTE commented that "Semipublic service is now unregulated and detariffed in North Carolina" as a consequence of being detariffed, and that "reregulation" of semipublic service by the Commission would make it harder for the Company to receive interim compensation from carriers, thereby placing it at a disadvantage relative to its competitors. GTE added that the Public Staff proposal to require potential competitors to file prospective rates for semipublic service prior to offering service to the public was not "competitively neutral treatment," since competitors were not required to limit those rates to existing levels and could, therefore, set them to guarantee cost recovery. (*Reply Comments of GTE*, pages 3-4)

CT&T/Centel urged the Commission to reject the Public Staff's proposed pricing rules in Rule R13-9(b) and to instead authorize "market-based pricing." CT&T/Centel suggested that the Public Staff's proposals would jeopardize the future of semipublic service:

> "The Public Staff's "price regulation" proposal would delay the transition to deregulation of payphone services. The ultimate goal of the Public Staff's proposal is to ensure the continued availability of semipublic services. Existing rates for semipublic services were set in a noncompetitive environment, and do not always cover the costs associated with the service. Requiring payphone providers to price this service at uneconomical prices (i.e., below cost) will result in the demise of semipublic services because payphone providers cannot continue to offer services below cost without some form of subsidy." (*Comments of CT&T/Centel*, page 3)

The NCPA's reply comments supported the Public Staff's proposal to adopt rules in Chapter 13 to govern the provision of semipublic service, but opposed Commission regulation of the rates for the service. The NCPA recommended that the Commission adopt the Public Staff's proposed Rules R13-9(a) and (d) and reject proposed Rules R13-9(b), (c), and (e).

Conclusions. In deciding what to do regarding semipublic service, the Commission is faced with two questions. First, in light of recent changes in federal law, can and should the Commission continue to regulate the monthly rates and conditions under which semipublic service is provided? Second, if continued regulation is appropriate, what regulations are needed?

TA96 clearly expanded FCC authority over interstate and intrastate payphone service. Pursuant to the Act, the FCC deregulated LEC payphone equipment and the local coin rate. The result of this FCC action essentially eliminates the Commission's ability to effectively regulate the charges for semipublic service on a continuing basis. In view of these circumstances, the Commission concludes that state regulation of the monthly rates and conditions for the provision of semipublic service is no longer feasible and that the service should be deregulated. However, since existing LEC semipublic customers subscribed to their service under regulated tariffs, the Commission believes that these customers should be given a period of time to prepare for the deregulation of their service. This transition period will give existing customers an opportunity to consider alternate providers of semipublic service or other means of satisfying their service requirements before the service is actually deregulated.

We establish herein a transition period to help mitigate the potential impact of deregulation on existing semipublic service subscribers. The Commission concludes that LECs or LEC affiliates should be, until April 7, 1998, prohibited from discontinuing, except at the subscriber's request or as otherwise provided by Commission rules, semipublic service subscribed to on or before the date of

this Order, or applying rates and conditions to the service which are different from those which were applicable immediately prior to the date on which the semipublic service was detariffed by the LEC. The Commission further concludes that the rates and conditions for semipublic service initially subscribed to after the date of this Order should be deregulated. Each LEC or LEC-affiliated PSP shall send notices to each of its semipublic subscribers who was receiving service on the date of this Order as follows:

(a) Within 30 days of the date of this Order, a notice which advises the subscriber that:

(1) the monthly rates and conditions under which semipublic service is provided will be deregulated effective April 7, 1998;

(2) the monthly rates and conditions of service may change on or after that date;

(3) there are alternative payphone providers who may be willing to offer the same service or a similar service; and

(4) the customer has the option of obtaining a certificate from the North Carolina Utilities Commission, becoming a payphone provider, and providing semipublic service to himself and others.

(b) During the period between February 7, 1998 and February 20, 1998, a notice which advises the subscriber:

(1) that the monthly rates and conditions under which semipublic service is provided will be deregulated effective April 7, 1998;

(2) of any changes the LEC or LEC affiliate plans to make in the monthly rates and conditions under which semipublic service is provided on or after April 7, 1998;

(3) that there are alternative payphone providers who may be willing to offer the same service or a similar service; and

(4) that the customer has the option of obtaining a certificate from the North Carolina Utilities Commission, becoming a payphone provider, and providing semipublic service to himself and others.

The Commission sets forth in Rule R13-10 provisions which reflect the conclusions reached herein with regard to semipublic payphone service.

C. Obtaining line access from non-LECs

In anticipation of Legislative approval of H.B. 994, which would allow payphone providers to obtain access lines from entities other than the LECs, the NCPA's petition coined the term "Access Line Provider" (ALP) to refer to any generic provider of payphone access lines, as authorized by Commission rule or the North Carolina General Statutes. The NCPA proposed substituting this term for the phrases "local exchange company" and "telephone company" wherever these appeared in Chapter 13.

In June 1997, the General Assembly passed H.B. 994 and Governor Hunt signed it into law. No party opposed allowing payphone providers to obtain their payphone access lines and trunks from entities other than the LECs, and all parties except the Public Staff supported the adoption of the NCPA's term "Access Line Provider." In initial comments, the Public Staff recommended that the Commission adopt the term "Local Telephone Company" to refer generically to the providers of payphone access lines and trunks. The Public Staff cited the historical use of this phrase to refer to the local access provider, and suggested that it could be substituted for the terms "local exchange company" or "local exchange telephone company" in Chapter 13, except in those rules which use local exchange company rates or exchange areas to specify rate caps or ceilings (i.e., in existing Rules R13-7(d), R13-9(c), R13-9(e), and in the Public Staff's proposed new Rule R13-9(b)).

Conclusions. The Commission adopts the NCPA's proposed definition of "Access Line Provider," altered slightly to read "The provider of PSP access lines or PSP trunks..." All of the parties except the Public Staff supported the NCPA's proposal. We also substitute the term "access line provider" for "local exchange company" or "local exchange telephone company" wherever the latter terms appear in Rule R13, except in rules which use local exchange company rates or exchange areas to specify rate caps or ceilings applicable to the provision of payphone service (i.e., in existing Rules R13-7(d), R13-9(c), R13-9(e), and in the Public Staff's proposed new Rule R13-9(b)).

D. Local Coin Rate

On July 1, 1997, a panel of the D.C. Circuit Court of Appeals upheld the FCC's preemption of state authority over local coin rates. Current Rule R13-9(a) must be revised to conform to language in the FCC's Report and Order which allows providers to charge "market-based rates" for local coin calls, effective October 7, 1997. Chapter 13 must also be revised, in accordance with the FCC's orders, to require posting of the rate for a local coin call.

The NCPA's petition proposed that the Commission modify Rule R13-9(a) to authorize a charge of up to 35 cents for the carriage and completion of a local sent-paid call until October 7, 1997, and that it deregulate the charge after that date. The Commission's Order Initiating Rulemaking and Requesting Comments, however, advised parties that any rule changes approved in this docket would become effective no sooner than October 7, 1997. The NCPA's petition also proposed adoption of new Rule R13-4(j) to require payphone providers to post the local coin rate.

All of the parties in this docket recognized the need to conform the rules to the FCC's requirements. Each party either supported the NCPA's proposed rule changes or offered other versions that incorporated the FCC's requirements. The version of the posting rule which the Public Staff provided in its reply comments addressed the possibility that payphone providers might decide to impose time limits on local coin calls, and required that notice of any time limits be posted. The Public Staff reworded Rule R13-9(a) to cite the FCC's "preemption of state authority over local coin rates."

Conclusions. The Commission adopts the Public Staff's proposed Rule R13-9(a), which deregulates local coin rates in accordance with FCC requirements, modified to replace the phrase "COCOT providers" with "PSPs," and Rule R13-4(a)(5), which specifies posting requirements. These are consistent with FCC requirements and represent the best alternatives offered in this docket.

E. Requirement that intraLATA calls be routed to incumbent LEC

Current Rule R13-5(e) prohibits a COCOT provider from contracting with or arranging for his PTAS instruments to automatically access "any carrier other than the serving local exchange company to carry local intrastate calls originated from his PTAS instruments." Paragraph 261 of the Report and Order preempts any state regulations "which require the routing of intraLATA calls to the incumbent LEC." In paragraph 242 of the Order on Reconsideration, the FCC confirmed that this requirement applies to local calls as well as other types of intraLATA calls.

The NCPA's petition proposed deletion of R13-5(e) in order to eliminate the Chapter 13 requirement that local calls be routed to the incumbent LEC. BellSouth supported the NCPA's proposal.

In its initial comments, the Public Staff expressed concern that eliminating R13-5(e) altogether would free payphone providers to route local calls, particularly 0+ local calls, to long distance carriers, which usually complete the calls and charge toll rates for them. The Public Staff stated that it had initiated formal action against eleven COCOT providers since 1993 for routing 0+ local calls to IXCs, in violation of Rule R13-5(e). In seven of those cases, the Public Staff said it had provided the Commission with actual bills containing call details of its 0+ local test calls, which revealed that significant customer overcharges had resulted because IXCs had completed those calls and billed them at toll rates. The Public Staff recommended adding language to R13-5(e) which would prohibit payphone providers from routing local intrastate calls originated from their payphones to any carrier other than the "local telephone company," which the Public Staff's defined as "the local exchange telephone company in the service area where the pay telephone is located, any certificated local provider, or any other provider authorized by the Commission to provide PTAS lines and PTAS trunks." In its reply comments, CT&T/Centel supported the Public Staff's position.

In its reply comments, the NCPA argued that the Public Staff's proposed version of R13-5(e) was inconsistent with federal requirements:

> "The FCC intended that PSPs have the unfettered ability to negotiate with any authorized intraLATA carrier for carriage of intraLATA calls. This carrier may include IXCs, if an IXC is authorized to carry local phone calls. The intent of the FCC's order is that PSPs be allowed to contract with any eligible carrier, not just the incumbent local exchange company and not just 'local telephone companies.'
>
> The Staff's concern with the potential that PSPs might contract with IXCs who charge toll rates for local calls is addressed by other provisions of the rules. The rate provisions of R13 provide substantive restrictions on the charges that PSPs can impose for payphone calls." (*Reply Comments of the NCPA*, p. 9)

The NCPA also restated its position that Rule R13-5(e) should be eliminated.

In its reply comments, BellSouth suggested that the Public Staff's proposed rule was inconsistent with amended Part 64.1340, which appeared in Appendix D of the Report and Order:

64.1340 Right to Negotiate

> Unless prohibited by Commission order, payphone service providers have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry interLATA and intraLATA calls from their payphones.

BellSouth supported the NCPA's view that deletion of Rule R13-5(e) was necessary in order to conform Chapter 13 with FCC requirements.

Conclusions. In paragraph 261 of the Report and Order, the FCC addressed the issue of intraLATA call routing, emphasizing that any state requirements for routing intraLATA calls had to be consistent with TA96:

> "Because Section 276(b)(1)(E) establishes that all payphone service providers are to have the right to negotiate for intraLATA carriers for their payphones, we find that state regulations which require the routing of intraLATA calls to the incumbent LEC are inconsistent with the 1996 Act. Section 276(c) specifically states that 'to the extent that any State requirements are inconsistent with the Commission's regulations, the Commission's regulations on such matters shall preempt such State requirements.' Since we have found state requirements that mandate the routing of any or all intraLATA calls to an incumbent LEC to be inconsistent with the requirements of Section 276(b)(1)(E), we conclude that all such state requirements are preempted by the Commission's regulations."

In the Order on Reconsideration, the FCC clarified that the phrase "intraLATA calls" referred to both intraLATA toll and local calls, and stated that its intraLATA presubscription policies applied to both intraLATA toll and local calls:

> "APCC requests that the Commission clarify that, for purposes of Section 276(b)(1)(E), "intraLATA" calls include local calls. APCC argues that there is no evidence that Congress meant to exclude local calls from the scope of Section 276(b)(1)(E), and the policies of market competition and freedom of choice that support PSPs' right to select the intraLATA carrier presubscribed to their payphones are equally applicable to intraLATA local calls as to intraLATA toll calls." (¶239)
>
> "As to APCC's first issue, we confirm that it is our intent and understanding that, for purposes of the rules implementing Section 276(b)(1)(E) of the 1996 Act, intraLATA calls include local calls. We agree with APCC's reasoning that the policies supporting free competition in intraLATA presubscription are equally applicable to local calls." (¶242)

The Commission believes that payphone customers must be protected from the practice of local calls being routed to carriers that are not certified to carry or bill those calls. General Statute 62-110(f1) authorizes the Commission "to issue a certificate to any person applying to provide local exchange or exchange access services as a public utility," provided that person meets certain basic requirements. Under this statute, all carriers are free to seek certification to offer local exchange or exchange access services, and many have already been granted certification.

The FCC was careful to point out in paragraph 142 of its Order on Reconsideration that its efforts to "ensure a competitive payphone industry" were not intended to infringe upon the "traditional police powers" of the states. The FCC defended the authority of states "to impose certain requirements without competitive effect that are designed to protect the health, safety and welfare of its citizens." In paragraph 243, in discussing the "statutory language that PSPs should be allowed to negotiate for the intraLATA carriers presubscribed to their payphones," the FCC emphasized that "States may impose reasonable requirements on the exercise of these rights, especially for purposes of ensuring public health and safety." The Commission's authority to certify carriers for the purpose of providing local service and its authority to prevent payphone providers from using uncertified carriers from providing local service are fundamental exercises of its police powers that are intended to protect the welfare of the citizens of North Carolina.

However, reasonable parties might view the use of the term "local telephone company" in the Public Staff's revised version of Rule R13-5(e) as having the appearance, at least, of restricting the right of payphone providers to route local calls to IXCs which the Commission has certified to provide local service. The Commission believes that more inclusive language is appropriate. We adopt the following revision of R13-5(e), which should satisfy the reasonable concerns of BellSouth and the NCPA regarding consistency with FCC requirements and satisfy the Public Staff's concerns about IXCs improperly billing local calls at toll rates:

> R13-5(d) (R13-5(e) revised): "The PSP may *not* contract with, or arrange for his PSP instruments to automatically access, any carrier to carry local intrastate calls originated from his PSP instruments, unless that carrier has been certified by the Commission to complete and bill local calls."

F. Directory assistance

On July 1, 1997, a panel of the D.C. Circuit Court of Appeals upheld the FCC's preemption of state authority over local coin rates, including rates for intrastate directory assistance (DA) calls. Current Rule R13-5(l), which requires COCOTs to allow access to local and long distance directory assistance at no charge to the end user, must be revised or eliminated to conform to the FCC's requirement that providers be allowed to charge "market-based rates" for intrastate DA calls, effective October 7, 1997.

The NCPA's petition proposed deletion of Rule R13-5(l) and adoption of two new rules: R13-9(h), which would authorize payphone providers to charge a "market based fee" for each intrastate DA call, and R13-4(i), which would require providers to give end users notice of the cost of DA calls, either by posting the charge at the payphone or by voice message.

In initial comments, the Public Staff generally supported the NCPA's proposals, but reworded the NCPA's proposed Rule R13-9(h) to cite the FCC's "preemption of state authority over intrastate directory assistance charges." The initial comments of BellSouth and CT&T/Centel proposed retaining current Rule R13-5(l) to ensure that access to directory assistance is provided from payphones, but removing the provision which requires that DA access be provided "at no charge." The companies supported the NCPA's proposed rule on posting of DA charges and its proposal to authorize payphone providers to charge market based rates for intrastate DA calls in Rule R13-9(h).

In addition to these changes, CT&T/Centel's initial comments proposed that the current requirement that LECs allow 25 free local DA calls per payphone line per month should be eliminated. BellSouth's initial comments proposed inserting language into Rule R13-9(g) which would guarantee that "Entities providing directory assistance service to PSPs may charge market rates."

In their reply comments, the Public Staff and the NCPA both supported retention of R13-5(l) with the requirement that DA access be provided "at no charge" removed. The Public Staff agreed that the revised rule would still afford consumers the useful guarantee of DA access from payphones, even with the phrase requiring free DA deleted. The Public Staff indicated that it did not oppose CT&T/Centel's proposal to eliminate the provision of free DA calls by the LECs, but that the LECs that chose to cancel this offering "should be required to file other rate reductions to offset the increased DA revenues."

Conclusions. The Commission believes that all parties are now in agreement (1) that Rule R13-5(l) should be retained to require DA access, but revised to eliminate the requirement that this access be provided at no charge to the end user, (2) that Rule R13-9 should be updated to authorize "market-based rates" for intrastate DA calls, and (3) that Rule R13-4 should be amended to require posting or voice notification of the charges that are imposed for DA calls. To implement these changes, the Commission adopts the rule changes proposed by the Public Staff in its reply comments, modified appropriately to reflect use of the new term "PSP."

In adopting the Public Staff's proposed changes, we reject BellSouth's suggestion that we add language to R13-9 authorizing providers of DA service to charge payphone providers "market rates." The FCC's orders do not require this change. The rates that carriers currently charge payphone providers for provision of DA services are regulated, and there is no reason to authorize blanket deregulation of these charges. We believe that it is in the public interest to protect North Carolina payphone users, who will be experiencing a charge for local and intrastate toll DA for the first time beginning October 7, 1997 from changes which could unnecessarily increase their cost of intrastate DA service.

In response to CT&T/Centel's proposal, we decline to order the LECs to discontinue their free offering of DA calls at this time. If LECs wish to eliminate their free DA offerings in the future, they should present specific proposals to the Commission along with an accounting of any increased revenues and proposed offsets.

G. Compensation for 0- calls

The NCPA's petition proposed amending Rules R13-5(i) and R13-9(f) to include provisions for compensating payphone providers for calls in which a local operator is accessed by dialing "0" and completes a non-emergency call. The NCPA's proposed Rule R13-9(f) would give the Commission the ultimate responsibility for ensuring that COCOT providers are compensated for these calls.

In initial comments, AT&T, BellSouth, CT&T/Centel, and the Public Staff opposed the Commission mandating compensation for calls completed on an 0- basis. MCI did not address this issue. GTE supported the NCPA's proposal.

The Public Staff's initial comments pointed out that Part 64.1300, which appears in Appendix E of the FCC's Report and Order, guarantees payphone providers compensation for calls completed on an 0- basis. Under Part 64.1300, payphone providers are entitled to receive, through either a contract or on a per-call basis, compensation for calls completed on a 0- basis from the carrier which completes the call. The Public Staff indicated that it was unnecessary and inappropriate for the state to establish any compensation procedures for these calls in Chapter 13.

In reply comments, the NCPA indicated that there might be instances in which it was not compensated for certain 0- calls, suggesting that one LEC compensation plan -- that offered by BellSouth -- denied payphone providers compensation for local calls completed on an 0- basis unless the payphone provider agreed to route both local and intraLATA toll calls to BellSouth. The NCPA also proposed clarifying the Public Staff's proposed Rule R13-10(g) to indicate that no charge for 0- calls could be imposed on the end user.

The NCPA's petition also stated that Public Staff had neglected to alter Rule R13-9(f) to ensure consistency with Rule R13-5(i) during the 1996 rulemaking. The Public Staff proposed to correct this by replacing the word "Operator" in R13-9(f) with the phrase "serving local telephone company operator."

Conclusions. The Commission concurs with the recommendation of AT&T, BellSouth, CT&T/Centel, and the Public Staff, that it is inappropriate and unnecessary to introduce any provisions into Rules R13 to mandate payment of compensation from carriers to payphone providers. We believe that the compensation system established by the FCC is sufficient to ensure compensation to payphone providers. If the NCPA believes that BellSouth's compensation plan violates Part 64.1300, then it should bring the alleged violation to the attention of the FCC for action.

The Commission approves the Public Staff's proposals to revise Rules R13-5(i) and R13-9(f) (R13-5(h) and R13-9(g). We also substitute the term "PSP" for the terms "PTAS" and "provider" in these rules, and amend Rule R13-9(f) to eliminate the reference to the "Operator," as the NCPA proposed.

H. Blocking incoming calls

The NCPA's petition proposed revision of R13-5(m) to allow payphone providers to block incoming calls at the request of location providers, provided notice is posted. BellSouth supported the NCPA's position, arguing that, in business locations,

> "incoming calls often become disruptive to the operation of the business. Without the capability to block incoming calls, many of these businesses will not provide phones of any type for their employee needs." (*Comments of BellSouth*, section III.G)

CT&T/Centel took a different view, asserting that

> "Although the FCC noted that PSPs are capable of blocking incoming calls, they did not mandate states to allow blocking of incoming calls, and there is no requirement that the PSPs receive compensation for these calls. In fact, since PSPs incur no direct costs in terminating a call, they will not be financially harmed if they cannot block incoming calls.

> The NCPA's proposal to allow general blocking of incoming calls is not in the public interest, and should not be approved by the Commission. The Companies recommend no changes to the current Rule R13-5(m)." (*Comments of CT&T/Centel*, page 5)

The Public Staff's initial comments argued that there were situations where incoming calls at payphones served vital public needs. On page 6 of its reply comments, the Public Staff suggested that location providers, given the opportunity to request blocking of incoming calls, "would request blocking of incoming calls primarily for reasons of convenience and profitability, rather than to protect the public safety and welfare," which the Public Staff viewed as the only justification for requesting blocking under current Rule R13-5(r). According to the Public Staff, blocking of all incoming calls at a payphone was only justified if concerns about incoming calls' negative impacts on public safety and welfare outweighed the public needs which were served by allowed incoming calls.

In the NCPA's reply comments, Vince Townsend, president of Pay Tel Communications, Inc., provided average monthly data from a "representative" sample of 100 Pay Tel payphones. In this sample, incoming calls made up 8.37% of the total calls handled by the payphones. Based on these data, the NCPA proposed a rule that would require payphones to allow receipt of incoming calls free of charge for an initial period of at least two minutes, after which the end user would be required to pay the local coin rate for outgoing local calls in order to continue the call.

The NCPA also provided as an exhibit a letter from Ruth Daniel, Vice-President of Daniel Payphones, Inc., which asked the Commission

> "to consider some changes to allow PSPs to block incoming calls, for at least a few hours at night, at the written request of our clients. The police put pressure on our clients to remove our phones to prevent drug traffic, loitering and vandalism. Before long there would be no payphones in poor communities. The people who need access to public phones would be hurt most, plus a lost of revenue to the PSP. Our right to do business and the publics right to access needs this protection." (*Reply Comments of the NCPA*, Exhibit C)

Conclusions. The Commission believes that there is indeed a public need to receive incoming calls in certain cases, particularly in emergency situations. The Public Staff has argued that incoming calls serve many essential purposes, and we believe that the retention of the incoming call requirement of Rule R13-5(m) is in the public interest. However, the Commission finds that the requirement that PSPs allow unlimited access to incoming calls conflicts with the requirement of Section 276 of TA96 that PSPs be fairly compensated for all calls. Additionally, the Commission notes that paragraph 64 of the FCC's Report and Order states, in part:

> "We do not agree, however, that Section 276(b)(1)(A) was intended to apply to both incoming and outgoing calls. Because PSPs may block incoming calls, they are able to restrict use of their payphones if they are concerned about a lack of compensation. For this reason, we conclude that incoming calls are not within the purview of Section 276, and we are not required, as a result, to address them in the instant proceeding".

The Commission notes that current Rule R13-5(m) does not allow for PSPs to block incoming calls if they desire to do so as assumed in the FCC's Report and Order. Moreover, it is clear that the receipt of incoming calls prevents the payphone from generating revenue during that call. The NCPA has presented evidence compiled by one NCPA member demonstrating that receipt of relatively long duration calls represents a significant portion of payphone calls.

The Commission believes that it is appropriate to balance the need for the public to be able to receive incoming calls with the need of PSPs to receive compensation. Therefore, the Commission concludes that it is appropriate to adopt the NCPA's recommended Rule R13-5(m), however, to increase the initial time period to ten (10) minutes. Therefore, the Commission adopts the following Rule R13-5(m):

> "All PSP instruments must allow receipt of incoming calls at no charge for an initial period of at least ten (10) minutes. After the initial period, PSPs may impose a charge for the continued use of the PSP Instrument in an amount equal to the charge for a local call."

II. Other proposed amendments to Rule R13

A. PSP rates

1. Intrastate toll calls

Commission rules R13-9(b) and (c) currently limit the charges that payphone providers may impose for intrastate sent-paid toll calls to the applicable charges of AT&T for interLATA calls and to the applicable charges of the LEC for intraLATA calls The NCPA's petition proposed to limit the maximum charges that could be applied to intrastate toll calls to those of "any certificated carrier" rather than to the tariffed charges of AT&T or the LEC.

The NCPA also proposed that the Commission allow providers, as an alternative to carrier-based rate ceilings, to charge a flat rate for an initial period of a sent-paid toll call, and a flat rate for each minute thereafter. The NCPA's proposal did not specify the length of the initial period, the initial period rate, or the additional minute rate.

In its initial comments, MCI called for removal of any rules which impose rate regulation of calls originating or terminating at payphones "because rate caps are contrary to a competitive environment and the goals of TA96." (*Comments of MCI*, page 2) AT&T's initial comments proposed eliminating Rules R13-9 altogether, suggesting that regulation of call rates was "no longer germane to a deregulated, competitive market." (*Comments of AT&T*, page 5)

BellSouth, CT&T/Centel, and GTE South supported the NCPA's proposal to cap intrastate toll rates at the level of "any certificated carrier." In their initial comments, BellSouth and CT&T/Centel proposed that the Commission set price caps for both flat-rated and message-rated calls. BellSouth endorsed the NCPA's plan for raising the authorized rate caps for intrastate toll calls to the "highest current rate as authorized by the Commission for each rate element and each call type," and suggested that the rules should allow automatic upward adjustment of rates if the Commission approved higher intrastate rates for any carrier. (*Comments of BellSouth*, section III.A.1) CT&T/Centel and GTE

South took similar positions, but used slightly different language to implement their proposed changes.

The Public Staff's initial comments emphasized that the current rate caps in Rules R13-9(b) and (c) did not prevent payphone providers from reducing their toll rates to attract end users. The Public Staff stated that eliminating rate caps or allowing them to rise to the highest current levels of any carrier authorized by the Commission would be likely to result in substantial increases in the long distance rates charged to end users.

The Public Staff observed that the NCPA's proposal to tie rate caps to the highest rate charged by a carrier would make it extremely difficult to detect when overcharges on intrastate sent-paid toll calls were occurring, because it would require the Public Staff to know the amount that would be charged for a call by every certificated carrier that could lawfully complete it, including switchless long distance carriers, which are not required to file rates with the Commission. The Public Staff remarked that this would make the routine detection or investigation of overcharges virtually impossible.

The Public Staff also pointed out that "nothing in the FCC's Report and Order or Order on Reconsideration requires a change in our intrastate sent-paid toll rate caps," and recommended that the Commission "refrain from changing them in this Rulemaking." (*Reply Comments of the Public Staff*, page 7)

In reply comments, the NCPA argued that North Carolina's rate caps "act as artificial constraints on the payphone market which are inconsistent with the deregulatory thrust of the FCC's payphone orders." The NCPA defended its rate cap proposals, stating:

> "the NCPA's proposal would cap rates at the highest rate currently allowed by the Commission for a particular type of call. Any rate which is already being charged by a certified carrier in North Carolina, having been allowed to go into effect by the Commission, should also be a permissible rate for payphone calls. If a rate is fair and just as to a carrier's carriage of calls, there is no reason that the same rate would not be fair and just with respect to payphone calls." (*Reply Comments of the NCPA*, page 15)

The NCPA also supported CT&T/Centel's flat-rate proposal to require providers to charge for "XX%" of calls at rates lower than those of certified carriers. The NCPA proposed 90% as a reasonable figure for a flat-rate option.

Conclusions. The Commission takes issue with the NCPA's argument regarding the fairness and justness of toll rates at payphones. There is a wide range of intrastate 1+ toll rates that is considered fair and just for residence and business subscribers, and payphone providers, in part because these customers have the opportunity to choose the carrier for each 1+ toll call they make. They can do this either through presubscription or by using carrier access codes (such as 10222 for MCI) to route their calls to a different carrier or carriers. They are free to select the carrier that offers the best rates and charges for each call.

At payphones, the end users who pay for 1+ toll calls have no choice about who will carry those calls. Payphone providers make this decision. Payphone providers are not required, under Rule R13-

5(n), to allow end users to use access codes to reach the 1+ carrier(s) of their choice. It is, therefore, disingenuous to suggest that the broad spectrum of rates which is fair and just to payphone providers is fair and just to payphone end users, because payphone customers do not have access to them.

The rate caps in Rules R13-9(b) and (c) exist, in large part, because payphone customers lack the competitive alternatives that other callers have. The Commission agrees with the Public Staff that raising the intrastate sent-paid toll rate caps, as BellSouth, CT&T/Centel, and GTE propose, or eliminating them, as AT&T and MCI prefer, would be likely to lead to significant increases in the charges payphone users pay for their intrastate 1+ calls. These increases would be likely to fall disproportionately on those consumers who have no reasonable alternatives to payphone service: those who cannot afford residential service or those who are away from home and unable to access their residential or business service. In light of this, and because, as the Public Staff pointed out, there is nothing in the Report and Order or Order on Reconsideration which requires changes in North Carolina's regulation of intrastate toll calls, the Commission declines to make any changes in Rules R13-9(b) and (c) other than terminology changes.

2. 0+ calls other than automated calls

In the Report and Order, the FCC adopted procedures to compensate payphone providers for all "access code" calls completed from their payphones, including 10xxx0+ and 950 calls, and ordered that providers be compensated for 0+ calls either through contracts with the carriers who handled those calls or on a per-call basis. (¶¶21, 52, 53)

The NCPA's petition proposed amending Rule R13-9(d) to remove payphone providers' authority to charge 25 cents for 0+, 10xxx0+, and 950 calls, and to ensure compensation for "calls which are not otherwise compensated by federal dial around compensation or commission."

In initial comments, BellSouth, CT&T/Centel, and the Public Staff supported elimination of the 25 cent charge. In support of that position, the Public Staff cited paragraph 73 of the Order on Reconsideration, which cautioned states to "review their compensation regulations to ensure that PSPs are not receiving double compensation for certain types of calls." The Public Staff's proposed revision of R13-9(d) also prohibited charges for 101xxxx0+ calls. BellSouth recommended retaining the language in R13-9(d) which states that the carrier's tariffed charges would apply to 0+ calls and that these charges would be billed and retained by the carrier.

In reply comments, CT&T/Centel supported the Public Staff's proposed revision of R13-9(d) and suggested extending the rule to prohibit charging for 950 calls as well as 0+, 10xxx0+, and 101xxxx0+ calls.

Conclusions. After considering the proposals submitted by the parties, the Commission believes that R13-9(d) should be amended to prohibit end user charges for 0+, 10xxx0+, 101xxxx0+, and 950 calls. Because the last two sentences of current Rule R13-9(d) do not address charges which are under the control of the payphone provider, and state facts which should already be familiar to both providers and end users, we choose to eliminate them. The Commission adopts the Public Staff's proposed update of R13-9(d) (relabeled as Rule R13-9(e)), with the terms "PTAS" and "COCOT provider" replaced by "PSP." We also modify the Public Staff's version to include 950 calls, as proposed by CT&T/Centel.

3. <u>0+ and collect automated calls</u>

The NCPA's petition proposed that the Commission establish a new category of automated service, "automated 0+" service, and that the Commission eliminate the current LEC/AT&T rate ceilings on automated collect calls and adopt an "approved inmate service charge" which would apply to calls made from confinement facilities.

In initial comments, BellSouth supported the NCPA's proposal to modify rules R13-3(c), R13-7, and R13-9(e) to allow station-to-station automated 0+ calling using store and forward technology. BellSouth stated that this technology would offer payphone providers the same technical capability that IXCs and operator service providers currently use to complete 0+ calls. CT&T/Centel supported the NCPA's proposed revision of R13-9(e), except for the final sentence authorizing an "approved inmate service charge," which it opposed.

In initial comments, the Public Staff recommended that the Commission reject the NCPA's proposals, arguing that the COCOT industry had a history of abuses of its automated collect calling privilege, ranging from substantial overcharges on local and toll calls to violations of the positive response requirement, posting violations, and billing errors.

In reply comments, the Public Staff stressed that neither the NCPA's petition nor BellSouth's comments specified what types of automated 0+ services payphone providers intended to offer using store and forward capabilities. According to the Public Staff, the COCOTs industry's previous abuses of automated collect authority justified Commission disapproval of any additional automated authority.

The Public Staff insisted that there was no justification for raising the existing automated collect rate ceilings or approving any additional charges for confinement facility calls. It indicated that, by all accounts, payphone providers were competing aggressively for the opportunity to serve confinement facility locations in North Carolina. The Public Staff added that there was nothing in the FCC's <u>Report and Order</u> or <u>Order on Reconsideration</u> that required the rule changes advocated by the NCPA.

The NCPA's reply comments suggested that the Public Staff had exaggerated the importance of some "isolated enforcement actions which occurred in the early 1990s" involving confinement facility automated collect service. The NCPA indicated that "the overwhelming majority" of states had authorized the use of store and forward technology outside of confinement institutions without encountering serious problems. The NCPA contended that "the more cost-efficient automated technology" would "result in greater availability of payphones and increased competition with respect to payphone rates and service." (*Reply Comments of the NCPA*, pages 17-18)

<u>Conclusions</u>. On December 22, 1989, in Docket No. P-100, Sub 89, the Commission authorized automated collect service in North Carolina. Pursuant to that order, payphone providers began offering this service in North Carolina confinement facilities. Since early 1992, the Public Staff has advised the Commission of significant violations of the COCOT rules which apply to automated collect service. These included the overcharges to North Carolina customers by Equal Access Corporation, which totaled over $60,000 (Dockets No. SC-614, Sub 2 and SC-614, Sub 3), and by Robert Cefail and Associates, Inc., which totaled over $285,000 (Docket No. SC-610, Sub 2). In

each of these dockets, the Public Staff cited numerous examples of other COCOT rule and automated collect violations which it had found at these companies' confinement facility locations.

The record in this docket does not identify the additional automated services which payphone providers anticipate offering using "store and forward" technology. As a result, there has been no substantive discussion of the problems that might result from the use of specific types of automated services. The Commission is concerned about potential problems that may occur if we authorize additional automated authority without a clear knowledge of how it will be used and its implications for providers and end users. That consideration, coupled with the history of egregious overcharges and abuses in the automated collect industry, leads the Commission to deny the NCPA's request that we allow provision of automated services other than automated collect calling.

With respect to automated collect rates and charges, the Commission agrees with the Public Staff that increases are not required by the FCC's orders. We believe that the current automated collect rates are already sufficiently compensatory to providers, and that increases in those rates are unjustified and not in the public interest. For these same reasons, we also reject the NCPA's proposal to adopt an "approved inmate service charge."

4. Dial-around calls

In the Report and Order, the FCC adopted procedures to compensate payphone providers for all "access code" calls completed from their payphones, including 10xxx0+, 950, and toll-free calls, and ordered that providers be compensated for 0+ calls either through contracts with the carriers who handled those calls or on a per-call basis. (Report and Order, ¶¶21, 52, 53)

The NCPA's petition called for deletion of current Rule R13-9(g), which authorizes a charge of up to 25 cents for 800 and 888 number calls, and Rule R13-4(a)(5), which requires posting of any charge that is imposed for 0+, 10xxx0+, 800, and 888 calls. None of the parties submitting comments opposed these changes.

The petition also proposed adding new Rule R13-9(i) to guarantee that payphone providers were compensated for "dial-around" calls. In initial comments, GTE supported the adoption of Rule R13-9(i) with slight changes in wording. All of the other parties opposed the proposed rule, arguing that it was unnecessary and that it would duplicate compensation procedures established by the FCC in the Report and Order.

In initial comments, the Public Staff supported elimination of end user charges for 0+, 10xxx0+, 800, and 888 calls, and proposed rewriting Rules R13-9(d) and R13-9(g) to explicitly reflect these changes. The Public Staff supported deletion of Rule R13-4(a)(5), contingent upon elimination of the currently authorized 25 cent charge.

The Public Staff also contended that the FCC's April 7, 1997, order in CC Docket No. 92-237 required the Commission to rewrite Rules R13-5(n), R13-6(d), R13-7(f), and R13-9(d) to require 101xxxx access and phase out the requirement for 10xxx access. In reply comments, CT&T/Centel supported the Public Staff's proposed revisions of these rules and R13-9(g).

Rule R13-5(n) currently requires that "All PTAS instruments, other than those provided by COCOT providers which are also interexchange carriers, must be arranged or programmed to allow access to all available interexchange carriers on a non-discriminatory basis." In initial comments, AT&T and BellSouth proposed removing the exemption that R13-5(n) allows for interexchange carriers' payphones. AT&T also proposed updating the rule to require 1-800 number access.

In reply comments, the Public Staff supported AT&T's proposals and recommended adding the further requirements of 101xxxx and 1-888 access. The Public Staff recommended adoption of this renumbered version of R13-5(n):

> R13-5(m): "All PTAS instruments must allow access to all available interexchange carriers on a non-discriminatory basis. In an equal access environment, this requires that the end user be allowed to access a chosen carrier by dialing 10xxx-0+, 101xxxx-0+, 10xxx-0-, 101xxxx-0-, 1-800 numbers, 1-888 numbers, or 950-xxxx. The requirement for 10xxx-0+ and 10xxx-0- access will end on January 1, 1998. Access through 10xxx-1+, 101xxxx-1+, 10xxx-011+, or 101xxxx-011+ is not required."

In its reply comments, the NCPA did not oppose amending Rule R13 to require 101xxxx access.

Conclusions. The Commission adopts the Public Staff's proposed revisions of Rules R13-5(m), R13-5(n), R13-6(d), R13-7(f), and R13-9(g), and its proposal to eliminate Rule R13-4(a)(5). We reject the NCPA's proposed new Rule R13-9(i) as unnecessary.

B. Confinement facilities

1. Organization

In its petition, the NCPA proposed merging all rules regulating confinement facility service into Rule R13-6 to emphasize the differences between this service and non-confinement facility service. As part of this change, Rule R13-4(b), which specifies posting requirements in confinement facilities, would be shifted to a special section R13-6 "Special rules for service within Confinement Facilities." BellSouth supported the NCPA's position in its initial comments. In reply comments, the NCPA argued that no party had specifically opposed this position.

However, in its initial comments, the Public Staff contended that there was nothing in the Report and Order or Order on Reconsideration which suggested that the FCC believed changes in automated collect service were necessary. On page 14, the Public Staff recommended that the Commission "not make any changes to the automated collect and confinement facility COCOT service rules at this time."

Conclusions. The NCPA's proposal to shift posting Rule R13-4(b) to a separate confinement facility section is not necessary, and the Commission believes that it would set a bad precedent to consolidate the special rules for confinement facility service into a separate section. Our intent has always been to consider confinement facility payphone service as an integral part of payphone service in North Carolina. There is some risk that by segregating the special rules for confinement facility service into one section, providers might think of themselves as being subject only to those rules in

their provision of confinement facility service. That, of course, is not the case, and the Commission wishes to avoid the appearance that it is.

As the Public Staff pointed out, there are no provisions of the Report and Order or Order on Reconsideration which mandate or even suggest that changes are needed in the Commission's confinement facility rules. Accordingly, we reject the NCPA's proposal to segregate the rules governing confinement facility service into a separate section of Chapter 13.

2. Service requirements

The NCPA's petition proposed several amendments to current Rule R13-6, which BellSouth supported in its initial comments.

R13-6(b) currently allows COCOT providers, at the request of the confinement facility administration, to terminate calls "after ten minutes of conversation time." The NCPA proposed revising this rule to allow termination of calls "at any time after ten (10) minutes of conversation time." In reply comments, the Public Staff stated that it supported this rule if its intent was to give payphone providers flexibility to automatically terminate calls after some period of time which exceeds ten minutes: for example, after fifteen minutes of conversation time, or twenty minutes of conversation time.

R13-6(c) currently requires that "a copy of a current local telephone directory must be available for inmate access." The NCPA would qualify this rule to require access to the white pages only, "subject to the restrictions of the administration of the Confinement Facility." In reply comments, the Public Staff opposed limiting inmate access to the white pages only, and opposed adding the phrase "subject to the restrictions of the administration of the Confinement Facility" to the rule, contending that the confinement facility administration already has the authority to impose limits on the times and places where inmate access to a directory will be provided. The Public Staff expressed concern that the insertion of the phrase would be used to justify denying inmates access to directories altogether, something that it believed was unreasonable and unacceptable.

R13-6(h)(1) currently provides for three-way call detection and possible automatic disconnection if an attempt to use three-way calling is detected. The NCPA proposed amending this rule to allow, as an alternative to disconnection, "announcements...at random intervals during the course of the call by way of a voice overlay announcement that informs the called party that the call is from an inmate in a confinement facility." The Public Staff did not object to this proposal in its reply comments.

R13-6(h)(2) currently allows provision of call detail information at the request of the confinement facility "administrator." The NCPA proposed substituting the word administration for administrator. In reply comments, the Public Staff opposed this proposal because of inherent privacy concerns associated with the release of inmates' call detail information to confinement facility officials. According to the Public Staff, these concerns are reduced by ensuring that the approval of the administrator, not a subordinate employee, is required prior to release of call detail information.

The NCPA also proposed adding a new rule to allow payphone providers to block keypad operation at the request of the confinement facility administration. Neither the NCPA nor BellSouth,

which supported the NCPA in its initial comments, provided any explanation of what additional keypad blocking authority was necessary or why it was necessary. The Public Staff's reply comments recommended that the Commission reject this proposal due to the absence of any supporting information.

Finally, the NCPA included in its proposed revision of Chapter 13 a new Rule R13-6(c) entitled *Customer Deposits for Collect Call Service.* The Public Staff pointed out in reply comments that this rule contained some of the same elements (automatic blocking of calls when a call threshold was reached, deposit or advance payment requirements) that were present in the InVision Telecom, Inc., Fraud Prevention Plan, which was submitted for Commission approval in March 1997 and subsequently rejected. (Docket No. P-100, Sub 84)

In reply comments, the Public Staff argued that there was nothing in the Report and Order or Order on Reconsideration which required the Commission to make decisions regarding these proposals in this docket. The Public Staff recommended that the Commission attempt to limit this docket to addressing the stated purpose of the NCPA, conforming Rule R13 to recent changes in federal law.

In reply comments, the NCPA endorsed a suggestion supported by BellSouth that "the Commission allow certain decisions regarding (confinement facility) service to be arrived at by agreement between the confinement facility administration and the PSP." (*Reply Comments of the NCPA*, page 20) The NCPA also indicated that no party had raised specific objections to its proposed section entitled *Customer Deposits for Collect Call Service.* The NCPA argued that Commission approval of this section would address the lack of clear rules and standards for confinement facility fraud prevention programs, thereby addressing one of the primary objections the Commission had cited in denying InVision the authority to operate its Fraud Prevention Plan.

Conclusions. The Commission shares the view of the Public Staff that this docket should generally be limited to changes that are needed to make Rule R13 consistent with the federal requirements expressed in the FCC's Report and Order or Order on Reconsideration. There are no provisions in these orders which mandate or even suggest that changes are needed to the Commission's confinement facility service rules. Accordingly, we reject the NCPA's proposals.

3. Rates

Rules R13-7(d) and R13-9(e) currently require the charges for automated collect calls to be at or below those of the LEC (for local/intraLATA toll calls) or AT&T (for interLATA toll calls). The NCPA's petition proposed amending these rules to cap inmate calling rates at the rates of any certificated intrastate carrier plus any approved inmate service fee.

In initial comments, BellSouth endorsed the NCPA's proposals. The Public Staff opposed the NCPA's proposal and emphasized that nothing in the FCC's orders required the states to make changes in any inmate service rates.

On page 22 of in its reply comments, the NCPA cited figures which suggested that "inmate providers are losing, on average $182 per month on local calls, $30 per month on intraLATA calls less than or equal to 40 miles, and $8 per month on intraLATA calls greater than 40 miles," arguing

that "In light of these losses and the clear additional costs of providing inmate phone service, NCPA's proposed inmate service charge mechanism should be allowed."

Conclusions. The Commission believes that it would be imprudent to order changes in the present authorized charges for confinement facility service. Despite the alleged losses cited by the NCPA, the Commission believes that there is robust competition among providers for the right to serve confinement facilities and that such competition for confinement locations would be unlikely if payphone providers were not being adequately compensated for their services. Also, pursuant to FCC rules (Order on Reconsideration ¶72), confinement facility calls are now guaranteed compensation on either a contractual or per-call basis. The Commission believes there is no need to provide additional financial incentives to confinement facility providers at this time.

There are no provisions of the Report and Order or Order on Reconsideration which require changes in the current Commission's rules governing confinement facility rates and charges. Accordingly, we reject the NCPA's proposals.

C. Posting COCOT certificate number

The NCPA's petition proposed eliminating the requirement in Rule R13-4(a)(4) that a provider's certificate number be posted.

Conclusion. No parties objected to the NCPA's proposal to eliminate the certificate number posting requirement. The Commission approves it.

D. Line concentration

The NCPA's petition proposed adding a new Rule R13-5(v) to allow concentration outside of confinement facilities:

> "Line concentrators may also be used in single locations outside of Confinement Facilities with five (5) or more PSP Instruments, with the consent of the Location Owner, where there is otherwise available a private business line in the event of an emergency."

In initial comments, GTE supported this proposal, but suggested that the written consent of the location owner be required in order to allow concentration. GTE also added some clarifying language concerning connection of concentrators to the network. AT&T's initial comments recommended reducing the NCPA's proposed minimum requirement for concentration from five phones per location to two, and proposed allowing the provision of service using dedicated access arrangements.

In section III.D. of its initial comments, BellSouth opposed allowing concentration outside of confinement facilities because of concerns about service quality and public safety. The Company argued that end users who have to wait to receive dial tone "may assume that the PSP instrument or the line is out of service and become frustrated with the poor service." BellSouth also expressed concern about the confusion line concentration could create for emergency personnel:

"As a result of line concentration, emergency vehicles could be dispatched to wrong terminals or entrances of large facilities, such as airports, convention centers and bus stations. This proposal could unnecessarily endanger citizens of North Carolina."

Finally, BellSouth suggested that the NCPA's requirement that a private business line be available at a "concentrated" location was an inadequate alternative which could unnecessarily lead to delays in dispatching emergency personnel to the location.

CT&T/Centel's reply comments also opposed concentration outside of confinement facilities.

The Public Staff's initial comments expressed concerns about the inherent problems with guaranteeing access to emergency services, ensuring service quality, and monitoring customer dissatisfaction in concentrated locations outside of confinement facilities, and suggested that the Commission reject the NCPA's request. The Public Staff also argued that there was no necessity for the Commission to address the matter in this docket, since the FCC's orders did not address the question of concentration.

In reply comments, AT&T disagreed with BellSouth's conclusions regarding the dangers of concentration, arguing that

"today's Private Branch Exchanges ("PBX's") have the capability to incorporate programming that permits proper identification and completion of emergency calls. This functionality is substantially similar to that of stand alone payphones. Assuming that the 911 data base is properly populated with a description of the station's location, emergency services can be dispatched accurately, even at large locations such as airports. Therefore, the welfare of North Carolina citizens is appropriately safeguarded. (*Reply Comments of AT&T*, page 7)

AT&T conceded that concentration could lead to some end users being unable to complete calls on a first attempt. However, according to AT&T,

"When the location is studied prior to a switch installation, the correct number of lines required to accommodate the traffic can be estimated closely so that most calls will be completed on the first attempt without encountering any difficulties...Service might be affected but only if the proper location engineering is not conducted." (*Reply Comments of AT&T*, pages 7-8)

In its reply comments, the NCPA attempted to address Public Staff concerns by offering a modified version of the rule it had initially proposed. The revised rule would allow concentration only at phones that "are located within the same enclosed room or area in close proximity" and require availability of "a private business line or coin payphone in the event of an emergency." (*Reply Comments of the NCPA*, page 24)

Conclusions. The alternative proposed in the NCPA's reply comments, that concentration be allowed in locations where there would be "otherwise available a private business line or coin payphone in the event of an emergency" does not provide an acceptable alternative to an end user seeking emergency assistance. The rule offers no guarantee that an available business line or a coin phone with dial tone will be in close proximity to the concentrated phone. Even if one is nearby, it

may be in use. At the very least, additional delay in contacting emergency personnel will result if the end user has to leave a concentrated payphone and locate another phone that can provide dial tone.

The Commission also believes that it sets a bad precedent to allow payphone providers to rely upon the facilities provided by others to guarantee or ensure their quality of service. As a logical extension, providers might then argue that there is no need for them to provide directories at their payphones in locations where separate business lines are present, because end users could simply ask to use the directory which belongs to the business. Any such scheme which shifts responsibility for compliance with Rule R13 from payphone providers to other parties is unacceptable.

AT&T's reply comments addressed certain technical issues which are involved in providing service employing concentration. The Commission understands from AT&T's discussion that the ability to promptly place an emergency call from a "concentrated" payphone would depend upon the provider having sufficient expertise to conduct a location engineering study to ensure that enough payphone access trunks were available to virtually eliminate delays. Providers operating in a "concentrated" environment would also need to operate modern, state-of-the-art PBXs and be able to correctly program the payphones connected to them so that the PBXs could distinguish between several phone locations that share a common address.

The Commission has concerns that certain payphone providers might not be willing to devote the time and expense that is necessary to satisfy these technical requirements. If traffic engineering studies supporting concentration were done improperly, if PBXs were not programmed correctly, or if outdated equipment were used, the resulting concentrated service might be inadequate to ensure prompt, dependable access to emergency personnel. Allowing concentration under such conditions could jeopardize the public safety in busy locations such as airports or shopping malls.

The Commission agrees with BellSouth, CT&T/Centel, and the Public Staff that allowing concentration outside of confinement facilities could unnecessarily risk the public safety and is not in the public interest. We reject the proposals of the NCPA and AT&T to allow concentration outside of confinement facility locations and to provide concentration in confinement locations using access facilities other than PSP trunks.

E. International calling

The NCPA's petition proposed that Rule R13-5(h) be amended to allow blocking of all international calls. The current rule allows blocking of sent-paid international calls only. The petition also proposed modification of Rule R13-4(a)(7) to allow payphone providers to give notice of international call blocking by voice message in lieu of posting. BellSouth's initial comments supported the NCPA's positions.

In initial comments, the Public Staff opposed the concept of blocking all international calls from payphones, suggesting that those segments of the population most likely to place international calls might include those who are least able to afford residential telephone service, such as migrant workers. These persons may consequently be forced to depend on pay telephones to satisfy all of their telephone communications needs, including their need to complete international calls.

The Public Staff did not oppose giving payphone providers the option of advising end users of sent-paid international call blocking through either voice message or posting, so long as it is done dependably, specifically identifies the type of call that is being blocked, and is provided prior to implementation of the blocking. In reply comments, CT&T/Centel recommended no changes to current Rule R13-5(h).

Conclusion. The Commission believes that it is in the public interest to continue to require payphones to be able to complete non-sent-paid international calls. The Commission denies the NCPA's request to allow blocking of these calls. We grant the NCPA's request to provide notice of blocking via voice message. To implement this change, we adopt Rule R13-4(a)(8) as proposed by the Public Staff, but with the term "PTAS instrument" replaced with "PSP instrument.".

F. Maintenance of phone books

Commission Rule R13-5(q) currently requires that "The provider shall at all times maintain a current and complete local telephone directory at each PTAS instrument." The NCPA's petition proposed rewriting this rule to read:

> "The PSP shall maintain, insofar as is possible using reasonable efforts, a current local telephone directory with all local residence and business listings at each PTAS instrument. The PSP is not required to maintain a current copy of the 'yellow pages' directory if that directory is separate from the local residence and business listings."

In initial comments, BellSouth, CT&T/Centel, and GTE South endorsed the NCPA's proposal to require payphone providers to provide only a copy of the white pages in exchanges where there were split directories. BellSouth commented that, because of the size and weight of yellow pages sections, the decision of whether to install them in exchanges where directories are "split" should be left to the discretion of the payphone provider. BellSouth and GTE also agreed with the NCPA that providers should only be required to make "reasonable efforts" to maintain directories at their paystations. GTE proposed changing the requirement of one directory per instrument to one directory per "location." CT&T/Centel proposed retention of the current requirement that providers maintain a directory at each payphone "at all times."

In reply comments, BellSouth asserted that directories with split white and yellow pages sections were sometimes too large for "standard directory holders" and often required two holders per phone. BellSouth suggested that the expense of placing extra directory holders or maintaining both white and yellow pages at each phone could force providers "to remove pay stations that would otherwise remain in place for the convenience of the public." (Reply Comments of BellSouth, page 10).

BellSouth also proposed that the Commission consider adoption of a plan which was previously approved by the South Carolina Public Service Commission. The plan requires that directories be furnished at payphones according to a numerical schedule which requires at least one directory per every two payphones serving a given location.

In its initial comments, the Public Staff opposed changes which would tend to weaken the existing directory requirements expressed in Rule R13-5(q). The Public Staff argued that the public

interest is served by requiring a current, complete local directory at every payphone operating in North Carolina. The Public Staff suggested that the overall level of compliance with the Commission's directory requirements had fallen well below 50% in recent years, and argued that relaxing the existing directory requirements would have the same practical effect as eliminating Rule R13-5(q) altogether.

The Public Staff also expressed concern that the new FCC rule allowing payphone providers to charge "market-based rates" for local directory assistance calls could offer providers an economic incentive not to maintain directories at their paystations. The Public Staff recommended retaining the existing requirements of R13-5(q) to discourage such consumer abuse.

The Public Staff took exception to the NCPA's proposal to eliminate the current requirement that a "complete" directory, consisting of white and yellow pages, be provided at each payphone. According to the Public Staff, allowing payphone customers access to the alphabetical, categorized business listings in the yellow pages fulfilled a significant public need. In its reply comments, the Public Staff provided a list of six diverse categories of payphone customers who would commonly need to access yellow pages listings at payphones.

The Public Staff's reply comments also disputed arguments about the cost of maintaining yellow pages directories at paystations. The Public Staff suggested that there were sound economic reasons for the Commission to require the maintenance of yellow pages at each payphone:

> "yellow pages at payphones directly support the cost of their maintenance by enabling end users to find desired numbers and complete calls in many different situations. Payphone users pay a premium price, compared to residence subscribers, for the opportunity to complete local and long distance calls from payphones. It is entirely appropriate that a portion of these higher revenues be devoted to the maintenance of "a current, complete local directory," <u>including the yellow pages</u>, at each payphone." (*Reply Comments of the Public Staff*, page 14)

The Public Staff's reply comments proposed that Rule R13-5(q) be amended to explicitly require providers to maintain both white and yellow pages at their paystations.

In its reply comments, the NCPA proposed placing the burden of supplying and maintaining phone directories at paystations on the local exchange companies. The NCPA argued:

> "the party that is economically advantaged by the placement and maintenance of phone books is the local exchange company, ironically the PSP's biggest competitor. Given this, the Commission should consider revising its rules to place the burden of maintaining phone books on the party that is motivated to distribute and maintain phone books -- the LEC." (*Reply Comments of the NCPA*, page 26)

The NCPA also cited the practical difficulties payphone providers encountered in continuously maintaining directories at their phones. It produced as exhibits two letters from providers which described some of these problems. In one of these letters, Ruth Daniel, Vice President of Daniel Payphones, Inc., stated:

> "Theft of both directories and binders is so wide spread that it would require hiring additional personnel to police the phone books and replace them on a daily basis...[W]e need a few days leave way for replacement as they are sometimes stolen the same day they are replaced." (*Reply Comments of the NCPA*, Exhibit C)

The NCPA argued that the "difficulties in maintaining phone books" should at least free payphone providers from the "regulatory exposure" they face "every time a phone book is stolen or vandalized." It suggested that "PSPs should not have to defend enforcement actions when there is no evidence that the PSP was at fault for failing to provide phone books." (*Reply Comments of the NCPA*, page 27)

Conclusions. In deciding whether to amend its current directory requirements and how to amend them, the Commission is faced with several questions:

(1) Is it reasonable and in the public interest to require that the yellow pages section of the local directory be available at every paystation?

(2) Is it reasonable and in the public interest to replace the requirement of one directory per payphone with the requirement of one directory per every two payphones serving a given location?

(3) Should the current standard that providers maintain directories at their paystations "at all times" be replaced with the standard that providers maintain directories "insofar as is possible using reasonable efforts"?

(4) Who should be responsible for maintaining directories at payphones, the payphone providers or the serving LECs?

Several parties in this docket have focused on the expense of maintaining the yellow pages in very large exchanges, where directories are split into separate white and yellow pages sections. These parties asserted that the practice of maintaining both sections at each payphone was redundant, because all of the numbers listed in the yellow pages were also listed separately in the white pages.

However, the Public Staff has convincingly demonstrated that the yellow pages are distinctly superior to the white pages in many different calling scenarios. The examples cited by the Public Staff, such as a traveler's need to search for motel or restaurant listings, include situations that nearly everyone encounters at one time or another. Access to the yellow pages at paystations serves this vital public need. The Public Staff also stressed that callers are more likely to complete calls if yellow pages sections are available to end users, and that the increased calling volume offsets the expenses providers must incur in maintaining the yellow pages at their paystations.

The Public Staff has also made persuasive arguments against weakening the current requirement that "a current, complete local telephone directory" be provided "at all times" and "at each PTAS instrument." According to the Public Staff, its recent field inspections revealed that paystations violated the Commission's directory requirements well over 50% of the time. It is unlikely that the ability of payphone providers to charge for local DA calls will stimulate providers to improve their directory maintenance practices.

The Commission believes that approval of the NCPA's proposal to require that directories be maintained only "insofar as is possible using reasonable efforts," GTE's proposal to change the directory requirement to one per "location," or BellSouth's proposal to substitute a numerical schedule for the current requirement of one directory per payphone would also reduce the availability of directories at payphones, to the detriment of the using and consuming public. The NCPA's proposed requirement would make it virtually impossible to hold providers responsible for directory violations. GTE's open-ended proposal would enable payphone providers to maintain one directory at a location served by any number of payphones, a condition which would be clearly inappropriate. With respect to BellSouth's proposal, we note that the parties in this docket have not had the opportunity to consider it at length and to register their comments. We reject all three proposals.

BellSouth suggested in reply comments that the expense of placing extra directory holders or maintaining both white and yellow pages at each payphone could force providers "to remove pay stations that would otherwise remain in place for the convenience of the public." Payphone providers must comply with Commission rules as long as they operate payphones in North Carolina, even if they find compliance to be costly or time-consuming. It would be unacceptable for the Commission to allow providers to comply only with those rules with which they felt it was convenient to comply.

The Commission also rejects the NCPA's suggestion that LECs should be held responsible for maintaining directories at all paystations. Payphone providers must assume ultimate responsibility for the maintenance of their own equipment. They must periodically visit their equipment to ensure that it is functioning properly and collect coins deposited by customers. During these visits, it is not unreasonable to expect providers to install new directories whenever the existing directories are missing, out of date, incomplete, or unusable. Payphone providers are, of course, free to ask the LECs to provide this service under contract, if the LECs are willing to do so. However, the ultimate responsibility for meeting the Commission's directory requirements still rests with the provider, not the LECs.

The Commission adopts Rule R13-5(p) as proposed by the Public Staff in its reply comments, modified by substituting the terms "PTAS" and "provider" with "PSP." We also modify Rule R13-6(c) to reflect the requirement that both white and yellow pages must be available for inmate access.

G. Restriction of PSP instruments

Current Rule R13-5(r) allows restrictions on incoming and outgoing calls at payphones in North Carolina in the interest of public safety and welfare, provided these restrictions have been requested in writing by the chief law enforcement officer who has jurisdiction over the location of the payphone, so long as the provider posts notice of the restrictions and allows continuous access to "911."

The NCPA's petition sought to amend Rule R13-5(r) to allow location owners and "local law enforcement officials" other than the chief local law enforcement officer to request call restrictions at payphones. In initial comments, BellSouth supported the NCPA's proposed changes. CT&T/Centel supported the NCPA's proposal to allow law enforcement officers other than the chief local law enforcement officer to request restrictions, suggesting that the change would allow more expeditious handling of restriction requests.

CT&T/Centel's initial comments also pointed out that location owners have a financial incentive to block incoming calls, because this allows completion of a greater number of revenue-producing outgoing calls. CT&T/Centel argued that the "overabundance" of restrictions which would result if location providers were allowed to request restrictions would be detrimental to the public interest.

GTE South's initial comments did not specifically address the NCPA's proposals, but proposed modifying the "open keypad" requirement of current Rule R13-5(s) to reflect the possible restrictions allowed under current R13-5(r) and the confinement facility rules.

In its reply comments, the NCPA indicated that payphone providers were "facing increased pressure from municipalities to remove payphones at locations where unwanted activity is occurring," and stated that "Some PSPs have been ordered to remove payphones in circumstances where the payphone restrictions may have been successful in alleviating the perceived problem." The NCPA contended that "the removal of payphones is antithetical to the policy of the Commission's payphone rules as well as the new federal policy encouraging the widespread deployment of payphones." (*Reply Comments of the NCPA,* pages 28-29)

In initial comments, the Public Staff's opposed the NCPA's efforts to modify Rule R13-5(r), stating that it was aware of cases in which location owners had requested payphone restrictions, but that these requests had generally been motivated by issues of convenience rather than public safety or public welfare concerns. The Public Staff argued that giving restrictive authority to location owners would lead to widespread, unnecessary restrictions on incoming and outgoing calls. The Public Staff recommended that location providers restrict the use of on-premises payphones by exercising their supervisory authority over the premises and the persons who use the phones rather than by requesting automatic restrictions on payphones

The Public Staff argued that current Rule R13-5(r) gives the chief local law enforcement official broad authority to request restrictions as a means to curtail any unwanted or undesirable activity related to payphones that poses public safety or public welfare concerns. The Public Staff stated that it believes chief local law enforcement officers are willing to act promptly and responsibly when they conclude that payphones pose a threat to the public safety or welfare, and that this arrangement "strikes a proper balance between the needs of the public and the needs of the provider and location owner by ensuring that wholesale restrictions on payphone service are not imposed, but that restrictions can be imposed when there is sufficient justification." (*Comments of the Public Staff,* pages 18-19)

Conclusions. Based on the evidence presented, the Commission concludes that the NCPA's proposed changes to current Rule R13-5(r) are unwarranted and would not serve the public interest. We agree with CT&T/Centel and the Public Staff that location providers would be likely to request restrictions on payphones located at their premises for reasons of convenience or profitability rather than because of concerns about the public safety and welfare. The Public Staff and CT&T/Centel persuasively argued that the ability to complete incoming calls often satisfies essential public needs. The Commission believes that the only acceptable basis for denying the public the ability to complete incoming calls is a showing that the public's safety and welfare would be better served by blocking those calls.

In the Commission's view, that judgment must be left to the discretion of the "chief local law enforcement officer." It is undoubtedly more time-consuming to seek the approval of the sheriff or chief of police chief concerning payphone restrictions than it would be to make the same request of any police officer. However, we believe that requiring payphone providers to approach the chief local law enforcement officer to request restrictions helps to discourage frivolous or unnecessary requests for restrictions. We also believe that the chief local law enforcement officer will carefully consider requests for restrictions and will generally require some evidence that the operation of a payphone is somehow posing a threat to the public safety or welfare before issuing a request for restrictions. By insisting that the chief local law enforcement officer initiate such requests, we believe that we have struck an appropriate balance between the need to allow incoming calls and the occasional need to impose restrictions.

The Commission denies the NCPA's proposals to modify Rule R13-5(r) and CT&T/Centel's proposal to give "any local law enforcement officer" the authority to request payphone restrictions. We also deny the petition of GTE South to modify Rule R13-5(s). In our view it is unnecessary to add language to R13-5(s) to authorize keypad blocking in confinement facilities and in cases where restrictions have been imposed in accordance with Rule R13-5(r). Both Rule R13-5(r) and the confinement facility Rule R13-6 begin with the phrase "Notwithstanding any other rules in this Chapter." This initial language ensures that the keypad restrictions that are described in R13-5(r) and R13-6 may be imposed irrespective of what Rule R13-5(s) says.

H. "Immediate" disconnection of PSP service

Under current Rule R13-2(c), failure to abide by "all applicable telephone company tariffs" is cited as "grounds for immediate disconnection of service." The NCPA's petition asked the Commission to require access line providers to provide "appropriate notice, which includes the opportunity to respond, prior to the imposition of further remedies, including disconnection of service."

In initial comments, BellSouth supported the NCPA's proposed changes. GTE South opposed the NCPA's proposed notice requirement and supported allowing all access line providers to immediately disconnect service when they identified tariff violations.

In initial comments, the Public Staff argued that current R13-2(c) could be eliminated without affecting the provision of services by LECs and CLPs to payphone subscribers. The Public Staff stated that it was unaware of cases in which LECs had found tariff violations and failed to give the violators an opportunity to correct the problems prior to disconnecting service, and indicated that any providers who were threatened with imminent disconnection of their payphones could ask the Commission to forestall this process. The Public Staff suggested that the availability of competitors would help to ensure that providers were not treated unfairly by their suppliers of PTAS lines and trunks.

The Public Staff also asserted that the NCPA's proposed Rule R13-2(c) was not in the public interest, because it would allow payphone providers to commit repetitive violations of telephone company regulations without penalty.

CT&T/Centel's reply comments supported the Public Staff's recommendation that R13-2(c) be eliminated. In its reply comments, the NCPA indicated that it had no objection to this recommendation.

BellSouth's initial comments also proposed adding Rule R13-2(d), which would require the Commission to provide rule violators with "appropriate notice, which includes the opportunity to respond, prior to the imposition of further remedies, including disconnection of service." The Public Staff opposed this amendment, arguing that Rule R1-9 already ensured that public utilities would receive notice of any complaints made against them, including complaints alleging violations of Commission rules, and afforded utilities the opportunity to respond to these complaints. The Public Staff stated that BellSouth's proposed R13-2(d) would not offer payphone providers any additional protections beyond those they already have.

Conclusions. The Commission believes that the Public Staff's arguments are sound as they pertain to both proposed rule changes. The existing requirement that failure to abide by "all applicable telephone company tariffs" is "grounds for immediate disconnection of service" serves primarily an informational purpose, essentially notifying payphone providers that they are subject to the regulations of their payphone access service provider. We believe that this is already clear to payphone providers, and that the vague threat of disconnection in current Rule R13-2(c) serves no practical purpose. We also believe that payphone providers have sufficient protection under existing Commission rules to prevent the Commission from ordering disconnection of service without reasonable cause or due notice. Accordingly, we approve the Public Staff's recommendation to eliminate Rule R13-2(c), and deny BellSouth's proposal that we adopt Rule R13-2(d).

I. Access Line Provider (ALP) service obligations

The NCPA's petition proposed amending Rule R13-5(b) to ensure that access line providers "promptly respond to requests for technical service and installation from PSPs," and to add language which entitles payphone providers to "a fee from the Access Line Provider for missed service calls and missed installation dates, as provided for in applicable tariffs or as agreed by the parties." The NCPA argued that these changes were necessary to protect payphone providers from discrimination by the LECs.

In initial comments, BellSouth proposed amending the NCPA's proposed rule to require that the payphone provider be held responsible for payment of a maintenance of service charge only if the provider reported the trouble and if its equipment/facilities were responsible for the trouble. CT&T/Centel endorsed this position in its reply comments. BellSouth's initial comments also proposed deleting the NCPA's proposed requirement that access line providers "promptly respond to requests for technical service and installation from PSPs," and the language which would entitle payphone providers to "a fee from the Access Line Provider for missed service calls and missed installation dates, as provided for in applicable tariffs or as agreed by the parties."

GTE South's initial comments opposed language in the NCPA's proposed rule which would entitle payphone providers to a fee for missed service calls and missed installation dates.

In initial comments, the Public Staff proposed deleting current Rule R13-5(b), arguing that local telephone companies should be allowed to administer their own maintenance and service policies, and

that payphone providers could complain to the Commission concerning policies which they considered unfair or unreasonable. The Public Staff also indicated that the reference to "tariffs" was obsolete now that CLPs, which do not have tariffs, are able to offer local service. In its reply comments, the NCPA stated that it had no objection to deleting Rule R13-5(b).

Conclusions. The Commission agrees with the Public Staff and the NCPA that Rule R13-5(b) is unnecessary. The description of the maintenance of service charge and the conditions under which such a charge would apply are adequately addressed by the tariffs or regulations of the local service provider. Rule R13-5(b) serves no purpose other than to advise payphone providers that maintenance of service charges exist and that they apply to them under certain conditions. We believe that payphone providers are already familiar with these facts, and that restating them in Rule R13 serves no useful purpose. We also believe that it is inappropriate to use the Rule R13 rules as a vehicle for extending special service performance guarantees to payphone providers.

Consistent with these findings, the Commission deletes current Rule R13-5(b).

J. Clarification Amendments

1. Definitions

In addition to the proposed changes to Rule R13-1 which are addressed in sections I.A. and I.C. of this Order, the NCPA's petition proposed that the Commission adopt definitions for "Confinement Facility" and "Location Owner." The NCPA also proposed that the Commission revise the definition of "Line Concentrator" to reflect its proposed elimination of the requirement that concentration be provided only in confinement facilities, and "Sent-Paid Call" to eliminate the "commercial credit card" payment option.

In initial comments, BellSouth endorsed the NCPA's proposed definitions with only minor changes. The Public Staff opposed the NCPA's proposals. GTE South recommended approval of the NCPA's proposals with these specific changes:

(1) Confinement Facility: GTE eliminated the reference to "local, state or federal" and included "mental institutions" in the definition. In reply comments, CT&T/Centel opposed the reference to mental institutions, arguing that mental hospitals and criminal confinement facilities had different restriction requirements. No other parties took a position on GTE's proposal.

(2) Line Concentrator: GTE replaced NCPA's term "access line" with the word "trunk."

(3) Location Owner: GTE applied this term to "lessees" of physical locations as well as "owners." The NCPA supported this proposal.

(4) Payphone Service Provider: GTE added "the patients" as an additional category of end users to whom providers could offer payphone service.

(5) PSP Trunk: GTE changed "in lieu of a PSP line" to "in lieu of a PSP access line" and cited Rule R13-5(v) as a specific rule which mentioned the use of line concentrators.

(6) Sent-Paid Call: GTE redefined this as "A call paid for at the time and place of origination with cash, electronic cash or other financial medium."

BellSouth's initial comments and AT&T's reply comments supported the NCPA's proposal to revise the definition of "Sent-Paid Call." The Public Staff did not oppose this position in its reply comments.

Conclusions. The Commission approves the definition of "Confinement Facility" offered in the NCPA's petition, but we delete the second sentence of that definition, since we have decided not to segregate all of the special rules applicable to confinement facility service into one section, as the NCPA suggested. We reject GTE's suggestions to delete the phrase "local, state, or federal" and to include the phrases "mental institutions" in the NCPA's proposed Rule R13-1(c) and " the patients" in the NCPA's proposed Rule R13-1(j). Since we concluded in section II.D. of this Order that concentration outside of confinement facilities is not in the public interest, we also modify the NCPA's proposed definition of "Line Concentrator" by restoring the words "only" and "and only" which it struck in Exhibit B of its petition.

The Commission also rejects the NCPA's proposal to define "Location Owner" in Chapter 13. None of the rules we have approved in this or previous dockets references the "location owner" in any way. Accordingly, there is no need to define "location owner" in Rule R13-1.

Finally, the Commission adopts the change to the definition of "Sent-Paid Call" that was supported by the NCPA, AT&T, and BellSouth. Only GTE opposed this proposal. We believe it is reasonable.

2. Access to 911 Emergency Services

Current Rule R13-5(k) requires COCOTs to allow access to 911 Emergency Service. The NCPA's petition proposed amending the rule to explicitly state that payphones must allow completion of 911 Emergency Service calls. In initial comments, the Public Staff opposed the change as unnecessary.

Conclusion. The Commission believes that the meaning of existing Rule R13-5(k) is clear. We conclude that the only change needed is to substitute "PSP" for "PTAS."

3. Other Changes

Current Rule R13-8(c) prohibits provision of facsimile service on a third number, calling card, collect, or automated collect basis. In initial comments, BellSouth proposed changing this rule to allow PSPs to offer facsimile service on a cash or calling card basis. The Public Staff's reply comments proposed eliminating the Rule 13-8(c) entirely. The Public Staff argued that this would allow end users to pay for facsimile service using cash, calling cards, ATM cards, commercial credit

cards, or any other satisfactory medium, so long as the charge is posted in accordance with Rule R13-8(b).

In reply comments, BellSouth also proposed amending Rules R13-5(i) and (j) to clarify that payphones must permit calls to be billed to "commercial" credit cards and calling cards.

Conclusions. The Commission believes that the Public Staff's proposal to eliminate Rule R13-8(c) and BellSouth's proposal to amend Rules R13-5(i) and (j) will offer end users a wider range of payment options for fax transmissions and 0+ and 0- calls from payphones and are in the public interest. We adopt all three changes.

The Commission emphasizes that the revision of Rules R13-5(i) and (j) should not be viewed as authorizing PSPs to carry and bill calling card calls, commercial credit card calls, or third number calls. The right to carry and bill calling card calls, commercial credit card calls, and third number calls is reserved to the certified carrier that actually completes them.

III. NCPA's September 25, 1997 Informational Filing and Further Reply Comments

On September 25, 1997, NCPA filed an Informational Filing and Further Reply Comments in this proceeding. NCPA noted that by Order dated September 16, 1997, the D.C. Circuit Court of Appeals "clarified" its July 1, 1997 order and vacated the portion of the FCC's payphone orders prescribing a specific amount which IXCs and other carriers are obligated to compensate payphone providers for "dial-around" (i.e. 1-800 and access code) calls made from payphones (NCPA September 25, 1997 filing, page 2).

In its filing, NCPA noted that several of its recommendations in this proceeding were predicated on the existence of a federal dial around compensation scheme and that many of the parties to this proceeding assumed the existence of such a scheme. NCPA stated that it fully expects the FCC to issue new rules providing for a federal dial around compensation scheme along the lines originally proposed, however, stated that it would be premature for the Commission to amend its rules under the assumption that the FCC will re-instate its dial around compensation program.

In light of the September 16, 1997 Order of the D.C. Circuit Court of Appeals, NCPA recommended that the Commission should refrain from revising Rule R13-9(d), R13-9(g) and R13-4(a)(5) until such time as North Carolina has adopted a state per call compensation scheme or the FCC has reinstated its dial around compensation scheme. Likewise, NCPA recommended that the Commission (1) adopt NCPA's state per call compensation plan or (2) suspend action on NCPA's proposals until such time as the FCC has re-instated its dial around compensation rules.

The Commission has taken notice of the September 16, 1997 Order of the D.C. Circuit Court of Appeals and NCPA's Informational Filing and Further Reply Comments. The Commission does not believe that this information changes the appropriateness of the Public Staff's recommendations concerning Rules R13-9(d), R13-9(g), and R13-4(a)(5) [Compensation for 0- calls; 0+ calls; and dial around calls]. Therefore, the Commission concludes that it is still appropriate to adopt the Public Staff's recommendations on Rules R13-9(d), R13-9(g), and R13-4(a)(5).

IT IS, THEREFORE, ORDERED as follows:

1. That Rule R13 be amended as set out in Appendices A and B. Appendix A displays the changes which have been made to existing Rule R13, with lines struck through deleted provisions and with new provisions underlined. Appendix B is a copy of revised Rule R13.

2. That the amended rules in Appendix B be effective October 7, 1997.

3. That a copy of this Order be served on every certified COCOT provider in the State of North Carolina.

4. That all application forms and instructions for payphone service applicants be revised consistent with this Order, and that every certificate issued by the Commission for the provision of payphone service after October 7, 1997 be designated as a "PSP Certificate."

5. That the monthly rates and conditions for semipublic payphone service subscribed to on or before the date of this Order shall be subject to the requirements set forth in this Order until April 7, 1998, but are deregulated after April 7, 1998.

6. That the monthly rates and conditions for semipublic payphone service initially subscribed to after the date of this Order are deregulated.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of October, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

CHAPTER 13.

Provision of Pay Telephone Service. ~~by Means of Customer-owned Pay Telephone Instruments.~~

Rule R13-1. Definitions.

(a) *Access Line Provider (ALP).* The provider of PSP access lines or PSP trunks for PSP instruments as authorized by G.S. 62-110(c) or as otherwise provided by Commission rule or the North Carolina General Statutes.

~~(a)~~(b) *Automated Collect Call.* A call placed and billed to the called telephone number without the assistance or intervention of a human operator.

(c) *Confinement Facility.* Any local, state, or federal facility, including juvenile facilities, for the confinement of criminals and persons accused or convicted of crimes.

~~(b)~~(d) *Cut-Off Switch or Key.* An item of terminal equipment which enables a ~~Public Telephone Access Service (PTAS)~~ PSP instrument to be easily connected or disconnected from the exchange network. A cut-off switch or key does not have the capability of switching a given ~~PTAS~~ PSP instrument from one ~~PTAS~~ PSP access line or ~~PTAS~~ PSP trunk to another.

Cut-off switches or keys may be used only in confinement facilities and only at the request of the administration of the confinement facility.

~~(c)~~(e) *End User*. The person initiating a call from a pay telephone instrument.

~~(d)~~(f) *Facsimile*. The device or process by which information on documents is converted to an electronic format, conveyed over the telephone network, and reconverted into documentary form. A facsimile device which does not incorporate a telephone is a "voiceless-facsimile device."

~~(e)~~(g) *Line Concentrator.* An item of registered terminal equipment which enables two or more ~~PTAS~~ PSP instruments to obtain access, through manual or automatic switching, to the same ~~PTAS~~ PSP trunk but denies connection to the same trunk at the same time. Such equipment may be used only in confinement facilities and only with the express written consent of the administration of the confinement facility.

(h) *Pay Telephone Service.* The provision of coin, coinless, or key-operated telephone service utilizing a PSP instrument.

~~(f)~~(i) ~~*Provider, COCOT Provider, or PTAS Subscriber.*~~ *Payphone Service Provider (PSP).* The subscriber to a ~~PTAS~~ PSP access line or ~~PTAS~~ PSP trunk who offers telephone service to the public by means of a coin, coinless, or key-operated ~~PTAS~~ PSP instrument.

~~(g)~~(j) ~~*PTAS*~~ *PSP Instrument.* A coin, coinless, or key-operated telephone or facsimile device, other than a voiceless-facsimile device, capable of originating and receiving voice telephone calls.

~~(h)~~(k) ~~*PTAS*~~ *PSP Access Line.* The exchange access facility furnished by the ~~local exchange company~~ access line provider which is used to connect ~~PTAS~~ PSP instruments to the network when a line concentrator is not utilized.

~~(i)~~(l) ~~*PTAS*~~ *PSP Trunk.* The exchange access facility furnished by the ~~local telephone company~~ access line provider which is required in lieu of a ~~PTAS~~ PSP access line when the ~~provider~~ PSP utilizes a line concentrator between the ~~PTAS~~ PSP instrument and the exchange network as allowed by Rule R13-6.

~~(j)~~(m) *Sent-Paid Call.* A call paid for at the time and place of origination with cash. ~~or commercial credit card.~~

Rule R13-2. ~~PTAS~~ PSP Access Line or Trunk.

(a) All ~~PTAS~~ PSP instruments and all voiceless facsimile devices operated for compensation, other than those located in detention areas of ~~local, state or federal~~ confinement facilities and connected through line concentrators as specified in Rule R13-6 following, must be connected to the telephone network through ~~PTAS~~ PSP access lines furnished by the ~~local exchange telephone company~~ access line provider. Except as specified in Rule R13-6, connection through other facilities or systems is prohibited.

(b) All ~~PTAS~~ PSP instruments and all voiceless facsimile devices connected to the network through line concentrators as specified in Rule R13-6 require the use of ~~PTAS~~ PSP trunks furnished by the ~~local exchange telephone company~~ access line provider for connection of the line concentrator to the network.

~~(c) The PTAS subscriber is responsible for abiding by all applicable telephone company tariffs. Failure to do so is grounds for immediate disconnection of service.~~

Rule R13-3. Certificate.

(a) Every ~~provider~~ PSP, before offering any telephone service other than voiceless-facsimile service, shall obtain a certificate (COCOT or PSP certificate) from the Commission. A certificate is not required for provision of voiceless facsimile service.
(b) Application shall be made on a form specified by the Commission.

(c) Every holder of a COCOT or PSP certificate wishing to offer automated collect service shall first obtain specific additional authority from the Commission to do so. Application for additional authority shall be made on a form specified by the Commission. ~~Providers~~ PSPs making initial application for PSP certification may request authority to offer automated collect service on the initial application.

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

(e) Copies of the COCOT or PSP certificate must be provided to the ~~local exchange telephone company~~ access line provider prior to the establishment of service.

Rule R13-4. Required Notice.

(a) The following information must be posted at each ~~PTAS~~ PSP instrument other than those located in the detention areas of local, state, or federal confinement facilities:

(1) The appropriate emergency number (911, operator or other).

(2) Clear operating instructions and procedures for handling repair, refunds, and billing disputes.

(3) The current telephone number of the ~~PTAS~~ PSP access line and the local address.

(4) The name~~,~~ and address~~, and COCOT certificate number~~ of the ~~provider~~ PSP. The name~~,~~ and address~~, and COCOT certificate number~~ shown on the instrument must be the same as those shown on the ~~provider's~~ COCOT or PSP certificate.

(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.~~ The charge for a local sent-paid coin call, including notice of any time limits that are imposed on the call.

(6) The charge, if any, for directory assistance calls, unless such notice is given by voice message when the end user attempts to place such a call.

~~(6)~~(7) The name of the carrier to which 0+, 00-, and 00+ calls will be routed. In the event that a ~~provider~~ PSP 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.

~~(7)~~(8) Whether international calling capability is blocked from the ~~PTAS~~ PSP instrument, unless such specific notice is given by voice message when the end user attempts to place such a call.

~~(8)~~(9) Clear operating instructions and the charges for any enhanced services offered by the ~~COCOT provider~~ PSP from the ~~PTAS~~ PSP instrument.

(b) The following information must be posted at each ~~PTAS~~ PSP instrument located in the detention areas of local, state, or federal confinement facilities. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(1) Notice that only collect calls are allowed and that all other calls are prohibited unless, in accordance with R13-6(d) the telephone is arranged to permit 1+ toll and seven-digit local dialing. In that case, the notice shall state the types of calls that are permitted and that all other calls are prohibited.

(2) Clear operating instructions and procedures for reporting equipment or service problems.

(3) The current telephone number of the ~~PTAS~~ PSP instrument unless the instrument is arranged or programmed to allow outward-only calling.

(4) The name ~~and COCOT certificate number~~ of the ~~provider~~ PSP. The name ~~and COCOT certificate number~~ shown at the instrument must be the same as ~~those~~ the name shown on the ~~provider's~~ COCOT or PSP certificate.

(5) The cost of a local collect call.

Rule R13-5. General Requirements-Service and Equipment.

(a) The ~~provider~~ PSP is responsible for the installation, maintenance, and operation of ~~PTAS~~ PSP instruments and other terminal equipment.

~~(b) The provider is responsible for payment of a maintenance of service charge as covered in Section 15 of the applicable telephone company tariff. The charge is applicable for each visit by the telephone company to the premises of the provider, when the service difficulty or trouble report results from the use of equipment or facilities provided by the provider.~~

~~(c)~~(b) The ~~provider~~ PSP is responsible for meeting all federal, state, and local requirements with respect to provision of customer-provided telephone equipment for use by hearing-impaired and handicapped persons.

~~(d)~~(c) The ~~provider~~ PSP may *not* contract with, or arrange for his ~~PTAS~~ PSP instruments to automatically access, any non-certified carrier for completion of intrastate calls.

~~(e)~~(d) The ~~provider~~ PSP may *not* contract with, or arrange for his ~~PTAS~~ PSP instruments to automatically access, any carrier ~~other than the local exchange company~~ to carry local intrastate calls originated from his ~~PTAS~~ PSP instruments unless that carrier has been certified by the Commission to complete and bill local calls.

~~(f)~~(e) All ~~PTAS~~ PSP instruments and all other terminal equipment must be connected to the telephone network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. ~~Subscribers to PTAS~~ PSP subscribers may, upon request, be required to provide the ~~telephone company~~ access line provider with the FCC registration number of each item of terminal equipment to be connected prior to its connection.

~~(g)~~(f) All ~~PTAS~~ PSP instruments and all other terminal equipment must be installed in compliance with the current National Electrical Code and National Electrical Safety Code.

~~(h)~~(g) All ~~PTAS~~ PSP instruments must be capable of completing local and long distance calls; provided, however, that sent-paid international calling capability may be blocked.
~~(i)~~(h) All ~~PTAS~~ PSP instruments must allow the end user to access the ~~serving local exchange company~~ access line provider operator by dialing "0." All ~~PTAS~~ PSP instruments must allow completion of 0- local and 0- long distance calls billed to a commercial credit card, a calling card, a third number, or the called number (collect) at no charge to the end user.

~~(j)~~(i) All ~~PTAS~~ PSP instruments must allow completion of 0+ local and long distance calls billed to a commercial credit card, a calling card, a third number, or the called number (collect).

~~(k)~~(j) All ~~PTAS~~ PSP instruments must allow access to 911 Emergency Service, where available, at no charge to the end user.

~~(l)~~(k) All ~~PTAS~~ PSP instruments must ~~be arranged or programmed to allow~~ provide access to local and long distance directory assistance ~~at no charge~~.

~~(m)~~(l) All ~~PTAS~~ PSP instruments must allow receipt of incoming calls at no charge for an initial period of at least ten (10) minutes. After the initial period, PSPs may impose a charge for the continued use of the PSP Instrument in an amount equal to the charge for a local call.

~~(n)~~(m) All ~~PTAS~~ PSP instruments~~, other than those provided by COCOT providers which are also interexchange carriers,~~ must ~~be arranged or programmed to~~ allow access to all available interexchange carriers on a non-discriminatory basis. In an equal access environment, this requires that the end user be allowed to access a chosen carrier by dialing 10xxx-0+, 101xxxx-0+, 10xxx-0-, 101xxxx-0-, 1-800 numbers, 1-888 numbers, or 950-xxxx. The requirement for 10xxx-0+ and 10xxx-0- access will end on January 1, 1998. Access through 10xxx-1+, or 101xxxx-1+, 10xxx-011+, or 101xxxx-011+ is not required.

~~(o)~~(n) Coin-operated ~~PTAS~~ PSP instruments must be equipped to return the coins to the caller in the case of an incomplete call.

~~(p)~~(o) Coin-operated ~~PTAS~~ PSP instruments must be equipped to accept nickels, dimes, and quarters. The coin chute capacity of any ~~PTAS~~ PSP instrument must be sufficient to enable an end user to complete any sent-paid call using a single type of coin or any combination of nickels, dimes, and quarters.
~~(q)~~(p) The ~~provider~~ PSP shall at all times maintain a current and complete local telephone directory, including white and yellow pages, at each ~~PTAS~~ PSP instrument.
~~(r)~~(q) Notwithstanding any other rules in this chapter, A ~~COCOT provider~~ PSP may restrict incoming and/or outgoing calls at any specific ~~PTAS~~ PSP instrument in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific ~~PTAS~~ PSP instrument from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The ~~COCOT provider~~ PSP shall keep a copy of such requests from the chief local law enforcement officer on file for inspection and upon request by the Commission or the Public Staff shall provide copies of the requests for restrictions. The ~~COCOT provider~~ PSP shall retain copies of the requests for restrictions so long as the pay phones remain restricted.

(2) A notice of the restrictions applicable to a ~~PTAS~~ PSP instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 emergency service may not be prevented.

~~(s)~~(r) With the exception of ~~PTAS~~ PSP instruments located in confinement facilities where the administration has specifically requested that keypad operation be blocked, the keypad of a ~~PTAS~~ PSP instrument must be kept open and capable of transmitting tones or dial pulses at all times.

~~(t)~~(s) All ~~COCOT~~ keypads of PSP instruments 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)~~(t) All ~~PTAS~~ PSP instruments must allow end users to access ~~COCOT~~ PSP refund and repair service at no charge.

Rule R13-6. Special Rules for Service Within Confinement Facilities.

Notwithstanding any other rules in this Chapter, ~~PTAS~~ PSP instruments located in the detention areas of ~~local, state, or federal~~ confinement facilities:

(a) May, if specifically requested by the administration of the confinement facility, be arranged or programmed to allow outward-only calling;

(b) May, if specifically requested by the administration of the confinement facility and if the ~~local exchange company~~ access line provider and presubscribed interexchange carrier are notified by the ~~provider~~ PSP, be arranged or programmed to terminate calls after 10 minutes of conversation time;

(c) Shall be arranged or programmed to block directory assistance (411) calls, provided that a copy of a current local telephone directory, including white and yellow pages, must be available for inmate access;

(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, and 101xxxx calls. Provided, however, that if specifically requested by the administration of the confinement facility, 1+ toll and seven-digit local dialing may be permitted if the ~~local exchange company~~ access line provider or the ~~telephone~~ PSP instrument can block additional digit dialing after initial call set-up.

(e) May, if specifically requested by the administration of the confinement facility, be arranged to block access to certain specific numbers identified by the administration or to allow access to only certain specific numbers identified by the administration.

(f) Shall, at the request of the administration of the confinement facility, provide for the cutoff of designated ~~PTAS~~ PSP instruments through the use of cutoff keys or switches placed on the ~~provider~~ PSP's side of the network interface;

(g) May, with the express written consent of the administration of the confinement facility, terminate ~~PTAS~~ PSP trunks provided by the ~~serving local exchange company~~ access line provider for use at the facility in manual or automatic line concentrators; the concentrator may not be arranged or programmed to allow access by more than one ~~PTAS~~ PSP instrument to a single ~~PTAS~~ PSP trunk at any time; prior to connection of the equipment, the ~~provider~~ PSP is obligated to advise the ~~serving local exchange company~~ access line provider of its intent to connect a concentrator to the ~~local exchange company's~~ access line provider's facilities, specifically identify the trunks which will terminate in the concentrator and, upon demand, provide the FCC registration number of the equipment.

(h) May, with the express written consent of the administration of the confinement facility, be arranged to provide three-way call detection and call detail from the payphones located within the confinement facility subject to the following conditions:

(1) Three-way call detection may be arranged at the request of the facility administrator such that the call may be disconnected or noted for further investigation. When three-way call detection is arranged for disconnection, a recorded announcement shall inform the called party, before acceptance of the call, that the call may be disconnected if an attempt to use three-way calling is detected. The ~~COCOT provider~~ PSP shall give credit for wrongful disconnections according to its established credit procedures.

(2) Call detail information such as date and time of calls, duration of calls, and called and calling telephone numbers may be provided to the confinement facility administrator at his request.

Rule R13-7. Automated Collect Capability.

~~PTAS~~ PSP instruments may be arranged or programmed to provide automated collect calling and the ~~provider~~ PSP may bill called parties who agree to pay for calls, provided:

(a) The ~~provider~~ PSP has secured the authority to furnish such service as specified by Rule R13-3(c);

(b) The ~~PTAS~~ PSP instrument is arranged or programmed to require a positive response from the called party indicating willingness to pay for the call before completing the call, and to terminate the call without charge in the absence of a positive response;

(c) Except in the case of a call originated from a confinement facility, if the recipient of an automated collect call does not act to either accept or reject the call, the call must be terminated and a call must be initiated to an operator of certified carrier, or instructions must be provided on how to complete the call using an operator of a certified carrier. In the case of a call originated from a confinement facility, the call must be terminated;

(d) Recipients of automated collect calls must not be charged more for such calls than would have been charged by the local exchange company for a local or intraLATA collect call or by AT&T Communications for an interLATA collect call;

(e) The ~~provider~~ PSP must use a local or certified interexchange carrier to transmit all communications involved in the call;

(f) The ~~provider~~ PSP shall block or arrange for blocking of automated collect calls to 900, 976, 950, 700, ~~and~~ 10xxx, and 101xxxx codes;

(g) The billing authority granted by this rule may be exercised only in connection with automated collect calls; and

(h) Authorization to employ automated collect capability must not be taken to allow restriction of the end user's ability to make other types of calls, such as customer-dialed credit card or sent-paid coin calls. See Rule R13-5(i) and (j).

Rule R13-8. Facsimile Service.

Providers of facsimile service:

(a) May charge an unregulated rate for the facsimile portion of the service; and

(b) Shall conspicuously display rates and charges for the facsimile portion of the service on or near the facsimile device~~;~~.

~~(c) Shall not offer or provide facsimile service on a third number, calling card, collect or automated collect basis.~~

Rule R13-9. Charges

The ~~provider~~ PSP is responsible for ensuring that calls originated or terminated at his ~~PTAS~~ PSP access line or trunk are rated in accordance with the following:

(a) *Local Sent-paid.* ~~The end user of a PTAS instrument may not be charged more than 25 cents for the carriage and completion of a local sent-paid call.~~ Pursuant to Federal Communications Commission preemption of state authority over local coin rates, PSPs are permitted to charge market-based rates for local coin calls.

(b) *Directory Assistance.* Pursuant to Federal Communications Commission preemption of state authority over intrastate directory assistance charges, PSPs are permitted to charge market-based rates for intrastate directory assistance calls.

~~(b)~~(c) *Intrastate, InterLATA Sent-Paid Station-to-Station.* The end user of a ~~PTAS~~ PSP instrument may not be charged at a rate higher than the rate that could be charged by AT&T for the carriage and completion of an intrastate, interLATA toll call of the same type.

~~(c)~~(d) *Intrastate, IntraLATA Sent-Paid Station-to-Station.* The end user of a ~~PTAS~~ PSP instrument may not be charged at a rate higher than the rate that could be charged by the local exchange company for the carriage and completion of an intrastate, intraLATA toll call of the same type.

~~(d)~~(e) *0+ Other Than Automated Collect.* The end user of a ~~PTAS~~ PSP instrument may not be charged ~~more than 25 cents by the PTAS provider~~ by the ~~COCOT provider~~ PSP for a 0+ or 10xxx-0+, 101xxxx0+, or 950 local or toll call billed to a calling card, to a third number, or to the called party (collect). ~~The tariffed charges of the local exchange company or certificated interexchange carrier handling the call will also apply to these calls. These tariffed charges are billed by or on behalf of the carrier handling the call and are retained by that carrier.~~

~~(e)~~(f) *0+ Automated Collect Station-to-Station.* The recipient of an automated collect station-to-station call may not be charged more for the call than would have been charged by the local exchange company for a local or intraLATA collect station-to-station call or by AT&T Communications for an interLATA collect station-to-station call.

~~(f)~~(g) *0- Calls.* All ~~PTAS~~ PSP instruments outside of confinement facilities must allow access to the ~~"Operator"~~ access line provider operator at no charge. The ~~provider~~ PSP may not impose a charge on the end user for completion of 0- local and toll calls billed to a calling card, a third number, or the called number (collect).

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

Rule R13-10. Semipublic Service.

(a) Any semipublic service subscribed to from a LEC or LEC-affiliated PSP on or before October 7, 1997 must be allowed to continue until April 7, 1998. During this period, the semipublic service must be provided to the subscriber under the same monthly rates and conditions that applied

immediately prior to detariffing of the service. On April 7, 1998, the monthly rates and conditions for service provided under this provision shall cease to be subject to Commission regulation.

(b) The monthly rates and conditions for semipublic service initially subscribed to after October 7, 1997 are not subject to Commission regulation.

(c) Rules R13-1 through R13-9 shall apply to the provision of any semipublic service.

APPENDIX B

CHAPTER 13.
Provision of Pay Telephone Service.

Rule R13-1. Definitions.

(a) *Access Line Provider (ALP).* The provider of PSP access lines or PSP trunks for PSP instruments as authorized by G.S. 62-110(c) or as otherwise provided by Commission rule or the North Carolina General Statutes.

(b) *Automated Collect Call.* A call placed and billed to the called telephone number without the assistance or intervention of a human operator.

(c) *Confinement Facility.* Any local, state, or federal facility, including juvenile facilities, for the confinement of criminals and persons accused or convicted of crimes.

(d) *Cut-Off Switch or Key.* An item of terminal equipment which enables a PSP instrument to be easily connected or disconnected from the exchange network. A cut-off switch or key does not have the capability of switching a given PSP instrument from one PSP access line or PSP trunk to another. Cut-off switches or keys may be used only in confinement facilities and only at the request of the administration of the confinement facility.

(e) *End User.* The person initiating a call from a pay telephone instrument.

(f) *Facsimile.* The device or process by which information on documents is converted to an electronic format, conveyed over the telephone network, and reconverted into documentary form. A facsimile device which does not incorporate a telephone is a "voiceless-facsimile device."

(g) *Line Concentrator.* An item of registered terminal equipment which enables two or more PSP instruments to obtain access, through manual or automatic switching, to the same PSP trunk but denies connection to the same trunk at the same time. Such equipment may be used only in confinement facilities and only with the express written consent of the administration of the confinement facility.

(h) *Pay Telephone Service*. The provision of coin, coinless, or key-operated telephone service utilizing a PSP instrument.

(i) *Payphone Service Provider (PSP)*. The subscriber to a PSP access line or PSP trunk who offers telephone service to the public by means of a coin, coinless, or key-operated PSP instrument.

(j) *PSP Instrument*. A coin, coinless, or key-operated telephone or facsimile device, other than a voiceless-facsimile device, capable of originating and receiving voice telephone calls.

(k) *PSP Access Line*. The exchange access facility furnished by the access line provider which is used to connect PSP instruments to the network when a line concentrator is not utilized.

(l) *PSP Trunk*. The exchange access facility furnished by the access line provider which is required in lieu of a PSP access line when the PSP utilizes a line concentrator between the PSP instrument and the exchange network as allowed by Rule R13-6.

(m) *Sent-Paid Call*. A call paid for at the time and place of origination with cash.

Rule R13-2. PSP Access Line or Trunk.

(a) All PSP instruments and all voiceless facsimile devices operated for compensation, other than those located in detention areas of confinement facilities and connected through line concentrators as specified in Rule R13-6 following, must be connected to the telephone network through PSP access lines furnished by the access line provider. Except as specified in Rule R13-6, connection through other facilities or systems is prohibited.

(b) All PSP instruments and all voiceless facsimile devices connected to the network through line concentrators as specified in Rule R13-6 require the use of PSP trunks furnished by the access line provider for connection of the line concentrator to the network.

Rule R13-3. Certificate.

(a) Every PSP, before offering any telephone service other than voiceless-facsimile service, shall obtain a certificate (COCOT or PSP certificate) from the Commission. A certificate is not required for provision of voiceless facsimile service.

(b) Application shall be made on a form specified by the Commission.

(c) Every holder of a COCOT or PSP certificate wishing to offer automated collect service shall first obtain specific additional authority from the Commission to do so. Application for additional authority shall be made on a form specified by the Commission. PSPs making initial application for PSP certification may request authority to offer automated collect service on the initial application.

(d) Every PSP is responsible for ensuring that the name which appears on the COCOT or PSP certificate also appears on all access line provider bills for lines installed pursuant to that certificate. The PSP is responsible for ensuring that the information which appears on its certificate is kept current.

(e) Copies of the COCOT or PSP certificate must be provided to the access line provider prior to the establishment of service.

Rule R13-4. Required Notice.

(a) The following information must be posted at each PSP instrument other than those located in the detention areas of local, state, or federal confinement facilities:

(1) The appropriate emergency number (911, operator or other).

(2) Clear operating instructions and procedures for handling repair, refunds, and billing disputes.

(3) The current telephone number of the PSP access line and the local address.

(4) The name and address of the PSP. The name and address shown on the instrument must be the same as those shown on the COCOT or PSP certificate.

(5) The charge for a local sent-paid coin call, including notice of any time limits that are imposed on the call.

(6) The charge, if any, for directory assistance calls, unless such notice is given by voice message when the end user attempts to place such a call.

(7) The name of the carrier to which 0+, 00-, and 00+ calls will be routed. In the event that a PSP 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.

(8) Whether international calling capability is blocked from the PSP instrument, unless such specific notice is given by voice message when the end user attempts to place such a call.

(9) Clear operating instructions and the charges for any enhanced services offered by the PSP from the PSP instrument.

(b) The following information must be posted at each PSP instrument located in the detention areas of local, state, or federal confinement facilities. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(1) Notice that only collect calls are allowed and that all other calls are prohibited unless, in accordance with R13-6(d) the telephone is arranged to permit 1+ toll and seven-digit

local dialing. In that case, the notice shall state the types of calls that are permitted and that all other calls are prohibited.

(2) Clear operating instructions and procedures for reporting equipment or service problems.

(3) The current telephone number of the PSP instrument unless the instrument is arranged or programmed to allow outward-only calling.

(4) The name of the PSP. The name shown at the instrument must be the same as the name shown on the COCOT or PSP certificate.

(5) The cost of a local collect call.

Rule R13-5. General Requirements-Service and Equipment.

(a) The PSP is responsible for the installation, maintenance, and operation of PSP instruments and other terminal equipment.

(b) The PSP is responsible for meeting all federal, state, and local requirements with respect to provision of customer-provided telephone equipment for use by hearing-impaired and handicapped persons.

(c) The PSP may *not* contract with, or arrange for his PSP instruments to automatically access, any non-certified carrier for completion of intrastate calls.

(d) The PSP may *not* contract with, or arrange for his PSP instruments to automatically access, any carrier to carry local intrastate calls originated from his PSP instruments unless that carrier has been certified by the Commission to complete and bill local calls.

(e) All PSP instruments and all other terminal equipment must be connected to the telephone network in compliance with Part 68 of the FCC Rules and Regulations as well as the regulatory and certification requirements of the North Carolina Utilities Commission. PSP subscribers may, upon request, be required to provide the access line provider with the FCC registration number of each item of terminal equipment to be connected prior to its connection.

(f) All PSP instruments and all other terminal equipment must be installed in compliance with the current National Electrical Code and National Electrical Safety Code.

(g) All PSP instruments must be capable of completing local and long distance calls; provided, however, that sent-paid international calling capability may be blocked.

(h) All PSP instruments must allow the end user to access the access line provider operator by dialing "0." All PSP instruments must allow completion of 0- local and 0- long distance calls billed to a commercial credit card, a calling card, a third number, or the called number (collect) at no charge to the end user.

(i) All PSP instruments must allow completion of 0+ local and long distance calls billed to a commercial credit card, a calling card, a third number, or the called number (collect).

(j) All PSP instruments must allow access to 911 Emergency Service, where available, at no charge to the end user.

(k) All PSP instruments must provide access to local and long distance directory assistance.

(l) All PSP instruments must allow receipt of incoming calls at no charge for an initial period of at least ten (10) minutes. After the initial period, PSPs may impose a charge for the continued use of the PSP Instrument in an amount equal to the charge for a local call.

(m) All PSP instruments must allow access to all available interexchange carriers on a non-discriminatory basis. In an equal access environment, this requires that the end user be allowed to access a chosen carrier by dialing 10xxx-0+, 101xxxx-0+, 10xxx-0-, 101xxxx-0-, 1-800 numbers, 1-888 numbers, or 950-xxxx. The requirement for 10xxx-0+ and 10xxx-0- access will end on January 1, 1998. Access through 10xxx-1+, 101xxxx-1+, 10xxx-011+, or 101xxxx-011+ is not required.

(n) Coin-operated PSP instruments must be equipped to return the coins to the caller in the case of an incomplete call.

(o) Coin-operated PSP instruments must be equipped to accept nickels, dimes, and quarters. The coin chute capacity of any PSP instrument must be sufficient to enable an end user to complete any sent-paid call using a single type of coin or any combination of nickels, dimes, and quarters.

(p) The PSP shall at all times maintain a current and complete local telephone directory, including white and yellow pages, at each PSP instrument.

(q) Notwithstanding any other rules in this chapter, a PSP may restrict incoming and/or outgoing calls at any specific PSP instrument in the interest of public safety and welfare under the following conditions:

(1) Such restrictions have been requested in writing as to the specific PSP instrument from the chief local law enforcement officer acting within his apparent jurisdiction stating that the specific restrictions requested are needed in the interest of public safety and welfare. The PSP shall keep a copy of such requests from the chief local law enforcement officer on file for inspection and upon request by the Commission or the Public Staff shall provide copies of the requests for restrictions. The PSP shall retain copies of the requests for restrictions so long as the pay phones remain restricted.

(2) A notice of the restrictions applicable to a PSP instrument must be posted at the instrument. The information must be printed sufficiently large and posted close enough to the telephone to be easily readable from the telephone.

(3) Access to 911 emergency service may not be prevented.

(r) With the exception of PSP instruments located in confinement facilities where the administration has specifically requested that keypad operation be blocked, the keypad of a PSP instrument must be kept open and capable of transmitting tones or dial pulses at all times.

(s) All keypads of PSP instruments 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.

(t) All PSP instruments must allow end users to access PSP refund and repair service at no charge.

Rule R13-6. Special Rules for Service Within Confinement Facilities.

Notwithstanding any other rules in this Chapter, PSP instruments located in the detention areas of confinement facilities:

(a) May, if specifically requested by the administration of the confinement facility, be arranged or programmed to allow outward-only calling;

(b) May, if specifically requested by the administration of the confinement facility and if the access line provider and presubscribed interexchange carrier are notified by the PSP, be arranged or programmed to terminate calls after 10 minutes of conversation time;

(c) Shall be arranged or programmed to block directory assistance (411) calls, provided that a copy of a current local telephone directory, including white and yellow pages, must be available for inmate access;

(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, 10xxx, and 101xxxx calls. Provided, however, that if specifically requested by the administration of the confinement facility, 1+ toll and seven-digit local dialing may be permitted if the access line provider or the PSP instrument can block additional digit dialing after initial call set-up.

(e) May, if specifically requested by the administration of the confinement facility, be arranged to block access to certain specific numbers identified by the administration or to allow access to only certain specific numbers identified by the administration.

(f) Shall, at the request of the administration of the confinement facility, provide for the cutoff of designated PSP instruments through the use of cutoff keys or switches placed on the PSP's side of the network interface;

(g) May, with the express written consent of the administration of the confinement facility, terminate PSP trunks provided by the access line provider for use at the facility in manual or automatic line concentrators; the concentrator may not be arranged or programmed to allow access by more than one PSP instrument to a single PSP trunk at any time; prior to connection

of the equipment, the PSP is obligated to advise the access line provider of its intent to connect a concentrator to the access line provider's facilities, specifically identify the trunks which will terminate in the concentrator and, upon demand, provide the FCC registration number of the equipment.

(h) May, with the express written consent of the administration of the confinement facility, be arranged to provide three-way call detection and call detail from the payphones located within the confinement facility subject to the following conditions:

(1) Three-way call detection may be arranged at the request of the facility administrator such that the call may be disconnected or noted for further investigation. When three-way call detection is arranged for disconnection, a recorded announcement shall inform the called party, before acceptance of the call, that the call may be disconnected if an attempt to use three-way calling is detected. The PSP shall give credit for wrongful disconnections according to its established credit procedures.

(2) Call detail information such as date and time of calls, duration of calls, and called and calling telephone numbers may be provided to the confinement facility administrator at his request.

Rule R13-7. Automated Collect Capability.

PSP instruments may be arranged or programmed to provide automated collect calling and the PSP may bill called parties who agree to pay for calls, provided:

(a) The PSP has secured the authority to furnish such service as specified by Rule R13-3(c);

(b) The PSP instrument is arranged or programmed to require a positive response from the called party indicating willingness to pay for the call before completing the call, and to terminate the call without charge in the absence of a positive response;

(c) Except in the case of a call originated from a confinement facility, if the recipient of an automated collect call does not act to either accept or reject the call, the call must be terminated and a call must be initiated to an operator of certified carrier, or instructions must be provided on how to complete the call using an operator of a certified carrier. In the case of a call originated from a confinement facility, the call must be terminated;

(d) Recipients of automated collect calls must not be charged more for such calls than would have been charged by the local exchange company for a local or intraLATA collect call or by AT&T Communications for an interLATA collect call;

(e) The PSP must use a local or certified interexchange carrier to transmit all communications involved in the call;

(f) The PSP shall block or arrange for blocking of automated collect calls to 900, 976, 950, 700, 10xxx, and 101xxxx codes;

(g) The billing authority granted by this rule may be exercised only in connection with automated collect calls; and

(h) Authorization to employ automated collect capability must not be taken to allow restriction of the end user's ability to make other types of calls, such as customer-dialed credit card or sent-paid coin calls. See Rule R13-5(i) and (j).

Rule R13-8. Facsimile Service.

Providers of facsimile service:

(a) May charge an unregulated rate for the facsimile portion of the service; and

(b) Shall conspicuously display rates and charges for the facsimile portion of the service on or near the facsimile device;.

Rule R13-9. Charges

The PSP is responsible for ensuring that calls originated or terminated at his PSP access line or trunk are rated in accordance with the following:

(a) *Local Sent-paid.* Pursuant to Federal Communications Commission preemption of state authority over local coin rates, PSPs are permitted to charge market-based rates for local coin calls.

(b) *Directory Assistance.* Pursuant to Federal Communications Commission preemption of state authority over intrastate directory assistance charges, PSPs are permitted to charge market-based rates for intrastate directory assistance calls.

(c) *Intrastate, InterLATA Sent-Paid Station-to-Station.* The end user of a PSP instrument may not be charged at a rate higher than the rate that could be charged by AT&T for the carriage and completion of an intrastate, interLATA toll call of the same type.

(d) *Intrastate, IntraLATA Sent-Paid Station-to-Station.* The end user of a PSP instrument may not be charged at a rate higher than the rate that could be charged by the local exchange company for the carriage and completion of an intrastate, intraLATA toll call of the same type.

(e) *0+ Other Than Automated Collect.* The end user of a PSP instrument may not be charged by the PSP for a 0+, 10xxx-0+, 101xxxx0+, or 950 local or toll call billed to a calling card, to a third number, or to the called party (collect).

(f) *0+ Automated Collect Station-to-Station.* The recipient of an automated collect station-to-station call may not be charged more for the call than would have been charged by the local exchange company for a local or intraLATA collect station-to-station call or by AT&T Communications for an interLATA collect station-to-station call.

(g) *0- Calls.* All PSP instruments outside of confinement facilities must allow access to the access line provider operator at no charge. The PSP may not impose a charge on the end user for completion of 0- local and toll calls billed to a calling card, a third number, or the called number (collect).

(h) *800 and 888 Calls.* The end user of a PSP instrument may not be charged for the carriage and completion of any 800 or 888 call.

Rule R13-10. Semipublic Service.

(a) Any semipublic service subscribed to from a LEC or LEC-affiliated PSP on or before October 7, 1997 must be allowed to continue until April 7, 1998. During this period, the semipublic service must be provided to the subscriber under the same monthly rates and conditions that applied immediately prior to detariffing of the service. On April 7, 1998, the monthly rates and conditions for service provided under this provision shall cease to be subject to Commission regulation.

(b) The monthly rates and conditions for semipublic service initially subscribed to after October 7, 1997 are not subject to Commission regulation.

(c) Rules R13-1 through R13-9 shall apply to the provision of any semipublic service.

DOCKET NO. P-100, SUB 114
DOCKET NO. P-100, SUB 124

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-100, SUB 114 In the Matter of Exemption of Domestic Public Cellular Radio Telecommunications Service Providers from Regulation Under Chapter 62 of the North Carolina General Statutes DOCKET NO. P-100, SUB 124 In the Matter of Investigation of the Scope of Jurisdiction and Appropriate Regulation of Wireless Communications Providers	)	ORDER RESCINDING RULE R16-1

BY THE CHAIR: On July 29, 1995, the North Carolina General Assembly enacted Ratified House Bill 941 (Chapter 523 of the 1995 Session Laws) which, among other things, amended Chapter 62 of the General Statutes with respect to wireless communications providers. The relevant

amendments were a new G.S. 62-3(23)j, and a repeal of Article 6A consisting of G.S. 62-119 through 62-125 dealing with radio common carriers.

As enacted, G.S. 62-3(23)j reads as follows:

> The term "public utility" shall not include any person, not otherwise a public utility, conveying or transmitting messages or communications by mobile radio communications service. Mobile radio communications service includes one-way or two-way radio service provided to mobile or fixed stations or receivers using mobile radio service frequencies.

On August 28, 1995, the Commission entered an Order in these dockets noting that the above-referenced legislation removed from Commission jurisdiction cellular services, radio common carrier services, personal communications services, and any such other services which constituted mobile radio communications service.

Chapter 16 of the Commission's Rules and Regulations is entitled "Radio Common Carriers" and consists of only one rule; i.e., "Rule R16-1. Classifications." With the enactment of Ratified House Bill 941 by the General Assembly effective July 29, 1995, Rule R16-1 was no longer required and should have been rescinded at that time by the Commission. However, the rule in question, through oversight, was not rescinded. That being the case, the Chair now finds good cause to enter this Order rescinding Commission Rule R16-1.

IT IS, THEREFORE, ORDERED that Rule R16-1 be, and the same is hereby, rescinded.
ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of December, 1997.

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 Local Exchange Access Competition) ORDER RULING ON PETITION FOR DECLARATORY RULING

BY THE COMMISSION: On March 14, 1997, MCImetro Access Transmission Services, Inc. (MCImetro) filed a Petition for Declaratory Ruling to determine whether competing local providers (CLPs) have the authority to provide intraLATA toll service under their CLP certificates.

MCImetro essentially argued that CLPs should have the authority to provide intraLATA service under their CLP certificates. MCImetro maintained that, since the local exchange companies

(LECs) have retained the authority to provide intraLATA toll service without additional certification, to deny CLPs a similar privilege would be discriminatory and prejudicial. MCImetro noted that the Public Staff's view was that Rule R17-1(h), which defines "local exchange service," excludes intraLATA toll service.

Rule R17-1(h) reads as follows:

> (h) Local Exchange Service.--Switched service 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.

MCImetro also noted that the Commission had authorized facilities-based intraLATA 10XXX-1+ competition in 1994, and had ruled that Defined Radius Plan/Defined Area Plan (DRP/DAP) calling was local, but said that this determination did not preclude intraLATA competition.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that certificated CLPs lack the authority to provide intraLATA toll service pursuant to their CLP certificates. However, this is no way precludes a CLP from obtaining a long distance certificate and offering intraLATA long distance service on that basis. This conclusion stems from this State's determination that intraLATA toll service is a long distance service, not a local service, and the definition of local exchange service in Rule R17-1(h) does not accommodate the provision of long distance service, even on an intraLATA basis. That LECs may provide intraLATA service without additional certification is an artifact of regulatory history, which rises neither to the level of being discriminatory nor of being prejudicial to CLPs. As noted before, MCImetro may easily seek and in all probability would quickly obtain a certificate to provide intraLATA long distance service. MCI Telecommunications Corporation already possesses both interLATA and intraLATA long distance authority.

Concerning DRP/DAP calling, the Commission notes that such calling is local with reference the local exchange companies offering such plans. A principal concern of the Commission at the time of that determination was that such designation not legally preclude intraLATA competition by interexchange carriers. Thus, an interexchange carrier may engage in intraLATA competition and competition with DRP/DAP plans.

IT IS, THEREFORE, ORDERED that a declaratory ruling be, and the same is hereby, made that a CLP lacks the authority to provide intraLATA toll service by virtue of its CLP certificate alone.

IT IS, THEREFORE, SO ORDERED.
ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of March, 1997.

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 Local Exchange	)	ORDER OF
Access Telecommunications Competition	)	CLARIFICATION

BY THE COMMISSION: The Commission entered an Order in this docket on February 23, 1996, Setting Out Regulatory Structure For Competing Local Providers and Promulgating Rules.

The Commission Staff and the Public Staff have received informal requests from the competing local providers (CLPs) requesting clarification of requirements under this Order and Rules for promotional-type offerings, and individual case basis-type arrangements.

The February 23, 1996, Order did not specifically address these types of service. However, in Rule R17-2 - Requirements and Limitations Regarding Certification of Competing Local Providers, Paragraph (h), the Commission ordered that "[a]ll CLPs shall file price lists relating to the provision of *basic* (emphasis added) local exchange services." In Rule R17-1 - Definitions, the Commission defined Basic Local Exchange Service as:

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.

The Commission accordingly concludes that, with the exception of the provisions in Rule R17-2(h) noted above regarding the requirement to file price lists for basic local exchange service, competing local providers are not required otherwise to notify the Commission of promotional offerings or changes in or provision of any service offering. The Commission further concludes that the provisions noted above extend only to general offerings and not to basic service bundled into a special arrangement. It should be noted, however, that this does not change the requirement of Rule R17-2(q) regarding notice to all affected customers at least 14 days before any public utility rates are increased and before any public utility service offering is discontinued.

IT IS, THEREFORE, ORDERED that competing local providers are not required to notify the Commission of any promotional offerings or any individual contract offerings or similar services.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of May, 1997.

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 Local Exchange Access) ORDER AMENDING CLP
Telecommunications Competition) CERTIFICATES

BY THE COMMISSION: Under G.S. 62-110(f1), the Commission is authorized to issue certificates to competitive local providers (CLPs) for the provision of local exchange or exchange access services regardless of whether local service is already being provided in the areas for which the certificates are sought. G.S. 62-110(f2) exempts service areas that are being served by local exchange companies with 200,000 access lines or less located within the State from Commission authorized competition and price plan regulation under G.S. 62-133.5(a). If, however, a local exchange company elects to be regulated under G.S. 62-133.5(a) and the Commission applies the provisions of that section to that company, the Commission must at the same time apply the provisions of G.S. 62-110(f1) to the franchised area and the local exchange and exchange access services offered by that company.

On May 30, 1997, in Docket No. P-16, Sub 181, the Commission approved a Price Regulation Plan for Concord Telephone Company, and on June 6, 1997, Concord accepted the Plan and filed revised tariffs in accordance with the Plan. Both the Plan and the tariffs have an effective date of September 1, 1997. Effective with the beginning of price plan regulation for Concord, Concord's service area must be considered open to local exchange competition under G.S. 62-110(f1).

All of the certificates issued to the CLPs in the State have limited the service areas in which the providers may operate to service areas served by local exchange companies with greater than 200,000 access lines in North Carolina, in accordance with G.S. 62-110(f2). Since the Concord Price Plan is to be effective on September 1, 1997, the Commission is authorized and required to allow certificated local providers to operate in the Concord service area in addition to those service areas previously authorized.

IT IS, THEREFORE, ORDERED that the certificates of all previously certificated CLPs be and hereby are amended to expand the service areas in which the CLPs are authorized to provide service to include the service area of Concord Telephone Company, effective September 1, 1997.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of August, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-55, SUB 1022
DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-55, SUB 1022

In the Matter of Application of BellSouth Telecommunications, Inc., to Provide In-Region, InterLATA Service Pursuant to Section 271 of the Telecommunications Act of 1996 DOCKET NO. P-100, SUB 133 In the Matter of Local Exchange and Exchange Access Telecommunications Competition	)	ORDER CLARIFYING REPORT REQUIREMENTS

BY THE CHAIR: The Commission has now received reports pursuant to Orders in the above dockets. The Chair wishes to clarify the following matters regarding the R17-2(k) and the Questions for Competing Carriers (QCC) reports:

1. All competing local providers (CLPs) are expected to file these reports.

2. The R17-2(k) report should be included with, but set out separately from, the QCC. Some parties have done this; other parties seem to be under the mistaken impression that the QCC information subsumes the R17-2(k) information. This is not true. For instance, the R17-2(k) report asks for information on geographic location and access lines, while certain of the QCC questions ask for number of customers.

3. When filing, CLPs should separate confidential information from non-confidential information.

4. An original and 20 copies are needed for the non-confidential information with cover letter attached. Four copies of the confidential information are needed.

5. Since this information is requested by the Commission as a report for Commission purposes, it is not necessary for CLPs to serve all parties to the proceeding with their filings. Interested persons may examine non-confidential information at the Chief Clerk's Office.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE CHAIR.
This the 21st day of November, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Establishment of Intrastate Schools' and Libraries' Discounts Pursuant to Section 254(h) of the Telecommunications Act of 1996	))))	ORDER ESTABLISHING INTRASTATE DISCOUNTS FOR SCHOOLS AND LIBRARIES

BY THE COMMISSION: The Telecommunications Act of 1996 (TA96) requires states to establish intrastate discounts on designated services provided to eligible schools and libraries. Specifically, Section 254(h)(1)(B) of TA96 provides in relevant part:

> (B) EDUCATIONAL PROVIDERS AND LIBRARIES.--All telecommunications carriers serving a geographic area shall, upon bona fide request for any of its services that are within the definition of universal service under subsection (c)(3), provide such services to elementary schools, secondary schools, and libraries for educational purposes at rates less than the amounts charged for similar services to other parties. The discount shall be an amount that the Commission, with respect to interstate services, and the states, with respect to intrastate services, determine is appropriate and necessary to ensure affordable access to and use of such services by such entities.

On May 8, 1997, the Federal Communications Commission (FCC) issued its Report and Order, FCC Order No. 97-157 (Universal Service Order or USO) implementing key portions of Section 254 of TA96, which addresses universal service. The USO provides for funding of both interstate and intrastate services for schools and libraries. Eligibility for the discounts is based upon adoption by the states of the federal discount levels for intrastate services. While the FCC adopted rules permitting schools and libraries to begin receiving the discounts on January 1, 1998, they may begin applying for funding earlier. The FCC has capped spending for these discounts at $2.25 billion annually. Accordingly, it is important that the Commission expeditiously approve intrastate discounts so that North Carolina schools and libraries will not be relatively disadvantaged as they apply for funding.

The interstate discounts range from 20 percent to 90 percent for all telecommunications services, internet access, and internal connections, subject to the $2.25 billion cap. The range of discounts is correlated to students' eligibility for the national school free- and reduced-lunch programs. Urban or rural location is based on metropolitan statistical areas. The FCC has adopted the following discount matrix:

SCHOOLS AND LIBRARIES DISCOUNT MATRIX

HOW DISADVANTAGED?		DISCOUNT LEVEL	
% of students eligible for national school lunch program	Estimated % of US schools In category	Urban discount (%)	Rural discount (%)
< 1	3	20	25
1 - 19	31	40	50
20-34	19	50	60
35-49	15	60	70
50-74	16	80	80
75-100	16	90	90

The discounts are applied to a pre-discount price, which price must be no higher than the lowest price the carrier charges to similarly situated non-residential customers for similar services. The USO does not require that carriers file new tariffs for schools and libraries, but, rather, requires that the discounts be applied to existing tariff rates where appropriate.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that the discount matrix contained in the USO and set out above should be adopted on an interim basis for the purposes of permitting eligible North Carolina schools and libraries to receive federal funding for intrastate services. This action does not preclude consideration of expansion of this program on an intrastate basis at a future point in time. The Commission does not believe that the provision of intrastate discounts to schools and libraries pursuant to TA96 is in any way violative of G.S. 62-140 prohibiting unreasonable discrimination as to rates and services.

Adoption of the discount matrix on an interim basis will both maximize the amount of time that schools and libraries will have to prepare their applications and allow any interested party to file objections to the Commission's decision herein on an expedited basis. However, unless substantial objections are received, the Commission will thereupon issue an Order confirming this Order and making this decision permanent.

IT IS, THEREFORE, ORDERED as follows:

1. That the discount matrix contained in Paragraph 520 of the USO shall be adopted on an interim basis for the purposes of permitting eligible North Carolina schools and libraries to receive federal funding for intrastate services.

2. That interested parties may file objections to this Order by no later than Tuesday, July 1, 1997. If no substantial objections are received, the Commission will issue an Order confirming this Order and rendering its decision permanent.

3. That all parties to Docket No. P-100, Sub 133, be made parties to this docket.

4. That the Chief Clerk shall send a copy of this Order to the Superintendent of the North Carolina Department of Public Instruction, the Executive Director of the State Board of Education, the Secretary of the Department of Cultural Resources, and the Advisor to the Governor for Policy, Budget, and Technology.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of June, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Establishment of Intrastate Schools' and	)
Libraries' Discounts Pursuant to Section	) ORDER CONFIRMING DISCOUNTS
254(h) of the Telecommunications Act	)
of 1996	)

BY THE COMMISSION: On June 17, 1997, the Commission issued an Order Establishing Intrastate Discounts for Schools and Libraries on an interim basis. Ordering Paragraph No. 2 of that Order provided that "interested parties may file objections to this Order by no later than Tuesday, July 1, 1997." The Order further provided that "[i]f no substantial objections are received, the Commission will issue an Order confirming this Order and rendering its decision permanent."

The Commission has received no objections to its June 17, 1997, Order in this docket. The Chair therefore concludes that the June 17, 1997, Order should be confirmed and its decision rendered permanent.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of July, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Designation of Carriers Eligible	)	ORDER GRANTING WAIVERS
for Universal Service Support	)	AND DESIGNATING CARRIERS

BY THE COMMISSION: On August 12, 1997, the Commission issued an Order outlining procedures to be followed by telecommunications carriers desiring designation as eligible telecommunications carriers (ETCs) for receiving federal universal service support pursuant to 47 U.S.C. Section 214(e) and the guidelines set out in the FCC's Report and Order, FCC 97-157 (Universal Service Order or USO), issued on May 8, 1997. Under the USO guidelines, the appropriate state commissions are to designate carriers as ETCs by December 31, 1997, since only ETCs may receive federal universal service support funds beginning January 1, 1998. To be eligible, a carrier must offer certain prescribed services throughout its designated service area either by using its own facilities or by using a combination of its own facilities and resale of another carrier's facilities: single-party service; voice grade access to the public switched network; Dual-Tone Multifrequency (DTMF) Signaling or its functional equivalent; access to emergency services, e.g., 911 and E911; access to operator services; access to interexchange service; access to directory assistance; and toll limitation for qualifying low-income consumers. A carrier that is unable to provide single-party service, access to E911 service, or toll limitation may petition the state commission for a waiver to permit it to receive universal service support for a designated period of time while completing network upgrades. ETCs must also advertise the availability of the designated universal services and the charges therefor using media of general distribution. Finally, although it is not a precondition of eligibility, all designated ETCs must offer modified Lifeline and Link-Up service effective January 1, 1998.

The Commission has received petitions for ETC designation from all sixteen (16) incumbent local exchange carriers (ILECs) in North Carolina. Individual petitions were filed by ALLTEL Carolina, Inc., BellSouth Telecommunications, Inc., Carolina Telephone and Telegraph Company, Central Telephone Company, GTE South, Inc., and Pineville Telephone Company. The Alliance of North Carolina Independent Telephone Companies (the Alliance) and the TDS Telecom Companies filed a joint petition on behalf of Barnardsville Telephone Company, Citizens Telephone Company, Concord Telephone Company, Ellerbe Telephone Company, Lexington Telephone Company, d/b/a LEXCOM Telephone, MEBTEL, Inc., North State Telephone Company, Randolph Telephone Company, Saluda Mountain Telephone Company, and Service Telephone Company.

In addition, the North Carolina Rural Electrification Authority (NCREA) has forwarded to the Commission a petition by the nine telephone membership corporations (TMCs) in North Carolina stating that the TMCs either meet all of the requirements for ETC designation or qualify for a waiver. The NCREA requests that the Commission on its own motion designate the TMCs as ETCs to the FCC while providing that such action does not set any precedent for future regulatory jurisdiction over the TMCs that is otherwise prohibited by North Carolina law. The TMCs are exempt from regulation as public utilities pursuant to G.S. 62-3(23)d. and G.S. 117-35.

This matter was presented at the Commission's Regular Staff Conference on December 15, 1997.

The Public Staff noted that ALLTEL has requested a waiver through 1998 regarding the provision of access to 911/E911 services in Stokes County, which is scheduled to be implemented in the second quarter of 1998, and recommended that this request be granted. The other waiver requests concern the provision of toll limitation services. The FCC defines toll limitation as toll blocking and toll control. The carriers indicate, however, that they can provide only toll blocking at this time and request a waiver of this requirement. The FCC's definition is currently the subject of motions for reconsideration. The Public Staff recommended that the Commission waive the toll limitation requirement as requested until the issue is resolved by the FCC.

The ILECs indicate that they currently provide Lifeline and Link-Up services and will continue to offer those services in conformance with the changes adopted by the Commission in Docket No. P-100, Sub 133f, effective January 1, 1998. The ILECs also indicate that they are currently advertising the availability of and charges for the designated universal services through standard subscriber notifications, including information printed in the white page directories and on telephone bills and presented in periodic bill inserts. The Public Staff stated that although it does not believe that further advertising of these services is necessary, it does believe that advertising of Lifeline and Link-Up programs should be required.

According to the Public Staff, the Florida Public Service Commission has required ETCs to provide Lifeline and Link-Up information in their telephone directories at the next possible publication date, listing Lifeline and Link-Up in the index if the directory contains an index, and to provide bill stuffers advertising the availability of these services on an annual basis. The Florida Commission has also required ETCs to work with local social service agencies to the extent possible to reach eligible subscribers. The Public Staff stated its belief that these requirements are reasonable and recommended that they be adopted.

With regard to the request of the NCREA, the Public Staff stated that it agrees with the TMCs that the NCREA has more jurisdiction over the TMCs than does the Commission with regard to this issue and that the NCREA is more likely to be the "State commission" responsible for determining that the TMCs are eligible to receive universal service support pursuant to 47 U.S.C. Section 214(e). The Public Staff also noted that the Communications Act of 1934 has been amended to provide for the designation of carriers not subject to state commission jurisdiction as ETCs by the FCC. Stating that ETC designation for TMCs by this Commission is not necessary and may not be appropriate, the Public Staff recommended that the TMCs' petition for ETC designation be referred back to the NCREA for disposition.

Finally, the Public Staff stated that it has reviewed the ILECs' petitions and believes that each meets the requirements for ETC designation in its designated service area.

Based on the foregoing, the Commission concludes that the ILEC requests for waiver are justified and should be granted, that the 16 ILECs meet the requirements for designation as ETCs in their designated service areas, that advertising of the Lifeline and Link-Up programs should be required, and that the TMCs' petition for ETC designation should be referred back to the NCREA for appropriate disposition.

IT IS, THEREFORE, ORDERED as follows:

1. That the request of ALLTEL for waiver of the requirement to provide access to 911/E911 service with respect to Stokes County is granted through 1998.

2. That the requests of the ILECs for waiver of the toll limitation requirement are granted pending reconsideration of the issue by the FCC.

3. That the petitions of the 16 North Carolina ILECs for designation as eligible telecommunications carriers pursuant to 47 U.S.C. Section 214(e) are granted.

4. That the ILECs shall provide Lifeline and Link-Up information in their telephone directories at the next possible publication date, listing Lifeline and Link-Up in the index if the directory contains an index, and provide bill stuffers advertising the availability of these services on an annual basis. The ETCs shall also work with local social service agencies to the extent possible to reach eligible subscribers.

5. That the TMCs' request for ETC designation is referred back to the NCREA for disposition.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of December, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133e

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Establishment of Service Areas	)	ORDER DESIGNATING INTERIM
Pursuant to Section 254 of the	)	SERVICE AREAS AND
Telecommunications Act of 1996	)	REQUESTING COMMENTS

BY THE CHAIR: On May 9, 1997, the Federal Communications Commission (FCC) issued its Report and Order, FCC Order No. 96-45 (Universal Service Order or USO), implementing key portions of Section 251 of the Telecommunications Act of 1996 (TA96).

NON-RURAL SERVICE AREAS

Sections 184 and 185 of the USO consider state requirements for adoption of non-rural service areas and read, in part, as follows:

> [S]ubsections 214(e)(2) and 214(e)(5) require state commissions to designate the area throughout which a non-rural carrier must provide universal service in order to be eligible to receive universal service support. Specifically, we conclude that service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors. As such, an unreasonably large service area effectively could prevent a potential competitor from offering the supported services, would not be competitively neutral, would be inconsistent with section 254, and would not be necessary to preserve and advance universal service. . . . We therefore encourage state commissions not to adopt, as service areas, the study areas of large ILECs. In order to promote competition, we further encourage state commissions to consider designating service areas that require ILECs to serve areas that they have not traditionally served.

In a public notice dated August 14, 1997, the FCC listed changes adopted in the USO that will take effect January 1, 1998. In this notice, the FCC states in part: "By January 1, 1998: State commission must designate service areas consistent with 47 C.F.R. § 54.207." Hence, state commissions must designate **non-rural service areas** by January 1, 1998. With reference to non-rural companies, 47 C.F.R. § 54.207(a) defines a "service area" as "a geographic area established by a state commission for the purpose of determining universal service obligations and support mechanisms. A service area defines the overall area for which the carrier shall receive support from federal universal service support mechanisms."

RURAL SERVICE AREAS

Rural telephone companies are defined in Section (2)(37) of TA96. The FCC has adopted a different process for the designation of rural service areas:.

47 C.F.R. § 54.207(b) states in pertinent part as follows:

> (b) In the case of a study area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the state. . establish a different definition of service area for such company.

In Paragraph 189 of the USO, the FCC encouraged the states to consider designating rural service areas that consist only of the contiguous portions of the study areas because of concerns about the ability of wireless carriers to provide service throughout a noncontiguous rural carrier's service area. The FCC outlined a process by which such modification could be effected consistent with Section 214(e)(5) of TA96.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

Concerning non-rural telephone companies, the Chair believes that, in view of the looming January 1, 1998, due date for designation of service areas, the most prudent course of action is to designate the existing study areas of non-rural telephone companies as their respective <u>interim</u> service areas.

The adoption of interim service areas keeps the Commission's options open while ensuring universal service funding for the telephone companies. We are, however, fully aware of the FCC's preference for and encouragement of smaller service areas. Accordingly, the Chair concludes that in this Order we should solicit immediately comments from local exchange companies (LECs), competing local providers (CLPs), and other interested parties regarding the methodology to be used by the Commission to designate permanent non-rural geographical service areas in accordance with the USO.

With respect to rural telephone companies, the Chair believes that the appropriate way to proceed at this point is to accede to 47 C.F.R. § 54.207(b) constituting the rural service areas as their current respective study areas. Any consideration of modifying such rural service areas will be delayed to a later date.

IT IS, THEREFORE, ORDERED as follows:

1. That Docket No. P-100, Sub 133e, be established. All parties to Docket No. P-100, Sub 133, are made parties to this docket.

2. That the non-rural service areas of non-rural telephone companies shall on an interim basis consist of their current respective study areas.

3. That all non-rural LECs subject to the jurisdiction of this Commission shall, and all other parties may, submit comments to the Commission regarding their recommended methodology, consistent with the USO, to be used by the Commission to designate non-rural geographical service areas. Such comments are due by no later than Friday, October 31, 1997. Reply comments are due no later than Friday, November 21, 1997. Non-rural LECs especially are strongly encouraged to include with their comments maps illustrating their proposed non-rural service areas.

4. That rural service areas for rural telephone companies shall on an interim basis consist of their current respective study areas.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of October, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. P-100, SUB 133f

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Lifeline and Link-Up Services Pursuant	)	FINAL ORDER REGARDING
to Section 254 of the Telecommunications	)	LIFELINE AND LINK-UP
Act of 1996	)	

BY THE COMMISSION: On November 5, 1997, the Commission issued an Order Requiring Expanded Lifeline and Link-Up Services. This Order was in response to the May 8, 1997, Order of the Federal Communications Commission concerning universal service. The Commission asked that any parties wishing to file objections do so by November 14, 1997.

Among the salient points, the Commission made the eligibility criteria for both Lifeline and Link-Up identical by adding food stamps to the Lifeline eligibility criteria. Thus, AFDC, SSI, and food stamps became the eligibility criteria for both programs. The Commission also required that non-incumbent local exchange companies are to reduce the total customer bill by the amount of support they receive under Paragraph 366 of the Universal Service Order.

On November 14, 1997, the North Carolina Justice and Community Development Center (NCJCDC) sought intervention in this docket and provided comments. While applauding the Commission's action in expanding eligibility criteria, the NCJCDC pointed out that as a result of the federal welfare reform law, AFDC no longer exists as a federal or state program. In place of AFDC, the states now receive a block grant known as Temporary Assistance for Needy Families. North Carolina has chosen to use those funds for a program known as Work First. The NCJCDC therefore urged the Commission to delete AFDC has an eligibility criteria and to substitute "participation in Work First or Temporary Assistance for Needy Families." The NCJCDC also pointed out that Rule R9-6(c)(2)b., concerning Link-Up, should be amended to read:

> b. Be a current recipient of Supplemental Security Income, Food Stamps, or a current participant in Work First or Temporary Assistance for Needy Families.

On November 14, 1997, AT&T Communications of the Southern States, Inc. (AT&T) filed comments. Though AT&T had no formal objections at this time, it did seek clarification on an item listed under "Program Changes" requiring non-incumbent local exchange carriers to reduce the total customer bill by the amount of support they receive under Paragraph 366 of the Universal Service Order. AT&T said that it was unclear whether this requirement constituted an obligation for competing local providers only to the exclusion of incumbent local exchange companies. If it is, AT&T would object to the obligation as being discriminatory.

Whereupon, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes the following:

1. With respect to the filing by the NCJCDC, the Commission concurs that, because of the elimination of AFDC under the welfare reform act, the term AFDC should be deleted from the eligibility criteria and replaced with the terms "Work First" and "Temporary Assistance for Needy Families" for both the Lifeline and Link-Up programs.

2. With respect to AT&T's query, the Commission notes that Paragraph 366 of the Universal Service Order states as follows:

> We acknowledge that the distribution of support to non-ILEC carriers cannot be achieved simply by waiving the SLC [subscriber line charge]. Carriers other than ILECs do not participate in the formal separations process that our rules mandate for ILECs and hence do not charge SLCs nor distinguish between the interstate and intrastate portion of their charges and costs. With respect to these carriers, we conclude that Lifeline support must be passed through directly to the consumer in the form of a reduction in the total amount due.

It thus appears to be the FCC's intent to ensure that the subscriber receiving Lifeline support will receive the full amount of support whether he is served by an local exchange company or a competing local provider. The purpose, then, is to equalize obligations, not to discriminate.

IT IS, THEREFORE, ORDERED as follows:

1. That the November 5,1997, Order Requiring Expanded Lifeline and Link-Up Services be finalized as modified below.

2. That the eligibility criteria for Lifeline shall be Supplemental Security Income, Food Stamps, and Work First or Temporary Assistance for Needy Families.

3. That Rule R9-6(c)(2)b., concerning Link-Up, be amended to read as follows:

> b. Be a current recipient of Supplemental Security Income, Food Stamps, or a current participant in Work First or Temporary Assistance for Needy Families.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 137

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Area Code Relief for North Carolina's 704/910/919	)	ORDER APPROVING
Numbering Plan Areas	)	MODIFIED GEOGRAPHIC
	)	SPLIT OPTION TO PROVIDE
	)	AREA CODE RELIEF

BY THE COMMISSION: On April 11, 1997, BellSouth Telecommunications, Inc. (BellSouth), as Industry Central Office Code Administrator, filed a Joint Petition for Approval of Number Plan Area (NPA) Relief for the 704, 910, and 919 area codes on behalf of itself and the Joint

Petitioners. The Joint Petitioners consist of the following: BellSouth, Carolina Telephone and Telegraph Company, Central Telephone Company, Concord Telephone Company, GTE South Incorporated, Mebtel Communications, Star TMC, Randolph Telephone Company, Randolph TMC, Atlantic TMC, Ellerbe Telephone Company, ALLTEL Carolina, Inc., Pineville Telephone Company, Barnardsville Telephone Company, Saluda Mountain Telephone Company, Service Telephone Company, and Yadkin County TMC. In addition, CTC Long Distance Service, Sprint Communications, Inc., Intermedia Communications, MCI and BellSouth Mobility DCS joined in the petition. BellSouth represented that AT&T Communications of the Southern States, Inc. (AT&T), although not a signatory, supports the geographic split recommended by the Joint Petitioners.

The Need for Area Code Relief

The area code relief plan proposed by the Joint Petitioners arose because the State is running out of numbers for assignment in all three existing area codes more or less simultaneously. This unprecedented situation is due to the high demand for telephone numbers brought about by the advent of new technologies, such as cellular telephones, the demand for second lines for computers and fax machines, the prospect of local competition, and economic growth. The Joint Petitioners have ultimately projected a 1999 exhaust date for existing area codes. On August 6, 1997, the Area Code Administrator even declared that North Carolina was in a state of "extraordinary jeopardy," necessitating the implementation of immediate code conservation measures.

Unlike previous occasions in which the State has undergone the creation of new area codes, this time the industry as a whole was unable to reach a consensus to present to the Commission. Accordingly, the Joint Petitioners requested the Commission to adopt the plan formulated by a major part of the industry.

April 21, 1997 Commission Conference

This matter was brought before the Regular Commission Conference for initial presentation by the Public Staff on April 21, 1997. The Public Staff reported that the two relief plan options presented to the Commission are the geographic split and the overlay. The geographic split option consists of dividing an exhausting NPA into new geographic areas. Under this option, each of the three existing North Carolina NPAs would be divided into two geographic areas normally conforming to exchange boundaries and to LATA boundaries where feasible. Subscribers in the newly designated NPA area would be subject to telephone number changes, while subscribers remaining in the existing NPA area would not. The geographic split has been the alternative chosen nationally for nearly all NPA relief to date, including the splitting of the 919 NPA into the 919 and 910 NPAs approximately four years ago in North Carolina. The technical aspects of this option have been resolved and implementation procedures for it are well established.

The overlay option provides area code relief by opening a new NPA within the same geographic area as an exhausting NPA. NXXs from the new NPA are then assigned to new subscribers only. Existing subscribers are not subject to a number change. However, the FCC has directed that states can authorize NPA overlays **only** if they mandate ten-digit dialing for **all** local calls not only between, but also within, area codes in the affected geographic area.

The Joint Petitioners' proposed split at that time for each area code was as follows:

919 NPA

The 919 NPA is proposed to be split essentially along LATA boundaries. The Raleigh LATA exchanges, those 919 area code exchanges in Johnston and Chatham counties that are in the Fayetteville LATA, and the Mebane exchange that is in the Greensboro LATA would retain the present 919 area code. The Rocky Mount LATA exchanges and that portion of the Swansboro exchange in Carteret County that is in the Fayetteville LATA would receive the new area code.

910 NPA

The 910 NPA is proposed to be split essentially along LATA boundaries. The Wilmington and Fayetteville LATA exchanges, with the exception of those exchanges in Carteret, Johnston and Chatham counties that are currently in the 919 area code, would retain the present 910 area code. The Greensboro LATA exchanges, with the exception of the Mebane exchange, would receive the new area code. Also, the Bennett, Coleridge

and High Falls exchanges in the Fayetteville LATA 910 area code and the New Hope, Union Grove, Harmony, Ijames, Cooleemee and Mocksville exchanges in the Charlotte LATA 704 area code would receive the new area code for the Greensboro LATA.

704 NPA

Because a LATA boundary split in the 704 NPA between the Asheville and Charlotte LATAs would result in too much disparity in the future NXX exhaust potentials between the old and new NPAs, it is not proposed to divide the 704 NPA along LATA boundaries. Instead, one area including the Charlotte exchange and forty-two (42) surrounding exchanges with strong ties to the Charlotte area would retain the present 704 area code. The rest of the exchanges in the Charlotte LATA, excluding those that will be associated with the new Greensboro LATA area code, and all the exchanges in the Asheville LATA would receive the new area code.

Although generally supportive of the geographic split plan proposed by the Joint Petitioners, the Public Staff stated that it wished to defer its recommendations on the specific geographic configuration of the respective NPAs until after initial comments have been filed and evaluated. The Public Staff also identified a related issue concerning dialing arrangements for interNPA seven-digit dialed routes currently in place or that will be created by new area code splits. The Public Staff supported continuation of seven-digit dialing over such routes.

At the Regular Commission Conference several industry representatives and members of the public expressed their views on the proposal. Senator Tony Rand and Representative Richard Morgan also appeared. The members of the General Assembly and the public witnesses opposed the application of the Joint Petitioners' proposal to their geographic areas of concern, while representatives of the cellular industry favored the overlay option.

April 25, 1997 Order

On April 25, 1997, the Commission issued an Order Requesting Comments and Scheduling Public Hearing concerning area code relief proposals. The Order provided for newspaper notice throughout the State advising the public of their opportunity to file comments or to appear at a public hearing in Raleigh on May 19, 1997. Parties were given the opportunity to file written comments by May 19, 1997, and reply comments by May 27, 1997. The area plan relief planning coordinator was specifically requested to file comments discussing the advantages and disadvantages of the split proposal and the overlay proposal.

Written Public Comments

More than 500 letters have been received from the public concerning the area code relief proposals. Many of the letters have come from southeastern North Carolina and the greater Triad area, including Iredell County. Virtually all of these letters opposed the Joint Petitioners' proposal as applied to their respective geographic areas. The letters cited the expense, burden, and injustice of the proposal.

May 19, 1997 Public Hearing

On May 19, 1997, the Commission held a public hearing as scheduled. Approximately 25 public witnesses, as well as several members of the General Assembly, appeared in order to register their opposition to the Joint Petitioners' proposal as applied to their respective areas. Responding to questions from Commissioners, some witnesses were willing to support an overlay if that were the alternative, while others expressed concerns about the possible negative effects an overlay might have on travel and tourism.

Initial Comments

Comments were received from AT&T Communications of the Southern States, Inc. (AT&T), Bell Atlantic NYNEX Mobile (BANM), LEXCOM Telephone, Inc.[1] (LEXCOM), North State Telephone Company (North State), Randolph Telephone Membership Corporation/Randolph Telephone Company (Randolph) and the Joint Petitioners.

AT&T stated that it believes that the geographic split is the preferred option for the following reasons:

1) The geographic split is the traditional method of NPA relief and is the most familiar and least confusing option to customers; each geographic area will retain a unique NPA identification.

2) Customers can continue to dial seven (7) digits within the home NPA and 1+10 digits for calls outside of the home NPA.

[1]LEXCOM stated it is joined in these comments by Wilkes Telephone Membership Corporation, Skyline Telephone Membership Corporation, Piedmont Telephone Membership Corporation, as well as Bell Atlantic NYNEX Mobile, GTE Mobilnet, 360° Communications, United States Cellular Corporation and Carolina West Cellular, some of which will separately file additional comments to address their individual situations and concerns.

3) A geographic split is more competitively neutral than the other options. In other relief alternatives, new entrants will be disadvantaged by being restricted to offering consumers only NXXs in the new area code, while the incumbent may offer NXXs in either the new or the existing area code. This prevents competing local providers from offering services at parity to incumbent LECs.

4) A geographic split allows certain wireless customers to retain their existing area codes and numbers and not place a disproportionate share of the burden on wireless customers through "takebacks" or "givebacks" of NXXs or numbers.

5) Through a geographic split, the new NPA will be populated from the outset and is, therefore, less likely to be seen by customers as undesirable.

AT&T attached, as an exhibit to its filing, customer research conducted by the Taylor Group for Southern New England Telephone (SNET) in December 1994, which indicated a strong customer preference for a geographic split as opposed to an overlay.

BANM urged the Commission to adopt an overlay as the best long-term solution to provide relief for North Carolina. A geographic split of the 704, 910 and 919 area codes at this time would burden North Carolina customers terribly, especially cellular consumers who would be forced to expend time and resources to have their area codes changed. The overlay option is cost-effective, future-looking and equitable. In the alternative, if the Commission orders a geographic split, BANM requested that cellular customers be grandfathered to spare them the disproportionate burden of reprogramming their phones.

LEXCOM stated that the overlay is the most efficient and forward-looking approach for managing the inevitable code shortages in North Carolina and urged the Commission to reject further geographic splits and adopt an overlay plan. LEXCOM expressed concerns that the burden of a "split" plan would fall disproportionally on wireless carriers. Under such a plan, approximately one-half of the wireless phones now in use in North Carolina would have to be brought in by the customer for reprogramming. LEXCOM maintains that ten-digit dialing is inevitable, even with geographic splits, and ultimately with location number portability. LEXCOM referred to the confusion and cost to its customers associated with changing area codes in August 1996, when it moved from the 704 to the 910 area code and the fact that LEXCOM and its customers would be subjected to another area code change if the joint petition is granted.

North State requested that the Commission approve retention of the 910 area code for the Piedmont Triad region and assignment of a new area code to the eastern section of the present 910 area. The proposal made by the petitioning telephone companies is not justified due to the fact that it would require all customers served by 887,000 access lines in the Piedmont region to change to a new area code while allowing far fewer customers served by 687,000 lines in the eastern section to retain the use of the 910 code. Businesses incur great expense and confusion when an area code is changed. Businesses in the Piedmont Triad region are served by 254,000 lines while the eastern section is served by 162,000 lines. This large difference in the number of businesses that will be adversely impacted if the Petitioners' proposal is approved more strongly substantiates retaining the 910 code for the Piedmont region and assigning a new code to the eastern section.

Randolph requested that its name be withdrawn from the list of 22 telephone companies on the original petition for NPA relief, in that subsequent changes may now result in Randòlph's service area being divided into two NPAs. If this is the case, then Randolph favors the overlay alternative, inasmuch as this method eliminates the need for customer number changes. Additionally, with Randolph's expanded local calling plan, its customers will be required to do extensive ten-digit dialing anyway.

Joint Petitioners submitted Comments describing in detail certain changes to the Plan that they are now recommending. These changes are based on criteria set forth at the April 21, 1997 Regular Commission Conference, by Dwight W. Allen, Vice President and General Counsel of Carolina Telephone and Telegraph Company, speaking on behalf of Joint Petitioners. Those criteria included whether or not an alteration significantly advances the area code exhaust dates and whether any proposed alteration would engender "significant re-engineering of the network." In addition, Mr. Allen noted that they did not want to destroy existing community of interest in areas that are used to being able to call between areas.

Joint Petitioners recommended that the Commission adopt the following proposed alterations to the Plan and approve the Plan as amended.

A. Iredell and Rowan Counties.

The Joint Petitioners recommended that the Commission modify the Plan to allow residents whose local exchanges are principally located in Iredell and Rowan Counties to remain in Area Code 704. As support for this recommendation, the Joint Petitioners stated that the inclusion of Iredell County and Rowan County in Area Code 704 advances the exhaust date for Area Code 704 by only three months, engenders little or no network re-engineering and helps to maintain existing communities of interest.

The exchanges affected by this proposed modification and that will be included in Area Code 704 are as follows:

New Hope	Union Grove	Granite Quarry
Harmony	Statesville	Troutman
Stony Point	Cleveland	Salisbury

B. Granville County.

Based upon requests directed to the Commission by Granville County elected officials and other interested parties, the Joint Petitioners requested that the Plan be amended to place all of Granville County in the proposed 919 NPA. This change will affect the Oxford exchange.

C. Franklin County.

Based upon the April 14, 1997 petition of the Franklin County Board of Commissioners to the Director of the Communications Division of the Public Staff, the Joint Petitioners requested that the Plan be amended to place all of Franklin County within the proposed 919 NPA. This change will affect the Franklinton and Louisburg exchanges.

D. Moore and Montgomery Counties.

Based upon requests from representatives of Moore and Montgomery Counties at the April 21, 1997 Staff Conference, the Joint Petitioners requested that the Plan be amended to place the Moore County exchange of West End and the Montgomery county exchanges of Troy, Biscoe, Mount Gilead, and Candor in the proposed 910 NPA.

The Joint Petitioners, in conclusion, stated that the Plan represents a delicate balance between various competing interests: different geographic areas of the State, different economic sectors within the State, and different communities of interest. Joint Petitioners have also considered the needs of unique and discrete groups within the State and have attempted to balance these interests and needs while, at the same time, applying the first two Joint Petitioner criteria set forth by Mr. Allen--namely, the desire to avoid premature NPA exhaust and the need to avoid significant network re-engineering.

The Joint Petitioners emphasize the need to avoid repeating this process every two years or so. The remedy should above all else obviate the necessity to repeat this process in the near future. Because of the time requirements involved in this process (the parties need a decision by June 1), Joint Petitioners submitted that starting over is simply not in the public interest.

Reply Comments

Reply comments were received from the Public Staff, AT&T, BANM, LEXCOM, North State, 360° Communications (360° COM), the Public Staff, and the Joint Petitioners.

AT&T maintained its support of the geographic split methodology for NPA relief in North Carolina with the provision that wireless carriers and their customers may retain their assigned ten-digit numbers. AT&T stated that this is the traditional relief method, is the most competitively neutral, preserves unique geographic identity of NPAs, and retains the convenience of seven-digit dialing for local calls. It further permits wireless carriers and their customers to retain their existing ten-digit numbers in the "old" NPA, avoiding the significant expense, inconvenience, and burden of service visits to reprogram thousands of cellular phones and other devices. AT&T requested that if the Commission considers the use of an overlay, several prerequisites must be met in order not to disadvantage North Carolina consumers and competing local providers (CLPs). These conditions include the following: the overlay must be applied to all telecommunications carriers and services; mandatory ten-digit dialing for all calls within all of the affected NPAs must be implemented once the permissive period has concluded; all unused numbers held by the incumbent LEC in the existing NPA must be made available on a non-discriminatory basis to all CLPs; and a true solution for permanent local number portability must be in place.

BANM pointed out that the geographic split option creates boundary inequities which would be avoided entirely with the overlay option. With the overlay, no existing customers are forced to change their phone numbers. In addition, there is no need to reprogram cellular phones with an overlay. BANM further stated that the overlay is competitively neutral and that AT&T's assertion that new entrants would be disadvantaged by an overlay because they would be restricted to offering only the new area code to their customers is wrong, as it ignores the pro-competitive impact of number portability. Permanent number portability will be available in North Carolina well before the

existing area codes exhaust. With number portability, customers of incumbent carriers will be able to keep their full telephone numbers (including area codes) when they switch to take phone service with competitive local exchange carriers (CLECs).

LEXCOM stated that Randolph Telephone Company, and its parent Randolph Telephone Membership Corporation, have now joined LEXCOM and the other commenters in supporting the adoption of an overlay plan. LEXCOM stated that it believes the area code overlay approach is the best, most farsighted and fairest solution to the NPA relief problem in North Carolina. The overwhelming preference of the public witnesses testifying on May 19 was to retain their current area code assignment. The only option which allows the Commission to accommodate that preference is the area code overlay approach. The "quick fix" offered by the geographic split solution should be rejected for the better long-term solution offered by an overlay plan.

The **Public Staff** stated it continues to support the geographic split proposal in the Joint Petition for the reasons stated in its April 21, 1997 agenda presentation. It believes the geographic configurations of the NPAs will be improved by the modifications proposed by the Joint Petitioners and recommended in these comments. The Public Staff stated it recognized, however, that considerable public opposition has been expressed to the number changes necessitated by geographic splits and the introduction of new area codes now and in the future. The overlay option would avoid these changes and would be an acceptable alternative to geographic splits.

North State submitted that strong justification exists for allowing the Piedmont Triad region of the present 910 NPA to retain the 910 area code. North State recommended and requested that the Commission approve retention of the 910 area code for use in the Piedmont Triad region, and further that a new area code be assigned to the eastern section of the present 910 NPA, with such action deemed to be fair, reasonable, and in the best overall interests of the public.

360° COM believes that the Commission should reject the idea of applying a "quick fix" solution to this problem (which the "split" represents) and instead should resolve the problem, on a more permanent basis, by adopting the "overlay." Under the "overlay," no consumer will be required to give up his/her existing phone number and the benefits and burdens of resolving the number exhaust problem will fall equally on all North Carolinians.

360° COM stated that there will be substantial service interruptions and other quality of service problems if reprogramming of wireless phones are required with three new NPAs at once. Before the Commission imposes such burdens upon wireless carriers and wireless subscribers, due process requires that hearings be conducted at which representatives of the wireless industry and wireless subscribers can offer substantive evidence in support of the "overlay" and go "on record" with the reasons why they oppose the "split." Creation of a separate NPA for wireless subscribers has been expressly forbidden by the FCC.

360° COM does not believe that the use of six new NPAs, instead of the three proposed in the Joint Petition, represents an appropriate option for the Commission to consider. The more area codes that are added and then "split," the greater the likelihood that existing "community of interest" areas will be divided and that a significant amount of ten-digit dialing (which the "split" is supposed to avoid) will be required anyhow.

The **Joint Petitioners** recommended that the Commission approve the Modified Plan because it best meets the needs of the people in North Carolina by providing additional area codes to accommodate future growth, by postponing the date upon which the State will again confront this problem, by equitably distributing the economic costs and resulting customer burdens of implementing new area codes, and by maintaining existing communities of interest.

The Joint Petitioners described both the Plan originally filed with the Commission and the Modified Plan set forth in Comments and submitted further modifications to address existing communities of interest and anomalies engendered by the Modified Plan. The Joint Petitioners stated that since submitting Comments, they have concluded that the Kenly exchange should remain in the 919 area code with the remainder of Johnston County; the Town of Fremont should remain in the 919 area code along with the rest of Wayne County; and the exchanges of Shelby, Lawndale, and Lattimore should be assigned to the 704 area code in order for them to remain with the other Cleveland County exchanges. High Falls should be moved to the Fayetteville NPA, thus assigning all exchanges in Moore County to the Fayetteville NPA. The Joint Petitioners urged the Commission to refrain from making further modifications to the proposed Plan. The lives of each of the proposed NPAs varies significantly, as a result of making changes to the NPAs in order to move counties into the same area code and to preserve communities of interest. Some degree of divergence is acceptable if it means that the Plan gains further support from North Carolina's telephone customers. But if the lives of the NPAs become too severely out-of-balance, the entire numbering relief exercise will have to be repeated within a very short period, and the State runs the risk that the Plan will be rejected. The Joint Petitioners stated that the attachment to their reply comments shows that the lives of some NPAs will be dramatically shortened if changes being proposed by some parties, such as the Public Staff's code protection proposal and BANM's grandfathering proposal, are adopted by the Commission. The Joint Petitioners encouraged the Commission to reject these proposals and to embrace the Modified Plan as a practical solution to a complex and difficult dilemma.

The Joint Petitioners stated the Modified Plan represents the most equitable solution because:

1. It minimizes customer confusion by retaining seven-digit dialing for basic local calling and expanded local calling within the same NPA, whereas an overlay would require ten-digit dialing for all local calls through the State;

2. It does not favor a particular interest group. CLPs will be able to compete with incumbent LECs on a level playing field, because those CLPs will be able to provide their customers with the same telephone numbers as incumbent LECs will provide to their customers;

3. It balances the cost of implementation for all affected parties, including industry members;

4. It does not engender an increase in the number of "protected codes," which are central office codes restricted from assignment in a home NPA in order to retain local seven-digit dialing to exchanges in an adjacent NPA; and

5. It accounts for existing community of interest factors.

The Joint Petitioners further indicated that grandfathering wireless numbers would be confusing and inconvenient for cellular customers, may be discriminatory, appears to be at odds with the principles underlying the FCC's Second Report and Order, may result in delaying the resolution of North Carolina's numbering relief plan, and would result in unbalancing the amount of relief scheduled for the new 704, 910, and 919 NPA areas in the Joint Petitioners' Modified Plan.

Commissioner Hughes requested during the May 19, 1997 public hearing that the telephone companies with military bases in their serving area contact the telecommunications people at the bases and request them to respond to the Commission concerning the overlay option. The following communications were received.

On May 22, 1997, Telecommunications Specialist Clifton D. Foreman at Seymour Johnson Air Force Base informed the Commission that, if given the choice, they would advocate the split area code method rather than the overlay method. The overlay method was viewed as "confusing and creating long term disruptions to our mission" while the split area code method, while creating "some confusion," would have a "minimum impact to our mission with some short term disruptions."

On May 30, 1997, a faxed letter was received from Dwight W. Allen, Vice President, Regulatory Affairs and General Counsel, Sprint Mid-Atlantic Operations, attaching a memorandum from Major Kurt R. Fox to Sprint, outlining Pope Air Force Base's position on the proposed area code change. Major Fox stated in this memorandum that Pope AFB's current position and preference is to "keep the existing (910) area code for obvious reasons." Major Fox further stated that, "in the event we lost our area code, our preferred choice is a *new* area code versus the overlaying option." Major Fox again stated that "with the daily operations tempo at Pope AFB and our many worldwide commitments, changing our area code for the second time in four years would be a major inconvenience for Pope AFB personnel, as well as our long distance customers."

Mr. Allen further stated in his letter that Sprint had held further discussions with officials at Ft. Bragg and Camp Lejeune, but have been unable to obtain written confirmation of positions. However, they have been advised that both Ft. Bragg and Camp Lejeune believe that it is "critical" that the current area code be retained based on previous communications to the Commission. In the event that an area code change is mandated, they prefer the area code change to an overlay.

Responses of Area Code Administrator

1. Advantages and Disadvantages of Geographic Split Versus Overlay

In Ordering Paragraph No. 5 of its April 25, 1997 Order, the Commission requested the Area Code Administrator to "discuss the advantages and disadvantages of the split proposal and the overlay proposal." On May 27, 1997, the Area Code Administrator filed a response as follows concerning this question:

a. Overlay Advantages

1) Users retain current ten-digit telephone numbers.

2) Businesses do not need to change stationery, invoices, catalogs, business cards, TV/Radio ads, newspaper/magazine ads, office/truck signs, telephone directory advertising, Internet sites, promotional advertising, etc.

3) The permissive dialing period may be eliminated.

4) No new boundaries or cross-boundary situations are created.

5) Cellular providers do not have to modify their existing subscribers' portable telephones.

6) Ten-digit dialing for intraNPA local calls is the recommended long-term dialing pattern for the future (Uniform Dialing Plan, Inc., 97-0131-017, issued 1/31/97).

7) An overlay provides a relief method for future code exhausts, since subsequent area codes can be added with the same boundaries as their predecessors.

8) Counties, regions, and municipalities are not split by new area code boundaries.

9) There is no dispute among customers with respect to retention of the "old" NPA.

10) An overlay provides more efficient numbering relief because it requires no NXX code protection and there is no requirement to balance the relief between different geographic areas of the existing area code.

b. Overlay Disadvantages

1) Ten-digit dialing is required between and within each NPA in accordance with FCC Docket No. 96-98, paragraphs 286-288.

2) The unique association between a geography and an area code is eliminated.

3) As the existing NPA will be essentially exhausted, the majority of codes obtained by new providers will be predominantly from the new NPA. Consequently, new entrants see this as a competitive disadvantage.

4) The exhaust of the existing NPA may be accelerated, as FCC Docket No. 96-98 requires the "availability to every existing telecommunications carrier, including CMRS providers, authorized to provide telephone exchange service, exchange access, or paging service in the affected area code within 90 days before the introduction of a new overlay area code, of at least one NXX in the existing area code..."

5) There may be some customer confusion over multiple NPAs within the same geographic area.

6) Directories must list ten digits.

7) PBX users and others must reprogram their systems to dial ten digits for all local calls.

8) Little industry or user experience with this method.

9) Assignment of area codes to the same businesses or residences with multiple lines could create confusion.

c. Split Advantages

1) Seven-digit dialing is retained for most local calls.

2) Geographic definition for each NPA is maintained.

3) Implementation methods are well-established, including methods of customer education.

d. Split Disadvantages

1) A significant portion of the users in each existing area code would change the NPA portion of their telephone numbers.

2) The guidelines state that seven-digit dialing for interNPA local calls should be eliminated or reduced to an absolute minimum. This means that most interNPA local dialing should be ten digits. With the creation of an NPA boundary that is not coterminous with a LATA boundary, a significant amount of ten-digit interNPA local dialing will be created.

3) Since the geographic split creates new interNPA local calling routes, if seven-digit dialing for cross-NPA routes is retained, the quantity of codes that need to be "protected" will cause the new areas to exhaust more rapidly.

4) Service providers with the new area code will have disproportionate implementation costs.

5) Businesses with the new area code will have higher conversion costs.

2. Effect of Additional Area Codes

By letter dated May 20, 1997, the Chair requested information from the Area Code Administrator concerning the following questions:

1. Assuming that North Carolina could receive six new area codes instead of three, what would be the projected exhaust dates for the State's area codes?

2. What is the feasibility of this State receiving six new area codes instead of three? Can these new area codes be obtained on an expeditious basis? What is the procedure for obtaining such area codes?

Concerning the projected exhaust dates for additional area codes, the Area Code Administrator stated that future exhaust dates are a function of how many telephone numbers are in use at the creation of the NPA and the rate of consumption of new telephone numbers once the NPA is established. It is difficult to predict the latter factor accurately. While not projecting an exhaust date for more new area codes, the Area Code Administrator noted that, assuming nine NPAs instead of six, the State would have 2,376 more NXXs. This equals twice the number available under the Joint Petitioners' modified plan.

Regarding the feasibility, speed, and procedure for receiving new area codes, the Area Code Administrator stated that new area codes would be received if the Commission can order a relief plan found acceptable to the North American Numbering Plan Administrator (NANPA). The NANPA can officially assign the relieving codes within 30 days if the plan ordered by the Commission is acceptable and is not in conflict with the guidelines. The most important factor is that the new NPA areas must have a reasonable chance of lasting for roughly equal periods of time, meaning that from the start of the plan the existing telephone numbers and the growth potential for each NPA must be fairly equally balanced. The Area Code Administrator noted that recently the Florida Public Service Commission had sought new area codes but had been refused by NANPA because of this very factor and had been told to devise a new plan.

There are a number of negative implications to seeking additional area codes. The Joint Petitioners' proposed boundaries would have to be jettisoned, and boundaries would have to be redrawn, giving rise to border conflicts, including the splitting of counties. The number of businesses and individuals that would have to change their phone numbers would increase from one-half of all phone lines to two-thirds. Regions would have to be divided. The issues brought up in the May 19th public hearing would not be resolved but intensified. Additional public notice would need to be given and public hearings held. Since the NPAs would encompass smaller areas, there would be more basic calling routes, EAS routes and local calling routes traversing NPA lines. If, as the Area Code Administrator strongly suggests, these new cross-NPA routes are dialed on a ten-digit basis, the use of ten-digit dialing would be increased further.

Lastly, the resolution of these problems would require substantially more time, and time is of the essence. The Area Code Administrator therefore argued that seeking additional area codes at this time is not in the public interest.

3. Other Comments

The Area Code Administrator stated that the pace of area code utilization appears to be quickening, with actual demand running significantly ahead of forecast. This means that expeditious action by the Commission is necessary. The Area Code Administrator also urged the Commission to reject the extensive use of NXX code protection suggested by the Public Staff and mandate ten-

digit cross-NPA boundary dialing. This would be in accordance with current trends and keep North Carolina within the regulatory mainstream.

Data Request

On June 20, 1997, the Commission prepared an extensive series of questions to the Joint Petitioners and the Area Code Administrator. The Area Code Administrator responded to the data request on June 27, 1997.

The Joint Petitioners responded on July 11, 1997. BANM, LEXCOM, Randolph Telephone Company, Randolph TMC, and AT&T filed comments on these responses on July 17, 1997, or July 18, 1997. The State Information Processing Services (SIPS), a state agency within the North Carolina Department of Commerce, filed comments in this docket on July 28, 1997, in support of the Joint Petitioners' modified area code split option and in opposition to consideration of an overlay option.

Technical Conference

At the same time that the Commission prepared data requests, it scheduled a technical conference. The technical conference was held on July 28, 1997. Witnesses from the Joint Petitioners, the Area Code Administrator and numerous parties were present and responded to Commission questions and questions from the attorneys of parties.

Declaration of Extraordinary Jeopardy

On August 6, 1997, the Area Code Administrator filed a letter in this docket stating that demand for central office prefix (NXX) codes in North Carolina has increased significantly beyond the normal forecast and that, as a result, the 704, 910 and 919 codes are now in **jeopardy** of exhausting prior to the implementation of a relief plan. The Area Code Administrator further stated that he anticipated that requests for NXX codes will outstrip the limited and rapidly dwindling supply of available codes, which requires the immediate implementation of **extraordinary jeopardy** code conservation procedures. The Commission was also notified that the industry would meet on August 12, 1997, to develop extraordinary jeopardy NXX central office code assignment procedures and that, until relief can be provided, special conservation measures will be invoked and all code assignments in the 704 and 910 code areas will be suspended due to the severity of the situation for those areas.

Revised Projected Area Code Exhaust Dates

On August 7, 1997, the Joint Petitioners filed the following revised projected exhaust dates for the six area codes proposed under the Modified Split Plan:

910 Area Code	October 2003
Area Code "Beta"	May 2001
919 Area Code	June 2001
Area Code "Alpha"	June 2004
704 Area Code	February 2001
Area Code "Omega"	December 2004

WHEREUPON, the Commission reaches the following

CONCLUSIONS

1. **North Carolina is experiencing rapid acceleration of projected exhaust dates, and the NPA Code Administrator has implemented *extraordinary jeopardy* in North Carolina.**

During the July 28, 1997 technical conference, the Joint Petitioners and NPA Code Administrator represented that North Carolina has experienced tremendous economic growth and development in recent years. With that growth has come a considerable need for additional telephone numbers for such things as additional business and residential lines, wireless telephones, pagers, modem lines, and fax lines. As a direct result of the large demand for telephone numbers in the State due to this tremendous economic growth and development, North Carolina has found itself in the unique situation where it is projected that all three area codes in the State will exhaust at approximately the same time. All across the nation, states are facing area code exhaust situations; however, only Maryland and North Carolina have experienced projected simultaneous exhaustion of NPA codes.

Additionally, during the July 28, 1997 technical conference, the Joint Petitioners and NPA Code Administrator represented that currently the NPA codes are exhausting **even faster than anticipated** by the Joint Petitioners and NPA Code Administrator. By letter dated March 12, 1997, the NPA Code Administrator presented the following exhaust dates to the Commission:

NPA	Exhaust Date
910 NPA	January 1999
704 NPA	February 1999
919 NPA	November 1999

During the technical conference held July 28, 1997, a party representing the Joint Petitioners stated that they have seen an acceleration of the exhaust dates in all three of the existing NPA codes since the beginning of 1997; in most cases that acceleration has been at least six months (Tr. pages 17-18).

The projected exhaust dates under the Modified Geographic Split Plan have also been accelerating. Below is a chart representing the projected exhaust dates under the Modified Geographic Split Plan that have been submitted to the Commission:

Modified Plan	910	"Beta"	919	"Alpha"	704	"Omega"
Update of June 27, 1997	October 2005	January 2003	March 2003	April 2006	February 2002	January 2006
Update of August 7, 1997	October 2003	May 2001	June 2001	June 2004	February 2001	December 2004

The initial projected exhaust dates under the Modified Geographic Split Plan represented in the table shown above were filed on June 27, 1997 by the NPA Code Administrator in response to the Commission's June 20, 1997 Order requesting the Joint Petitioners and the NPA Code Administrator to respond to certain questions from the Commission. By letter filed August 7, 1997, in response to a request from the Commission, the NPA Code Administrator provided the revised projected exhaust dates for the existing three area codes and the three new area codes proposed under the Joint Petitioners' Modified Plan and represented in the table shown above. The projected exhaust dates under the Modified Geographic Split Plan have **also significantly accelerated,** in most cases, by at least two years from the initial projected exhaust dates provided to the Commission a mere six weeks prior.

On August 6, 1997, the BellSouth NPA Code Administrator filed a letter with the North Carolina Utilities Commission to inform the Commission "that demand for central office prefix (NXX) codes in North Carolina has increased significantly beyond the normal forecast. As a result, the 704, 910, and 919 codes are in jeopardy of exhausting prior to the implementation of a relief plan." The Administrator explained that there currently are only 77 codes in the 910 area, 104 codes in the 704 area, and 151 codes in the 919 area available for assignment. According to the Administrator, this situation "necessitates the immediate implementation of **extraordinary jeopardy** code conservation procedures per" the *Central Office Code (NXX) Assignment Guidelines, INC 95-0407-008, revision 9/96.*

Due to the rapid acceleration of projected exhaust dates and the fact that the NPA Code Administrator has implemented **extraordinary jeopardy** in North Carolina, the Commission concludes that area codes in North Carolina are exhausting at a very rapid pace, and that time is of the essence for the Commission to adopt an area code relief plan which the Commission believes is in the best interest of North Carolina as a whole.

2. There are no ready solutions which will help the current exhaust situation in North Carolina, but there are some promising approaches which the industry should pursue. Conservation measures regarding NXX code assignments should begin immediately.

It would appear that, based on responses to Commission request by the Joint Petitioners and the NPA Code Administrator, even though possible solutions to conserve central office codes are being developed and reviewed by the industry, there are no "quick fixes" available in time to avoid the fast approaching exhaust dates for North Carolina's three area codes.

The evidence in this docket clearly demonstrates that relief for the three area codes in North Carolina is needed because of the exhaust of central office codes, or NXXs, and not because all of the nearly 23.7 million possible numbers in the 910, 919 and 704 area codes are in use. The exhaust of central office codes is exacerbated by the advent of competition in the local exchange market, and general growth in requests for additional lines for faxes, modems and second lines. While approximately 30% of the numbers associated with the NXXs are still available, there were only 332 NXX codes unassigned in the three area codes at the end of July 1997. To alleviate this problem, minimize customer disruption, and possibly delay the need for adding additional area codes in the near future, the Commission finds that immediate consideration and prompt implementation of NXX code conservation measures are required.

Participants appearing at the public hearings and those writing to the Commission expressed some preferences for either a split or overlay, but often claimed there should be a better answer. We agree, and will direct that the industry take steps to ensure a more efficient use of phone numbers, as discussed below.

One potential solution to exhaustion of NXX codes alters the method in which telephone numbers are assigned to companies serving new customers. Instead of incumbent local exchange carriers (ILECs) and competitive local exchange carriers (CLECs) retaining blocks of 10,000 numbers when there are few customers using numbers, telephone numbers could be assigned to carriers as needed. This method of redistributing numbers in an NXX to other carriers is called "pooling." When an ILEC or a CLEC needs a telephone number for a new customer, the carrier would draw a number from the pool of available numbers. Pooling would be a more efficient means of assigning telephone numbers and may avert or postpone the need for additional area code splits or overlays in the near future. Although some CLECs have already been assigned blocks of 10,000 numbers, any unused numbers could be returned to the NPA Code Administrator. Pooling could potentially eliminate the need for the Commission to adopt either a split or overlay in some cases. Pooling could work in different ways, both in relation to existing telecommunications services and in relation to programs that will be implemented in the near future, particularly local number portability (LNP). Any method of splitting or allocating numbers from one NXX among different carriers is referred to as "pooling."

According to the participants discussing the possible solutions, the modified AT&T plan (known as NXX-X/LRN), a new form of number pooling that utilizes long-term number portability, appeared to be the most promising. This proposal could have a positive impact on number exhaust in the future. Should number pooling prove successful, it will likely delay the date of the next exhaust and, in the case of a geographic split, extend seven-digit dialing throughout most of the local calling areas. This number pooling alternative should not require massive changes to either billing systems or to central office routing schemes. One of the regional Bell companies, Ameritech, has agreed to a trial using this method at the beginning of 1998. Under this plan, industry participants would likely be required to return unused numbers in blocks of 1000 to a pool. From this pool, numbers may be reassigned in 1000-number blocks to different service providers within the same rate center. These 1000-number blocks, assigned to different service providers, may reside within the same central office code. Long-term number portability via location routing number data base will be used to route calls to the correct service provider's switch in order to terminate calls to that service provider's customers, thus minimizing costly changes to either billing or switch routing schemes. However, it is impossible at this time to determine this solution's potential, since the current proposal only allows the pooling of numbers within each rate center boundary and will not include wireless carriers for some time. It appears, however, that a thorough evaluation of this proposal by the industry, and a determination of which, if any, modifications might be necessary will probably not be complete until at least mid- to late-1998.

The Commission concludes that an intense, ongoing investigation of conservation measures regarding NXX code assignments shall begin immediately. We further conclude that the Joint Petitioners and Area Code Administrator should take the lead in establishing an industry task force (Task Force) to provide solutions for a more efficient management of telephone numbers in North Carolina. This Task Force shall be given the objective of providing the Commission with: recommended solutions to the long-term efficient use of telephone numbers within the area codes in

North Carolina; an objective timeline for the implementation of this long-term solution; and recommendations for interim conservation measures consistent with the long-term solution. The members of this Task Force should not be limited to a specific number of industry representatives but should contain representatives from those in the industry interested in deciding the long-term solution to the efficient use of telephone numbers in an area code. The Commission expects that those parties who have participated in this docket will be afforded the opportunity to serve on the Task Force. The Task Force shall file an initial procedural report concerning how it is constituted and how it proposes to proceed for the Commission's review by no later than October 1, 1997. On an ongoing basis, the Task Force shall identify the various conservation measures, including the proposals set forth above, as well as any additional proposals to conserve NXX codes, in order of preference with specific estimated implementation dates and costs and shall file substantive reports with the Commission on a quarterly basis beginning with the quarter ending December 31, 1997. The reports shall identify any limiting legal, technological, or economic factors associated with each conservation measure. The reports shall be North Carolina specific, but may also include a discussion of the impacts of any national studies and timetables.

The reports are to include information including but not limited to:

a. Number pooling, including central office code sharing at the "thousands" digit level.

b. Recapturing of unused NXX codes that have already been assigned or codes used for special purposes such as testing.

c. Exhaust dates for all six area codes at the end of each quarter.

d. Number utilization information at the end of each quarter.

e. Targeted solutions for urban areas, including overlay.

f. Impact of permanent local number portability, when implemented, on number conservation.

3. **<u>It is in the public interest that the Modified Split Proposal of the Joint Petitioners be adopted</u>.**

After careful consideration, the Commission concludes that the Modified Split Proposal put forward by the Joint Petitioners should be adopted. The Commission hastens to add, however, that this is not because the Modified Split Proposal is perfect--far from it--but because this proposal is less imperfect than the other proposals and its advantages on balance outweigh its disadvantages.

The comments of the parties, the Area Code Administrator, and the public have exhaustively identified the respective merits and deficiencies of the proposals. Their most significant advantages and disadvantages have been set out above.

The Commission is, of course, highly aware of the controversy surrounding area code relief. As noted above, such controversy is hardly unique to this State. All over the country, state utilities commissions and phone customers have been swept into this maelstrom. Area code relief affects

customers at a very basic level. Individuals use the telephone every day and are used to dialing certain numbers in a certain way and to having other persons dial them in the same fashion. Anything that interferes with this will be experienced as disruptive and inconvenient. There are other considerations as well--considerations of expense. If a phone number is changed, the affected customer must let other people know of this change. Affected customers may also have to change stationery, reprogram PBXs, and perhaps even have cellular phones reprogrammed. For the persons affected, the cost as well as the inconvenience of a number change is not insignificant.

The Commission understands these concerns. It is therefore very important that any area code relief plan that the Commission adopts should cause the least amount of disruption and expense possible to the least number of people consistent with the law. The Commission believes that the Modified Split Proposal of the Joint Petitioners does this and should be adopted for the following reasons:

a. The Modified Split Proposal retains seven-digit calling. A distinct advantage of the Modified Split Proposal is that, unlike an overlay which would mandate ten-digit dialing for all calling statewide, the Modified Split Proposal retains seven-digit dialing for intraNPA local calling. People prefer seven-digit dialing, since the numbers are shorter, easier to remember, and quicker to dial. The Commission believes that it is important to respect this preference for as long as possible.

This is not to say that ten-digit dialing may not at some point become necessary or, for all practical purposes, inevitable, or that the creation of additional area codes does not necessarily cause an increase in interNPA ten-digit dialing. The Commission does wish to say that we have not yet reached the point where we must embrace intraNPA ten-digit dialing for the entire State. The Commission is unwilling to precipitately mandate statewide ten-digit dialing as long as seven-digit dialing can be effectively maintained.

b. The Modified Split Proposal affects fewer telephone customers overall. The best estimate of the percentage of persons that will have to change their phone numbers as a result of the Modified Split Proposal is approximately 45%. This is far below the 100% that will be affected if the overlay option is adopted. This is because under the overlay, all customers will have to remember to dial three extra digits when making any call, even one to their next-door neighbor.

As noted above, there are definitely costs associated with a split proposal. There are, for example, the costs of stationery, advertising materials, and the reprogramming of switches, PBXs and cellular phones for affected customers and companies. The overlay proposal, however, is not without costs either, although the incidence of those costs may be somewhat different. There would still be certain reprogramming costs, for example, and the subtler costs of learning a new system and dialing three extra digits for every single call.

The fact that the Modified Split Proposal affects fewer customers overall is, of course, cold comfort to those on whom the burden does fall, especially to those in the Triad area, who are undergoing a second change within a relatively short period of time. Nothing the Commission can say is likely to assuage their frustration. However, the Commission is determined that measures should be taken to extend the life of the present plan and to find innovative ways to deal with area code relief in the future.

c. The Modified Split Proposal enjoys broad-based support. An important consideration in whether to adopt an area code relief plan is whether the plan enjoys widespread support. The Commission believes that the Modified Split Proposal enjoys this support. The Joint Petitioners formulated and endorsed this plan which accommodated many of the concerns expressed by those at the public hearing. Their membership consists of almost all the local exchange companies and telephone membership corporations in the State, representing approximately 95% of the nearly 4.2 million North Carolina access lines. In addition, MCI, Sprint, CTC Long Distance Service, Intermedia Communications, and BellSouth Mobility DCS joined in the joint petition and, while not a signatory, AT&T supported the geographic split as well. Perhaps most importantly, the Public Staff, which is statutorily charged with representing the interests of the using and consuming public, endorsed the Modified Split Proposal as well.

There were parties who opposed the geographic split, notably the cellular companies and LEXCOM, a local exchange company near the Triad region. Among the parties, however, their position was a minority view.

The Commission also received hundreds of letters from concerned citizens, mostly from parts of the State that were affected by the original or modified proposals. Very few of these letters argued against the principle of the geographic split or explicitly endorsed the overlay. For the most part, the writers were concerned--quite legitimately--about the impact of the area code relief plan upon their particular circumstances. Some, such as the military and State Telecommunications Services, argued explicitly against the overlay and in favor a geographic split.

d. The Modified Split Plan retains geographic identity. An important aspect of a geographic split, such as the Modified Split Plan, is that it retains the geographic associations that people have between where they live and their area codes. In the overlay, by contrast, this association is destroyed. One's next door neighbor may have a different area code if he is a new customer. This geographic association may also be important to a caller from another state. If he knows generally where the called party lives, he can look up the area code on a map and be assured that is the appropriate area code. All this is more convenient and saves time and trouble.

Along with the geographical association of the split, there is an additional consideration regarding the modified split, which is that geographic splits are a familiar process to both customers and telecommunications providers. Implementation methods are well-established, including the methods for customer education. This will make the transition smoother than if an entirely new method, such as the overlay, were imposed.

e. The Modified Split Plan is competitively neutral. While both geographic split and overlay proposals have been approved by the FCC, the Commission believes that a geographic split is likely to be on balance the more competitively neutral option. The reason for this is that, under an overlay proposal, the new entrants are, other things being equal, more likely to receive the new, rather than the old, NPAs. There is an understandable, if not totally rational, tendency to view the new NPAs as relatively less desirable than the old ones, with which people are more familiar. While this may not rise to the level of unreasonable discrimination and can in some measure be ameliorated by requiring that the old NPAs be assigned in a nondiscriminatory manner as long as they last, this bias of the new NPAs to the newer entrants appears to be an inherent feature of the overlay.

f. The Modified Split Plan keeps our options for the future open. A distinct disadvantage to the overlay proposal is that it "locks in" ten-digit dialing. Once ten-digit dialing is adopted, there is no going back. By contrast, the Modified Split Plan retains the seven-digit dialing for the time being. As noted elsewhere, the Commission is directing the industry to explore options that will extend the life of area codes. Perhaps there will be technological advances that will mitigate or eliminate these problems. For all these reasons, the Commission believes that we should keep our options for the future open and not foreclose them by immediately going to universal ten-digit dialing.

g. The Modified Split Proposal meets the requirements set forth by the FCC. The FCC in its Second Report and Order in Docket 96-333, released August 8, 1996, set forth general requirements for the evaluation of area code relief plans. The FCC stated that an area code relief plan must:

1. Facilitate entry into the telecommunications marketplace by making telecommunications numbering resources available on an efficient, timely basis to telecommunications carriers;

2. Not unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers; and

3. Not unduly favor one telecommunications technology over another.

The Commission finds that the Modified Split Proposal meets these criteria. As noted above, the Modified Split Plan is competitively neutral with respect to the various carriers and technologies. To the extent there are burdens, these burdens fall, to one degree or another and depending on the technology involved, upon all affected companies and customers. Thus, for example, while cellular customers and companies need to reprogram cellular phones, landmine customers and companies must reprogram switches and PBXs. No group of consumers or carriers is unduly favored or disfavored, nor is one technology unduly favored or disfavored.

4. **Protection proposals, including protecting central office codes to allow seven-digit dialing for interNPA EAS and extended local calling routes and grandfathering cellular users' current numbers, are not in the public interest and should not be adopted.**

The Joint Petitioners take the position that the lives of some NPAs will be dramatically shortened if the Public Staff's code protection proposal and BANM's grandfathering proposal are adopted by the Commission. To that end, the Joint Petitioners encourage the Commission to reject these protection proposals and to approve the Modified Split Plan as the most practical solution to a complex and difficult dilemma.

The Commission concludes that the protection proposals advocated by the Public Staff and BANM must be rejected for the reasons offered by the Joint Petitioners in order to maximize and extend the life of the area code relief provided by the Modified Geographic Split Plan. The protection proposals in question, although having some appeal, would only exacerbate the current number code shortage and reduce the life span of the Joint Petitioners' Modified Plan.

IT IS, THEREFORE, ORDERED as follows:

1. That the Modified NPA Relief Plan filed by the Joint Petitioners be, and the same is hereby, approved for implementation in North Carolina. The Joint Petitioners shall file an implementation schedule regarding the Modified Plan not later than Monday, September 15, 1997.

2. That an Industry Task Force shall be formed and shall file reports with the Commission as required in Conclusion No. 2 above.

ISSUED BY ORDER OF THE COMMISSION.
This the _20th_ day of August, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner William R. Pittman concurs.
Commissioner Charles H. Hughes dissents.

COMMISSIONER WILLIAM R. PITTMAN, CONCURRING. I reluctantly concur with the majority, but wish to note several areas of concern. The largest and most troubling flaw in the modified proposal which we today adopt is the length of time it will be effective in resolving the problem of number exhaust. The projections of the industry have proven to be inherently and grossly inadequate in predicting the dates at which the number supply will run out. Indeed, each new monthly usage report moves those dates closer and closer. This kind of imprecision in economic or market forecasting would bankrupt the industry. No evidence has been presented that the projections for the plan we adopt today will be any more reliable. Consequently, we are left with a plan which necessarily causes significant cost and inconvenience but which at best will solve the problem for two years. The original plan of the Joint Petitioners would have done a better job of extending exhaust dates further into the future.

Moreover, I would have preferred a plan which more compactly assigns codes to the three largest metropolitan areas: Charlotte, the Triangle and the Triad. It is the growth in these three areas which more than any other single factor drives this problem. The modified plan which we today adopt bows to political pressure in broadening these areas to include more outlying communities who want to be identified with the metropolitan area. This broadening, in my judgment, is neither responsible nor in the long-term public interest.

It is similarly difficult for me to justify the modified plan's inequality in forcing the Triad to change its area code so soon after having forced it to change to 910 in 1994. Although the plan notes that it requires fewer customers statewide to make this change, it is clear that more business customers in the industrial heart of our state will be affected than in other regions. This result is unfair, in my judgment. The argument that the effect upon our valuable military resources requires such a result does not hold water. The military, for whom such a change would be a drop in its budgetary bucket, is far better equipped to deal with such a change than are several thousand small and medium-sized businesses, many of whom will be hurt domestically and internationally.

Finally, I applaud the part of the order which requires an intense, on-going effort to ensure that we prevent an emergency of this nature from occurring again. Being forced to make this decision with the kinds of far reaching and long lasting economic consequences it carries with only four

months to devise and consider options does not allow for the kind of careful deliberation and consideration for which this Commission is justly recognized, and which the public interest requires. Having to choose the least bad of several bad options is not to be preferred as a decision-making model.

\s\ William R. Pittman
Commissioner William R. Pittman

COMMISSIONER HUGHES DISSENTING: I respectfully dissent from the majority decision in the case. The facts so presented by the petitioners and the assumptions derived thereof cannot be relied upon because it is impossible to conduct a true quality quantitative analysis based upon them. For example, the petitioner in the last area code split assumed an area code life expectancy of 10 years. The true life term was four years. In March of this year, they assumed the life expectancy of adding three new area codes to be four to six years. This has in a mere four months changed to a two year depletion date for some areas. The real fact is that no one knows how long the new or existing area codes will last. What we do know is that the track record for such assumptions have been terribly wrong.

Further, the assumption that number portability will expand the life expectancy is also a mere guess (we think).

I cannot in good conscience, believing that this modified plan will at best last only two years and then the next choice is 12 area codes for North Carolina, place such a burden on the people of North Carolina. I fully realize that 10-digit dialing would also be a burden but it is a one time event. The cost is minimal. However, the modified plan adopted by the majority will impose millions of dollars of cost just to the wireless carriers for reprogramming.

I realize that many public witnesses requested a modified plan, but not the final submitted plan. Nevertheless, I firmly believe if the general public were totally educated about an overlay there would be overwhelming support therefor. With overlay everyone keeps their existing number. No one has to change area codes, neighborhoods and community of interest aren't split, and it creates less customer confusion over dialing patterns. The overlay can once and for all meet new growth demand. The overlay allows existing businesses to avoid the expense of changing advertising, business cards, and stationery not to mention the loss of business from old paper goods still in the market places, to include the overseas market. The modified plan establishes boundaries that divide towns and communities allowing some seven digit dialing and creating some 10-digit dialing. This really creates customer confusion. An overlay would require dialing three more digits than the modified plan, i.e., a total of 10 digits, but with touch tone dialing this is really not any more than a very minuscule, transitory inconvenience. In any event, 10-digit dialing will be a reality for everyone within a very few years. We also cannot forget that the driving forces creating rapid consumption of numbers - economic growth, advanced technology, computer literacy, advanced education, and telecommunication free market competition - are also the primary goals of North Carolina society today.

The reality of number consumption is real. All witnesses said "10-digit dialing or more is coming - they just cannot say when it will happen." An overlay is a forward looking solution. It

recognizes both existing and future customer needs. Based on all of the above, I disagree with the majority and would have moved North Carolina into the 21st century.

\s\ Charles H. Hughes
Commissioner Charles H. Hughes

DOCKET NO. P-100, SUB 137

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Area Code Relief for North Carolina's 704/910/919 Numbering Plan Areas) ORDER DENYING TRIAD MOTION FOR RECONSIDERATION

BY THE COMMISSION: On September 18, 1997, three telephone companies in the Triad region--Lexcom Telephone Company, North State Telephone Company, and Piedmont Telephone Membership Corporation (collectively, the Triad companies)--filed a Motion for Reconsideration of the Commission's August 20, 1997, Order in this docket. The thrust of the Triad companies' filing was that the Commission's decision will have a disproportionately adverse impact on the citizens and businesses of the Triad region. The Triad companies noted that the area code for the Greensboro LATA had been changed from 919 to 910 in November 1994, and, at that time, the exhaust date projections for 910 "went as far as 2010." Instead, Triad residents are now being faced with an area code change in only about three years, with prospects of further area code changes in the nearer, rather than the farther, future. Furthermore, the Triad companies maintained that fewer people overall would have to change their telephone numbers and lesser costs would have to be incurred if the eastern portion of the 910 area code had been required to change its area code rather than the Triad.

The Triad companies, however, did not argue that the geographic split should be redrawn. Instead, the Triad companies advocated the overlay as being the preferred method of area code relief since this method would ensure that all persons would retain their current telephone numbers. The Triad companies did not consider universal 10-digit dialing as being an argument against the overlay, since 10-digit dialing is being multiplied already as geographic splits increase. While the overlay is not without problems, the Triad companies viewed the overlay as "the inevitable solution to the area code exhaustion problem."

On October 3, 1997, the Joint Petitioners filed their Response to Motions to Reconsider. With respect to the motion of the Triad companies, the Joint Petitioners argued that the plan adopted by the Commission maintains communities of interest in a number of areas, such as Rowan, Iredell, Granville, Franklin, Moore, Montgomery, Wayne, Johnston, and Cleveland Counties; that the plan minimizes customer confusion by retaining seven-digit calling and maintaining geographic identity; and that the plan is broadly supported by the industry and balances the cost of implementation for all affected parties. Furthermore, the plan gives the industry time to solve the number crisis and is competitively neutral as required by the FCC.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

After careful consideration, the Commission concludes that the motion of the Triad companies should be denied for the reasons as generally set forth in the Commission's August 20, 1997, Order and the response of the Joint Petitioners.

The Commission notes that the Triad companies have recognized the impracticality at this late date of redrawing the area code relief plan to bring about the different geographic split but have instead advocated the adoption of an overlay approach for the whole state. Since plans are already well advanced for the implementation of the new area codes that the Commission has decided upon, it is ill-advised and impractical to go to a completely different approach.

The Commission has exhaustively analyzed the overlay approach as well as the geographic split. The Commission found that the overlay approach, though not without merit, was not yet ripe for implementation in this state. The Commission emphasized that it is adopting the modified split proposed by the Joint Petitioners not because it is perfect--far from it--but because it is less imperfect than others and, on balance, its advantages outweigh its disadvantages.

None of this, the Commission recognizes, is likely to assuage the Triad's frustration. The frustration is shared by customers across the country and is a result of the exponential increase in the use of telephone numbers. However, by ordering the formation of an industry task force, the Commission expects the industry to find innovative ways to conserve the number supply and to extend the exhaust dates of the new area codes. In its August 20, 1997, Order, the Commission concluded that an "intense ongoing investigation of conservation measures. . .shall begin immediately," gave the industry task force it marching orders regarding the content of its investigations, and required quarterly reports. The Commission is thus doing everything within its power to require the telecommunications industry to efficiently manage and conserve the number supply so as to maximize the life of all six of North Carolina's area codes.

IT IS, THEREFORE, ORDERED that the Triad companies' September 18, 1997, Motion for Reconsideration be denied.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of October, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 137

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Area Code Relief for North Carolina's) ORDER RULING ON MOTIONS
704/910/919 Numbering Plan Areas) FOR RECONSIDERATION

BY THE COMMISSION: On August 20, 1997, the Commission issued an Order Approving Modified Geographic Split Option to Provide Area Code Relief. Since that time, the Commission has received certain motions for reconsideration.

Randolph Telephone Membership Corporation Motion

On September 15, 1997, Randolph Telephone Membership Corporation (RTMC) filed a Motion for Reconsideration requesting that the Commission reconsider a portion of its August 20, 1997, Order, to provide for a continuation of seven-digit dialing under existing flat rate extended area service (EAS) arrangements among and between all RTMC exchanges. The portion RTMC referred to was Conclusion No. 4, where the Commission stated that "[p]rotection proposals, including protecting central office codes to allow seven digit dialing for interNPA EAS and extended calling routes...are not in the public interest and should not be adopted." The Commission stated that the protection proposals in question would tend to exacerbate the current number shortage and reduce the life span of the proposed area code relief plan.

RTMC maintained that the Order was unclear as to whether the prohibition extended to existing EAS routes, and argued that granting relief in these circumstances would have an insignificant effect on the relief plan as a whole. RTMC provides local exchange service in the High Falls, Coleridge, Bennett, Farmer, Pisgah, Badin Lake, and Jackson Creek exchanges. RTMC identified three specific routes that would be adversely affected by requiring ten-digit dialing.

On September 19, 1997, the Public Staff filed a Response to RTMC's Motion in which it urged the Commission to modify its Order to allow all existing seven-digit dialed EAS routes to retain seven-digit dialing until all local calling is ten digits. In support of its view, the Public Staff noted that the exhaust dates provided by the NPA Code Administrator and shown in the Order assume that existing interNPA EAS and Defined Radius/Defined Area routes will remain seven-digit. Second, the Public Staff pointed out that the existing interNPA seven-digit dialed EAS routes involve 135 NXX access codes. Only 108 additional NXX codes will be involved for the newly created interNPA EAS routes. Thus the total number of codes involved--243 statewide--is relatively small. Moreover, with proper administration, these codes need not be "protected" in the sense of being withheld from use. They only need to be used far enough away geographically to prevent potential code conflicts. The Public Staff characterized its position as a "dialing retention" policy rather than a "code protection" proposal.

On October 15, 1997, Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Carolina) filed a response to RTMC's motion. Carolina argued that on May 11, 1995, in Docket No. P-100, Sub 126, the Commission concluded that 10-digit dialing, rather

than seven-digit dialing, should apply to calling arrangements crossing area code boundaries. Carolina maintained that this principle should apply in this case.

On October 17, 1997, the Public Staff filed a reply to Carolina's response. The Public Staff took issue with the assertion that the Commission has determined in Docket No. P-100, Sub 126, that 10-digit dialing should apply to all calling arrangements across NPA boundaries. Rather, the Public Staff pointed out that the Commission concluded that 10-digit dialing should apply only to new interNPA DRP/DAPs and EAS.[1] In the instant case, the Public Staff's proposal involves only currently existing EAS, some of which was established decades ago. Thus, the Commission's May 11, 1995, decision in Docket No. P-100, Sub 126, should not weigh against the Public Staff's proposal here.

Cellular Movants' Motion for Reconsideration

On September 19, 1997, Bell Atlantic Mobile, 360 Communications, and GTE Mobilnet (cellular movants) filed a Motion for Reconsideration to allow current wireless customers to retain their existing area codes through "grandfathering." The cellular movants objected to the Commission's Conclusion No. 4, in which the Commission found that grandfathering current cellular users' current numbers would tend to reduce the life span of the area code relief proposal and exacerbate the number shortage. The cellular movants contended that there was no factual basis for this conclusion. Even if this were the case, the impact could be alleviated by limiting grandfathering to customers served by Type II interconnections and the grandfathering period could be limited, e.g., to three years. Such grandfathering has been allowed in other states.[2] The cellular movants also emphasized the burden and expense to cellular companies and their customers of having to change cellular numbers.

With respect to the motion of the cellular movants, the Joint Petitioners in their October 3, 1997, Response argued that the Commission's decision to deny protection proposals was not based solely on the impact of grandfathering wireless customers but rather on the impact of all protection proposals. Furthermore, if cellular numbers were grandfathered for three years as requested by the cellular movants--a period essentially equivalent to the projected life of the 704, 336, and 919 area codes--such grandfathering could be interpreted as unduly favoring wireless over landline providers under the principles that the FCC set out in Docket 96-333.

Nevertheless, the Joint Petitioners stated that they were not opposed to the Commission's issuing an Order to temporarily grandfather Type II cellular telephone numbers for approximately

---

[1]Within that context, "new" referred to post-April 18, 1995, interNPA arrangements.

[2]Type II interconnection is available through a local exchange carrier tandem switch and provides a full NXX to wireless carriers, while Type I interconnection is served out of a local exchange carrier central office and is available in partial NXX blocks. Type I interconnections are usually shared between wireless and wireline customers, and it is thus technically difficult to grandfather shared Type I wireless customers.

eighteen months.[1] This would allow a reasonable amount of time for customers to have their sets reprogrammed. The Joint Petitioners emphasized that they did not recommend grandfathering Type II cellular numbers for the life of each NPA. However, they provided the following impact analysis to provide the Commission with "factual support" to evaluate the motion filed by the cellular movants, on the assumption of Type II grandfathering for three years (as opposed to 18 months) :

NPA	Current Exhaust	With Type II Grandfathering
704	02/2001	12/2000
828	12/2004	02/2005
336	05/2001	12/2001
910	10/2003	02/2003
919	06/2001	05/2001
252	06/2004	08/2004

On October 15, 1997, the Joint Petitioners filed a Clarification of Response to Motions to Reconsider. The Joint Petitioners made two main points in clarification:

1. Grandfathering of Type II cellular for a period less than the life of each NPA--for example, 18 months--will have no impact on currently projected exhaust dates because the central office codes associated with the grandfathered numbers can be reassigned once the grandfathering period ends.

2. The shortened lives of the existing area codes of 704, 910, 919 projected on the chart of Type II grandfathering for three years reflect the unavailability of the central office codes for reassignment in those codes. The projected extended lives for the new 828, 336, and 252 area codes reflect the fact that central office codes originally set aside for Type II cellular customers in those codes would be freed up by grandfathering and would thus be available for assignment to other customers.

On October 23, 1997, the Cellular Movants filed a letter indicating that they and the Joint Petitioners have held further discussions and have agreed that the grandfathering of Type II wireless customers for a period of two years would have no negative effects. The Cellular Movants represented that such an extension would not affect the exhaust dates. However, should demand exceed the current forecasts and the duration of one or more of the NPAs be less than two years, the Cellular Movants and Joint Petitioners suggested that it should be made clear that the number administrator may, with appropriate notice, reclaim some or all of the grandfathered NXXs, if an NPA is unexpectedly nearing exhaust and the NXXs are necessary to extend the life of the NPA.

WHEREUPON, the Commission reaches the following

[1] Carolina Telephone and Telegraph Company and Central Telephone Company did not join with the other Joint Petitioners in this filing.

CONCLUSIONS

1. RTMC Motion. The original RTMC motion addressed only certain exchanges in the RTMC service area. The Public Staff's response in effect broadened the inquiry into a generic one-- i.e., whether all existing EAS interNPA routes should be allowed to retain seven-digit dialing until such time as all local calling is 10-digit. Carolina resisted this proposal citing a Commission decision in Docket No. P-100, Sub 126, said to favor 10-digit dialing across NPA boundaries.

After careful consideration, the Commission is convinced that the Public Staff's proposal to generically allow currently existing seven-digit interNPA EAS routes to remain seven-digit should be adopted. The Commission is persuaded that, due to the small number of NXX codes involved, any adverse effect on the exhaust dates for area codes would either be minimal or, with proper administration, practically nonexistent.

Second, the Commission does not view Carolina's citation to our May 11, 1995, decision in Docket No. P-100, Sub 126, to be controlling in this docket. First, that decision spoke to both DRP/DAP and EAS interNPA calling, whereas the instant case involves only EAS interNPA calling. Second, as the Public Staff points out, the May 11, 1995, Order was less broad than Carolina asserts. The May 11, 1995, Order applied 10-digit dialing only to new (i.e., post-April 18, 1995) interNPA DRP/DAP and EAS arrangements, not to all calling arrangements across NPA boundaries. The Public Staff proposal in the instant docket, by contrast, refers only to preserving currently existing seven-digit EAS dialing across interNPA EAS routes. In this context, "currently existing" refers to applicable EAS routes existing as of the date of this Order.

2. Cellular Movants. The Cellular Movants asked that their existing customers be permanently grandfathered or, in the alternative, that those customers with Type II interconnection be grandfathered for three years. The Joint Petitioners responded by opposing the three-year grandfathering but did not oppose Type II grandfathering for 18 months. Type II grandfathering for 18 months, or for a period less than the life of an NPA, would not affect the exhaust dates.

On October 23, 1997, the Cellular Movants made a filing indicating agreement with the Joint Petitioners on a 24-month grandfathering which should not affect the exhaust dates and would be subject to a "safety valve" whereby the number administrator could reclaim some or all of the numbers should the life of an NPA be unexpectedly shortened.

The Commission notes at the outset that an 18- or 24-month "grandfathering" is actually more in the nature of an extension of time to enable cellular customers to reprogram their instruments than it is a true grandfathering, which implies permanence. While the Commission further notes that the Joint Petitioners and Cellular Movants have agreed on a 24-month extension period, the Commission nevertheless is persuaded that an 18-month extension period is preferable subject to a further six-month extension if conditions warrant. Although the Commission has been assured that the 24-month extension would have no effect on exhaust dates, the Joint Petitioners and Cellular Movants have suggested that the number administrator can be called upon to take back numbers should it be necessary. The Commission simply believes it would be more prudent to allow an 18-month extension now, subject to a further six-month extension upon motion of the Cellular Movants for good cause shown.

IT IS, THEREFORE, ORDERED as follows:

1. That all currently existing interNPA seven-digit dialed EAS routes be permitted to retain seven-digit dialing and that the affected NXX access codes be administered in such a way as to avoid potential code conflicts.

2. That affected customers with Type II cellular interconnection be granted an extension of time of 18 months in which to reprogram their instruments and equipment..

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of October, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-100, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
G.S. 62-110.3 - Bond Required for Water and Sewer Companies	))))	ORDER AMENDING RULES R7-37 AND R10-24 AND ASSOCIATED SAMPLE BOND FORMS

BY THE CHAIR: Due to the fact that United Carolina Bank (now Branch Banking & Trust Company) no longer serves as custodian for commercial surety bonds or irrevocable letters of credit furnished to the Commission by water and sewer public utilities, the Chair concludes that Commission Rules R7-37(d), R7-37(e)(4), R10-24(d), and R10-24(e)(4) and associated sample bond forms should be amended by deleting the reference to United Carolina Bank and its address in those places where the rules and sample bond forms now refer to United Carolina Bank. Accordingly, the rules and associated sample bond forms in question shall be amended to delete the phrase "and United Carolina Bank, Trust Group, 3605 Glenwood Avenue, Raleigh, North Carolina 27612-4936," so that the written notification required by those rules and bonds will now only have to be given to the Chief Clerk of the Commission.

IT IS, THEREFORE, ORDERED that Commission Rules R7-37(d), R7-37(e)(4), R10-24(d), and R10-24(e)(4) and the associated sample bond forms for bonds secured by irrevocable letters of credit of nonperpetual duration and commercial surety bonds of nonperpetual duration issued by corporate sureties be, and the same are hereby, amended as set forth above.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of November, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-100, SUB 17

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Rulemaking Proceeding to Implement Rules Governing Applications and Procedures for Water and Sewer Certificates and Transfers and Extension into Contiguous	)))	ORDER REVISING APPLICATION FORMS AND RULE R1-5(G)

BY THE COMMISSION: On February 28, 1995, the Commission issued its Order Adopting Rules R7-38 and R10-25 and New and Revised Application Forms with respect to the above-captioned docket.

On May 20, 1996, the Public Staff stated in a memorandum to the Commission Staff that in order to review the financial fitness in its examination of contiguous extension notifications, certain additions and/or revisions need to be made to the *Notification Of Intention To Begin Operations In Area Contiguous To Present Service Area,* attached as Attachment A. These additions refer to a financial section which discusses the initial cost and improvements, an addendum showing the projected cash flow and income statement for the first five years, and a statement indicating that the utility may request a waiver of the first two revisions if the contiguous extension is for a nominal number of connections. The addendum is identical to the addendum previously approved by the Commission in its certificate and transfer forms.

Additional financial information and other changes requested above in the contiguous area form, with the exception of the addendum and the waiver statement, have also been reflected on both the *Application For Certificate Of Public Convenience & Necessity And For Approval Of Rates* and the *Application For Transfer Of Public Utility Franchise And For Approval Of Rates,* attached as Attachments B and C, respectively.

In response to Section 1613 of the Small Business Job Protection Act of 1996, concerning the tax treatment of contributions in aid of construction (CIAC), the section pertaining to information requested with respect to CIAC, has been deleted on all three forms.

Additionally, the Public Staff is requesting that the number of copies of such forms that are required to be filed be increased. Therefore, it is necessary to revise Rule R1-5(g) Exception 2, for copies required to be filed by water and sewer utilities. The rule now states that with the exception of rate increases and transfers, for all other filings by Class A and B water and sewer utilities, an original plus five (5) copies shall be provided to the Commission. For filings by Class C water and sewer utilities for rate increases or transfers, an original plus six (6) copies shall be filed, and an original plus five (5) copies for other filings. The rule shall be revised to state that with the exception of rate increases and transfers, for all other filings by Class A and B water and sewer utilities, an original plus seven (7) copies shall be provided to the Commission. For all filings by Class C water and sewer utilities, the rule shall be revised to state that an original plus seven (7) copies shall be provided to the Commission. The revised Rule R1-5(g), is shown as Attachment D.

IT IS, THEREFORE, ORDERED as follows:

1. That the revised application form for Notification of Intention To Begin Operations In Area Contiguous To Present Service Area, attached hereto as Attachment A, is hereby adopted by this Commission, effective with the date of this Order.

2. That the revised application form for Certificate Of Public Convenience & Necessity And For Approval Of Rates, attached hereto as Attachment B, is hereby adopted by this Commission, effective with the date of this Order.

3. That the revised application form for Application For Transfer Of Public Utility Franchise And For Approval Of Rates, attached hereto as Attachment C, is hereby adopted by this Commission, effective with the date of this Order.

4. That Rule R1-5(g), Exception 2, attached hereto as Attachment D, is hereby adopted by this Commission, effective with the date of this Order.

5. That all parties to this proceeding shall receive a copy of the Order and all accompanying attachments. Utilities who are not a party to this proceeding shall be mailed a copy of the Order. Attachments shall be mailed to interested parties upon request.

ISSUED BY THE ORDER OF THE COMMISSION.
This the 8th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

For Attachments A - C, see Official Copy in the Chief Clerk's Office.

ATTACHMENT D

Rule R1-5(g). Pleadings, generally.

Exception 2. For filings by Class A and B water and sewer utilities for rate increases or transfers, an original plus twenty four (24) copies shall be provided to the Commission. For all other filings by Class A and B water and sewer utilities, an original plus seven (7) copies shall be provided to the Commission.

For filings by Class C water and sewer utilities for rate increases or transfers, an original plus seven (7) shall be provided to the Commission. For all other filings by Class C water and sewer utilities, an original plus seven (7) copies shall be provided to the Commission.

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) FINAL 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 North Carolina Utilities Commission (NCUC or 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.

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 were to be filed not later than October 24, 1996. Other interested persons were allowed to petition to intervene at the time they filed comments. On October 10, 1996, an Order Adopting Interim Rules was issued by the Commission.

After careful review by the Commission of the comments, reply comments and Interim Rules, the Commission finds good cause to issue an order adopting **Final Rules**. The **Final Rules** as adopted by the Commission are attached and labeled as **Appendix A - Chapter 18. Resale of Water and Sewer Service.**

IT IS, THEREFORE, ORDERED as follows:

1. That the **Interim Rules** previously adopted by the Commission in this docket be, and the same are hereby, repealed.

2. That the attached **Final Rules** labeled as **Appendix A** and identified as - **Chapter 18. Resale of Water and Sewer Service** - be, and the same are hereby, adopted as **FINAL RULES** in this docket.

3. The **Final Rules** adopted in this docket shall become effective on or after the date of this order.

4. That all Application (Original Certificate, Rate Increase and Transfer) forms in reference to this docket are available upon request from the North Carolina Utilities Commission - Public Staff Water Division.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

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.* An apartment complex, comprising one or more buildings under common ownership or management, located on property 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.

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. No more than $2.00 may be added to the cost of purchased water and sewer service as an administrative fee to compensate the provider for meter reading, billing, and collection. All charges other than the administrative fee 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; meter reading.

(a) No customer deposit, charge for connection or disconnection, charge for late payment, or similar charge in addition to the rate specified in Rule R18-6 shall be allowed.

(b) Consistent with this Chapter, disconnection for non-payment, and billing procedure shall be governed by **Chapter 12, Rules R12-7 through R12-9, Chapter 7, Rules R7-20 and R7-24, and Chapter 10, Rules R10-15 and R10-16**, of the Rules and Regulations of the North Carolina Utilities Commission.

(c) Bills shall be rendered at least monthly.

(d) The date after which a bill is due, or the past due after date, shall be disclosed on the bill and shall not be less than twenty-five (25) days after the billing date.

(e) A provider shall not bill for or attempt to collect for excess usage resulting from a plumbing malfunction or other condition which is not known to the customer or which has been reported to the provider.

(f) Every provider shall provide to each customer and maintain in its business office, near the cashier's window, where it may be available to the public, the following:

(1) A copy of the rates, rules and regulations of the provider applicable to the territory served from that office.

(2) A copy of these rules and regulations.

(3) A statement advising the customer that he should first contact the provider office with any questions he may have regarding his bill or complaints about service, and that in cases of dispute, he may contact the Commission either by calling the Public Staff - North

Carolina Utilities Commission, Consumer Services Division at (919) 733-9277 or by appearing in person or writing the Public Staff - North Carolina Utilities Commission, Consumer Services Division, P.O. Box 29520, Raleigh, North Carolina 27626-0520.

(g) **All water shall be sold by metered measurements. All sewer service shall be measured based on the amount of water metered. Each provider shall adopt some means of informing its customers as to the method of reading meters. Information on bills shall be governed by Chapter 7, Rule 7-23 and Chapter 10, Rule 10-19. Adjustment of bills for meter error shall be governed by Chapter 7, Rule 7-25.** Testing of water meters shall be governed by Chapter 7, Rules R7-28 through R7-33.

DOCKET NO. E-2, SUB 700

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light Company for a Certificate of Public Convenience and Necessity to Construct Approximately 160 mW of Combustion Turbine Generating Capacity in Buncombe County	)	ORDER GRANTING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HEARD IN: Superior Courtroom, 5th Floor, Buncombe County Courthouse, Asheville, North Carolina, on Tuesday, April 22, 1997, at 7:00 p.m.

Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, June 10, 1997, at 9:30 a.m.

BEFORE: Commissioner William Pittman, Presiding; Chair Jo Anne Sanford and Commissioner Ralph Hunt

APPEARANCES:

For Carolina Industrial Group for Fair Utility Rates:

Ralph McDonald, Bailey & Dixon, L.L.P., Post Office Box 1351, 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 28680-1269

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

For Carolina Power & Light Company:

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

BY THE COMMISSION: On September 4, 1996, pursuant to Commission Rule R8-61, CP&L filed Preliminary Plans for a New Generation Facility which described CP&L's plans to construct 320 mW of combustion turbine generating capacity at a site adjacent to CP&L's Asheville Steam Electric Plant in Buncombe County, North Carolina with a planned in-service date of the summer of 1999.

In accordance with its Rule R8-61 filing, on January 31, 1997, CP&L filed an Application for a Certificate of Public Convenience and Necessity pursuant to N.C.G.S. 62-110.1 and the supporting testimony of Bobby L. Montague to construct 160 mW of combustion turbine generating capacity in Buncombe County, North Carolina at a site adjacent to CP&L's Asheville Steam Electric Plant in 1999.

By Order issued March 4, 1997, the Commission scheduled a public hearing on this matter for April 22, 1997, in Asheville, North Carolina and an evidentiary hearing for June 10, 1997, in Raleigh, North Carolina.

Petitions to Intervene were filed by Carolina Utility Customers Association, Inc. (CUCA), Carolina Industrial Group for Fair Utility Rates (CIGFUR II), and the Attorney General (AG). The Commission granted all of the Petitions to Intervene.

The public hearing in Asheville, North Carolina was held on April 22, 1997, as scheduled. No public witnesses testified.

On May 23, 1997, CIGFUR II filed a Motion for Extension of Time to File Testimony or Comments. On May 27, 1997, the Commission issued an Order Granting Extension of Time for Intervenors to Prefile Expert Testimony until June 2, 1997.

On May 23, 1997 CP&L filed the affidavit of Verne B. Ingersoll, II pursuant to N.C.G.S. 62-68. CP&L stated in its filing that: Bobby Montague had retired from CP&L on May 1, 1997 and that Mr. Ingersoll was adopting Mr. Montague's testimony and exhibits; CP&L intended to submit the affidavit of Mr. Ingersoll as evidence in this proceeding; and Mr. Ingersoll would not be called to testify orally and would not be subject to cross-examination unless a party of the Commission demanded the right to cross-examine Mr. Ingersoll.

On June 3, 1997 CUCA notified the Commission, the parties and CP&L that it requested the right to cross-examine CP&L witness Ingersoll at the June 10, 1997 evidentiary hearing.

On June 10, 1997, at the scheduled hearing, CP&L presented the testimony of Verne B. Ingersoll, II. The Public Staff presented the testimony of: Thomas S. Lam; Darlene P. Peedin; and John R. Hinton. No other witnesses were presented.

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 a need to add 160 mW of peaking capacity by the summer of 1999 to prevent its capacity margin from falling to an unacceptable level.

4. Transmission constraints require CP&L to obtain new generation from within its Western Area.

5. 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.

6. CP&L adequately evaluated all alternative resources and complied with its stipulation with the Public Staff in Docket No. E-2, Sub 669, in determining that the most appropriate type of resource to add to its Western Area to meet its projected need for peaking capacity was 160 mW of combustion turbine generating capacity in Buncombe County.

7. The competitive bidding process CP&L utilized to evaluate competing supply resources and other available purchased power options against its self-build alternative in Buncombe County was reasonable.

8. The combustion turbine proposed by CP&L in Buncombe County is necessary because CP&L needs 160 mW of peaking capacity in its Western Area by the summer of 1999.

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.G.S. 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 FINDINGS OF FACT NOS. 3 AND 4

These findings are 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 January 31, 1997, the testimony of CP&L witness Verne B. Ingersoll, II and the testimony of Public Staff witness Tom Lam.

CP&L's Application and testimony explained that CP&L's system consists of two separate geographic areas that are not connected by CP&L facilities. The Eastern Area, which is the largest, includes most of the North Carolina coastal plain and the northeastern portion of South Carolina.

The Western Area is located in and around Asheville, North Carolina. The Western Area is something of an "island" and, unlike the Eastern Area, generally experiences the highest demand for electricity during the winter. The Western Area's separation from the bulk of CP&L's system means that CP&L must either possess sufficient generation resources to serve the customers located there or import electricity via other utilities' transmission lines.

CP&L's demand forecasts and testimony indicate that: CP&L currently has a total generation capacity of 11,220 mW; a CP&L record peak demand of 10,386 mW was set in August of 1995; and CP&L's forecasts based on normal weather project a summer peak demand in 1999 of 10,652 mW.

The 1996/1997 winter peak for the Western Area was 780 mW. Load growth in this area has averaged 16 mW a year since 1985 and the projected peak for the 1999/2000 winter is 833 mW[1]. In the absence of any new resource additions by the winter of 1999/2000, only 767 mW of generating capacity will be available to meet this demand.

As explained by witness Ingersoll, 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. To provide such an adequate margin of generating capacity, CP&L has recently completed studies that demonstrate that it should use a target capacity margin[2] of 13% to schedule resource additions.

CP&L's projections demonstrate that unless additional generating capacity is obtained by the winter of 1999/2000 to serve the Western Area, this area's capacity margin will be negative and CP&L's system capacity margin will fall to 8.2%, 5.7% and 2.9%, respectively for the summers of 1999, 2000 and 2001.

Mr. Ingersoll's testimony explained that the proposed 160 mW addition in CP&L's Western Area, in conjunction with the addition of the 522 mW of new combustion capacity in Wayne County, North Carolina which was approved by the Commission in Docket No. E-2, Sub 669, plus additional power purchases will provide a system capacity margin of 12% by the summer of 1999, and will provide generating resources sufficient to serve CP&L's Western Area. In addition, Public Staff witness Lam testified that by locating the new capacity inside the Western Area as proposed by CP&L, this will increase the amount of transmission capacity available to import electricity into this area, thus further improving the Western Area's reliability.

---

[1]The projected demand of 833 mW reflects reductions due to all cost-effective demand-side management programs.

[2]Capacity margin is defined as the ratio of the difference between generating capacity and peak load divided by the generating capacity.

The Commission finds CP&L's Application and Mr. Ingersoll's and Mr. Lam's testimony persuasive on these issues and observes that CP&L's evidence on this issue was unchallenged. Thus, the Commission concludes that unless CP&L adds a 160 mW peaking resource to serve its Western Area by the summer of 1999, 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. 5

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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 6 AND 7

These findings are based on the testimony of CP&L witness Ingersoll and Public Staff witnesses Lam, Peedin, and Hinton, and CP&L's 1995 IRP.

Witness Ingersoll 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 asserts that given CP&L's low system marginal capacity and energy costs, additional cost-effective DSM to meet its capacity need is unlikely to be available. CP&L's 1995 IRP supports Ingersoll's testimony as it indicates additional cost-effective DSM potential is insufficient to meet CP&L's projected peaking capacity needs in 1999. None of the parties to this proceeding challenged CP&L on this issue.

Regarding CP&L's evaluation of purchased power options, Mr. Ingersoll testified that in Docket No. E-2, Sub 669, CP&L agreed to pursue the competitive acquisition of its 1999 and 2000 resource additions. On June 12, 1996, CP&L issued a "Request for Proposals (RFP) for Power Supply Resources" for 1999 in-service. The RFP was for both the Western and Eastern Areas. The capacity need in the Western Area was identified as up to 350 mW. On September 4, 1996, nine proposals were received from eight bidders. One proposal was designated as applicable to the Western Area. This was an independent power producer (IPP) proposal to build a combustion turbine facility on a site near an existing CP&L substation.

Mr. Ingersoll explained that after thorough economical and technical reviews, it was determined that the CP&L self-build alternative which is the subject of this proceeding, was more economical than the IPP proposal, as well as all of the RFP proposals, to provide the necessary generating capacity from outside the Western Area. In comparing the self-build option to the power purchase proposals from outside the Western Area, CP&L excluded the costs to expand the transmission system necessary to bring in this power.

CP&L's witness explained that its studies demonstrate that its existing transmission lines and interconnections will not be able to reliably bring in the necessary new capacity from outside the Western Area as early as 1999. These studies show that upgrading these transmission lines and interconnections to the level necessary would cost $62 to $168 million. Thus, this cost would have to be added to the cost of a new purchased power resource in comparing the CP&L self-build option

to such power purchases. Mr. Ingersoll testified that the total cost of the self-build option is less than $50 million. Given that the self-build option is less expensive than the cost of the necessary transmission upgrade alone, as well as any of the purchased power options alone, CP&L asserts that it is clear that its self-build proposal is the most cost-effective course of action.

The Public Staff witnesses testified that CP&L's RFP met the requirements of the stipulation they entered into with CP&L in Docket No. E-2, Sub 669. They also testified that while they had concerns regarding the discount rate assumptions used in cash flow and option analyses, the market price assumptions used in option analyses, and price volatility assumptions used in option analysis; the sensitivity analyses performed by CP&L and the Public Staff demonstrated that CP&L's proposed self-build option to construct 160 mW of combustion turbine capacity at the Asheville Steam Electric Plant still retained its advantage over competing alternatives when adjustments considered appropriate by the Public Staff were made.

Thus, the Commission finds that CP&L adequately considered purchased power options in determining that the proposed 160 mW combustion turbine addition in Buncombe County is the most cost-effective resource to meet CP&L's projected need for peaking capacity in 1999.

Regarding the reasonableness of CP&L's proposal to utilize a combustion turbine to meet its capacity need, CP&L's Application, 1992 and 1995 IRPs and Mr. Ingersoll's testimony explain that simple cycle combustion turbines are the most economical and reliable peaking resource available. Mr. Ingersoll 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 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.

Turning to the issue of siting the proposed facility, CP&L witness Ingersoll explained that CP&L formed a site selection team composed of representatives from appropriate departments and an outside land planning consultant, EDAW, Inc., of Atlanta, Georgia. The team developed an overall site selection process to be used to independently identify and evaluate potential sites for the new combustion turbines. The process consisted of establishing initial siting parameters followed by a three-phase analysis systematically leading to the determination of the best overall site.

The process began with the definition of the study area, or the area in which the turbine must be located. Within the study area, locations that could not accommodate such a facility, due to topographic, environmental, operational, and land-use constraints, were identified. The remaining suitable areas within the study area were then evaluated according to more stringent criteria in Phase 2.

The sites identified as most suitable in Phase 2 were subsequently subjected to an additional round of more detailed criteria under Phase 3-A. The five highest scoring sites from Phase 3-A were

then analyzed in Phase 3-B according to refined environmental, land-use, and operational characteristics. These sites were, in addition, evaluated based on construction, transmission, and land acquisition costs.

Results of the Phase 3-B evaluation identified the proposed site (designated Asheville East) as the preferred site. No fatal flaws were detected for any of the five sites considered in Phase 3-B. The three sites with the highest ratings were all located at the Asheville Steam Electric Plant. The Asheville East site was considered superior to both the Asheville South site, which is constrained by a difficult configuration, and the Asheville West site, which would require displacement of a recreation field and pine forest currently covering the site. Due to these considerations, as well as the lower cost of developing Asheville East, Asheville East was selected as the preferred site.

In light of the evidence described above and the fact that no intervenor challenged CP&L's selection of a combustion turbine as the most cost-effective method of meeting CP&L's peaking capacity needs or the proposed site for this new combustion turbine, the Commission finds that CP&L's proposed addition of 160 mW of combustion turbine capacity in Buncombe County at the Asheville Steam Electric Plant is reasonable and appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

This finding is based on the testimony of CP&L witness Ingersoll, CP&L's Application and the testimony of Public Staff witnesses Peedin, Lam and Hinton. CP&L witness Ingersoll 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 Buncombe County turbine is consistent with these filings. Mr. Ingersoll further explained that based on current projections, the Buncombe 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 Buncombe 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 Public Staff witnesses agreed that construction of the proposed Buncombe County turbine was a reasonable choice and recommended that the Commission grant CP&L a certificate of public convenience and necessity to do so.

The Commission concludes that based upon the facts and circumstances presented here, it approves CP&L's plans to install approximately 160 mW of combustion turbine capacity in Buncombe County, North Carolina at the Company's Asheville Steam Electric Plant.

IT IS, THEREFORE, ORDERED that CP&L's Application for a Certificate of Public Convenience and Necessity to construct approximately 160 mW of combustion turbine generating capacity in Buncombe County, North Carolina is granted.

ISSUED BY ORDER OF THE COMMISSION
This the 1st day of August, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 700

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 160 mW of combustion
turbine generating capacity
located
at Carolina Power & Light Company's Asheville Steam Electric Plant
in Buncombe County, North Carolina

ISSUED BY ORDER OF THE COMMISSION
This the 1st day of August, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-2, SUB 713

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Application of Carolina Power & Light Company for a Certificate of Environmental Compatibility and Public Convenience and Necessity Pursuant to G.S. 62-101 and G.S. 62-102 to Construct a 190-Foot 230 kV Transmission Tap Line in Person County	)	ORDER ISSUING CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY AND WAIVING PUBLIC NOTICE AND HEARING

BY THE COMMISSION: On July 28, 1997, Carolina Power & Light Company (CP&L) filed an application pursuant to G.S. 62-101 and 62-102 for a Certificate of Environmental Compatibility and Public Convenience and Necessity to construct a 190-foot 230 kV transmission tap line from the existing Henderson-Person 230 kV transmission line to a new substation located north of Roxboro on Bowmantown Road (NCSR 1512) approximately a quarter mile east of U.S. 501 in Person County, and a motion to waive the notice and hearing requirements of G.S. 62-102 and 62-104.

CP&L's application states that completion of the Roxboro-Bowmantown Road 230 kV Project will improve the electric quality and reduce line losses in the North Roxboro area which has experienced significant industrial growth. The project will also provide additional capacity for future load growth. CP&L estimates that the transmission tap line will cost approximately $170,619.

A detailed environmental report has been filed with the application. This report satisfies the requirements of G.S. 62-102 and Commission Rule R8-62.

Federal and state licenses, permits, and exemptions required for the construction and operation of the transmission line have been obtained.

N.C.G.S. 62-101(d)(1) authorizes the Commission to waive the notice and hearing requirements of G.S. 62-102 and 62-104 when the Commission finds that the owners of the land to be crossed by the proposed transmission line do not object to such waiver and either of the following conditions exists:

a. The transmission line is less than one mile long.

b. The transmission line is for the purpose of connecting an existing transmission line to a substation.

The proposed transmission line will be located entirely on land owned by CP&L, is less than one mile long, and is for the purpose of connecting an existing transmission line to a substation. Therefore, the requirements of G.S. 62-101(d)(1) have been met.

The Public Staff presented this matter at the Commission's Staff Conference on July 28, 1997.

Based on the foregoing, and the recommendations of the Public Staff, the Commission finds and concludes that the notice and hearing requirements of G.S. 62-102 and G.S. 62-104 should be waived as allowed by G.S. 62-101(d)(1) and a Certificate of Environmental Compatibility and Public Convenience and Necessity for the construction of the 230 kV transmission tap line from the existing Henderson-Person 230 kV transmission line to a new substation located north of Roxboro on Bowmantown Road (NCSR 1512) approximately a quarter of a mile east of U.S. 501 in Person County should be issued.

IT IS, THEREFORE, ORDERED as follows:

1. That pursuant to G.S. 62-101, the requirement for publication of notice and hearing is waived.

2. That pursuant to G.S. 62-102, a Certificate of Environmental Compatibility and Public Convenience and Necessity, which is attached, is issued.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of July 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 713

Known to All Men by These Presents, That

CAROLINA POWER & LIGHT COMPANY

is hereby issued this

CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY PURSUANT TO G.S. 62-102

to construct a 190-foot 230 kV transmission tap line from the existing Henderson-Person 230 kV transmission line to a new substation located north of Roxboro on Bowmantown Road (NCSR 1512) approximately a quarter of a mile east of U.S. 501

to be located in

Person County, North Carolina

subject to receipt of all federal and state permits as required by existing and future regulations prior to beginning construction subject to all orders, rules, regulations and conditions as are now or may hereafter be lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of July 1997.

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	)	
	)	FURTHER ORDER ON
v.	)	PETITION 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.

On December 27, 1996, the Commission issued its Order on Petition for Investigation and Complaint (the December 27 Order) by which the Commission concluded that CIGFUR's request for an investigation of CP&L's rates should be denied and, tentatively, that no reasonable ground exists to proceed with CIGFUR's alternative request for a complaint proceeding. However, as to this second decision, the Commission's Order allowed CIGFUR an opportunity to file comments pursuant to G.S. 62-73[1] and provided for reply comments from other parties.

On January 10, 1997, CIGFUR filed Comments, Motion for Reconsideration and for Extension of Time for Filing Notice of Appeal, and Objection to Procedure. CIGFUR urged the Commission to reconsider its decision with respect to an investigation of CP&L's rates and, alternatively, to proceed with the docket as a complaint case. CIGFUR objected to that portion of the December 27 Order allowing reply comments. CIGFUR also moved for an extension of time within which to appeal; that request has been allowed by separate order.

CP&L filed a Response on January 23, 1997, and the Carolina Utility Customers Association, Inc. (CUCA) filed comments on January 24, 1997. CP&L argued that the Commission had afforded CIGFUR all the rights and procedures provided by the complaint statute, but that it had not been required to do so since CIGFUR's petition cannot legally be treated as a complaint proceeding. CP&L defended its right to file reply comments. CUCA argued that the Commission's December 27, 1996 Order contained "faulty logic."

[1] G.S. 62-73 provides that the Commission shall hold a hearing on a complaint unless it finds "after notice to the complainant and opportunity to be heard" that no reasonable ground for an investigation exists.

First, the Commission finds good cause to deny CIGFUR's request that the Commission not consider reply comments. CIGFUR argues that the complaint statute allows it to be heard before its complaint is denied without a hearing, but that the statute does not allow others to file reply comments. It argues that it is entitled to the last word. While it is true that the complaint statute, G.S. 62-73, does not mention reply comments, CIGFUR's January 10 filing not only addressed its request for a complaint hearing, but also moved for reconsideration of other parts of the December 27 Order. Other parties were clearly entitled to be heard on the motion for reconsideration. Besides, the Supreme Court has repeatedly recognized that the Commission is afforded great liberality in its procedures. Strict rules of pleading do not apply. Thus, the Commission had discretion to allow for reply comments. Finally, CIGFUR was not prejudiced by the reply comments; in fact, the reply comments filed by CUCA support CIGFUR.

As to substance of the December 27 Order, the Commission finds good cause to deny reconsideration and to reaffirm the conclusion that no reasonable ground exists for a complaint hearing, all for the reasons stated in the December 27 Order. The Commission finds it appropriate to comment further on just one of the arguments presented by CIGFUR and CUCA. The Commission cited the following as one of the considerations leading to its December 27 Order: "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." Both CIGFUR and CUCA focus on this language and argue that the Commission should not deny an investigation just because it might lead to a realignment of rates. The Commission comments (1) that it simply cited this consideration as an indication of the moment of a general rate case investigation and, thus, the need to proceed cautiously in exercising the discretion granted by G.S. 62-130(d) and (2) that the Commission would not shirk if a rate realignment were justified though that is not the case made by CIGFUR's petition.

IT IS, THEREFORE, ORDERED as follows:

1. That CIGFUR's objection to the procedures in the December 27 Order is overruled;

2. That CIGFUR's motion for reconsideration is denied; and

3. That the Commission finds that no reasonable ground exists for an investigation of CIGFUR's complaint with respect to the level of CP&L's current rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of February 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Pittman did not participate.

DOCKET NO. E-2, SUB 712

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of Application by Carolina Power & Light Company for Authority to Adjust Its Electric Rates and Charges Pursuant to N.C. General Statute 62-133.2 and NCUC Rule 8-55	)))))	ORDER APPROVING NET FUEL CHARGE DECREASE

HEARD: Tuesday, August 5, 1997, at 10:00 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding; and Commissioners J. Richard Conder and Ralph A. Hunt

APPEARANCES:

For the Applicant:

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

For the Public Staff:

Amy Barnes Babb, 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 Industrial Group for Fair Utility Rates (CIGFUR II):

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

For the Carolina Utility Customers Association, Inc. (CUCA):

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

BY THE COMMISSION: Rule R8-55 of the North Carolina Utilities Commission's (the Commission) Rules of Practice and Procedure and N.C. General Statute 62-133.2 require the Commission to conduct annual public hearings in order to review changes in Carolina Power & Light Company's (CP&L or Company) cost of fuel and the fuel component of purchased power. Rule R8-55 requires CP&L to file a variety of information regarding its fuel cost and fuel component of purchased power in the form of testimony and exhibits at least sixty days prior to each such annual hearing.

On June 5, 1997, CP&L filed its application for a change in rates based solely on the cost of fuel in accordance with the provisions of N.C. General Statute 62-133.2 and Commission Rule R8-55 along with the testimony and exhibits of Company witness Ronald R. Penny. In its application, CP&L proposed a decrement of 0.126 ¢/kWh (0.130 ¢/kWh including gross receipts tax) to the base factor of 1.276 ¢/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537, or a recommended fuel factor of 1.150 ¢/kWh. In its application, the Company also requested a decrement of 0.047 ¢/kWh (0.049 ¢/kWh including gross receipts tax) for the Experience Modification Factor (EMF) to refund approximately $15.0 million of over-recovered fuel expense experienced during the period April 1, 1996 to March 31, 1997, plus interest. The Company proposed that the EMF rider be in effect for a fixed twelve month period. The net effect of the changes recommended by the Company in conjunction with the expiration of the EMF rider approved in the last fuel proceeding (Docket No. E-2, Sub 697) would result in a slight decrease in customers' bills.

On June 9, 1997, the Commission issued its Order Scheduling Hearing, Requiring Filing of Testimony and Requiring Public Notice. The hearing was scheduled for August 5, 1997.

On June 12, 1997, the Carolina Industrial Group for Fair Utility Rates (CIGFUR II) filed a petition to intervene. The petition was granted by the Commission on June 16, 1997. The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e).

On June 19, 1997, Carolina Utility Customers Association, Inc. (CUCA) filed a petition to intervene in the proceeding. The Commission granted CUCA's petition on June 24, 1997.

On July 16, 1997, the Public Staff filed Affidavits and Exhibits of Thomas S. Lam and Michael C. Maness. The filing was made in accordance with Commission Rule R8-55(h) which requires the filing of Public Staff and other intervenor testimony at least 15 days prior to the hearing date. No other parties filed testimony in this case.

On July 28, 1997, CUCA filed a Notice with the Commission requesting the right to cross-examine Public Staff witnesses Lam and Maness.

On July 30, 1997, the Company filed the affidavits of publication showing that public notice had been given as required by Rule R8-55(f) and the Commission's Order.

The docket came on for hearing as ordered on August 5, 1997. At the beginning of the hearing, CUCA advised the Commission that Public Staff witness Maness would not be in attendance and that all of the parties had agreed to the admission into evidence of a late-filed exhibit containing certain of the testimony given by witness Maness in the Duke Power Company fuel proceeding, Docket No. E-7, Sub 598. The Commission received into evidence CP&L's Application, the direct testimony and exhibits of CP&L witness Penny, the Affidavits and exhibits of Public Staff witnesses Lam and Maness and CUCA's late-filed exhibit and cross-examination exhibits. Witnesses Penny and Lam appeared and answered questions from the intervenors. The Commission asked that Proposed Orders be filed no later than August 29, 1997. The transcript was mailed on August 8, 1997 to all parties.

Based upon the Company's verified Application, the testimony and exhibits received into evidence at the hearing and the record as a whole, the Commission now makes the following

FINDINGS OF FACT

1. Carolina Power & Light Company is duly organized as a public utility company under the laws of the State of North Carolina and is subject to the jurisdiction of the North Carolina Utilities Commission. CP&L is engaged in the business of generating, transmitting, and selling electric power to the public in North Carolina. CP&L is lawfully before this Commission based upon its application filed pursuant to N.C. General Statute 62-133.2.

2. The test period for purposes of this proceeding is the twelve month period ended March 31, 1997.

3. CP&L's fuel procurement and power purchasing practices were reasonable and prudent during the test period.

4. The proper fuel factor for this proceeding is 1.150 ¢/kWh.

5. The Company's North Carolina test period jurisdictional fuel expense over-collection is $13,057,685 (excluding interest). Interest on this over-collection totals $1,906,421.

6. The Company's Experience Modification Factor (EMF) is a decrement of 0.047 ¢/kWh (including gross receipts tax the factor is 0.049 ¢/kWh).

7. The performance of CP&L's nuclear units during the test period was reasonable and prudent.

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

N.C. General Statute 62-133.2 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 a historical 12-month period. In Commission Rule R8-55(b), the Commission has prescribed the 12 months ending March 31 as the test period for CP&L. All prefiled exhibits and direct testimony submitted by the Company in support of its Application utilized the 12 months ended March 31, 1997, as the test year for purposes of this proceeding. The Company made the standard adjustments to the test period data to reflect normalizations for weather, customer growth, generation mix, SEPA and NCEMPA transactions.

The test period proposed by the Company was not challenged by any party and the Commission concludes that the test period appropriate for use in this proceeding is the 12 months ended March 31, 1997.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence for this finding can be found in the Company's Application and the monthly fuel reports on file with this Commission. Commission Rule R8-52(b) requires each utility to file a Fuel Procurement Practice Report at least once every 10 years, as well as each time the utility's fuel procurement practices change. In its application, the Company indicated that the procedures relevant to the Company's procurement of fossil and nuclear fuels were filed in the Fuel Procurement Practices Report which was updated in May 1994. In addition, the Company files monthly reports of its fuel costs pursuant to Rule R8-52(a). These reports were filed in Docket No. E-2, Sub 693 for calendar year 1996 and in Docket No. E-2, Sub 706 for calendar year 1997. No party offered any testimony contesting the Company's fuel procurement and power purchasing practices.

The Commission concludes that CP&L's fuel procurement and power purchasing practices and procedures were reasonable and prudent during the test period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting these findings can be found in the testimony and exhibits of Company witness Penny and the Affidavit of Public Staff witness Lam.

In Penny Exhibit No. 3, the Company calculated a fuel factor of 1.347 ¢/kWh based on normalized capacity factors for its nuclear units in accordance with Commission Rule R8-55(c)(1) by using the five-year North American Reliability Council (NERC) Equipment Availability Report 1991-1995 average for boiling water reactors (BWRs) and pressurized water reactors (PWRs). The workpapers included in Penny's exhibits show kWh normalization for customer growth and weather at both meter and generation levels and were done in the same manner as past cases. Normalization adjustments were also made for SEPA deliveries and hydro generation. The unit prices used for coal, nuclear, internal combustion turbines, purchases and sales were also calculated in a manner consistent with past cases. The NERC five-year capacity factors for Brunswick Unit Nos. 1 and 2, both BWRs, were normalized at 64.00% and the capacity factors of the Robinson and Harris Units, both PWRs, were normalized at 75.09%. The Company's NERC normalized calculations resulted in a system nuclear capacity factor of 69.58% using this data.

Witness Penny testified that he could not recommend the 1.347 ¢/kWh fuel factor based on the NERC average capacity factors because this factor would produce a substantial over-recovery at the end of the next test period. Witness Penny also testified that the Company's nuclear units are expected to significantly outperform the NERC average during the period rates are in effect in this case. Company witness Penny recommended adoption of a fuel factor of 1.150 ¢/kWh stating the Company's desire to minimize the EMF at the end of the next period. The 1.150 ¢/kWh factor proposed by the Company, when used in concert with the EMF decrement proposed by the Company of 0.047 ¢/kWh, would result in a slight reduction in customer rates.

Public Staff witness Lam recommended that the Commission approve CP&L's requested fuel factor of 1.150 ¢/kWh. Witness Lam stated on cross-examination that the Public Staff reviewed the Company's fuel factor calculation using NERC data and found that calculation to be correct. The Public Staff also reviewed the Company's requested factor for this case and recommended that it should be approved. No other party produced any evidence on this issue.

Based on the evidence of the record, the Commission finds and concludes that the proper fuel factor to adopt in this case is 1.150 ¢/kWh. This factor is a reduction of 0.126 ¢/kWh (0.130 ¢/kWh with gross receipts tax) from the base fuel factor of 1.276 ¢/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 AND 6

The evidence supporting this finding can be found in the testimony and exhibits of Company witness Penny and the Affidavits and Testimonies of Public Staff witnesses Lam and Maness.

N.C. General Statute 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.

In its application and testimony, the Company proposed an EMF decrement factor of 0.047 ¢/kWh (0.049 ¢/kWh with gross receipts tax) to refund $13,057,686 of over-recovered fuel cost plus $1,906,421 of interest. This factor was determined by dividing the over-recovered amount by N.C. retail adjusted kWhs of 31,587,646,716. CP&L asked that this factor remain in effect for a 12-month period.

Company witness Penny testified that the Company over-collected its fuel expense by almost $13.1 million during the test year from the fuel factors approved in the past two fuel cases, Docket Nos. E-2, Sub 680 and Sub 697. Witness Penny testified that the over-recovery had been adjusted by approximately $2.8 million to reflect the adjustment for Stone Container fuel costs and $0.3 million for marketer fuel cost. Public Staff witness Lam reviewed the Company's EMF and interest calculations and recommended approval of the Company's request.

The amount of fuel cost incurred by the utilities as a result of purchases from power marketers was an issue in each of the 1996 fuel charge adjustment proceedings. In CP&L's last fuel case, Docket E-2, Sub 697, CP&L and the Public Staff entered into a Joint Stipulation which settled many issues in that fuel case including the determination of the proper amount of marketer fuel cost to include in the EMF. CP&L and the Public Staff also agreed in that Joint Stipulation to meet with all interested parties and "attempt to reach agreement on the proper methodology to use to determine the fuel cost associated with power purchases by electric utilities from power marketers." The Commission, in approving the Joint Stipulation in that case, was encouraged that the parties were interested in reaching middle ground on this issue. Pursuant to the Joint Stipulation, CP&L, Duke Power, N.C. Power, the Public Staff and the Attorney General reached a Stipulation Regarding the Proper Methodology for Determining the Fuel Cost Associated with Power Purchases by Electric Utilities from Power Marketers and Certain Utilities (Marketer Stipulation). CUCA did not sign the Marketer Stipulation and objected to the use of the 75% fuel-to-energy cost ratio set forth in the Marketer Stipulation in this case and the most recent Duke Power fuel case.

The Parties filed the Marketer Stipulation with the Commission on March 14, 1997, in Docket No. E-2, Sub 697. The Marketer Stipulation classifies three categories of purchases made by utilities. One category is not subject to the 75% fuel ratio and includes purchases from NUGs/IPPs/QFs from whom the utility makes direct purchases; sellers from whom the utility makes unit purchases; and purchases from Duke, CP&L and NC Power. The second category includes purchases from power marketers, which are subject to the 75% ratio. The third category consists of purchases from all other sellers from whom it is assumed accurate fuel cost can be obtained or is available. . The Marketer Stipulation has a provision for sellers listed in category three to be subject to a ratio if it is determined that the seller refuses to provide the utility with accurate and reliable fuel cost. In general, the 75% ratio is subject to adjustment if total fuel cost to energy cost falls outside the range of 67.5% and 82.5%. The Parties agreed that the Marketer Stipulation would be in effect for fuel cases filed during 1997 and 1998.

Public Staff witness Maness asked the Commission to adopt the Marketer Stipulation in this proceeding and sponsored it as an exhibit to his Affidavit. As indicated by the Marketer Stipulation, the 75% factor was chosen because it was representative of the fuel-to-energy cost ratio for off-system sales generated by the three utilities that signed the Marketer Stipulation. The Commission notes that testimony given in the latest Duke fuel case, Docket No. E-7, Sub 598, indicated that this average fuel ratio for the three utilities for the 12 months ending March 1996 was 77.45%. Witness Maness testified that the Public Staff reviewed the fuel ratios for off-system sales for each of the three utilities reported in their fuel reports and concluded that the ratios supported use of the 75% factor. The Public Staff considers it reasonable to use the utilities' off-system sales data as a proxy because it is reasonable to assume that marketers would be making sales from the same types of generating resources. Additionally, witness Maness testified that data relating to the utilities' off-system sales are readily available, whereas the Public Staff is aware of essentially no available information concerning the actual fuel cost component of marketers' sales made to utilities. As indicated in CUCA Exhibit No. 1, witness Maness also testified that given the expanding number of marketers, the benefits of obtaining greater accuracy would not be worth the cost incurred in collecting the necessary information.

Witness Penny indicated on cross-examination that the fuel ratio for marketers for the test period averaged 89% which is based on marketer invoices submitted to CP&L. The Company adjusted this percent down to the 75% amount per the Marketer Stipulation which generated the year-end adjustment to the N.C. Retail EMF of $0.3 million. Witness Penny indicated that CP&L also purchased power from entities other than marketers as shown on the CP&L exhibits.

In its Order in Duke Power Company's 1996 fuel proceeding, the Commission stated, "When faced with a utility's reliance upon some such form of proof [i.e., a reasonable and reliable proxy] 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." Applying this standard to the evidence presented herein, the Commission concludes that the methodology for determining the fuel cost component of purchases from marketers as set forth in the Marketer Stipulation will be accepted for purposes of this proceeding. The Commission concludes that the use of the utilities' own off-system sales to determine a reasonable and reliable proxy is reasonable. The utilities make a large number of off-system sales from their generation stock, both under firm contract and economic interchange arrangements. The Commission finds it reasonable to assume that the fuel-to-energy cost ratio

exhibited by this large number of sales is similar to the ratio exhibited by the sales made to CP&L, via marketers, from the same types of generating resources. The Commission concludes that the use of a single average factor (75%) is reasonable. Although the factors applicable to particular marketer purchases will vary, it is not unreasonable to assume that they will center reasonably around an average. Any deviation from the average is mitigated by the fact that the Marketer Stipulation will be in effect for a relatively short period of time- two years. The Commission also concludes that the 75% factor is reasonably reliable since, as is stated in the Commission's Order in Docket No. E-7, Sub 598, of which the Commission takes judicial notice, it is supported by the utilities' and the Public Staff's independent studies of off-system sales' fuel cost. Further, the Commission concludes that no alternative fuel cost information for purchases from power marketers is reasonably available. In reaching this conclusion, the Commission takes note of the fact that, as reflected in Penny Exhibit No. 6, page 77, CP&L purchased energy from 14 power marketers during the year ended March 31, 1997. The Commission believes that it would be unduly burdensome to require CP&L to obtain actual fuel cost data from this many marketers and, in effect, the underlying suppliers of the power the marketers purchased for resale to CP&L. The Commission also takes note of Public Staff witness Maness' testimony that the Public Staff is unaware of any available information concerning the fuel cost component of marketers' sales made to utilities other than that obtained for one marketer in Duke Power's 1996 fuel case. The Commission is aware that if it disallows recovery, CP&L and the other electric utilities will face uncertainty regarding future recovery of fuel costs associated with otherwise economical purchases from power marketers. Although we stated in Duke Power's 1996 fuel proceeding that "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...," we recognize that it would be difficult to perform a retrospective prudence review of those decisions.

The Commission approved the use of the 75% fuel ratio for marketer purchases in the most recent Duke fuel case, Docket No. E-7, Sub 598 (Order issued June 17, 1997, Errata Order issued June 24, 1997), and believes the use of the 75% ratio in this case is also appropriate as a reasonable approximation for the fuel ratio. The Commission is not convinced by CUCA that use of another ratio is more appropriate in this case. No other party proposed or introduced any evidence which supported another percentage.

In making this decision, the Commission recognizes that the Marketer Stipulation was not signed by all parties to this proceeding. The Commission has stated many times that such partial settlements of a case are not binding on the Commission and will be received into evidence and weighed along with the entire record. The Commission has concluded that CUCA did not successfully contest the Stipulation in this case, but non-signing parties may contest the terms of the Marketer Stipulation in each proceeding in which it is presented.

The Commission finds that the EMF decrement of 0.047 ¢/kWh (0.049 ¢/kWh with gross receipts tax) proposed by the Company and recommended by the Public Staff is appropriate for use in this proceeding. The EMF decrement will remain in effect for a fixed 12-month period from the effective date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding can be found in the Company's Application and direct testimony and exhibits of CP&L witness Penny and the testimony of Public Staff witness Lam.

The Company files with this Commission monthly Fuel Reports and Base Load Power Plant Performance Reports. These reports were filed in Docket No. E-2, Sub 693 for calendar year 1996 and Docket No. E-2, Sub 706 for calendar year 1997. Witness Penny testified that the Company met the standard for prudent operation as set forth in Commission Rule R8-55 based upon the test year actual nuclear capacity factor of 92.7% exceeding the NERC five-year average of 69.58%. The Company's BWRs at Brunswick Units 1 and 2 experienced capacity factors of 87.9% and 95.8% respectively. The PWRs at Robinson and Harris experienced capacity factors of 91.0% and 95.6% respectively. Public Staff witness Lam verified the Company's test year average nuclear capacity factor calculation. No other party offered evidence on this issue.

Based on the evidence, the Commission concludes that the operation of the Company's base load nuclear plants was reasonable and prudent during the test period.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after September 15, 1997, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.126 ¢/kWh decrement (0.130 ¢/kWh including gross receipts tax) from the base fuel component approved in Docket No. E-2, Sub 537. Said increment shall remain in effect until changed by a subsequent Order of this Commission in a general rate case or fuel case.

2. That CP&L shall establish an EMF Rider as described herein to reflect a decrement of 0.047 ¢/kWh (0.049 ¢/kWh including gross receipts tax). The EMF is to remain in effect for a 12-month period beginning September 15, 1997.

3. That CP&L shall file appropriate rate schedules and riders with the Commission in order to implement the fuel charge adjustment approved herein not later than five (5) working days from the date of this Order.

4. That CP&L shall notify its North Carolina retail customers of the fuel adjustment approved herein by including the customer notice attached as Appendix A as a bill message to be included on bills rendered during the Company's next normal billing cycle following the effective date.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of September 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

CP&L BILL MESSAGE

The North Carolina Utilities Commission has entered an Order approving a fuel charge decrease of approximately $3.8 million on an annual basis in CP&L's rates. The Order, effective for service rendered on and after September 15, 1997, will result in a monthly net rate decrease of 12 cents for a typical customer using 1,000 kWhs per month.

DOCKET NO. E-7, SUB 598

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Power Company Pursuant to G.S. 62-133.2 and NCUC Rule R8-55 Relating to Fuel Charge Adjustments for Electric Utilities - 1997	)))))	ORDER APPROVING FUEL CHARGE ADJUSTMENT

HEARD: Tuesday, May 6, 1997, 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; Chair Jo Anne Sanford and Commissioner Charles H. Hughes

APPEARANCES:

For Duke Power Company:

Mary Lynne Grigg, Senior Attorney, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

and

Robert W. Kaylor, P.A., 225 Hillsborough St., Suite 480 Raleigh, North Carolina 27603

For the Public Staff:

Amy Barnes Babb, Staff Attorney and A. W. Turner, 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 PA, Post Office Drawer 1269, Morganton, North Carolina, 28680-1269

BY THE COMMISSION: On March 7, 1997, 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 10, 1997, 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).

On March 14, 1997, a Stipulation (the Stipulation) entered into by the Public Staff, the Attorney General, Carolina Power & Light (CP&L), Duke, and North Carolina Power (NC Power) was submitted to the Commission with the recommendation that the Commission adopt its use in the utilities' fuel cases. The Stipulation was reached regarding the proper methodology for determining the fuel cost associated with power purchases by electric utilities from power marketers and certain other sellers.

On April 18, 1997, the Public Staff filed the Affidavits of Thomas S. Lam, Electric Engineer, Electric Division and Michael C. Maness, Supervisor, Electric Section, Accounting Division.

The case came on for hearing as ordered on May 6, 1997. Candace A. Paton, Manager, Regulatory Accounting, Rates and Regulatory Affairs Department of Duke Power Company presented direct testimony for Duke. Michael C. Maness, Supervisor, Electric Section, Accounting Division presented testimony on behalf of the Public Staff and the affidavit of Thomas S. Lam, Electric Engineer, Public Staff Electric Division was entered in the record as if given orally from the stand. No other party presented witnesses and no public witnesses appeared at the hearing.

At the conclusion of the hearing, the parties were given three weeks from the mailing of the transcript to file proposed orders and/or briefs. The transcript was mailed on May 12, 1997. Duke and the Public Staff filed a joint proposed order on June 2, 1997.

Based upon the Company's verified application, the testimony and exhibits received into evidence at the hearing 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, 1996.

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 74,415,561 mWh.

5. The test period per book system generation is 81,592,866 mWh and is categorized as follows:

Generation Type	mWh
Coal	40,648,872
Oil & Gas	199,503
Light Off	-
Nuclear	33,177,177
Hydro	1,867,164
Net Pumped Storage	(548,264)
Purchased Power	2,607,897
Catawba Contract Purchases	2,661,535
Catawba Interconnection Agreements	827,574
Interchange	151,408
Total Generation	81,592,866

6. The nuclear capacity factor appropriate for use in this proceeding is 80%.

7. The adjusted test period sales of 73,009,024 mWh consists of test period system sales of 74,415,561 mWh which are increased by 895,864 mWh for customer growth, reduced by 388,759 mWh for weather normalization, and reduced by 1,913,642 mWh associated with the adjustment for Catawba retained generation.

8. The adjusted test period system generation for use in this proceeding is 80,311,399 mWh and is categorized as follows:

Generation Type	mWh
Coal	38,847,254
Oil & Gas	227,509
Light Off	-
Nuclear	35,588,376
Hydro	1,760,700
Net Pumped Storage	(496,218)
Purchased Power	2,607,897
Catawba Contract Purchases	1,775,881
Total Generation	80,311,399

9. The appropriate fuel prices and fuel expenses for use in this proceeding are as follows:

A. The coal fuel price is $13.61/mWh.
B. The oil and gas fuel price is $47.99/mWh.
C. The appropriate Light Off fuel expense is $3,827,000.
D. The nuclear fuel price is $4.58/mWh.
E. The purchased power fuel price is $15.92/mWh.
F. The Catawba Contract Purchase fuel price is $4.43/mWh.

10. Setting fuel costs associated with purchases from power marketers at a level equal to 75% of the energy portion of the purchase price, is reasonable for use in this proceeding.

11. The adjusted test period system fuel expense for use in this proceeding is $714,486,000.

12. The proper fuel factor for this proceeding is 0.9786¢/kWh, excluding gross receipts tax.

13. The Company's North Carolina test period jurisdictional fuel expense under-collection was $1,077,000. The adjusted North Carolina jurisdictional test year sales are 49,001,768 mWh.

14. The Company's Experience Modification Factor (EMF) is an increment of 0.0022¢/kWh, excluding gross receipts tax.

15. The final fuel factor is 0.9808¢/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(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 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, 1996.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Commission 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 1994 and were in effect throughout the 12 months ended December 31, 1996. 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 74,415,561 mWh and test period per book system generation was 81,592,866 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	40,648,872
Oil & Gas	199,503
Light Off	-
Nuclear	33,177,177
Hydro	1,867,164
Net Pumped Storage	(548,264)
Purchased Power	2,607,897
Catawba Contract Purchases	2,661,535
Catawba Interconnection Agreements	827,574
Interchange	151,408
Total Generation	81,592,866

Witness Paton testified that Duke achieved a system nuclear capacity factor of 75.49% for the test period and that the most recent (1991-1995) North American Electric Reliability Council's five-year average nuclear capacity factor for all pressurized water reactor units is 75.09%. Witness Paton's testimony and exhibits reflect the use of an 80% system nuclear capacity factor to determine the fuel factor in this proceeding. Public Staff witness Lam supported the use of the 80% nuclear capacity factor proposed by the Company. No other party contested the use of an 80% 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 the agreement of the Public Staff, the Commission concludes that the 80% nuclear capacity factor and its associated generation of 35,588,376 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 1,406,537 mWh. This adjustment is the sum of adjustments for customer growth, weather, and Catawba retained generation of 895,864 mWh, negative 388,759 mWh and negative 1,913,642 mWh, respectively. The level of Catawba retained generation is associated with the system nuclear capacity factor of 80%.

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 895,864 mWh, and weather normalization of a negative 388,759 mWh, and Catawba retained generation of a negative 1,913,642 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 74,415,561 mWh should be decreased by 1,406,537 mWh resulting in an adjusted test period sales level of 73,009,024 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 a negative 1,281,467 mWh to per book generation for adjustments relating to weather normalization, customer growth, Catawba retained generation and line losses/Company use, based on an 80% normalized system nuclear capacity factor and, therefore, calculated an adjusted generation level of 80,311,399 mWh. Witness Lam reviewed and accepted witness Paton's adjusted generation level of 80,311,399 mWh.

The Commission concludes, after finding a system nuclear capacity factor of 80% reasonable and appropriate in Finding of Fact No. 6 and adjustments to sales for customer growth, weather and Catawba retained generation reasonable and appropriate in Finding of Fact No. 7, that Duke's adjustment to per book system generation of a negative 1,281,467 mWh and the resulting adjusted test period generation level of 80,311,399 mWh are both reasonable and appropriate for use in this proceeding. Total generation is categorized as follows:

Generation Type	mWh
Coal	38,847,254
Oil & Gas	227,509
Light Off	-
Nuclear	35,588,376
Hydro	1,760,700
Net Pumped Storage	(496,218)
Purchased Power	2,607,897
Catawba Contract Purchases	1,775,881
Total Generation	80,311,399

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-14

The evidence for these findings of fact is found in the testimony and exhibits of Company witness Paton and the testimony of Public Staff witnesses Lam and Maness.

Witness Paton recommended fuel prices as follows: (1) coal price of $13.61/mWh; (2) oil and gas price of $47.99/mWh; (3) light-off fuel expense of $3,827,000; (4) nuclear fuel price of $4.58/mWh; (5) purchased power fuel price of $15.92/mWh; and (6) Catawba Contract purchase fuel price of $4.43/mWh.

The appropriate level of marketers' fuel costs to include in purchased power expense was an issue in each of the 1996 fuel charge adjustment proceedings. In the last Duke proceeding, Docket No. E-7, Sub 575, concern with the evidence offered by Duke at the hearing led to the filing of late affidavits after the hearing setting forth actual fuel costs gathered from most of the 15 sources from which ENRON purchased power for resale to Duke. Using these affidavits, the Commission factored in fuel costs representing 59% of the reported production cost of the purchases from ENRON. However, the Commission was concerned about requiring such evidence in every case, and the Commission stated in its order 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 panel does not intend to close the door on some other form of proof. Some reasonable and reliable proxy might pass muster." Encouraged by the Commission, several parties met and their discussions led to a Stipulation that was signed by the Public Staff, the Attorney General, CP&L, Duke, and NC Power regarding the proper methodology for determining the fuel costs associated with power purchases from power marketers and other suppliers. The Stipulation was filed with the Commission on March 14, 1997, in Docket No. E-2, Sub 697. According to the Stipulation, the utilities will treat 75% of the energy portion of the purchase price as fuel costs in those instances where a seller cannot or will not provide actual fuel cost data. The agreement provides for three categories of sellers. One category, power marketers, would always have the 75% factor applied. NUGs, IPPs, QFs and the three utilities make up a second category whose sales are not eligible for the 75% factor. The third category is all other sellers. The presumption is that actual fuel cost data will be available from this category. However, if the utilities or the Public Staff discover that actual fuel information is unavailable from these sellers, or if the information provided is unreliable, that party has fourteen days to notify the other party and the parties will then attempt to reach an agreement on the proper treatment of such purchases.

Duke witness Paton testified at the hearing in this case that, pursuant to the Stipulation, Duke's test period purchased power expense was adjusted to reflect 75% of the total energy charges of certain purchased power transactions. Witness Paton testified that in arriving at the 75% figure in the Stipulation, the three utilities had looked at their level of fuel expense in sales to marketers for the twelve-month period ended March 1996. The average for the three companies was 77.45%. Subsequent to the Stipulation, she analyzed Duke's off-system sales for the period 1992 through 1996 and found that during that time Duke's average fuel expense as a component of energy charges was 77%. Witness Paton also testified that if Duke had used the reported fuel information that it was able to obtain during the test year from the sellers to whom it applied the 75% factor, the equivalent percentage would have been 79.91%.

Public Staff witness Lam accepted Ms. Paton's recommended fuel expense and fuel prices. Public Staff witness Maness testified that the Public Staff believes the 75% factor to be reasonable, given the fuel cost component of the utilities' own off-system sales. He indicated that the Public Staff did not rely on the study performed by the utilities that resulted in a factor 77.45%, but instead made its own review of off-system sales by the three utilities, as reported in the fuel reports filed with the Commission. As to whether the type of proof included in Duke's late affidavits in its last fuel proceeding should be required, Maness testified that "... the benefits of obtaining the greater accuracy ... wouldn't be worth the cost that the Company would incur in collecting that information," given the expanding number of marketers.

CUCA did not sign the Stipulation, and CUCA objects to use of the 75% figure in this proceeding. The logic of the 75% figure contained in the Stipulation is that CP&L, Duke, and NC Power sell power into the regional wholesale market, that the fuel costs associated with their off-system sales are representative of the fuel costs incurred throughout the market, and that the utilities' fuel cost percentage is therefore a reasonable approximation of the fuel costs incurred by all participants in the regional wholesale market. CUCA argues that the record shows that fuel costs vary from transaction to transaction and that there is no evidence that the fuel costs incurred by CP&L, Duke, and NC Power while selling power off-system are reflective of the fuel costs incurred in connection with the purchases made by Duke during the test period. Indeed, many of the suppliers from which Duke purchased power were located outside the Southeastern wholesale market. CUCA supports use of the 59% figure found appropriate in Duke's last fuel charge adjustment proceeding. The only other options would be to hold that Duke has failed to meet its burden of proof and allow nothing as to the fuel component of these purchases or to use the 79.91% figure in CUCA Paton Cross Examination Exhibit No. 1, neither of which CUCA recommends.

In its Order in Duke's last fuel proceeding, the Commission stated, "When faced with a utility's reliance upon some such form of proof [i.e., a reasonable and reliable proxy] 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." Applying this standard to the evidence presented herein, the Commission concludes that the methodology for determining the fuel cost component of purchases from marketers as set forth in the Stipulation will be accepted for purposes of this proceeding. The Commission concludes that the use of the utilities' own off-system sales to determine a reasonable and reliable proxy is reasonable. The utilities make a large number of off-system sales from their generation stock, both under firm contract and economic interchange arrangements. The Commission finds it reasonable to assume that the fuel-to-energy cost ratio exhibited by this large number of sales is similar to the ratio exhibited by the sales made to Duke, via marketers, from the same types of generating resources. The Commission concludes that the use of a single average factor (75%) is reasonable. Although the factors applicable to particular marketer purchases will vary, it is not unreasonable to assume that they will center reasonably around an average. Any deviation from the average is mitigated by the fact that the Stipulation will be in effect for a relatively short period of time: two years. The Commission also concludes that the 75% factor is reasonably reliable since it is generally supported by the utilities' and the Public Staff's independent studies of off-system sales' fuel costs. Further, the Commission concludes that no alternative fuel cost information for purchases from power marketers is reasonably available. In reaching this conclusion, the Commission takes note of the fact that the number of marketers selling to Duke has increased substantially in just one year. The Commission believes that it would be unduly burdensome to require Duke to obtain from a large number of marketers and the underlying suppliers of power the same type of information that it obtained from ENRON last year. The Commission also takes note of Public Staff witness Maness' testimony that (1) he knew of no available information concerning the fuel cost component of marketers' sales made to utilities other than that obtained in Duke's last fuel case, and (2) in his recollection, neither the states surveyed by the Public Staff during the discussions leading to the Stipulation nor the National Regulatory Research Institute had addressed the marketer fuel cost issue. The Commission is aware that if it disallows recovery, Duke and the other electric utilities will face uncertainty regarding future recovery of fuel costs associated with otherwise economical purchases from power marketers. Although we stated in Duke's last fuel proceeding that "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 ...," we recognize that it would be difficult to perform a retrospective prudence review of those decisions. The Commission concludes that the purchased power fuel expense of $15.92/kWh as proposed by the Company and reviewed and accepted by the Public Staff is reasonable and appropriate for use in this proceeding.

In making this decision, the Commission recognizes that the Stipulation was not signed by all parties to this proceeding. The Commission has stated many times that such partial settlements of cases are not binding on the Commission and will be received into evidence and weighed along with the entire record. The Commission has concluded that CUCA did not successfully contest the Stipulation in this case, but non-signing parties may contest the terms of the Stipulation in each proceeding in which it is presented.

Therefore, the Commission concludes that adjusted test period fuel expenses of $714,486,000 and the fuel factor of 0.9786¢/kWh, excluding gross receipts tax, are reasonable and appropriate for use in this proceeding. This approved base fuel factor is 0.1246¢/kWh lower than the base fuel factor of 1.1032¢/kWh 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."

Public Staff witness Lam accepted the Company's calculation of under-recovered fuel cost and the resulting experience modification factor (EMF) as set forth on Paton Exhibit 6. The $1,077,000 under-recovered fuel revenue is divided by the adjusted North Carolina jurisdictional sales of 49,001,768 mWh to arrive at an EMF increment of .0022¢/kWh, excluding gross receipts tax. The Commission, concludes that the EMF increment of .0022¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Accordingly, the fuel calculation, incorporating the conclusions reached herein, results in a final net fuel factor of 0.9808¢/kWh, excluding gross receipts tax, as shown in the following table:

Description	Adjusted Generation (mWh)	Fuel Price $/mWh	Fuel Dollars (000's)
Coal	38,847,254	13.61	$528,900
Oil and gas	227,509	47.99	10,918
Light-Off			3,827
Nuclear	35,588,376	4.58	163,072
Hydro	1,760,700	-	0
Net Pumped Storage	(496,218)	-	0
Purchased Power	2,607,897	15.92	41,514

Catawba Contract Purchases	1,775,881	4.43	7,867
TOTAL	80,311,399		756,098
Less:			
Intersystem Sales	(2,492,902)		(41,612)
Line Loss	(4,809,473)		0
System MWH Sales	73,009,024		$714,486
Fuel Factor ¢/kWh			0.9786¢
EMF ¢/kWh			0.00220
FINAL FUEL FACTOR ¢/KWH			0.9808¢

IT IS, THEREFORE, ORDERED:

1. That, effective for service rendered on and after July 1, 1997, 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 0.1246¢/kWh decrease (excluding gross receipts tax) and further that Duke shall adjust the resultant approved fuel cost by an increment of 0.0022¢/kWh (excluding gross receipts tax) for the EMF. The EMF increment is to remain in effect for a 12-month period beginning July 1, 1997.

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 the methodology for determining the fuel cost associated with power purchases by electric utilities from power marketers and certain other sellers as set forth in the Stipulation will be used for determining Duke's fuel cost for the purposes of the 1998 fuel cost proceeding.

4. That Duke shall notify its North Carolina retail customers of these fuel adjustments by including the "Notice to Customers of Net Rate Decrease" 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 17th day of June, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 598

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Duke Power Company	)	NOTICE TO CUSTOMERS
Pursuant to G.S. 62-133.2 and NCUC Rule	)	OF NET RATE DECREASE
R8-55 Relating to Fuel Charge	)	
Adjustments for Electric Utilities - 1997	)	

NOTICE IS GIVEN that the North Carolina Utilities Commission entered an Order on June 17, 1997, after public hearings, approving a fuel charge net rate decrease of approximately $5 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 decrease will be effective for service rendered on and after July 1, 1997. The rate decrease was ordered by the Commission after review of Duke's fuel expense during the 12-month period ended December 31, 1996, 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 rate decrease of approximately 11¢ for each 1,000 kWh of usage per month.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of June, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-7, SUB 598

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Duke Power Company	)	ERRATA ORDER
Pursuant to G.S. 62-133.2 and NCUC	)	
Rule R8-55 Relating to Fuel Charge	)	
Adjustments for Electric Utilities - 1997	)	

BY THE COMMISSION: On June 17, 1997, the Commission issued its Order Approving Fuel Charge Adjustment in this docket, which is the 1997 fuel charge adjustment proceeding for Duke Power Company (Duke).

The appropriate level of power marketers' fuel costs to include in Duke's purchased power expense was a contested issue in this proceeding. The evidence introduced at the hearing included a Stipulation that was signed by the Public Staff, the Attorney General, Carolina Power & Light Company, Duke, and North Carolina Power regarding the proper methodology for determining the fuel costs associated with power purchases from power marketers and other suppliers. According to the Stipulation, the utilities will treat 75% of the energy portion of the purchase price as fuel costs in those instances where a seller cannot or will not provide actual fuel cost data. The Stipulation provides for three categories of sellers; one category, power marketers, will always have the 75% factor applied. The Stipulation provides that the methodology will apply to the utilities' 1997 and 1998 fuel cases. Both Duke and the Public Staff presented testimony consistent with and supportive of the Stipulation at the hearing in this docket.

In the June 17 Order Approving Fuel Charge Adjustment issued by the Commission in this docket, the Commission finds as a fact, "Setting fuel costs associated with purchases from power marketers at a level equal to 75% of the energy portion of the purchase price, is reasonable for use in this proceeding." (Emphasis added.) In the discussion of this finding, the Commission recognizes that the Carolina Utility Customers Association, Inc. (CUCA) opposes the Stipulation. The Commission concludes as follows:

> In making this decision, the Commission recognizes that the Stipulation was not signed by all parties to this proceeding. The Commission has stated many times that such partial settlements of cases are not binding on the Commission and will be received into evidence and weighed along with the entire record. The Commission has concluded that CUCA did not successfully contest the Stipulation in this case, but non-signing parties may contest the terms of the Stipulation in each proceeding in which it is presented. (Emphasis added.)

However, the third ordering paragraph of the June 17 Order provides:

> 3. That the methodology for determining the fuel cost associated with power purchases by electric utilities from power marketers and certain other sellers as set forth in the Stipulation will be used for determining Duke's fuel cost for the purposes of the 1998 fuel cost proceeding.

While the signing parties may employ the Stipulation in Duke's 1998 fuel charge adjustment proceeding (that is what the Stipulation itself provides), the ordering paragraph quoted above may be interpreted as deciding the Commission's treatment of the issue for purposes of the 1998 proceeding. This ordering paragraph is inconsistent with the discussion of the issue in the June 17 Order, and this ordering paragraph was included in the June 17 Order by mistake. The Commission, on its own motion, finds good cause to issue the present order deleting the third ordering paragraph from the June 17, 1997 Order Approving Fuel Charge Adjustment.

IT IS, THEREFORE, ORDERED that the third ordering paragraph of the June 17, 1997 Order Approving Fuel Charge Adjustment in this docket should be, and hereby is, deleted.

ISSUED BY ORDER OF THE COMMISSION.

This the 24th day of June, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. E-22, SUB 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Power Pursuant	)	
to North Carolina General Statute 62-133.2	)	ORDER APPROVING FUEL
and North Carolina Utilities Commission	)	CHARGE ADJUSTMENT
Rule R8-55 Relating to Fuel Charge	)	
Adjustments for Electric Utilities	)	

HEARD: Tuesday, November 18, 1997, 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 J. Richard Conder and Robert V. Owens

APPEARANCES:

For North Carolina Power:

Robert W. Kaylor, 225 Hillsborough Place, Suite 480, Raleigh, North Carolina 27603

James S. Copenhaver, North Carolina Power, P.O. Box 26666, Richmond, Virginia 23261

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 Industrial Group for Fair Utility Rates:

Carson Carmichael III and Cathleen M. Plaut, Bailey and Dixon, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865

For Carolina Utility Customers Association, Inc.:

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

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 10, 1996 in Docket No. E-22, Sub 365.

North Carolina Power filed its fuel charge adjustment application and supporting testimony and exhibits in accordance with North Carolina Utilities Commission Rule R8-55 and G.S. 62-133.2 on September 12, 1997. North Carolina Power filed testimony and exhibits for the following witnesses: Charles R. Goode, III, Regulatory Specialist, Corporate Accounting; Daniel J. Green, Director, Energy Planning; and Glenn A. Pierce, Regulatory Specialist, Rate Design. The Company also filed information and workpapers required by North Carolina Utilities Commission Rule R8-55(d).

On September 18, 1997, the Commission issued an Order Scheduling Hearing, Requiring Testimony, and Requiring Public Notice of this proceeding.

The Carolina Industrial Group for Fair Utility Rates (CIGFUR I) filed a Petition to Intervene on September 25, 1997, which petition was granted during the hearing on November 18, 1997. The Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene on October 9, 1997, which petition was granted by Order dated October 14, 1997.

On October 10, 1997, the Company filed revised testimony and exhibits on behalf of each of its witnesses that reflected certain modifications and updates to its initial testimony. On October 22, 1997, the Company filed a Notice of Affidavits, which indicated that the Company would enter its revised direct testimony 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.

On November 3, 1997, the Public Staff filed the testimony and exhibits of Michael C. Maness and the affidavit of Thomas S. Lam, which recommended approval of the Company's fuel adjustment filing, subject to certain modifications reflected in Mr. Maness' testimony.

On November 14, 1997, the Company filed its Notice of Publication of this proceeding.

The matter came on for hearing as scheduled on Tuesday, November 18, 1997. The prefiled direct testimony of the Company's witnesses was stipulated into the record by affidavit. No party requested an opportunity to cross-examine the Public Staff's witnesses. The testimony of Public Staff witness Maness and the affidavit of Public Staff witness 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 Goode, Green and Pierce and Public Staff witnesses Maness and Lam, 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, 1997.

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 65,005,695 MWh.

5. The fuel proceeding test period per book system generation is 67,657,767 MWh, which includes various generation as follows:

	MWh
Coal	31,079,703
Combustion Turbine	1,279,943
Heavy Oil	517,935
Natural Gas	19,129
Nuclear	25,628,778
Hydro	3,077,511
Hydro	3,077,511
Pumped Storage (Pumping)	(2,557,829)
Power Transactions	8,612,597
NUG	2,935,719
NUG	2,935,719
Other	12,078,852
Other	12,078,852
Sales for Resale	(6,401,974)

6. The normalized system nuclear capacity factor which is appropriate for use in this proceeding is 84.89%, which is the estimated nuclear capacity factor for the rate year ending December 31, 1998.

7. The increase to system test period sales of 2,634,047 MWh results from an increase of 184,526 MWh associated with customer growth, 611,195 MWh of additional customer usage, an increase of 1,852,044 MWh associated with weather normalization, and a decrease of 13,718 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 65,005,695 MWh.

8. The adjusted test period system generation for use in this proceeding is 70,436,232 MWh, which includes various generation as follows:

	MWh
Coal	33,144,564
Combustion Turbine	1,364,986
Heavy Oil	552,330
Natural Gas	20,387
Nuclear	25,224,148
Hydro	3,077,511
Pumped Storage	(2,557,829)
Power Transactions	9,610,135
NUG	3,130,757
Other	12,881,352
Sales for Resale	(6,401,974)

9. The appropriate fuel prices for use in this proceeding are as follows:

A. The coal fuel price is $13.03/MWh.
B. The nuclear fuel price is $4.32/MWh.
C. The heavy oil fuel price is $24.43/MWh.

D. The natural gas price is $29.44/MWh.
E. The internal combustion turbine (IC) fuel price is $29.42/MWh.
F. The fuel price for other power transactions is $15.47/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, 1996, to June 30, 1997 test period for use in this proceeding is $619,258,641.

11. The appropriate fuel cost rider (Rider A) for this proceeding is a decrement of 0.175¢/kWh, excluding gross receipts tax, or a 0.181¢/kWh decrement, including gross receipts tax.

12. The Company's North Carolina test period jurisdictional fuel expense over-collection as filed is $1,150,949. The adjusted North Carolina jurisdictional test year sales are 3,167,047 MWh.

13. The total jurisdictional fuel expense over-collection as modified by the Public Staff and which is appropriate for use in establishing the experience modification factor (EMF) in this proceeding is $1,265,609.

14. Interest expense associated with the over-collection of test period fuel revenues amount to $189,841, based upon a 10% annual interest rate.

15. The Company's EMF and interest combine for a decrement of 0.046¢/kWh, excluding gross receipts tax, or a 0.047¢/kWh decrement, including gross receipts tax.

16. The final fuel factor is 0.899¢/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 North Carolina Utilities Commission 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 12, 1997, as revised on October 10, 1997, was based on the 12 months ended June 30, 1997.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

North Carolina Utilities Commission 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 North Carolina Utilities Commission Rule R8-52(a).

No party offered or elicited any testimony contesting the Company's fuel procurement and power purchasing practices. In the absence of any evidence 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 Goode and Green and the affidavit of Public Staff witness Lam.

Company witnesses Goode and Green testified with regard to the July 1, 1996 to June 30, 1997 test period sales, test period generation, and normalized nuclear capacity factor. Company witnesses Goode and Green testified that the test period levels of sales and generation were 65,005,695 MWh and 67,657,767 MWh, respectively. The test period per book system generation includes various generation as follows:

	MWh
Coal	31,079,703
Combustion Turbine	1,279,943
Heavy Oil	517,935
Natural Gas	19,129
Nuclear	25,628,778
Hydro	3,077,511
Pumped Storage (Pumping)	(2,557,829)
Power Transactions (Net)	8,612,597
NUG	2,935,719
Other	12,078,852
Sales for Resale	(6,401,974)

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 86.3% for the July 1, 1996 to June 30, 1997 test period. Witness Green normalized the system nuclear capacity factor to a level of 84.89%, which is the estimated nuclear capacity factor for the rate year ending December 31, 1998. Witness Lam agreed that the nuclear capacity factor of 86.3% as achieved by the Company should be normalized to 84.89% as proposed by the Company. No other party offered or elicited testimony on the normalized nuclear capacity factor. In the absence of evidence to the contrary, the Commission concludes that the July 1, 1996 to June 30, 1997 test period levels of sales and generation are reasonable and appropriate for use in this proceeding. The Commission further concludes that the 84.89% 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, 1997 was adjusted by jurisdiction for weather normalization, customer growth, and increased usage. Witness Pierce adjusted total Company sales by 2,634,047 MWh. This adjustment is the sum of adjustments for customer growth, increased usage, and weather normalization of 184,526 MWh, 611,195 MWh and 1,852,044 MWh, respectively, and an adjustment of (13,718) 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 184,526 MWh, 611,195 MWh, and 1,852,044 MWh, respectively, and an adjustment of (13,718) 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, 1997, due to weather normalization, customer growth, and increased usage of 2,778,465 MWh, to arrive at witness Green's adjusted generation level of 70,436,232 MWh. Witness Lam reviewed and accepted witness Pierce's adjustment to per book MWh generation for the 12-month period ended June 30, 1997, due to weather normalization, customer growth and increased usage. Witness Lam also accepted witness Green's adjusted generation level of 70,436,232 MWh which includes various generation as follows:

	MWh
Coal	33,144,564
Combustion Turbine	1,364,986
Heavy Oil	552,330
Natural Gas	20,387
Nuclear	25,224,148
Hydro	3,077,511
Pumped Storage (Pumping)	(2,557,829)
Power Transactions (Net)	9,610,135
NUG	3,130,757
Other	12,881,352
Sales for Resale	(6,401,974)

Based on the foregoing evidence and with no other evidence to the contrary, the Commission concludes that the adjustment of 2,778,465 MWh is reasonable and appropriate for use in this

proceeding, and that the resultant adjusted fuel generation level of 70,436,232 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 1997 fuel prices as follows: (1) coal price of $13.03/MWh; (2) nuclear fuel price of $4.32/MWh; (3) heavy oil price of $24.43/MWh; (4) natural gas price of $29.44/MWh; (5) internal combustion turbine price of $29.42/MWh; (6) other power transactions price of $15.47/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 $619,258,641 and the fuel cost rider (Rider A) decrement of 0.175¢/kWh, excluding gross receipts tax, or a 0.181¢/kWh decrement, including 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 witnesses Goode and Pierce, the testimony and exhibits of Public Staff witness Maness and the affidavit of Public Staff witness Lam.

North Carolina General Statute 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 $1,150,949 during the test year ending June 30, 1997. Further, witness Pierce testified that the adjusted North Carolina jurisdictional fuel clause test year sales are 3,167,047 MWh. Public Staff witness Maness reviewed the Company's calculations and concluded that certain adjustments relating to the Company's application of the Joint Stipulation pertaining to power marketer fuel expenses and the appropriate level of fuel cost credits associated with off-system sales were necessary to accurately calculate the Company's EMF. Public Staff witness Lam reviewed the Company's EMF and interest

calculations and recommended approval of the Company's request, subject to the modifications presented in Public Staff witness Maness' testimony. As indicated in the testimony of Public Staff witness Maness, the Company concurred with Mr. Maness' proposed modifications.

The amount of fuel cost incurred by the utilities as a result of purchases from power marketers was an issue in each of the 1996 fuel charge adjustment proceedings. In North Carolina Power's last fuel case, Docket E-22, Sub 365, North Carolina Power and the Public Staff entered into a Joint Stipulation which settled many issues in that fuel case including the determination of the proper amount of marketer fuel cost to include in the EMF. The Company and the Public Staff also agreed in that Joint Stipulation to meet with all interested parties and "attempt to reach agreement on the proper methodology to use to determine the fuel costs associated with power purchases by electric utilities from power marketers." The Commission, in approving the Joint Stipulation in that case, was encouraged that the parties were interested in reaching middle ground on this issue. Pursuant to the Joint Stipulation, CP&L, Duke Power, N.C. Power, the Public Staff and the Attorney General reached a Stipulation Regarding the Proper Methodology for Determining the Fuel Cost Associated with Power Purchases by Electric Utilities from Power Marketers and Certain Utilities (Marketer Stipulation). CUCA did not sign the Marketer Stipulation and objected to the use of the 75% fuel-to-energy cost ratio set forth in the Marketer Stipulation in the most recent Duke Power and CP&L fuel cases.

The Marketer Stipulation was filed with the Commission on March 14, 1997, in Docket No. E-2, Sub 697. The Marketer Stipulation classifies three categories of purchases made by utilities. One category is not subject to the 75% fuel ratio and includes purchases from NUGs/IPPs/QFs from whom the utility makes direct purchases; sellers from whom the utility makes unit purchases; and purchases from Duke, CP&L and NC Power. The second category includes purchases from power marketers, which are subject to the 75% ratio. The third category consists of purchases from all other sellers from whom it is assumed accurate fuel costs can be obtained or is available. The Marketer Stipulation has a provision for sellers listed in category three to be subject to a ratio if it is determined that the seller refuses to provide the utility with accurate and reliable fuel cost. In general, the 75% ratio is subject to adjustment if total fuel cost to energy cost falls outside the range of 67.5% and 82.5%. The Parties agreed that the Marketer Stipulation would be in effect for fuel cases filed during 1997 and 1998.

Public Staff witness Maness asked the Commission to adopt the Marketer Stipulation for use in this proceeding and sponsored it as an exhibit to his testimony. As indicated by the Marketer Stipulation, the 75% factor was chosen because it was representative of the fuel-to-energy cost ratio for off-system sales generated by the three utilities that signed the Marketer Stipulation. The Commission notes that testimony given in the latest Duke fuel case, Docket No. E-7, Sub 598, indicated that this average fuel ratio for the three utilities for the 12 months ending March 1996 was 77.45%. Witness Maness testified that the Public Staff reviewed the fuel ratios for off-system sales for each of the three utilities reported in their fuel reports and concluded that the ratios supported use of the 75% factor. The Public Staff considered it reasonable to use the utilities' off-system sales data as a proxy because it is reasonable to assume that marketers would be making sales from the same types of generating resources. Additionally, witness Maness testified that data relating to the utilities' off-system sales are readily available, whereas the Public Staff is aware of essentially no available information concerning the actual fuel cost component of marketers' sales made to utilities.

In its Order in Duke Power Company's 1996 fuel proceeding, the Commission stated, "When faced with a utility's reliance upon some such form of proof [i.e., a reasonable and reliable proxy] 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." Applying this standard to the evidence presented herein, the Commission concludes that the methodology for determining the fuel cost component, for purchases from marketers as set forth in the Marketer Stipulation, will be accepted for purposes of this proceeding and those sellers in category three of the Marketer Stipulation that either refused or were unable to provide the Company with accurate and reliable fuel costs. The Commission concludes that the use of the utilities' own off-system sales to determine a reasonable and reliable proxy is reasonable. The utilities make a large number of off-system sales from their generation stock, both under firm contract and economic interchange arrangements. The Commission finds it reasonable to assume that the fuel-to energy cost ratio exhibited by this large number of sales is similar to the ratio exhibited by the sales made to North Carolina Power from the same types of generating resources. The Commission concludes that the use of a single average factor (75%) is reasonable. Although the factors applicable to particular purchases will vary, it is not unreasonable to assume that they will center reasonably around an average. Any deviation from the average is mitigated by the fact that the Marketer Stipulation will be in effect for a relatively short period of time, two years. The Commission also concludes that the 75% factor is reasonably reliable since, as is stated in the Commission's Order in Docket No.
E-7, Sub 598, of which the Commission takes judicial notice, it is supported by the utilities' and the Public Staff's independent studies of the fuel cost of off-system sales. Further, the Commission concludes that no alternative fuel cost information for purchases from power marketers and category three sellers is reasonably available. In reaching this conclusion, the Commission takes note of the fact that, as reflected in Public Staff witness Maness' testimony, North Carolina Power purchased power from 46 power marketers and 11 non-marketer sellers of power who refused or were unable to supply actual fuel cost data. The Commission believes that it would be unduly burdensome to require North Carolina Power to obtain actual fuel cost data from this many sellers. The Commission also takes note of Public Staff witness Maness' testimony that the Public Staff is unaware of any available information concerning the fuel cost component of marketers' sales made to utilities other than that obtained for one marketer in Duke Power's 1996 fuel case. The Commission is aware that if it disallows recovery, North Carolina Power and the other electric utilities will face uncertainty regarding future recovery of fuel costs associated with otherwise economical purchases of power. Although the Commission stated in Duke Power's 1996 fuel proceeding that "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...," the Commission recognizes that it would be difficult to perform a retrospective prudence review of these decisions.

The Commission approved the use of the 75% fuel ratio for marketer purchases in the most recent Duke Power fuel case, Docket No. E-7, Sub 598 (Order issued June 17, 1997, Errata Order issued June 24, 1997), and in the most recent CP&L fuel case, Docket No. E-2, Sub 712 (Order issued September 8, 1997) and the Commission believes the use of the 75% ratio in this case is also appropriate as a reasonable approximation for the fuel ratio. No party proposed or introduced any evidence which supported a different EMF calculation.

In making this decision, the Commission recognizes that the Marketer Stipulation was not signed by all parties to this proceeding. The Commission has stated many times that such partial

settlements of a case are not binding on the Commission and will be received into evidence and weighed along with the entire record. Moreover, non-signing parties may contest the terms of the Marketer Stipulation in each proceeding in which it is presented.

The total jurisdictional fuel expense over-collection for use in establishing the EMF in this proceeding is $1,265,609. The appropriate level of interest for this over-collection of $189,841 is calculated 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, 1998, using the adjusted North Carolina retail sales of 3,167,047 MWh as modified by the Public Staff and accepted by the Company.

The Commission concludes that the fuel revenue over-collection and associated interest of $1,265,609 and $189,841, 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 $1,265,609 over-collected fuel revenue plus the $189,841 of interest was divided by the adjusted North Carolina jurisdictional sales of 3,167,047 MWh to arrive at the proposed EMF decrement of 0.046¢/kWh, excluding gross receipts tax, or a 0.047¢/kWh decrement, including gross receipts tax. This reflects the EMF-Rider B decrement proposed by Company witness Pierce, as modified by the testimony of Public Staff witnesses Maness and Lam. The Commission concludes that, there being no controversy, the proposed EMF decrement of 0.046¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding, and shall become effective on January 1, 1998, 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 Goode, Pierce and Green, the testimony of Public Staff witness Maness and the affidavit of Public Staff witness Lam.

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 0.899¢/kWh.

The fuel factor is determined as follows:

Normalized System Fuel Expense	$619,258,641
System MWh Sales at Sales Level	67,639,742
Fuel Factor (¢/kWh) Excluding Gross Receipts Tax	0.916
Fuel Factor (¢/kWh) Including Gross Receipts Tax	0.946

Fuel Factor (¢/kWh) Including Gross Receipts Tax	0.946
Base Fuel Factor (¢kWh)	(1.127)
Fuel Cost/Rider A (¢/kWh)	(0.181)

	Effective 1/1/98 (Including Gross Receipts Tax)
Base Fuel Factor ¢/kWh	1.127
EMF/Rider B ¢/kWh	(0.047)
Fuel Cost/Rider A ¢/kWh	(0.181)
FINAL FUEL FACTOR ¢/kWh	0.899

IT IS, THEREFORE, ORDERED as follows:

1. That effective beginning with usage on and after January 1, 1998, 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 0.175¢/kWh, excluding gross receipts tax, or a 0.181¢/kWh decrement, including gross receipts tax;

2. That an EMF Rider decrement (Rider B) of 0.046¢/kWh, excluding gross receipts tax, or a 0.047¢/kWh decrement, including gross receipts tax, shall be instituted and remain in effect for usage from January 1, 1998, until December 31, 1998;

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; and

4. 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 Increase 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 29th day of December 1997.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-22, SUB 373

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Power	)	
Pursuant to North Carolina General	)	NOTICE TO CUSTOMERS
Statute 62-133.2 and North Carolina	)	OF RATE INCREASE
Utilities Commission Rule R8-55 Relating	)	
to Fuel Charge Adjustments for Electric	)	
Utilities	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission entered an Order in this docket on December 29, 1997, after public hearings, approving an approximate $600,000 increase in the annual rates and charges paid by the retail customers of North Carolina Power in North Carolina. The rate increase will be effective for usage on and after January 1, 1998. The rate increase was ordered by the Commission after a review of North Carolina Power's fuel expenses during the 12-month test period ended June 30, 1997, and represents changes experienced by the Company with respect to its reasonable costs of fuel and the fuel component of purchased power.

For a typical residential customer using 1,000 kWh per month, the Commission's Order will result in a net rate increase of approximately $0.19 per month from the previously effective rates.

ISSUED BY ORDER OF THE COMMISSION.
This the 29th day of December, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

ELECTRICITY - SECURITIES

DOCKET NO. E-7, SUB 596

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

Application of Duke Power Company for Authorization under North Carolina General Statute Sections 62-111 and 62-161 to Engage in and to Issue Securities in Connection with a Business Combination Transaction with PanEnergy Corp	))))))	ORDER APPROVING MERGER AND ISSUANCE OF SECURITIES

HEARD IN: The Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding, Chairman Jo Anne Sanford, Commissioners Laurence A. Cobb, Ralph A. Hunt, Judy Hunt, and William R. Pittman

APPEARANCES:

For Duke Power Company:

Steve C. Griffith, Jr., Vice Chairman and General Counsel, William Larry Porter, Deputy General Counsel, Mary Lynne Grigg, Senior Attorney, 422 South Church Street, Charlotte, North Carolina 28242-1000

and

Robert W. Kaylor, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27603

and

Clarence W. Walker, Kennedy Covington Lobdell & Hickman, L.L.P., NationsBank Corporate Center, 100 North Tryon Street, Charlotte, North Carolina 28202-4006

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:

Antoinette R. Wike, Chief Counsel, 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 27602-0629

BY THE COMMISSION: On December 19, 1996, Duke Power Company (Duke) filed with the North Carolina Utilities Commission (Commission) an application pursuant to G.S. 62-111 and 62-161 for authorization to engage in and to issue securities in connection with a business combination transaction with PanEnergy Corp (PanEnergy).

PROCEDURAL HISTORY

The Commission issued an order on December 19, 1996, which scheduled a public hearing for Tuesday, March 18, 1997, at 9:30 a.m. in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, for the purpose of considering the application filed by Duke. The order provided for petitions to intervene to be filed in accordance with Commission Rule R1-19 no later than February 27, 1997. It also provided that the direct testimony and exhibits of Duke be filed on or before January 31, 1997, and the direct testimony and exhibits of the Public Staff and other intervenors to be filed on or before February 27, 1997. Finally, the order provided that Duke publish notice in newspapers having general circulation in its service area once a week for two consecutive weeks with the first notice to appear no later than the first week of January, 1997.

On January 15, 1997, Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene which was allowed by the Commission. On February 4, 1997, the Attorney General filed a notice of intervention pursuant to G.S. 62-20 to represent the using and consuming public. The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e).

Duke filed the direct testimony and exhibits of William H. Grigg and William R. Stimart on January 30, 1997. On February 26, 1997, the Public Staff filed a motion for an extension of time to file testimony from February 27, 1997 to March 6, 1997. The Public Staff indicated that it was in the process of negotiating a stipulation with Duke under which Duke would agree to a number of conditions and the Public Staff would recommend that the proposed business combination transaction with PanEnergy be authorized, subject to those conditions. The Public Staff indicated that Duke concurred in this request. The Commission issued an order granting the extension of time for the Public Staff to file testimony. On March 6, 1997, the Public Staff filed the joint testimony of Elise Cox, Thomas W. Farmer, Jr. and Dennis J. Nightingale. The joint testimony reflected that Duke had agreed to the conditions recommended by the Public Staff, that a signed stipulation to that effect would be filed, and that the Public Staff recommended that the authorizations requested by Duke be granted by the Commission subject to those conditions.

The case was heard on March 18, 1997. After opening statements by the parties, William H. Grigg, Chairman of the Board and Chief Executive Officer, and William R. Stimart, Vice President, Rates and Regulatory Affairs, presented testimony for Duke. The Public Staff presented the following witnesses as a panel: Elise Cox, Assistant Director, Accounting Division; Thomas W. Farmer, Jr., Director, Economic Research Division; and Dennis J. Nightingale, Director, Electric Division. No other party presented witnesses and no public witnesses appeared at the hearing.

On March 18, 1997, the Commission concurred in the parties' agreement for Duke to file a proposed order within two weeks and for the parties to file comments within one week of receipt of the proposed order from Duke. Duke filed its proposed order on April 1, and the Public Staff, the Attorney General and CUCA filed comments on April 8. On April 15, Duke filed a revised proposed order incorporating some of the comments of the other parties. The Public Staff filed a letter on April

16 recommending that the revised proposed order be issued. The Attorney General filed a letter on the same date stating that he "continues not to oppose the authorization sought by Duke in this proceeding, given the commitments Duke has undertaken in the Stipulation with the Public Staff as clarified through direct testimony and cross examination."

Based upon Duke's verified application, the testimony and exhibits received into evidence at the hearing, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Duke 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. Duke is engaged in the business, among others, of generating, transmitting, distributing and selling electric power and in owning and operating water supply systems.

2. Duke is the sole shareholder of Nantahala Power and Light Company (Nantahala), a public utility operating under the laws of the State of North Carolina and subject to the jurisdiction of the North Carolina Utilities Commission. Nantahala is engaged in the business of generating, transmitting, distributing and selling electric power.

3. Duke's authorized and issued and outstanding capital stock as of September 30, 1996 consisted of the following:

(a) A total of 300,000,000 authorized shares of Common Stock, of which 201,589,596 shares were issued and outstanding;
(b) A total of 12,500,000 authorized shares of Preferred Stock, of which 5,240,000 shares were issued and outstanding;
(c) A total of 10,000,000 authorized shares of $25 par value Preferred Stock A, of which 6,400,000 shares were issued and outstanding; and
(d) A total of 1,500,000 authorized shares of $100.00 par value Preference Stock, none of which was issued and outstanding.

4. Duke proposes to enter into a business combination transaction with PanEnergy and to issue or reserve for issuance up to 166,000,000 shares of its Common Stock in connection with that transaction. The transaction is structured as a merger of a new Delaware subsidiary of Duke into PanEnergy, also a Delaware corporation, in which Duke Common Stock will be issued to PanEnergy stockholders in exchange for their PanEnergy common stock in an exchange ratio of 1.0444 shares of Duke Common Stock for each share of PanEnergy common stock. That transaction is hereinafter referred to as "the Merger." The result of the Merger will be that PanEnergy will be a wholly-owned subsidiary of Duke, the former PanEnergy stockholders will become Duke shareholders, and Duke will change its name to Duke Energy Corporation.

5. PanEnergy, a publicly held corporation headquartered in Houston, Texas, owns approximately 37,500 miles of natural gas pipeline forming a network of four pipeline operations, which delivered 2,629 trillion BTU's during 1995, accounting for approximately 12% of the natural gas consumed in the United States. PanEnergy also markets natural gas and electricity, gathers and processes natural gas and produces natural gas liquids. It employs approximately 5,000 people in

thirty states, Canada and the United Kingdom. Its revenues in 1995 were $5.0 billion and at December 31, 1995, its total assets were $7.6 billion. Its pipeline operations do not extend into the State of North Carolina and it has no operating assets in North Carolina.

6. Duke will issue approximately 158,000,000 shares of its Common Stock in the Merger based on the approximately 151,000,000 shares of PanEnergy common stock that were outstanding on November 24, 1996, the date of the Merger Agreement. The implied price is $50.00 per PanEnergy share, based on the $47.875 closing price for Duke's Common Stock on November 22, 1996, the last trading date prior to public announcement of the execution of the Merger Agreement.

7. In connection with the Merger, Duke will assume PanEnergy's obligation to issue its Common Stock upon conversion of PanEnergy's 9% Convertible Notes due 2004, which would require the issuance of up to 471,938 shares (Duke Exhibit 12, page 4) of Duke's Common Stock if all such Notes were converted. Duke is not, however, assuming the payment obligation for Notes that are not converted.

8. Duke will also assume the obligation of PanEnergy to issue Common Stock upon the exercise of PanEnergy employee stock options and to make certain restricted stock awards to employees, for which Duke will reserve approximately 7,500,000 shares of its Common Stock.

9. Duke has committed that it will not issue any more of its shares than are required under the Merger Agreement with PanEnergy and expects the total number of shares will not exceed 166,000,000 shares.

10. Duke has submitted to its shareholders for action at its annual meeting to be held on April 24, 1997, a proposal to approve the issuance of stock in connection with the Merger, to increase the number of authorized shares of Common Stock from 300,000,000 to 500,000,000 and to change the name of the company to Duke Energy Corporation.

11. The Merger will be accounted for as a pooling of interests in which neither of the stockholder groups (Duke or PanEnergy) withdraws or invests assets but, in effect, will hold voting common stock in a ratio that determines their respective interests in the combined enterprise. PanEnergy's assets and liabilities at the effective time of the Merger will be reflected at their book values on Duke's consolidated balance sheet. No goodwill from the Merger will be recorded on Duke's financial statements.

12. The Merger does not involve a change of control of Duke nor will there be any sale, assignment or transfer of any of Duke's public utility franchises. Duke will continue to be a North Carolina corporation headquartered in Charlotte, North Carolina.

13. None of PanEnergy's debt will be guaranteed by Duke in connection with the Merger.

14. Upon consummation of the Merger, Duke's financial condition will be consistent with the level of financial stability Duke has maintained for the past several years.

15. The Merger will significantly increase Duke's size and the diversity of its revenue sources, assets and work force skills, which will provide additional stability and additional protection against adverse conditions in the capital markets or the economy.

16. The Merger, and the issuance by Duke of its securities in connection therewith, are lawful objects within Duke's corporate purposes and are reasonably necessary and appropriate for such purposes.

17. Through paragraph 8 of the Stipulation dated March 7, 1997, between Duke and the Public Staff (the Stipulation), which was filed March 19, 1997, Duke has stated that its intention is to hold its North Carolina retail electric and water customers and Nantahala's North Carolina retail electric customers harmless from any adverse effects of the Merger, including actions by other regulatory jurisdictions related to the Merger, and to ensure that they receive no fewer benefits from the Merger than those received by electric customers in other jurisdictions.

18. The 18 conditions recommended by the Public Staff, which are set forth in subparagraphs 9(a) through (r) of the Stipulation, are appropriate and sufficient safeguards to ensure that the Merger, and the issuance by Duke of its securities in connection therewith, will not adversely affect Duke's or Nantahala's North Carolina retail rates, will be consistent with the proper performance by Duke of its service to the public, will not impair its ability to perform that service, will be compatible with the public interest, and will be justified by the public convenience and necessity.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

The evidence supporting these findings of fact is contained in the verified application, the Joint Proxy Statement-Prospectus of Duke and PanEnergy (Duke Exhibit 12), the Commission's files and records regarding this proceeding, and the testimony of Duke's witnesses. These findings are essentially informational.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4 AND 5

The evidence supporting these findings of fact is found in the verified application and in the testimony of Duke witness Grigg and the joint testimony of the Public Staff, as well as in Duke Exhibits 1, 3, 10 and 12.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-10

The evidence supporting these findings of fact is contained in Duke's verified application, the testimony of Duke's witnesses Grigg and Stimart and Duke Exhibits 1 and 12.

Witness Grigg testified that it is not possible at this time to state precisely the number of shares that Duke will issue or reserve in connection with the Merger because, between the time of the hearing and the effective time of the Merger, PanEnergy is permitted under the Merger Agreement to issue additional shares through its dividend reinvestment program and, in the normal course of business, to grant additional employee stock options and restricted stock awards. In addition, some of the outstanding stock options may be exercised during that interim period. As a

result of these uncertainties the application did not state a specific fixed number of shares for which application was made under G.S. 62-161 but instead indicated that the number of shares is not expected to exceed 166,000,000.

The Commission concludes that, given these uncertainties and the commitment by Duke that it will not issue more shares than are required by the Merger Agreement, this is a reasonable and appropriate way in which to seek approval under G.S. 62-161.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is found in Duke's verified application, the testimony of Duke witness Stimart, the joint testimony of the Public Staff and Duke Exhibit 12.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is contained in Duke's verified application, the testimony of Duke witness Grigg and Duke Exhibit 12. The verified application states that Duke's current shareholders will retain a controlling interest in the combined entity, Duke Energy Corporation, and that no present stockholder of PanEnergy will acquire more than 2.5% of Duke's outstanding Common Stock as a result of the Merger.

Duke witness Grigg testified that Richard B. Priory, currently Duke's President and Chief Operating Officer, will be Chairman of the Board and Chief Executive Officer of Duke. According to Duke Exhibit 12, of the 18 members of the Board of Directors of the combined entity, 11 will be designated by Duke and seven by PanEnergy and the chairs of all committees of the Board of Directors will be directors designated by Duke.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is contained in Duke's verified application, the testimony of Duke witness Stimart and Duke Exhibit 12.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 AND 15

The evidence supporting these findings of fact is contained in Duke's verified application and in the testimony of Duke witness Stimart and Duke Exhibits 4, 5, 6, 11 and 12.

Witness Stimart testified that the Merger will significantly increase Duke's size and the diversity of its assets, revenue sources and work force skills and talents, which will add stability and provide a safeguard against bad economic conditions and unexpected adversities. According to Duke's verified application, the Merger will create an integrated energy company with consolidated assets of approximately $21 billion and consolidated revenues of approximately $9.6 billion as of December 31, 1995. The application points out that the Merger will join Duke's expertise in generation, marketing and delivery of electricity with PanEnergy's expertise in natural gas gathering, processing, marketing and transportation and in the structuring and marketing of energy services.

Witness Grigg testified that Duke concluded that its strategy to become a provider of total energy services in North America would be furthered by its participation in the gathering, processing and marketing of natural gas. Witness Grigg also testified that Duke concluded that PanEnergy offered the best strategic fit of assets (pipelines, gathering lines and processing plants) and skills (marketing, sales and trading and risk management) to meet Duke's strategic objectives and that PanEnergy's management is experienced, highly capable and holds a vision of the future of the energy business that is very similar to Duke's.

Witness Stimart also testified that in the nine months ended September 30, 1996, the combined cash flows from operations of Duke and PanEnergy were $1.8 billion, well in excess of the combined cash used in investment activities (principally property additions), leaving ample cash for dividends and debt retirement. He testified that this is an indication of a strong financial condition. Further indications of a strong financial condition, he testified, are the fact that the combined enterprise will have pro forma fixed charges coverage, using the SEC method, of four times fixed charges, which is well within the range of fixed charge coverages of AA-rated utilities. Witness Stimart pointed out that more than 90% of the earnings of the combined enterprise would be asset-based. Witness Stimart further testified that, based upon his 25 years of experience in the financial and regulatory affairs of Duke, it was his conclusion that Duke, after the Merger, would have a financial condition consistent with the level of financial stability that Duke has maintained for the past several years. Witness Stimart expressed his opinion that the Merger will not adversely affect Duke's North Carolina electric operations or customers.

The Public Staff panel's testimony indicated that it had a number of concerns about the effect of the Merger and stock issuance on Duke's financial condition and their effect on Duke's and Nantahala's ratepayers. The panel concluded that Duke's and Nantahala's ratepayers could be adequately protected by the imposition of the Public Staff's proposed conditions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

This finding of fact is supported by Duke's verified application, the testimony of Duke's witnesses Grigg and Stimart, Duke Exhibits 1 and 12, the joint testimony of the Public Staff, and by the Commission's files and records, including Duke's Articles of Incorporation, which are on file with the Commission and with the Secretary of State of North Carolina, of which the Commission takes judicial notice.

Much of the evidence supporting this finding of fact is discussed above in the summary of Evidence and Conclusions for Findings of Fact Nos. 6-10, which is incorporated herein by reference. An examination of Duke's Articles of Incorporation reveals that the Merger, and the conduct of the combined enterprise thereafter, are within Duke's corporate purposes.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17 AND 18

The evidence supporting these findings of fact is found in the testimony of Duke witness Stimart and the joint testimony of the Public Staff panel (witnesses Cox, Farmer and Nightingale) (including the summary of legal matters presented by Public Staff attorney Rankin and referred to by witness Nightingale) and in the Stipulation between the Public Staff and Duke.

Witness Grigg testified that in his opinion the Merger will enhance Duke's ability to serve North Carolina retail customers both directly and indirectly: directly by enabling Duke to address its large energy customers' total energy needs and indirectly by making Duke a stronger, more viable company, better able to provide stable and reliable services in any market or economic environment.

Witness Grigg also emphasized that Duke will retain its central focus on its strategic objective to be a premier provider of traditional electric service. He pointed out that, based on 1995 figures, income from electric operations would constitute 65% of the total income of the combined enterprise.

Witness Grigg pointed out that Duke's commitment to be a good corporate citizen will be even stronger and that the public interest of North Carolina will be served by the Merger because Duke will continue to be headquartered in Charlotte, North Carolina and this will position the Carolinas in the forefront of energy developments, as they are in other industries such as banking. While the corporate name will change to Duke Energy Corporation, Duke Power's name will continue to be recognized and used in the electric operations.

Witness Grigg stated that, through the Stipulation, Duke's commitment is to hold North Carolina ratepayers harmless from any adverse effects of the Merger, primarily related to rates and level of service, and Duke's intention is that North Carolina ratepayers receive the same benefits from the Merger as electric customers in other jurisdictions.

Finally, witnesses Grigg and Stimart testified that in their opinion the Merger is consistent with the public convenience and necessity and in the public interest, that it will not impair Duke's ability to provide services to its North Carolina retail customers, and that it will not adversely affect Duke's North Carolina retail rates.

The Public Staff panel testified that a task force of accountants, engineers, financial analyst and attorneys conducted a comprehensive investigation of the proposed Merger and stock issuance, in connection with which they submitted extensive data requests and met with senior officers of Duke on several occasions. In this investigation the Public Staff reviewed Duke's and PanEnergy's filing with the Federal Energy Regulatory Commission (FERC), the Joint Proxy Statement-Prospectus and other documents filed with the Securities and Exchange Commission, Duke's and PanEnergy's filings with the Federal Trade Commission pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, Duke's filing with The Public Service Commission of South Carolina and Duke's responses to the data request submitted by the Consumer Advocate for the State of South Carolina. They also examined statements and opinions by outside auditors, attorneys and investment bankers.

With respect to the appropriate standard to apply to Duke's application, the Public Staff panel testified that North Carolina General Statute 62-111(a) provides that no merger or combination affecting any public utility shall be made through acquisition or control by stock purchase or otherwise, except after Commission approval, which "shall be given if justified by the public convenience and necessity." They further testified that, upon the advice of counsel, it was their understanding that this statute has been interpreted as requiring the Commission to determine whether or not rates and service will be adversely affected by the proposed sale. In addition, they testified that they have been advised that, in the context of the transfer of water and sewer franchises, the North Carolina Court of Appeals has held that the Commission must inquire into all aspects of anticipated

service and rates occasioned and engendered by the proposed transfer and then determine whether the proposed transfer will serve the public convenience and necessity.

The Public Staff panel further testified that G.S. 62-161, which governs the issuance of securities, provides that no public utility shall issue any securities without obtaining a Commission order authorizing such issuance. It further provides that the Commission shall authorize the issuance of securities only if the issuance is found to be

(i) for some lawful object within the corporate purposes of the public utility;
(ii) compatible with the public interest;
(iii) necessary or appropriate or consistent with the proper performance by such utility of its service to the public and will not impair its ability to perform that service; and
(iv) reasonably necessary and appropriate for such purpose.

The Public Staff panel testified that these statutes give the Commission broad authority to review all aspects of a proposed merger and/or issuance of securities and to balance all potential benefits and costs of the merger and stock issuance to determine if they should be authorized. For the public convenience/public interest standard to be met, expected benefits must be at least as great as known and expected costs. Factors to be considered include, but are not limited to, the maintenance of or improvement in service quality, the extent to which costs can be lowered and rates can be maintained or reduced, and the continuation of effective state regulation.

The panel further testified that the Public Staff, as the representative of the using and consuming public, believes that approval should be given to the Merger and stock issuance only if sufficient conditions are imposed to ensure that (1) the transaction will have no adverse impact on the rates and service of Duke's and Nantahala's retail ratepayers and (2) Duke's and Nantahala's ratepayers will receive their appropriate share of the benefits resulting from the Merger.

Because (1) this Merger is not premised on the cost cutting and efficiencies often associated with the merger of one electric public utility with another electric public utility and (2) no acquisition premium is involved, the Public Staff panel testified that its focus was on identifying and protecting North Carolina retail ratepayers from potential costs and risks resulting from the Merger and stock issuance. These potential costs and risks include the direct costs of the Merger itself, indirect corporate costs, potential subsidies of unregulated businesses by Duke's and Nantahala's North Carolina ratepayers, potential adverse effects on Duke's and Nantahala's cost of capital, the potential for cost shifting from other jurisdictions (wholesale and South Carolina), potential adverse effects as a result of the Merger's impact on the cost of Catawba Purchased Capacity and Energy, cost allocations, potential use of Duke's and Nantahala's current monopoly status to gain competitive advantages for unregulated affiliates and subsidiaries, potential limits on the Commission's regulatory jurisdiction, potential rate impacts of the foregoing costs and risks, and potential adverse effects on the quality of service because of the increased focus on diversification and growth in businesses other than traditional electric service.

The Public Staff panel further testified that these significant concerns must be addressed by a carefully constructed set of conditions for the proposed Merger to be found to be justified by the public convenience and necessity and for the stock issuance to be found to meet the requirements of G.S. 62-161(b). Both Duke and the Public Staff testified that such a set of conditions was negotiated between and agreed upon by the Public Staff and Duke, and that the conditions discussed in the Public Staff's testimony are the same conditions set out in paragraph 9 of the Stipulation. The Public Staff's testimony emphasized that the overriding principle under which these conditions were developed was that Duke's North Carolina retail electric and water customers and Nantahala's North Carolina retail electric customers be held harmless from any adverse effects of the Merger, including actions by other regulatory jurisdictions related to the Merger and that they receive no fewer benefits from the Merger than those received by electric customers in other jurisdictions.

In its opening statement the Public Staff stated for the record that its recommended condition (q) was intended to address its concern about federal pre-emption of the Commission's regulatory authority over Duke and its operations and that interaffiliate sales of goods and services, other than electric power, can be pre-empted by the Public Utility Holding Company Act (PUHCA) if a utility, such as Duke, were to become a registered holding company. The Public Staff noted its concern that the nature of the Merger and the rate of change in the electric utility industry could lead to an increased risk that Duke would become a registered holding company under PUHCA. The condition recommended by the Public Staff, to which Duke agreed in the Stipulation, requires Duke to provide the Commission with advance notice if it contemplates becoming a registered holding company under PUHCA or if it contemplates activities that may cause it to become a registered holding company, which will allow the Commission to take appropriate actions to protect its regulatory authority.

The Public Staff panel then testified that it recommended that Duke's proposed business combination transaction with PanEnergy and the requested issuance of stock in connection therewith be authorized, but only if that authorization is accompanied by the conditions set out in its testimony, which are identical with those conditions set out in subparagraphs (a)-(r) in paragraph 9 of the Stipulation.

The Attorney General presented no witnesses but stated on the record that he considered the conditions contained in the prefiled testimony of the Public Staff and in the Stipulation to be reasonable and appropriate, subject to certain clarifications which he then proceeded to obtain through cross-examination of Duke's witnesses Grigg and Stimart. Those clarifications are as follows:

(1) Witness Grigg confirmed that Duke, as the sole shareholder of Nantahala, will be in a position to, and will, honor the commitments contained in the Stipulation to hold Nantahala retail customers harmless from any adverse effects of the Merger;

(2) Witness Grigg also testified that Duke Energy Corporation will be bound by the Stipulation to the same extent and as fully as Duke Power Company is bound, since there would be merely a change of name from Duke Power Company to Duke Energy Corporation;

(3) Duke witness Stimart testified that, with respect to subparagraph 9(b) of the Stipulation, the reporting on affiliated transactions will include transactions by Nantahala with Duke's affiliates;

(4) Duke witness Grigg testified that subparagraph 9(g)(iv) of the Stipulation commits Duke to hold Duke's and Nantahala's North Carolina retail customers harmless from any adverse effect of any commitment made, either before or after any order issued by this Commission, to wholesale customers in relation to the Merger; and

(5) Duke witness Stimart confirmed that subparagraph 9(i) of the Stipulation commits Duke to identify the proceeds of long-term debt issued by Duke and Nantahala, as clearly as possible, with specific assets that will be utilized to provide service to their utility customers and that such identification is required under G.S. 62-161 and the Commission's Rule R1-16. Duke witness Grigg testified that Duke cannot issue long term debt without the approval of the Commission, and when Duke files for that approval, it sets forth the proposed use of the proceeds. He further testified that this is done "as a matter of course whenever we issue securities, and we would, of course, continue to do that."

Further, on request of the Attorney General, the Commission took judicial notice of Duke's application to FERC for approval of the Merger, and ordered that a copy of the application be included in this file. Duke stated that it did not object if the application was not treated as evidence in this matter.

Duke witness Grigg testified that the Stipulation does not contain a rate cap applicable to Nantahala's North Carolina retail rates, but does contain a cap on Duke's wholesale rate to Nantahala and a commitment to hold Nantahala's retail customers harmless from any adverse effect of the Merger. Witness Grigg explained that Nantahala is incurring significant capital cost in connection with upgrading its system and that these costs, which are unrelated to the Merger, could possibly result in the need for rate increases during the next four years.

Upon cross-examination by the Attorney General, Public Staff witness Nightingale testified that the Public Staff did not disagree with any of the clarifications the Attorney General discussed with Duke witnesses Grigg and Stimart.

CUCA also presented no witnesses and indicated that it had no objection to the Stipulation, the Merger or the issuance of stock in connection therewith, subject to certain clarifications that it had obtained in conversations with representatives of Duke and the Public Staff after the Stipulation was signed and prior to the hearings. These clarifications, which are contained in CUCA Exhibit 1, and which both Duke and the Public Staff stipulated on the record were appropriate and accurate, are as follows:

(1) The provisions of subparagraph 9(c) of the Stipulation are not intended to have any bearing upon the manner in which Duke actually "functionalizes and prepares inputs" for its existing and future cost-of-service programs. Instead, the only purpose of this language is to require Duke to more fully spell out the methods that

it utilizes in performing cost-of-service analyses. Neither Duke nor the Public Staff is bound by the Stipulation to use or approve any particular cost-of-service methodology, leaving both parties free to advocate whatever cost-of-service principle they deem to be appropriate in future regulatory proceedings.

(2) To the extent permitted by law, the annual written report required by subparagraph 9(n) of the Stipulation will protect the confidentiality of competitively sensitive information by providing procedures so that information a customer considers to be proprietary can be filed confidentially.

(3) Neither Duke nor the Public Staff construes the last paragraph of subparagraph 9(n) of the Stipulation as in any way precluding the introduction of retail electric competition in Duke's franchise service territory on a company-specific basis, or as connecting any such introduction of competition to the timing of any restructuring of the electric power industry generally in North Carolina or nationally.

CUCA asked the Public Staff panel whether the rate cap provision was intended to prohibit Duke from proposing new rates in addition to those already available. Public Staff witness Nightingale testified that it does not.

The Attorney General did not object to these clarifications of the conditions and Stipulation or to the conditions and Stipulation as clarified.

The Commission concludes that because (1) this Merger is not premised on the cost cutting and efficiencies often associated with the Merger of one electric public utility with another electric public utility and (2) no acquisition premium is involved, the appropriate focus of this proceeding is the identification of potential costs and risks to North Carolina retail ratepayers and the appropriate conditions to impose to protect those ratepayers from such costs and risks. The conditions recommended by the Public Staff and agreed to by Duke, as set forth in the Public Staff's testimony and in subparagraphs (a)-(r) of paragraph 9 of the Stipulation, as clarified in the manner described above, are necessary to ensure that the requirements of G.S. 62-111 and G.S. 62-161 are met.

Duke has stated that its intention is to hold its North Carolina retail electric and water customers and Nantahala's North Carolina retail electric customers harmless from any adverse effects of the Merger, including actions by other regulatory jurisdictions related to the Merger, and to ensure that they receive no fewer benefits from the Merger than those received by electric customers in other jurisdictions.

The Commission concludes that with conditions (a) through (r) set out in the Public Staff's testimony, the Merger and stock issuance will not adversely affect Duke's or Nantahala's North Carolina retail rates, will be consistent with the proper performance by Duke of its service to the public, will not impair its ability to perform that service, is compatible with the public interest, and is justified by the public convenience and necessity.

IT IS, THEREFORE, ORDERED as follows:

1. That Duke's application to engage in a business combination transaction with PanEnergy as described herein and to issue its securities in the manner set forth herein, and in its application, is approved upon the following conditions, as clarified by the understandings expressed by the Attorney General and CUCA and agreed to by Duke and the Public Staff during the hearing, and that Duke is hereby ordered to comply with such conditions:

(a) All costs of the Merger, and all direct and indirect corporate cost increases, if any, attributable to the Merger, shall be excluded from Duke's utility accounts, and shall also be excluded from utility costs, for all purposes that affect Duke's retail electric rates and charges, Duke's retail water rates and charges, and Nantahala's retail electric rates and charges. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level that Duke (including Duke's water utility and Nantahala) would have incurred on a stand-alone basis.

(b) Upon consummation of the Merger, Duke will undertake to revise and expand its affiliate cost allocation manual, and in that connection will perform a detailed review of the common costs to be allocated and allocation factors to be used. Duke also agrees to file an annual report of affiliated transactions with the Commission. Subject to future orders of the Commission, all of Duke's and Nantahala's administrative and general expenses shall be allocated consistent with past practices by either direct assignment or allocation so that no cost increases attributable to the Merger are reflected in electric operations.

(c) Upon consummation of the Merger, Duke will undertake to revise and expand its current electric cost of service manual to more fully delineate and describe how regulatory accounting functionalizes and prepares inputs for the cost of service computer program currently known as DARES.

(d) An amount equal to Duke's net equity investment in PanEnergy (i.e., the amount initially recorded as net investment in PanEnergy in NARUC Account 123, plus future earnings of PanEnergy less dividends paid by PanEnergy) will be eliminated from Duke's unconsolidated capital structure for all purposes that affect its North Carolina retail rates and charges.

(e) To the extent the cost rate of Duke's or Nantahala's long-term debt (more than one year), short-term debt (one year or less) or preferred stock is or has been adversely affected by the Merger, through a downgrade or otherwise, a replacement cost rate to remove the effect will be used for all purposes affecting Duke's and Nantahala's North Carolina retail rates and charges. This replacement cost rate will be applicable to all financings, refundings, and refinancings. This procedure will be effective through Duke's and Nantahala's next general rate cases. As part of the next rate case, any future procedure relating to a replacement cost calculation will be determined. This condition does not indicate a preference by any party for any specific debt rating for Duke and Nantahala on a current or prospective basis.

(f) In accordance with North Carolina law, Duke will continue to provide the Commission and the Public Staff full access to the books and records of Duke, its affiliates and subsidiaries. All of Duke's financial books and records will continue to be maintained in Charlotte, North Carolina.

(g) The revenues from certain Duke electric utility wholesale transactions are (1) allocated in part to Duke's North Carolina retail operations in Duke's North Carolina retail cost of service study, and/or (2) treated in part as a credit to jurisdictional fuel expenses in Duke's annual North Carolina retail fuel proceedings. In its filing at the FERC, Duke has committed itself to certain rate protections for the wholesale customers from whom these revenues are collected (including Nantahala and CP&L, Schedules J and G). In order to ensure that the rate protections committed to by Duke for these wholesale customers are treated as the cost responsibility of Duke's shareholders, not Duke's North Carolina retail electric customers, the following conditions shall apply:

(i) For purposes of the variable fuel rates charged under CP&L's Schedule J and Nantahala's wholesale rate schedules, Duke has committed to use a cost of debt through December 31, 2000, that reflects a debt rating no lower than Duke's debt rating as of December 31, 1996. For North Carolina retail ratemaking purposes, Duke will ensure that this commitment does not directly or indirectly cause North Carolina's retail cost of service and retail fuel cost to be greater than it would have been in the absence of the commitment.

(ii) In the case of CP&L Schedule G, Duke has committed to cap the transmission rates paid by CP&L as of December 31, 1996, through the earlier of December 31, 2000, or the date the Schedule G agreement between Duke and CP&L terminates. For North Carolina retail ratemaking purposes, an amount equivalent to and offsetting any revenue lost as a result of this commitment, appropriately allocated, shall be credited to North Carolina retail cost of service and/or North Carolina retail fuel cost.

(iii) To the extent that Duke has made other commitments to its wholesale customers relating to the Merger, the effects of which serve to increase the North Carolina retail cost of service and/or North Carolina retail fuel costs under reasonable cost allocation practices traditionally followed by Duke and approved by the Commission, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

(iv) To the extent that other such commitments are made by or imposed upon Duke relating to the Merger, either through an offer, a settlement, or as a result of a regulatory order, the effects of which serve to increase the North Carolina retail cost of service and/or North Carolina retail fuel costs under reasonable cost allocation practices traditionally followed by Duke and approved by the Commission, the effects of these commitments shall not be recognized for North Carolina retail ratemaking purposes.

(h) These conditions do not supersede any orders or directives that have been or will be issued by the Commission regarding the issuance of specific securities by Duke and Nantahala. As with securities issuances prior to the announcement of the Merger, the issuance of securities after the announcement of the Merger does not restrict the

Commission's right to review, and if deemed appropriate, adjust Duke's or Nantahala's cost of capital for ratemaking purposes for the effect of these securities.

(i) Long-term debt (of more than one year duration) issued by Duke and Nantahala will be identified as clearly as possible with the assets that are or will be utilized to provide service to customers.

(j) The cost of capital conditions of this Order will also apply to Duke's and Nantahala's determination of their maximum allowable AFUDC rates, the rates of return applied to any of Duke's and Nantahala's deferral accounts and regulatory assets and liabilities that accrue a return, and any other component of Duke's electric, Duke's water, or Nantahala's cost of service impacted by the cost of debt and/or preferred stock.

(k) The cost of capital conditions of this Order will also apply, for North Carolina retail ratemaking purposes, in all instances in which the cost of capital affects the determination of Catawba Purchased Capacity and Energy Costs.

(l) For North Carolina retail ratemaking purposes, all costs of the Merger, and all direct and indirect corporate cost increases, if any, attributable to the Merger, shall be excluded from Duke's utility accounts, and shall also be excluded from utility costs, wherever such costs would affect the determination of Catawba Purchased Capacity and Energy Costs. For purposes of this condition, the term "corporate cost increases" is defined as costs in excess of the level that Duke would have incurred on a stand-alone basis.

(m) Subject to future orders of the Commission, all of Duke's administrative and general expenses shall be allocated consistent with past practices by either direct assignment or allocation so that, for North Carolina retail ratemaking purposes, no cost increases attributable to the Merger are reflected in the determination of Catawba Purchased Capacity and Energy costs.

(n) Duke will establish a written "Code of Conduct" governing its relationship with various subsidiaries, affiliates, third parties, and retail electric customers. This "Code of Conduct" will be filed with the Commission within 90 days after the closing of the Merger and, at a minimum, will include the following provisions:

(i) Access by affiliates, subsidiaries and third parties to customer specific information of Duke's retail customers located within its franchise service territory is prohibited unless specifically requested in writing by the customer;

(ii) Duke personnel will not discriminate against non-affiliated entities (for example, when Duke customer representatives meet with a customer to discuss solutions to problems the representatives will inform the customer that there are others in addition to Duke subsidiaries or affiliates available to perform the work so that the customer has an opportunity to choose from non-affiliated companies);

(iii) Duke will not provide information or assistance to affiliated entities that it does not make available, upon request, to non-affiliated companies;

(iv) The conduct of Duke's subsidiaries and affiliated businesses will not negatively impact Duke's or Nantahala's retail customers; and

(v) Any technology or trade secrets developed by Duke in the conduct of its regulated operations will not be transferred to any of Duke's non-regulated affiliates or subsidiary businesses without just compensation and prior notification to the Commission.

Duke will file annually a written report with the Commission detailing the loss of any retail electric loads (including aggregated load) of 5.0 megawatts or greater, including the name of the load's new supplier, if applicable, explanations as to why the load was lost and what, if any, alternative energy form replaced it. To the extent that the loss of any native retail electric load is determined to be the result of any of Duke's affiliated or subsidiary businesses' direct or indirect marketing or promotion of electric or alternative energies, Duke agrees not to seek to be compensated for any revenue requirement impact resulting therefrom.

A determination as to the ability of Duke's affiliates and subsidiaries to provide electric services to, construct generating facilities for, or market the replacement of electric load with other energy forms to any retail customer of Duke or Nantahala will be made within the context of industry restructuring proposals, if any, and the Public Staff's agreement to these conditions does not constitute a position on such issues.

(o) With regard to the transfer prices charged for goods and services, including the use and/or transfer of personnel, exchanged between and among Duke and all of its direct and indirect affiliates and subsidiaries not operating as North Carolina retail utilities, the following conditions shall apply:

(i) For goods and services provided by Duke's electric utility, Duke's water utility, and/or Nantahala to such affiliates, the transfer prices shall be set at the greater of a competitive price (i.e., a price comparable with prices generally being charged at the time in arms length transactions in the same market) or fully distributed cost.

(ii) For goods and services provided by such affiliates to Duke's electric utility, Duke's water utility, and/or Nantahala, the transfer prices shall be set at the lesser of a competitive price or fully distributed cost.

Existing affiliated contracts that have been filed with the Commission are not invalidated by this provision, but remain subject prospectively to the Commission's authority to review and evaluate the reasonableness of affiliated contracts.

(p) Duke's base retail electric rates will be capped at existing levels from the date of this Order through the year 2000. The rate cap will not apply to annual fuel cost adjustment proceedings pursuant to G.S. 62-133.2 or to the termination of the Schedule J sale adjustment rider. Duke may file a request for an increase in base rates under Chapter 62 during the cap period, including a cost deferral for inclusion in base rates after the end of the cap period, solely for one or more of the following reasons:

(i) to reflect the financial impact of governmental action (legislative, executive or regulatory) having a substantial specific impact on the electric industry generally or on a segment thereof that includes Duke, including but not limited to major expenditures for environmental compliance, or

(ii) to reflect the financial impact of major expenditures to restore or replace property damaged or destroyed by *force majeure*.

Such a request will include a specification of the reasons therefor and an accurate quantification of the financial impact thereof.

(q) It is understood that the Merger *per se* should not cause Duke to become a registered holding company under PUHCA. However, should Duke be considered a "holding company" under PUHCA as a result of the Merger, Duke will merge its utility operations into a single-level company. In addition, if Duke or its affiliates engage in acquisitions or other actions after the Merger that create the possibility of Duke becoming a registered holding company, Duke will notify the Commission at least 30 days prior to taking such actions, Duke will bear the full risk of any preemptive effects of the Federal Power Act and/or PUHCA, and Duke will take all such actions as the Commission finds are necessary and appropriate to hold North Carolina retail ratepayers harmless from such preemption.

(r) Duke will continue to take steps designed to implement and further its commitment to providing superior electric service to North Carolina retail customers following the Merger.

2. That it is the intent of the foregoing conditions that Duke's North Carolina retail electric and water customers and Nantahala's North Carolina retail electric customers be held harmless from any adverse effects of the Merger, including actions by other regulatory jurisdictions related to the Merger, and that they receive no fewer benefits from the Merger than those received by electric customers in other jurisdictions.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-38, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Frontier Utilities of North	)	
Carolina, Inc., for a Certificate of Public	)	ORDER AWARDING
Convenience and Necessity to Construct,	)	CERTIFICATE AND
Own, and Operate an Intrastate Pipeline	)	APPROVING RATES
and Local Distribution System in Warren	)	FOR WARREN COUNTY
County and for the Establishment of Rates	)	

HEARD: Courtroom 201, Warren County Courthouse, 109 South Main Street, Warrenton, North Carolina, on Thursday, January 23, 1997; and Commission Hearing Room No. 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, February 12, 1997

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioners Ralph A. Hunt and Judy Hunt

APPEARANCES:

For Frontier Utilities of North Carolina, Inc.:

James P. Cain and M. Gray Styers, Jr., Attorneys at Law, Kilpatrick Stockton LLP, Post Office Box 300004, Raleigh, North Carolina 27611

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 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

BY THE COMMISSION: On November 26, 1996, 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 in Warren County and for the establishment of rates.

The Commission, by Order dated December 17, 1996, set the matter for hearing, required public notice and established intervention and filing deadlines. In addition, Public Service Company of North Carolina, Inc. (PSNC), was required to file a statement indicating its position with respect

to its franchise for Warren County. A public hearing in Warrenton and a hearing in Raleigh were scheduled.

The following parties intervened in this proceeding: North Carolina Natural Gas Corporation (NCNG), PSNC, and Piedmont Natural Gas Company, Inc. (Piedmont).

On January 7, 1997, PSNC filed a statement reiterating its willingness to relinquish its certificate to serve Warren County if the Commission authorized Frontier to provide natural gas service to the county without the use of monies from an expansion fund and if Frontier actually provided such service within the time specified by the Commission.

A public hearing was held as scheduled in Warrenton on January 23, 1997. The following fourteen persons testified as public witnesses: French Scott, Chairman of the Warren County Economic Development Commission, Senator Frank Winston Ballance, Jr., Walter Monroe Gardiner, Jr., Mayor Pro Tem of Warrenton, Walter Monroe Gardiner, President of the Warrenton Merchants Association, Jean Egerton, Mayor Pro Tem of Norlina, Oscar Long Meek, Charles Lynch, Sandra White, John Thomas Harris, Allan Miller, Bruce Perkinson, Karl Hehl, James D. Holloway, Chairman of the Board of Warren County Commissioners, and Clinton G. Alston, Warren County Commissioner.

The hearing continued in Raleigh on February 12, 1997, as previously scheduled. Joe Mavretic, President of the Carolina Gas Council, testified as a public witness.

Prior to presenting their witnesses, Frontier and the Public Staff notified the Commission that they had entered into a stipulation, which was filed with the Commission. Pursuant to this stipulation, Frontier accepted the conditions recommended by the Public Staff, which were the filing of (1) an agreement for capacity on the South Virginia Lateral of Transco's interstate pipeline, (2) a final financing plan within nine months of the date that a Commission Order becomes final, or the date that the Commission's Order in Docket Nos. G-38 and G-9, Sub 357, becomes final, whichever is later; and (3) security arrangements acceptable to the Commission in the amount of $500,000. Both Frontier and the Public Staff waived the right to cross-examine each other's witnesses. The stipulation further stated that counsel for PSNC and NCNG had indicated to counsel for the Public Staff that they did not intend to cross-examine any witnesses. Piedmont did not appear at the hearing, but it subsequently filed a letter to the effect that it should not be considered as consenting to the stipulation by its absence.

Frontier presented the testimony of a panel consisting 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. In addition, Allen Kimball, Director of the Economic Development Commission for Warren County testified on behalf of Frontier.

The Public Staff presented the testimony of a panel consisting of the following: Jeffrey L. Davis, public utilities engineer with the Natural Gas Division of the Public Staff; Kirk Kibler, staff accountant with 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 (Public Staff panel).

Following the hearing, the Public Staff and Frontier filed a joint proposed order on March 17, 1997, and a letter amending the proposed order on March 21, 1997. PSNC filed a Statement Regarding Proposed Order on March 25, 1997.

Based on the foregoing, the testimony and exhibits offered at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Frontier was originally formed in 1994 to provide natural gas service to Wilkes, Surry, Yadkin, and Watauga Counties (Four-County project). In Docket Nos. G-38 and G-9, Sub 357, Frontier was awarded a certificate of public convenience and necessity by this Commission to serve these counties by Order dated January 30, 1996, which is still pending at the North Carolina Supreme Court after being appealed by Piedmont.

2. By Order dated August 16, 1996, in Docket No. G-100, Sub 69, all unfranchised counties for which applications had not been filed were assigned to the existing local distribution companies, as required by G.S. 62-36A(b1). In this docket, Alleghany and Ashe Counties were assigned to Frontier.

3. Warren County is an unserved county within PSNC's franchised territory. PSNC filed a statement on January 7, 1997, indicating that PSNC remains willing to relinquish its franchise to serve Warren County if the Commission authorizes Frontier or another person to provide natural gas service to Warren County without the use of expansion funds and that person actually provides such service within the time specified by the Commission.

4. There is a public demand and need for natural gas service in Warren County, and no natural gas is now available.

5. Frontier's proposed pipeline will originate at the terminus of the Transcontinental Gas Pipe Line Company (Transco) lateral, approximately 1 mile west of U.S. Highway 1 at the Virginia State line. The project consists of approximately 16.5 miles of 4.5 inch steel pipe, and 54 miles of distribution laterals. The cost of construction of the initial transmission and distribution systems are estimated to cost approximately $3.5 million.

6. Frontier has proven that it can successfully design and construct the project, effectively and efficiently manage its proposed system for Warren County, and provide financing for the project on reasonable terms.

7. Frontier's proposed rates, tariffs, and service rules are just and reasonable and in compliance with the Commission's rules and regulations governing natural gas operations.

8. Sufficient interstate pipeline capacity being secured at reasonable rates is crucial to the success of this project. While there is adequate interstate pipeline capacity available to serve Warren County, no agreement had been reached as of the time of the hearing. It is therefore appropriate to condition the granting of a certificate to Frontier on such an agreement being reached and filed with Frontier's final financing plan.

9. It is in the public interest for Frontier to provide security in the amount of $500,000, which is equal to approximately two years of operation and maintenance expenses for the system. This security can be combined with the security Frontier has been required to post for its Four-County project or provided separately. It is to be used only for the purposes of covering operating expenses in Warren County 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 Warren County.

10. Frontier should be given nine months from the date the Commission's Order in this docket becomes final or the date that the Commission's Order in Docket Nos. G-38 and G-9, Sub 357, becomes final, whichever is later, to file the terms and conditions of its final financing plan, with information about all proposed equity investors, to be approved by the Commission pursuant to relevant statutes, rules and regulations. In the event Frontier is unable to arrange final financing or fails to file for Commission approval of the terms and conditions thereof, the certificate issued hereby shall expire and become null and void, and the Commission will issue such other further orders as it deems appropriate.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

The evidence supporting these findings of fact is contained in the verified application, the testimony filed by Frontier, the Commission's Order issued in Docket No. G-100, Sub 69, and PSNC's statement filed January 7, 1997, in this proceeding. These findings of fact are uncontroverted.

The Commission commends PSNC for its willingness to relinquish its franchise to serve Warren County under these circumstances and for its cooperation with Warren County officials and with Frontier during this process. This type of cooperation helps to maximize the resources available to extend natural gas to unserved counties in North Carolina and, thereby, furthers the policy of the State was evinced by the enactment of G.S. 62-2(9), 62-36A and its amendments, and G. S. 62-158.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The evidence supporting this finding of fact is contained in the testimony of virtually all of the witnesses testifying in this proceeding. All of the fourteen residents of Warren County, including various State, county, and municipal representatives, testified in support of Frontier's application. They were unanimous in their desire for natural gas service and discussed at length their efforts to obtain natural gas and to promote economic development. Mr. Allen Kimball, Director of Economic Development for Warren County, testified about the process whereby officials of Warren County first talked with PSNC and then Frontier about their willingness and ability to serve the area. Warren County initiated the efforts to recruit Frontier to serve it, and its governmental and business leaders are supportive of Frontier's application. Consistent with the witnesses who spoke at the hearing in Warrenton, Mr. Kimball spoke about lost economic opportunities in the past and the positive impact of having natural gas available to the county.

The Commission concludes that there is a public demand and need for natural gas service in Warren County and public support for Frontier and its proposed project.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence supporting this finding of fact is contained in the testimony of Frontier witnesses Oxford and Shute and the Public Staff panel.

The evidence indicates that Frontier's proposed pipeline will originate at the terminus of the Transco lateral, approximately 1 mile west of U.S. Highway 1 at the Virginia State line, and will run south along U.S. Highway 1 to Norlina, Soul City, and Manson, and southeast along U.S. Highway 401 to Warrenton. An alternate route would be along State Route 1210 from the Transco lateral to U.S. Highway 1-158, and then west to Soul City, and east to Norlina and Warrenton. Both routes are approximately the same distance. The project consists of approximately 16.5 miles of 4.5 inch steel pipe, and 54 miles of distribution laterals. Frontier has estimated the cost of construction of the initial transmission and distribution system to be approximately $3,527,000.

The Frontier pipeline design is compatible with Transco's current pipeline operating pressures and will satisfy present and projected market requirements of the proposed service territory. In the proceedings before this Commission regarding the Four-County project, Frontier filed its Pipeline System Design Plans describing technical and regulatory details of that system. The specifications for the Warren County system will be consistent with those for the Four-County project.

EVIDENCE AND CONCLUSION FOR FINDING OF FACT NO. 6

The evidence for this finding of fact is contained in the testimony of Frontier witnesses Oxford and Shute and the Public Staff panel. Frontier witnesses Oxford and Shute testified that Frontier undertook a fairly extensive study of the area, beginning in August 1996, and that subsequently Mr. Shute prepared pro forma projections of the economic feasibility of the project. The testimony of Allen Kimball also discussed Frontier's meetings with local business leaders and a review of Warren County's economy.

The evidence indicates that Frontier assessed the potential market for natural gas in Warren County by studying demographic information and making several on-site inspections to determine construction costs and potential residential, commercial and industrial markets. The 1990 U.S. Census data showed a population of 17,265 in 6,305 households in Warren County. The permanent population has grown about 11% since 1980. Frontier identified about 1,700 homes and 150 businesses in the project area around Warrenton, Norlina and Soul City. These figures were estimated from census data and current water meter counts. Many of these potential customers were grouped in sufficient density of 30 to 50 homes per mile to make natural gas service feasible. The 1990 U.S. Census data showed residential heating in Warren County to be about 19% propane, 21% electric, 33% fuel oil, and 27% with wood and other fuels.

The commercial customer count was based on actual commercial water meter counts for the project area. The schools will be the major commercial customers, and currently use about 10,000 dekatherms (Dth) of propane per year. The new prison at Manson will use a similar amount, or slightly more. In the rural areas, there are several poultry growout farms, a large hog complex, and several tobacco starter greenhouses, all of which are sizable commercial customers who now use propane. Added to these are the usual mix of car washes, laundries, government buildings, and other

propane users, and the annual commercial load should total approximately 50,000 Dth by Year 5 of the project. The commercial peak day load was calculated at 3.5 Dth per day.

Commercial loads are heavily propane-fired for cooking and water heating loads, and Frontier plans to convert 85% of this load within five years. The schools, nursing homes, car washes, and other big users are mostly on propane now.

There are about 150 tobacco drying barns in the immediate area of Frontier's planned system. Each barn has a dryer unit consisting of a large fan and propane-fired burner which circulates warm air through the tobacco according to a cyclic plan known to each farmer. Each barn is used for about seven days to dry a barn of tobacco leaves (up to 4,500 pounds), and is used up to seven times through the tobacco drying season. Each barn uses about 300 Dth per year of propane, all between July and mid-October. This will be a significant load for Frontier in Warren County and will be totally off-peak load.

There is no existing industry with a truly industrial-sized load (those above 50 Dth per day and 20,000 Dth per year). The small industries already in place use about 20,000 Dth per year as a whole. One of those manufacturers plans an expansion which could add more than 60,000 Dth per year to the existing load. Frontier contemplates a negotiated interruptible transport rate to these users (subject to available IT on Transco) to allow the greatest amount of conversion to gas. The estimated transport margin is a volume-weighted average of all large transporters.

The financial pro forma attached to Witness Shute's testimony as Exhibit 6 sets forth the revenue and expense forecast for the utility, using Frontier's estimates of construction costs, expenses, expected conversions and other assumptions and data, to evaluate the project's feasibility. Since the first five years are most critical, the model projects the financial viability of the project during that time frame.

The pro forma also projects an income statement which is the most likely picture of how the project will develop. In each year, Frontier will invest more in its system and add more customers. The gas revenues and expenses were modeled on a spreadsheet designed to help determine the appropriate rates. Net income each year was then reflected in a limited balance sheet section to show the change in debt and equity as the company progressed. These calculations indicate that Frontier's plans to provide service in Warren County are economically feasible.

The Public Staff panel testified that members of the Public Staff had investigated the prices of fuels currently available to customers, spoken by telephone with the propane and oil dealers in the area, conducted a field investigation of Warren County, and surveyed all of the known industrial customers regarding their current annual energy requirements. In surveying Frontier's potential customers, the Public Staff sent questionnaires requesting information about the type of fuel currently utilized, annual consumption quantities, on-site storage capacities, and whether natural gas would be considered for energy requirements.

The Public Staff further testified that it had evaluated the pressures and flows at key points along the proposed systems; reviewed the customer and usage projections provided by Frontier; reviewed the financial projections provided by Frontier; evaluated the reasonableness of the revenue and expense projections of the project; developed a detailed computer model for evaluating Frontier's

application; adapted the model to provide forecasted balance sheets, income statements, and cash flow statements for ten years; performed sensitivity analyses to evaluate the impact of changes in key variables, including rates, volumes, interest rates, expenses, and customer levels; ensured that the customer numbers used to determine the design day demand for the proposed system were consistent with the financial projections; investigated the availability of capacity on Transco's South Virginia Lateral at reasonable rates; reviewed cost estimates for transmission and distribution system construction; evaluated the capability of Frontier to finance the project; analyzed the proposed and potential capital structures for the project; evaluated potential equity and long-term debt investor(s); and analyzed Frontier's capability to arrange short-term financing for the project. After it completed this thorough investigation, the Public Staff concluded that Frontier has proven that it can successfully design and construct the project, effectively and efficiently manage the system, and provide financing for the project on reasonable terms.

The Commission concludes that Frontier's project is feasible. The estimates used are reasonable and the analysis very thorough. As we concluded in Docket Nos. G-38 and G-9, Sub 357, involving Frontier's much larger Four-County project, the experience of Frontier's principals, and in particular Robert Oxford and Steve Shute, is sufficient to qualify them to operate and maintain a local distribution company in a safe, reliable, and cost-effective manner. Frontier has proven that it can successfully design and construct the project, effectively and efficiently manage its proposed system for Warren County and provide financing for the project on reasonable terms.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding of fact is contained in the testimony of Frontier witnesses Oxford and Shute and the Public Staff panel.

The evidence indicates that Frontier set its proposed rates at levels that are competitive with alternative fuels in order to promote conversions from those fuels. For Frontier's rates to be competitive, they must be sufficiently lower than the market prices of competing fuels for potential customers to be willing to pay the conversion costs.

Frontier's initial rate mix reflects an estimated sales volume of gas when the system achieves a critical mass of about 1,000 customers in about three years. The residential rate is proposed to be $7.50 per Dth, which would be competitive with electricity, propane, and #2 oil. Frontier's pro forma financial projections reflect a commercial rate of $7.00 per Dth based on 132 connections over a five-year period. A strong off-peak market in the tobacco farm business has been identified with over 30 farms appearing to be good prospects. Frontier projects that it would sell 30,000 Dth of gas to these farms annually at an agricultural rate of $5.50 per Dth.. These customers could also, of course, have gas transported through Frontier's distribution system. In addition, Frontier proposes to provide transportation for industrial customers at a margin of $3.00 per MM/btu, which would be competitive with their #2 fuel oil alternative.

Frontier filed draft rate tariff sheets as Shute Exhibit 7, which were revised in Shute's supplemental testimony filed January 27, 1997. The Rules & Regulations previously filed for Frontier for the Four-County project will apply to Frontier's operations in Warren County. The O&M Manual filed for the Four-County project also will be used for Warren County. This manual complies with all pipeline safety standards, both state and federal.

During the hearing, a question as to the Commission's authority to approve "market based" rates was raised. Chapter 62 of the General Statutes does not contain an explicit grant of authority to the Commission to approve rates proposed in connection with an initial franchise application. The Commission's explicit ratemaking authority is contained in G.S. 62-133, which requires that rates be based upon 12 months of historical operating experience prior to the date the rates are proposed to become effective. This requirement obviously cannot be met when rates are being established for a new utility not yet in operation.

G.S. 62-30 provides that the Commission shall have such general power and authority to supervise and control the public utilities of the State as may be necessary to carry out the laws and for their regulation and all such other powers and duties that may be necessary or incident to the proper discharge of its duties. The authority to approve initial franchise rates must be implied from G.S. 62-30 because the Commission has the authority to grant certificates to new utilities under G.S. 62-110, and a new utility cannot begin to operate without approved rates. Without approved rates, it cannot obtain debt and equity financing. Without paying customers, it cannot recover its operating expenses, pay the interest associated with its debt, or provide a return to its equity investors. Thus, unless the Commission has the authority to approve rates without the historical operating experience required by G.S. 62-133, it cannot appropriately discharge its authority and duty to issue certificates to new utilities.

The consequences of construing the relevant statutes as not providing such authority to the Commission would be the invalidation of the multitude of certificates granted and rates established for new water and sewer utilities. There is no sèparate authority for the Commission to approve initial franchise rates for these utilities. In addition, such a construction would require that the pending application filed by Cardinal Extension Company for a certificate and approval of rates be dismissed. Cardinal is a new utility requesting a certificate to construct and operate a natural gas pipeline and requesting the approval of rates to be charged once construction is completed. It has supported its proposed rates in much the same way as Frontier, the only difference being that it has contracts with its potential customers (NCNG and PSNC), whose affiliates are also part owners of the Cardinal project.

The instant proceeding does not involve the setting of "market-based" rates in the sense that they are based solely on what the market will bear. The evidence demonstrates conclusively that the proposed rates are based on detailed estimates of construction costs, expenses, revenues, and financing costs. Because there are numerous alternatives to natural gas as a fuel source, whether a project is feasible depends upon the competitiveness of its proposed rates with those alternative fuels. Thus, any discussion of the feasibility of a proposed natural gas project must necessarily include a discussion of the relevant market, including the competitiveness of its proposed rates. If the rates that are necessary for the proposed project to be feasible are too high for customer conversions to occur, the project could not be found feasible.

It is more accurate to describe the rates to be established in this proceeding as initial franchise rates, recognizing that they are based upon estimates of construction costs, expenses, revenues, and financing costs and upon a determination that they are competitive with alternative fuels. With the exception of the consideration of alternative fuels, this process is the same as that used by the Commission in establishing initial franchise rates for new water and sewer utilities. There is nothing

novel or unusual about this process nor the Commission's authority to establish such rates. The Commission concludes that it does have the authority to establish and approve such rates.

Based on the foregoing evidence and legal analysis, the Commission concludes that Frontier's proposed rates, tariffs, and service rules 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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence for this finding of fact is contained in the testimony of Frontier witnesses Oxford and Shute and the Public Staff panel. Mr. Oxford testified that Frontier has solicited and received a number of proposals to supply gas for its Four-County project, with the key being obtaining adequate released capacity on Transco's mainline. He further testified that the Warren County project is different in that there are different capacity concerns on Transco's South Virginia lateral.

Frontier witness Oxford further testified that he had received a proposal from Williams Energy Service Company (WESCO) for both gas supply and firm transportation. WESCO, a sister company of Transco, holds considerable firm capacity on the Virginia lateral, and this proposal indicates that firm transportation from the production area in Louisiana to Frontier's city gate is available, but the price was extremely high. Witness Oxford acknowledged in his testimony that this price reflected the winter gas market following a extremely cold November, and he explained that Frontier would wait until warmer weather to negotiate a final agreement when the market is not as stressed. Since filing its application, Frontier learned that PSNC has reserved capacity on the Virginia lateral, and discussions about its releasing part of this capacity to Frontier for Warren County have begun.

The Public Staff panel testified that the availability and price of capacity on Transco's South Virginia lateral was of particular concern to it. During the course of its investigation, WESCO was contacted regarding a proposal sent to Frontier dated December 20, 1996, and included in Mr. Oxford's testimony as Exhibit 3. According to WESCO's letter, two other parties hold capacity on the lateral. Further investigation revealed that one of those parties is PSNC. The Public Staff panel testified that it had contacted PSNC regarding its capacity, and PSNC stated it was amenable to further discussions with Frontier. Frontier was informed of those findings regarding capacity, and it was suggested that Frontier contact PSNC and request a proposal. A formal agreement has not been finalized at this time, although Mr. Oxford testified that, based upon his initial conversations with PSNC, he expected a satisfactory agreement to be worked out. Because sufficient capacity being secured at reasonable rates is crucial to the success of this project, the Pubic Staff recommended that approval of the certificate be conditional upon such an agreement being reached.

Based upon the foregoing, the Commission concludes that sufficient capacity exists on the South Virginia lateral for Frontier's project, but that, in light of the ongoing discussions regarding the terms and conditions by which Frontier will obtain this capacity, its certificate should be conditioned upon an agreement for gas capacity being reached and filed with Frontier's final financing plan.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 AND 10

The evidence for these findings of fact is contained in the testimony of Frontier witnesses Oxford and Shute and the Public Staff panel. Frontier testified that it would like to include the financing of the Warren County project in its equity and debt financing for its Four-County project. Frontier witnesses Oxford and Shute explained that a single financing offering, including Warren County along with the Four-County project, will be more attractive to potential investors and will result in efficiencies and cost savings in the financing process. Frontier's plans in Warren County, however, are not contingent upon a favorable ruling by the North Carolina Supreme Court in the Four-County project. Witness Oxford testified that the Warren County project will proceed regardless.

As with the Four-County project, a large portion of the initial equity funding will be provided by ARB, Inc. IGS and Pipeline Solutions will provide a smaller portion. As previously discussed in Docket Nos. G-38 and G-9, Sub 357, several companies have expressed a desire to provide equity for Frontier and are awaiting the ruling of the Supreme Court on the appeal of the Four-County certificate before making a final commitment. Frontier recognizes that all financing plans must be approved by the Commission before the issuance of any stock or debt instruments.

Frontier testified that its initial debt-equity ratio will be 70%-30%, which is reasonable because Frontier is a new company, and that this debt to equity ratio is frequently used to arrange financing for this type of project. Unlike already existing distribution companies, Frontier's plans for Warren County involve the construction of an entirely new system. Each year Frontier plans to expand its distribution system and add new customers. As customers are added, the project generates additional revenues and cashflow so that the debt can be paid down over time. Therefore, eventually the actual ratio of debt to equity will be lower than the initial 70%-30%.

The actual interest rate for Frontier's debt will be a product of the financial markets at the time of closing. Frontier testified that it is impossible to pinpoint the interest rate until such time. Frontier's pro forma projections assume an interest rate of 9.5%, which is Frontier's best estimate at this time of what the third-party financing markets will require.

The Public Staff testified that Frontier's pro forma calculations and the Public Staff's sensitivity analyses show that the project is feasible using a range of assumptions about debt costs. The Public Staff further testified that it believes the project can be financed on reasonable terms and that Frontier should provide security, such as a standard payment and performance bond, in the amount of $500,000 to insure the operations of the Warren County project.

The Public Staff recommended that the Commission's order granting a certificate to Frontier should require Frontier to file for approval of (1) its final financing plan within nine months of the date that the Commission's Order in this docket, or the Order in Docket Nos. G-38, G-9 , Sub 357 becomes final, whichever is later; and (2) security arrangements acceptable to the Commission at the time Frontier files for approval of its financing. The security need not be executed at the time that financing is filed, but must be ready to be executed. Following its execution, Frontier should be required to file reports with respect to such security in accordance with the Commission's order. Consistent with the Commission's order regarding the Four-County project, the Public Staff

recommended that the amount of the security be equal to two years of operation and maintenance expenses for the system, which is approximately $500,000.

The Public Staff also recommended that the Commission include language in its order indicating that (1) the time periods set forth in the Commission order are subject to being 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; (2) the certificate of public convenience and necessity 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 that the Commission will issue such further orders as it deems appropriate in that event; (3) the proposed tariffs and rules and regulations filed by Frontier, as modified, if necessary, by Commission order, are approved; and (4) Frontier should be required to file progress reports with the Commission quarterly beginning from the date that the Commission's order becomes final. Frontier has agreed to and accepted these proposed conditions and this suggested language, as indicated in the stipulation filed in this docket.

Based on the foregoing, the Commission concludes that it is in the public interest for Frontier to provide security in the amount of $500,000, which is equal to approximately two years of operation and maintenance expenses for the system. This security can be combined with the security Frontier has been required to post for its Four-County project or provided separately. It is to be used only for the purposes of covering operating expenses in Warren County 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 Warren County. In addition, the Commission concludes that it is appropriate to give Frontier nine months from the date that the Commission's Order in this docket becomes final or the date that the Commission's Order in Docket Nos. G-38 and G-9, Sub 357 becomes final, whichever is later, to file the terms and conditions of its final financing plan. This will allow Frontier to pursue financing for both projects as a single offering since witness Oxford testified that that will result in efficiencies and cost savings. However, the Commission would not want the Warren County project to be unduly delayed. Therefore, should future proceedings in Docket Nos. G-38 and G-9, Sub 357 become protracted, any party, or the Commission on its own, may move to have the financing for Warren County proceed separately.

IT IS, THEREFORE, ORDERED as follows:

1. That the public convenience and necessity require that Frontier be, and Frontier hereby is, awarded a certificate of public convenience and necessity to provide natural gas service in Warren County by constructing and operating an intrastate pipeline and distribution system as hereinabove described.

2. That Frontier shall file for approval of its final financing plan within nine months of the date that the Commission's Order in this docket, or the Commission's Order in Docket Nos. G-38, G-9, Sub 357 becomes final, whichever is later, as hereinabove provided. The financing is required to be closed as soon as possible after the Commission approves it, 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, Frontier is required to 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.

5. That the certificate of public convenience and necessity granted herein is conditioned upon an agreement for interstate pipeline capacity being reached and filed with Frontier's final financing plan.

6. That the certificate of public convenience and necessity hereby granted 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 that the Commission will issue such further orders as it deems appropriate in that event.

7. That in the event and at such time as Frontier obtains Commission approval of its final financing plan and its security in accordance with this Order, the existing certificate of public convenience and necessity to serve Warren County previously awarded to PSNC shall expire to the extent that such certificate pertains to Warren County; provided, however, that if Frontier does not install its facilities and commence natural gas service to Warren County within the time specified by the Commission, as such time may be extended by the Commission, the certificate of public convenience and necessity to serve Warren County previously awarded to PSNC shall be reinstated nunc pro tunc.

8. That the proposed tariffs and rules and regulations filed by Frontier are approved.

9. That Frontier shall file progress reports with the Commission quarterly beginning from the date that this Order becomes final.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of March, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Cobb concurs.

DOCKET NO. G-38, SUB 1

Commissioner Cobb concurs in the decision to grant the certificate to Frontier under the conditions set forth in the order, but does not necessarily agree with the individual findings of fact or the evidence and conclusions in support of same.

\s\ Laurence A. Cobb
Commissioner Laurence A. Cobb

DOCKET NO. G-39
DOCKET NO. G-37, SUB 1
DOCKET NO. G-5, SUB 327
DOCKET NO. G-9, SUB 351

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Joint Application of Cardinal Extension Company, LLC (Cardinal Extension); Cardinal Pipeline Company, LLC (Cardinal Pipeline); Public Service Company of North Carolina, Inc. (PSNC); and Piedmont Natural Gas Company, Inc. (Piedmont) for (a) a Certificate of Public Convenience and Necessity Authorizing Cardinal Extension to Construct, Own and Operate Natural Gas Pipeline Facilities, (b) the Approval of a Merger of Cardinal Pipeline with and into Cardinal Extension, (c) the Approval of the Transfer to Cardinal Extension of all of Cardinal Pipeline's Rights and Authorities to Provide Natural Gas Service, (d) the Approval of the Abandonment of Gas Service by Cardinal Pipeline upon the Consummation of the Merger, (e) the Approval of the Rates and Other Terms and Conditions of Service by which Cardinal Extension will Provide Service, (f) the Approval of Ratemaking Treatment by Which Piedmont and PSNC will Adjust their Base Rates and Gas Cost Recovery Mechanisms, and (g) Request for Exemption from Certain Commission Rules	)	ORDER GRANTING CERTIFICATE AND APPROVING RATES, TERMS AND CONDITIONS, MERGER AND TRANSFER AND ABANDONMENT OF GAS SERVICE

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, May 20, 1997

BEFORE: Commissioner Judy Hunt, Presiding, Chairman Jo Anne Sanford, Commissioners Charles H. Hughes, Laurence A. Cobb, Allyson K. Duncan, Ralph A. Hunt and William R. Pittman

APPEARANCES:

For Cardinal Extension Company, LLC and Cardinal Pipeline Company, LLC

Robert W. Kaylor, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27603

For Public Service Company of North Carolina, Inc.

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

For Piedmont Natural Gas Company, Inc.

Jerry W. Amos, Amos & Jeffries, LLP, Post Office Box 787, Greensboro, North Carolina 27402

For North Carolina Natural Gas Corporation

Edward S. Finley, Jr., Hunton & Williams, Post Office Box 109, Raleigh, North Carolina 27601

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 Intervening Landowners

Wade Barber, Barber, Bradshaw & Vernon, Post Office Box 607, Pittsboro, North Carolina 27312

For the Using and Consuming Public

Antoinette R. Wike, Chief Counsel, Gisele L. Rankin, 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 27602-0629

BY THE COMMISSION: On December 23, 1996, Cardinal Extension Company, LLC (Cardinal Extension or, sometimes, Cardinal); Cardinal Pipeline Company, LLC (Cardinal Pipeline); Public Service Company of North Carolina, Inc. (PSNC); and Piedmont Natural Gas Company, Inc. (Piedmont) (collectively referred to as the Applicants) filed an application requesting (a) a certificate of public convenience and necessity authorizing Cardinal Extension to construct, own and operate intrastate natural gas pipeline facilities; (b) the approval of the merger of Cardinal Pipeline with and into Cardinal Extension; (c) the approval of the transfer to Cardinal Extension of all of Cardinal Pipeline's rights and authorities to provide natural gas service; (d) the approval of the abandonment of gas service by Cardinal Pipeline upon the consummation of the merger; (e) the approval of the rates and other terms and conditions of service by which Cardinal Extension will provide service; (f) the approval of ratemaking treatment by which Piedmont and PSNC will adjust their base rates and gas cost recovery mechanisms; and (g) exemption from certain rules set forth in Articles 4, 6 and 7 of Chapter 6 of the Commission's Rules as necessary to permit the quality standards and the billing

and measurement procedures set forth in the Pro Forma Service Agreement to apply to firm transportation service provided by Cardinal Extension.

The Commission issued an Order on January 28, 1997, which scheduled a public hearing to begin on Tuesday, May 20, 1997, for the purpose of considering the application filed by the Applicants on December 23, 1996. The order provided that Cardinal Extension publish a public notice in newspapers having general coverage in Alamance, Chatham, Orange and Wake counties once a week for three consecutive weeks starting no later than fifteen (15) days from the date of the Order. It also provided for the filing of petitions to intervene and the prefiling of direct testimony and rebuttal testimony.

On February 13, 1997, the Attorney General filed a notice of intervention pursuant to G.S. 62-20 to represent the using and consuming public. On February 21, 1997, the Carolina Utility Customers Association, Inc. (CUCA) filed a petition to intervene, which was allowed by Order dated February 2, 1997. On April 14, 1997, a motion for extension of time to file a petition to intervene on behalf of 21 landowners was filed. On April 30, 1997, the landowners filed a petition to intervene, which was granted by Order of May 8, 1997.

On May 1, 1997, CUCA filed the direct testimony of Kevin W. O'Donnell. On May 9, 1997, the Public Staff filed a letter notifying the Commission that the Public Staff and the Applicants had reached a settlement and that the Public Staff did not intend to file testimony. On May 15, 1997, Cardinal Extension, Cardinal Pipeline, PSNC, Piedmont and the Public Staff filed a Stipulation for the Commission's consideration. On May 15, 1997, the intervenor landowners filed the direct testimony of Lyle V. Jones, Lora Sparrow, Amelia G. Rountree, Anita Booth, David Swingle and Bobby Parker. Also, on May 15, 1997, CUCA filed Revised Exhibit KWO-4 to the testimony of Kevin W. O'Donnell. On May 19, 1997, Cardinal Extension filed the rebuttal testimony of Joseph N. (Jody) Wicker. On May 30, 1997, Cardinal Extension filed a letter regarding revised procedures with respect to entry on land for the purpose of surveying.

The case was heard as scheduled on May 20, 1997. At the hearing, CUCA introduced a letter (CUCA Exhibit No. 1) stating that CUCA did not oppose approval of the Stipulation between the Public Staff and Applicants, provided Cardinal Extension, NCNG, Piedmont and PSNC acknowledged that the capacity entitlements to be owned by NCNG, Piedmont and PSNC on Cardinal Extension would be operated as if they represented company-owned transmission facilities; that customer-owned gas would, in appropriate instances, be transported on each local distribution company's (LDC's) capacity entitlement on Cardinal Extension; that the proposed Cardinal Extension facility would not be operated in a manner which would unlawfully discriminate against the transportation of customer-owned gas; and that the effect of a Commission decision to approve the construction and operation of the proposed Cardinal Extension pipeline would be to expand the ability of all NCNG and PSNC industrial customers, whether those customers chose to purchase sales rate gas or to transport customer-owned gas, to obtain gas service at their manufacturing facilities. Cardinal Extension, NCNG, Piedmont, PSNC and the Public Staff agreed to CUCA Exhibit No. 1 at the commencement of the hearing. The Attorney General did not oppose approval of the Stipulation.

Subsequent to the hearing, on August 8, 1997, the Commission issued an Order Regarding Late-Filed Exhibits providing for the submission of late-filed exhibits, in the form of affidavits, to supplement the record as to two matters: developments as to the landowners' issues that had occurred

since the hearing and a list of all known federal, state and local permits required for the Cardinal project. Affidavits were filed on September 8, 1997, by Gary R. Snowbarger and Richard K. Mogensen on behalf of Cardinal Extension and by Nicolas P. Robinson on behalf of the landowners. The Attorney General filed a letter on that date.

Based upon the verified application, the testimony and exhibits received into evidence at the hearing, the late-filed exhibits, and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Cardinal Pipeline is a limited liability company formed under the North Carolina Limited Liability Company Act. The members of Cardinal Pipeline are PSNC and Piedmont Intrastate Pipeline Company (Piedmont Intrastate). Cardinal Pipeline's principal place of business is located at the offices of its operator, PSNC, at 400 Cox Road, Gastonia, North Carolina.

2. Cardinal Pipeline is the owner of an existing 24-inch diameter intrastate pipeline which originates at an interconnection with Transcontinental Gas Pipeline Corporation (Transco) in Rockingham County, North Carolina, and extends approximately 37 miles through Northern Guilford County to Alamance County where it connects with measurement facilities owned by PSNC and with measurement facilities owned by Piedmont on the southeast side of Burlington, North Carolina (hereinafter referred to as the existing Cardinal pipeline). The construction of the existing Cardinal pipeline and its firm service obligations and applicable ratemaking procedures were approved by Commission Order dated July 1, 1994, in Docket No. G-37. Service commenced through the existing Cardinal pipeline in December 1994. PSNC has a contractual entitlement to 70,000 thousand cubic feet per day (Mcf/day) of firm transportation capacity, and Piedmont has a contractual entitlement to 60,000 Mcf/day of firm transportation capacity on the existing Cardinal pipeline. Cardinal Pipeline does not charge PSNC or Piedmont a rate for this firm transportation capacity; rather, PSNC and Piedmont made capital contributions to Cardinal Pipeline, and the cost of service associated with this transportation capacity is recovered through the general system rates of PSNC and Piedmont.

3. PSNC is a natural gas local distribution company primarily engaged in the purchase, transportation, distribution and sale of natural gas in the State of North Carolina. At the time the application was filed, PSNC was authorized to serve natural gas customers in 90 cities and communities in an approximately 13,000 square mile area which includes portions of 33 counties and a population of approximately 2.4 million people.

4. Piedmont is a local distribution company principally engaged in the purchase, distribution and sale of natural gas to customers in the Piedmont region of North Carolina and South Carolina and the metropolitan area of Nashville, Tennessee. Piedmont serves approximately 327,000 customers in the State of North Carolina.

5. Cardinal Extension is a limited liability company formed under the North Carolina Limited Liability Company Act. The members of the Cardinal Extension are TransCardinal Company (TransCardinal), a wholly owned subsidiary of Transco; PSNC Cardinal Pipeline Company (PSNC Cardinal), a wholly owned subsidiary of PSNC; Piedmont Intrastate, a wholly owned subsidiary of Piedmont; and NCNG Energy Corporation (NCNG Energy), a wholly owned subsidiary of North Carolina Natural Gas

Corporation (NCNG). The initial sharing ratios of the members of Cardinal Extension are:

TransCardinal	45%	PSNC Cardinal	33%
Piedmont Intrastate	17%	NCNG Energy	5%

Cardinal Extension was formed to plan, design, develop and construct an extension of the existing Cardinal pipeline and related facilities; to acquire the existing Cardinal pipeline; to own and provide for the operation and maintenance of the extended Cardinal pipeline system including the existing Cardinal pipeline; and to conduct such business activities that are necessary or incidental in connection therewith.

6. In the application, Cardinal Extension requested a certificate of public convenience and necessity to permit it to construct, own and operate approximately 67 miles of 24-inch diameter pipeline commencing at the terminus of the existing Cardinal pipeline and continuing in a southeasterly direction through Alamance, Orange, Chatham and Wake Counties and terminating at proposed new interconnections with PSNC and NCNG near Clayton, North Carolina. Cardinal Extension also proposed to construct, own and operate three new meter stations, two new taps, and appurtenant facilities, and to provide incremental firm transportation service of 40,000 Mcf/day to NCNG and 100,000 Mcf/day to PSNC. The proposed facilities were designed to result in a minimum pressure of 550 psig for delivery points near the terminus of the existing Cardinal pipeline and a minimum pressure of 500 psig at the terminus of the extended Cardinal pipeline.

7. The estimated cost of constructing the facilities is $74.6 million. Construction of the proposed facilities will be financed by capital contributions from the members of Cardinal Extension in the following percentages:

TransCardinal	54%	NCNG	6%
PSNC Cardinal	40%		

Piedmont Intrastate will not make capital contributions to the construction of the proposed extension of the Cardinal pipeline facilities. At the effective time of the merger between Cardinal Extension and Cardinal Pipeline, PSNC and Piedmont Intrastate will be deemed to have made a capital contribution to Cardinal Extension equivalent to the net book value of their membership interests in the existing Cardinal pipeline, and Cardinal Extension will purchase the two existing measurement stations owned by PSNC and Piedmont at the terminus of the existing Cardinal pipeline. The initial sharing ratios of PSNC Cardinal and Piedmont Intrastate will be adjusted as necessary to reflect these transfers and PSNC will also receive a cash reimbursement from Cardinal Extension.

8. Cardinal Operating Company (Cardinal Operating), a wholly owned subsidiary of Transco, will construct the facilities proposed herein to extend the existing Cardinal pipeline and ultimately will serve as operator of the entire Cardinal pipeline system, including the existing Cardinal pipeline and the extended Cardinal line, pursuant to the terms and conditions of the Construction, Operation and Maintenance Agreement between Cardinal Operating and Cardinal Extension. Cardinal Pipeline will continue to own and operate the existing Cardinal pipeline until the proposed Cardinal Extension facilities are constructed and ready for service and other conditions set forth in the Merger Agreement have been satisfied. Once all necessary regulatory approvals have been secured, Cardinal Operating will commence construction of the proposed facilities so as to meet the

requested in-service date of November 1, 1999. The Applicants have agreed to operate the proposed Cardinal Extension facility and the capacity entitlements to be owned by PSNC, Piedmont and NCNG on Cardinal Extension in a manner consistent with the understanding expressed in CUCA Exhibit No. 1. Cardinal Extension has requested a waiver of certain portions of Articles 4, 6 and 7 of Chapter 6 of the Commission Rules to the extent necessary to give effect to the billing, measurement and quality standards with regard to firm transportation service provided by Cardinal Extension's Pro Forma Service Agreement. No party objected to this request.

9. Cardinal Extension's cost of service should reflect the transfer of the book value of the existing Cardinal pipeline, as it appears on the books of the two members of Cardinal Pipeline at the time the proposed merger is consummated.

10. Cardinal Extension's projected reasonable original cost rate base used and useful in providing service in North Carolina is $94,044,278, which consists of gas plant in service of $102,176,697 and materials and supplies of $1,021,767, reduced by accumulated depreciation of $5,101,834 and deferred income taxes of $4,052,352.

11. Cardinal Extension's projected overall level of reasonable operation and maintenance expenses is $792,744.

12. Cardinal Extension's projected reasonable level of deprecation expense, which reflects a depreciation rate of 2.5% applicable to gross plant in service, is $2,554,417.

13. Cardinal Extension's projected overall level of reasonable taxes other than income is $727,590.

14. The overall fair rate of return that Cardinal Extension should be allowed an opportunity to earn on its rate base is 10.08%.

15. Cardinal Extension should be authorized to charge rates designed to produce annual operating revenues of $17,124,065.

16. Cardinal Extension's cost of service should consist of two zones. The Zone 1 cost of service should be assigned to Piedmont and PSNC based on their respective ownership shares in the Existing Cardinal Pipeline. The Zone 2 cost of service should be assigned to PSNC and NCNG based on their peak day entitlements. The rates shown on Exhibit A of the Stipulation are just and reasonable.

17. Approval of the rates on Exhibit A of the Stipulation does not constitute approval of, or precedent regarding, the use of Straight-Fixed-Variable rate design in setting rates for local distribution companies in this State.

18. After the Cardinal pipeline extension becomes operational and Cardinal Pipeline is merged into Cardinal Extension, Piedmont and PSNC will add the annual Cardinal charges for Zone 1 to their respective gas costs consistent with the approved PGA procedures for demand and storage charges, as modified from time to time, with the exception that 100% of Piedmont's Cardinal charges will be assigned to North Carolina. At the same time, Piedmont and PSNC will reduce their

respective margins by the same amount so that there will be no change in their overall rates. Should either Piedmont or PSNC file a rate case prior to the in-service date of the Cardinal pipèline extension and consummation of the proposed merger, the Public Staff has the right to propose that the cost of existing Cardinal pipeline be classified as gas cost.

19. Cardinal Extension will file an application for a general rate case pursuant to G.S. 62-133 on or before January 15, 2003.

20. The cost of future taps and modifications to existing taps on the existing and extended Cardinal pipeline will be recovered from the entity requesting the tap, either through a contribution in aid of construction or through a surcharge.

21. Cardinal Extension will flow back to its capacity holders 100% of any excess CFT Revenues.

22. The appropriate treatment of any revenues received from the resale of capacity on the Cardinal Extension pipeline system by the holders of such capacity will be determined in another proceeding.

23. The effective AFUDC rate actually used by Cardinal Extension will be the net-of-tax overall rate of return approved by this Commission.

24. The merger of Cardinal Pipeline with and into Cardinal Extension, pursuant to the terms and conditions of the Agreement and Plan of Merger, as amended, is in the public interest.

25. The transfer to Cardinal Extension of all of Cardinal Pipeline's rights and authorities to provide natural gas service in North Carolina is in the public interest.

26. The abandonment of gas service by Cardinal Pipeline is in the public interest.

27. The proposed extension of the existing Cardinal pipeline meets the needs for increasing requirements for natural gas in the areas in PSNC's and NCNG's service territories to be served by the proposed facilities. It provides the most economically competitive means of delivering gas from Transco's system to those areas.

28. The requested certificate of public convenience and necessity authorizing Cardinal Extension to construct, own and operate natural gas facilities is in the public interest.

29. The business relationships reflected in this transaction are new to these companies and are unique in the natural gas industry in North Carolina. The Commission urges the Public Staff to monitor these relationships carefully in the context of its ongoing audits and reviews of the industry.

30. Cardinal Extension analyzed four alternative routes for the extended pipeline. It chose the preferred route, after consideration of the alternatives, based on appropriate factors, including distance, supply and delivery points, existing utility rights-of-way, terrain, water and road crossings, population densities, existing and planned developments, and other factors. Cardinal Extension carefully considered the alternatives and acted in a reasonable manner in choosing the preferred route.

31. In some cases, Cardinal Extension's agents entered the property of landowners along the preferred route without their consent in order to conduct preliminary survey work. Subsequent to the hearing, Cardinal Extension agreed not to enter private property without first seeking written permission and obtaining prior consent of the landowner and confirming the consent and time of entry in advance by telephone. The intervening landowners find these new procedures appropriate.

32. Although Cardinal Extension has chosen its preferred route for the pipeline, the exact routing of the pipeline across individual properties has not been finalized. Subsequent to the hearing, Cardinal Extension representatives met with several landowners along the preferred route and in some cases agreed to realignments of the pipeline to address individual landowners' concerns. Cardinal Extension shall continue to work with individual property owners in an effort to route the pipeline so as to have the least impact on their respective properties when feasible from a technical and regulatory standpoint and without impacting adjoining property owners.

33. Cardinal Extension shall use existing pipeline rights-of-way to the maximum extent possible consistent with prudent business practices and shall purchase the minimum of new right-of-way necessary and, after construction is complete, as to those portions of the route parallel to existing PSNC pipeline right-of-way, shall file detailed diagrams of the existing and new rights-of-way, showing their location in relation to each other and the location of the pipelines in each.

34. Cardinal Extension shall work with individual landowners as to the issues of compensation and the appropriate terms for the right-of-way agreements to be entered with them. The Commission will not decree a standard right-of-way agreement for all.

35. Cardinal Extension shall obtain and comply with all applicable environmental-related regulations and permits.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-8

The evidence supporting these findings of fact is contained in the verified application, the Commission's files and records regarding these proceedings, CUCA Exhibit No. 1 and the testimony of witnesses Yoho, Davis, Ferazzi and Skains. This evidence was not contradicted by any party to this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT OF NOS. 9-24

The evidence supporting these findings is contained in the verified application, the Commission's files and records regarding these proceedings, the testimony of witnesses Yoho, Davis, Ferazzi, Skains and O'Donnell, as well as the Stipulation dated May 14, 1997, between Cardinal Extension, Cardinal Pipeline, PSNC, Piedmont and the Public Staff. This evidence was not contradicted by any party to this proceeding.

The Stipulation filed by the Applicants and the Public Staff was not opposed by the Attorney General. After the parties agreed to address certain CUCA concerns regarding transportation, CUCA did not oppose the Stipulation.

The following table compares the total operating revenues as filed in the application with the terms of the Stipulation:

	APPLICATION	STIPULATION	CHANGE
OVERALL RETURN ON RATE BASE	$11,224,342	$9,479,664	($1,744,678)
O&M EXPENSES	887,400	792,744	(94,656)
DEPRECIATION	2,457,577	2,554,417	96,840
TAXES OTHER THAN INCOME	699,306	727,590	28,284
INCOME TAXES	4,653,967	3,569,650	(1,084,317)
TOTAL OPERATING REVENUES	$19,922,592	$17,124,065	($2,798,527)

The Stipulation reduces the operating revenues filed in the application by $2,798,527. A reduction in return on rate base and related income taxes accounts for the bulk of the reduction. Most of the $1,744,678 reduction in the overall return on rate base results from a lowering of the rate of return from 11.5% as filed to 10.08% in the Stipulation. However, $409,298 of the decrease results from the use of a smaller rate base in the Stipulation. The 11.5% return reflected a 50% debt, 50% equity capitalization, a request for 14.5% return on equity and an assumed 8.5% cost of debt. A return on equity is not broken out in the Stipulation, but if the 8.5% cost of debt is held constant, an equity return of 11.66% can be calculated.

The Stipulation calls for a $94,656 reduction in operations and maintenance expenses. A $96,840 increase in depreciation flows from the use of gross plant rather than net plant in the transfer of the assets from the existing Cardinal Pipeline to the books of the new Cardinal. In the application, the estimated net plant of Cardinal Pipeline is added to the capital cost of the expansion to get a new utility plant for rate base of more than $98.3 million. In the Stipulation, the gross plant of Cardinal Pipeline is used, which yields a utility plant for rate base of almost $102.2 million. The same 2.5% depreciation rate is applied to those figures and therefore the Stipulation yields an increase in depreciation expense. However, the use of gross plant means that a larger deferred income tax balance is deducted in calculating rate base, and that yields a $409,298 reduction in overall return mentioned above.

The Stipulation makes clear that as Piedmont and PSNC pick up their payments to the new Cardinal, they will reduce their respective margins by the same amount to reflect the merger of Cardinal Pipeline with and into Cardinal Extension.

The Applicants agree to file an application for a general rate case on or before January 15, 2003, and Public Staff agrees not to initiate a rate case prior to that date. The stipulation does not, of course, affect the right of the Commission to initiate a rate proceeding in appropriate circumstances.

The Stipulation dictates that excess CFT revenues will be flowed back to the capacity holders. Also, the parties agreed that the appropriate treatment of any revenues received from the resale of capacity by capacity holders will be determined "in another proceeding." The Commission believes that this agreement should be clarified and concludes that the parties to the Stipulation shall, within thirty (30) days, file a statement clarifying the circumstances in which these issues will be addressed

The Stipulation reflects rates designed using the Straight-Fixed-Variable (SFV) rate design methodology. The North Carolina Utilities Commission has not previously used Straight-Fixed-Variable rate design. Public Staff witness Hoard testified, ". . . we do not think that it would be appropriate for an LDC to use Straight-Fixed-Variable rate design." Cardinal Extension will be an intrastate pipeline, not a local distribution company. Transco witness Ferrazi testified that SFV rate design ". . . allocates all fixed costs of providing firm service to the reservation rate and any variable costs associated with the firm service to the commodity component of the rate." Mr. Ferazzi argued that, "Without the use of SFV, Cardinal Extension and its members will not have a reasonable opportunity to recover their capital investment and to earn an acceptable return on their investment. . . ." He stated that testimony presented by PSNC and NCNG witnesses showed that the LDCs anticipate serving primarily residential and commercial market growth with incremental firm capacity provided by Cardinal. He pointed out that, "The use of the Cardinal pipeline system will be determined by the nature of the market demand." and "This market demand is anticipated to be extremely weather dependent. . . ." Mr. Ferazzi then argued that it would be unreasonable and unfair to place the recovery of Cardinal Extension's fixed costs at risk by placing those costs in a volumetric rate. Mr. Ferazzi also stated that, in order to justify investing its capital in this project, Transco must be able to earn a return on its investment comparable to the returns available from other regulated investment opportunities.

The Commission recognizes that the Cardinal Extension is unique. It is an intrastate pipeline whose only customers are Piedmont, PSNC and NCNG. The Commission notes that the Stipulation, of which the Public Staff was a party and the Attorney General did not oppose, results in a $2,798,527 reduction in the allowed operating revenue under what was filed in the application. Of that total, $1,744,678 of the decrease is attributable to a decrease in the overall return on rate base. Public Staff witness Hoard stated that SFV rate design ". . . ensures revenue stability . . . " and therefore ". . . has a positive impact on the risk and therefore reduces the return." The Commission notes that the Stipulation filed in this docket is the result of negotiations. The Commission will consider the rates filed in Exhibit A to the Stipulation on their face. The Commission explicitly states that approval of those rates does not constitute approval of, or precedent regarding the use of Straight-Fixed-Variable rate design in setting rates for local distribution companies in this State.

The Stipulation states that Cardinal Extension shall be allowed an opportunity to earn an overall rate of return on rate base of 10.08%. In the application, Cardinal Extension requested an overall return on rate base of 11.50%, reflecting a capitalization of 50% debt and 50% equity. The pretax cost of debt was assumed to be 8.5% and the return on equity requested was 14.5%. The Stipulation does not break out cost of debt or return on equity. Since the Stipulation sets the allowed overall return at 10.08%, it follows that the actual debt cost incurred by Cardinal Extension will affect the return on equity. Again, the Commission notes that the Stipulation filed in this docket is the result of negotiations. The Commission finds that the 10.08% allowed overall return is just and reasonable. However, the Commission would like to know what the actual cost of debt is and what return on equity results. Therefore, the Commission will require Cardinal Extension to file within thirty (30)

days of the completion of its financing the terms and conditions of its debt financing and the calculated return on equity.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 25-26

The evidence supporting these findings of fact is found in the verified application and in the testimony of witnesses Yoho, Davis, Skains and Ferazzi. This evidence was not contradicted by any party to this proceeding.

The proposed merger will take place after the completion of construction of the proposed Cardinal Extension facilities, which is projected to occur in November 1999, and the satisfaction of all conditions precedent set forth in the Merger Agreement. At such time, Cardinal Pipeline will be merged into Cardinal Extension, the separate existence of Cardinal Pipeline will cease, and Cardinal Extension will be the surviving company, operating under the name of Cardinal Pipeline Company, LLC, and will assume all the rights, privileges, immunities and franchises held by Cardinal Pipeline prior to the merger.

The proposed merger is consistent with the public convenience and necessity in accordance with G.S. 62-111(a). The proposed merger will not change either the rates paid by or services delivered to existing Cardinal Pipeline customers. Cardinal Extension has made a contractual commitment to continue to provide the same level of firm transportation services of 70,000 Mcf/day and 60,000 Mcf/day that PSNC and Piedmont are currently receiving on the existing Cardinal pipeline for deliveries upstream of Burlington, North Carolina, as set forth in the precedent agreements between Cardinal Extension and PSNC and Cardinal Extension and Piedmont.

Cardinal Extension is ready, willing and able to assume all the responsibilities and service obligations applicable to Cardinal Pipeline and to public utilities in general by the North Carolina General Statutes and by the Rules and Regulations of the Commission. The members of Cardinal Extension have committed to funding 50% of the capital costs through equity contributions. With respect to the 50% financing of the project, Cardinal Extension will solicit formal bids and will negotiate the terms and conditions of the financing of the proposed project on satisfactory terms for the project.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACTS NO. 27-28

The evidence supporting these findings of fact is found in the verified application, the testimony of witnesses Yoho, Davis, Ferazzi and the joint testimony of the Public Staff panel, witnesses Farmer, Hoard and Curtis.

As set forth in the testimony of PSNC witness Yoho, the proposed extension of the existing Cardinal pipeline system solves two problems for PSNC. First, it provides additional capacity to augment PSNC's own transmission system to transport additional quantities of natural gas to the high-growth Raleigh-Durham area. Second, it provides capacity and thus gas supply and pressure maintenance on the east side of PSNC's Raleigh distribution system, where the need is critical.

As set forth in the testimony of witness Davis, the proposed Cardinal pipeline extension and interconnection with NCNG at Clayton will permit NCNG to receive gas supplies, on a firm basis,

close to the midpoint of its service territory where it is needed to meet projected peak day demands of its customers.

The unrefuted testimony of witnesses Yoho and Davis makes it clear that PSNC and NCNG need additional capacity southeast of Raleigh. Testimony in this docket supports that Cardinal Extension will provide 100,000 MCF/day of capacity to PSNC and 40,000 MCF/day to NCNG at a point near Clayton, North Carolina where it is needed.

Several witnesses discussed the cost-effectiveness of Cardinal Extension and the other options that were considered and testified that Cardinal Extension was the best option.

Witness Davis testified that, ". . . to NCNG and its ratepayers . . . ," Cardinal, ". . . was the lowest price alternative. . . ." He testified that Cardinal Extension will make it possible for NCNG to avoid approximately $11.7 million for additional pipeline and facility upgrades and $27.5 million in upgrades to its LNG plant over the next few years. Mr. Davis stated that economies of scale would be achieved by joining with other partners in a large project. Mr. Davis also mentioned that NCNG considered an "alternate pipeline" that came in from Virginia to Clayton.

PSNC witness Yoho testified that PSNC, ". . . evaluated building facilities to parallel its existing system from the end of the existing Cardinal pipeline toward Raleigh. . . ." PSNC also negotiated with NCNG to extend the contract with NCNG to provide LNG capacity to PSNC. Mr. Yoho discussed a project that came off of the Transco lateral in Virginia into the Raleigh distribution system and then went east to west. He deemed that project much longer and more expensive. He also discussed another interstate pipeline project that came down out of the Richmond, Virginia area. Mr. Yoho testified that Cardinal Extension is the most cost effective project that was studied. He stated that, "It is less expensive than the construction required on PSNC's transmission and distribution systems and it is less expensive than the proposed interstate pipeline project that was studied." He mentioned that the economies of scale made possible by the participation of multiple partners will result in an overall savings to all participants.

Public Staff witness Curtis stated that, to get gas to Clayton, where PSNC and NCNG need it, ". . . this project certainly made sense since there was already a 24-inch pipeline to Haw River, North Carolina." He further stated that, ". . . we looked at it as probably the most plausible option to go forward with. . . ."

Several parties testified that an advantage of Cardinal Extension was that Transco's participation in the project freed up LDC capital for other uses. In response to a question from Commissioner Cobb, witness Davis acknowledged that the pipeline coming down from Virginia was the WinterNet project, that WinterNet would have delivered gas to Clayton and that WinterNet would have used no LDC capital at all. The Commission notes that it is reasonable to assume that a pipeline from Richmond to Clayton would pass through unserved portions of Warren, Franklin and Johnston Counties on the way to Clayton. Such a pipeline would not only avoid the use of LDC capital to get gas to Clayton, but would also free up LDC capital that will otherwise be needed to extend service to those areas. In response to a question from Commissioner Hunt, Public Staff witness Hoard suggested that there may be a tradeoff between using LDC capital and paying more for a project like WinterNet. There is nothing in the testimony of any of the witnesses to tell the

Commission whether they rigorously considered the use of LDC capital as a cost in comparing Cardinal Extension to other projects.

While questions can be raised about the manner in which the costs of certain projects were evaluated, there is a significant difference among the projects other than cost. Witnesses linked the Cardinal Extension project to the Pine Needle LNG project. Mr. Ferazzi's pre-filed testimony included a table showing "recent Transco expansion projects." That table included the Pine Needle LNG project, which will provide 340,000 MCF/day of capacity to North Carolina customers beginning in November of 1999. Speaking of Cardinal Extension, Mr. Davis testified that, ". . . this line will also be constructed very close to the proposed Pine Needle LNG facility which is where our capacity will be filled on its 40,000 a day initially." Public Staff witness Hoard testified, "This project does have some connection with the Pine Needle project." Mr. Hoard further testified that Cardinal gets the gas from Pine Needle into the areas where it is needed by PSNC and NCNG. It is clear to the Commission that the immediate and primary purpose of Cardinal Extension is to deliver gas from the incremental capacity in the Pine Needle to PSNC and NCNG southeast of Raleigh to Clayton. It is in that context that the cost-effectiveness of the Cardinal Extension project must be considered.

Given that PSNC and NCNG are customers of Pine Needle, the project considered here must deliver gas from Transco to the southeast of Raleigh where both PSNC and NCNG need it. Although it would be possible for PSNC and NCNG to construct separate facilities to meet their respective needs, the construction, maintenance and operation of separate facilities would be more costly than the joint facilities proposed to be constructed by Cardinal Extension. Thus, the proposed facilities will result in lower rates to consumers than would be the case if NCNG and PSNC were to construct separate facilities. Witnesses Yoho and Davis testified that TransCardinal's capital contribution to the project would enable the North Carolina LDCs to utilize their capital for other purposes, such as expanding natural gas service within North Carolina. The Commission concludes that the record in this docket supports the conclusion that Cardinal Extension provides the most economically competitive way to move gas from Transco's system to the area southeast of Raleigh where it is needed by PSNC and NCNG.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

The evidence for this finding is found in the application and the testimony of the Applicants and in the testimony of the Public Staff witnesses Curtis and Hoard.

In response to questions from the Commission, the Public Staff witnesses testified that affiliated transactions always require the Public Staff to investigate more thoroughly and that they will do so as to Cardinal. The Public Staff has clearly established their right to access and audit all necessary books and records. Witness Curtis testified that the Public Staff monitors gas and commodity costs on a monthly basis and would catch anything out of line. Further, he testified that Cardinal Extension's rates will be subject to review in the annual gas cost prudence reviews and that this review "backs up all the way to the O&M expenses and return and everything."

Although the Public Staff has agreed not to initiate an investigation of Cardinal's rates before January 15, 2003, the Commission does not interpret this agreement as in any way limiting the Public Staff's ability and responsibility to audit Cardinal Extension and to raise such issues as appropriate

in the Public Staff's opinion, relating to the business relationships or other matters, in annual gas cost prudence reviews or complaint proceedings. Neither would the Commission be precluded from initiating a rate proceeding in appropriate circumstances. The Commission urges the Public Staff to monitor these relationships carefully in the context of its ongoing audits and reviews of the industry.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 30-34

The evidence for these findings is found in the verified application, the testimony at the hearing of witnesses Yoho, Davis, Ferazzi, Wicker, and intervenor witnesses Parker, Booth, Rountree, Jones and Sparrow, and in the late-filed exhibits of Cardinal and the intervenor landowners.

Cardinal's witnesses at the hearing provided little evidence of alternative routes that were considered for the pipeline. Witness Ferazzi identified only one alternative route through Chapel Hill and said, "there may have been other routes that were reviewed as well." He said, "I know that Transco's route was determined to be the most economic, and then we follow all the rules and regulations and have the protection of the environment as one of our utmost concerns." Witness Wicker testified to this same alternative, the PSNC right-of-way through Chapel Hill. He testified that they "concluded that this would not be a suitable corridor for installation of the 24-inch Cardinal Extension. This confirmed our choice with the southern routing which took us away from the Chapel Hill and Cary metropolitan areas."

Cardinal presented much more detailed evidence in its late-filed exhibit. Affiant Snowbarger explained the choice of route. He stated that the proposed pipeline had to commence at the terminus of the existing Cardinal pipeline and connect with the PSNC and NCNG systems at Clayton. He stated that the goal was to utilize as much existing utility right-of-way as possible and to avoid residential and commercial areas, areas of environmental concern, and areas with difficult terrain while still reaching the proposed delivery points. In 1995, several existing right-of-way corridors were identified for possible use and researched by fly-overs, ground investigations and maps. In late June 1995, a team visited North Carolina to investigate possible routes. Another preliminary field trip was conducted during early October 1995. In mid-December 1995, a new alternative, utilizing CP&L's rights-of-way south of Jordan Lake, was reviewed by fly-over. Snowbarger stated that the following factors were considered in selecting the route: pipeline length; supply and delivery point locations; existing utility rights-of-way; terrain features, such as wetlands, especially forested wetlands; water body crossings; areas of population densities; road and railroad crossings; cultural resources; endangered species; existing residential areas and communities; planned residential areas and communities; and existing contours where the pipeline would be located. Exhibit K illustrates the four alternative routes that were analyzed.

Alternate I follows an existing PSNC right-of-way from Burlington through Chapel Hill to Durham County, intersects with an abandoned railroad right-of-way and follows it to the south, and then intersects with the Colonial Pipeline right-of-way near the Chatham/Wake County line. The existing PSNC right-of-way through Chapel Hill runs through highly congested and developed areas, along streets, adjacent to schools, and under apartment complexes, shopping malls, and other facilities. Further, the abandoned railroad right-of-way was found to have numerous encroachments and the existing cleared railroad corridor was not wide enough. It was concluded that this alternative

was not feasible and that the preliminary route would have to leave the PSNC right-of-way west of Carrboro.

Alternate II was studied to avoid a Jordan Lake crossing; it would follow existing CP&L rights-of-way around Jordan Lake to the south. This route is approximately eleven miles longer than the other routes reviewed, would impact greater forest acreage and would require the crossing of two fingers of the Harris Reservoir and approximately two miles of forested wetlands. This alternative was eliminated based on the additional length and the environmental disturbance and landowner impact.

Alternate III was also reviewed in an effort to avoid a Jordan Lake crossing. Alternate III would parallel an existing Duke Power right-of-way north of the Lake. Alternate III would avoid the congested Chapel Hill/Carrboro area, but would impact a large area of forested wetlands associated with several creeks draining into Jordan Lake and would cross an eagle nesting area. Although this route would shorten the actual Jordan Lake crossing, the impact to forested wetlands and threatened and endangered species would be greater. This route would also require two additional directional drills, and the difficulties associated with the abandoned railroad right-of-way, discussed above, exist here as well.

Snowbarger stated that longitudinal occupancy of a controlled access highway right-of-way, such as the Interstate 40 corridor, is not allowed by the North Carolina Department of Transportation and that a right-of-way parallel to, but outside of, the Interstate 40 corridor would involve numerous private and commercial encroachments and would not be technically feasible.

The preferred route parallels the PSNC right-of-way from the terminus of the existing Cardinal pipeline to a point west of Dotsons Crossroads where the route turns south and runs to an intersection with the Colonial Pipeline right-of-way west of Jordan Lake. There was no existing right-of-way corridor that could be followed for this north-south portion of the route, and it is this part of the route that impacts the intervenor landowners. Snowbarger stated that two alternative routes were considered through this area, identified as Alternatives A and B on his Exhibit C. He stated that the preferred route will impact fewer streams than either Alternate A or Alternate B, as indicated by the table on Exhibit C; that it will minimize the impact to the environment; and that it will avoid the majority of development in the area. Two other alternatives, C and D, were developed subsequent to the hearing. Alternative C, proposed by the intervenors, was rejected, but Alternative D, developed by Cardinal, was still being considered.

In conclusion, Snowbarger stated that the preferred route has the least impact on the environment as compared with the other three alternatives considered and that approximately 41.4 miles of the proposed 67-mile route would be located either on or adjacent to existing utility rights-of-way. Although the preferred route will require a crossing of Jordan Lake, horizontal directional drilling technology will minimize the impact on the area. Horizontal directional drilling offers the maximum depth of pipeline coverage, affording additional protection.

Considering the record as a whole, the Commission concludes that Cardinal did seriously consider alternative routes and reasonably chose the preferred route based on consideration of appropriate factors. The evidence shows that Cardinal identified four alternative routes for analysis and that the alternatives were considered in terms of the factors identified by affiant Snowbarger.

Snowbarger explained the reasons for selecting the preferred route based on these factors. Landowners themselves presented a Cardinal chart, attached to their brief, comparing the alternatives based on the number of physical features (such as waterways, roads, towns, etc.) impacted. The landowners argue that important factors were omitted in the selection and that the alternatives not chosen were merely "straw men," destined to be eliminated from the start. In fact, they suggest that the alternatives may well have been concocted after the fact to make the selection appear more deliberate than it was. The evidence does not support these arguments. The alternative through Chapel Hill, which landowners now dismiss as a straw man, is essentially the alternative that one of the intervenor landowners advocated in his testimony during the hearing. In their proposed order, the landowners argue that Cardinal should be required to make a thorough investigation into alternative routes in accordance with federal guidelines and provide an explanation of the rational bases upon which the selection was made. The late-filed affidavits show that Cardinal has substantially done this already. The Commission concludes that appropriate factors were considered and that Cardinal acted in a reasonable manner in selecting the route for the pipeline.

These conclusions do not entirely resolve the issue of the pipeline route however. Witness Wicker testified at the hearing that although a general route had been determined, there could be changes to the exact location based on additional information obtained during the survey of individual properties. Affiant Snowbarger testified to meetings with intervenor landowners subsequent to the hearing at which Cardinal representatives explained their route selection and construction methods. The landowners filed a transcript of one such meeting as a late-filed exhibit. In addition to the group meetings, Cardinal met with individual landowners on site, considered the route across individual properties and in some cases made field realignments to accommodate individual landowners. Snowbarger testified, "Cardinal Operating is committed to working with property owners in an effort to route the pipeline in areas that have the least impact on their respective properties when feasible from a technical and regulatory standpoint and without impacting adjoining property owners." Cardinal representatives also met with several Wake County property owners who had filed letters with Commission but not intervened. They explained that Cardinal's right-of-way across their properties would be contained entirely within the an existing right-of-way of CP&L and that it would not be necessary to acquire any additional property or impose any additional limitations on these landowners. Snowbarger stated that Cardinal will enter into an easement agreement with each impacted property owner under which they will be compensated for the acquisition of right-of-way and damages. The issue of compensation and the other terms of the right-of-way agreement will be individually negotiated between the property owners and Cardinal.

The Commission concludes and orders that Cardinal shall work with individual property owners in an effort to route the pipeline in areas that have the least impact on their respective properties when feasible from a technical and regulatory standpoint and without impacting adjoining property owners. Cardinal made this commitment in its late-filed exhibit, and the Commission orders that it follow through with this commitment. Snowbarger also stated that issues of compensation and the terms of the right-of-way agreements would be "individually negotiated" with property owners. The Commission concludes that Cardinal shall follow through with this commitment also and shall work with individual landowners as to the issues of compensation and the terms of the right-of-way agreements it enters with them. In their post-hearing brief, the landowners complain that the right-of-way agreement submitted by Cardinal is "dramatically overbroad," and they propose their own draft agreement with additional provisions. The Commission will not attempt to decree a standard

agreement applicable to all situations. The Commission believes that the terms of the agreement should be subject to negotiation on an individual basis.

Much of the landowners' testimony at the hearing was devoted to complaints about Cardinal's entry on their properties during initial survey work. Five intervenors complained that Cardinal's representatives trespassed on their property for purposes of surveying the proposed pipeline. By exchange of letters after the hearing, Cardinal agreed to new procedures. In their brief, the intervenor landowners state that Cardinal has now agreed not to enter private property without first seeking written permission and obtaining prior consent of the landowner. The consent and the date and time of entry will then be confirmed in advance by telephone. The landowners state that they find these procedures appropriate, and the Commission concludes that the procedures shall be followed. The Utilities Commission has no authority to award monetary damages and thus cannot deal with the issue of damages for trespass presented by some landowners' testimony. Neither can the Commission award damages for loss of value to property crossed by the pipeline.

Finally, the issue of paralleling, rather than using, existing utility rights-of-way received considerable attention at the hearing. NCNG witness Davis was asked why it takes 50 feet of right-of-way to install a 2-foot pipe. He testified that, in addition to the size of the pipe, the right-of-way must accommodate concrete coatings (in some places), the width of the trench, the need for space for various spoil piles, work space for equipment and room to string the pipe. Cardinal contended that it minimized environmental impact by paralleling the existing pipeline rights-of-way of PSNC and Colonial Pipeline. In the transcript of a meeting that was filed by the landowners as their late-filed exhibit of Nicholas P. Robinson, Cardinal explained that it would use the PSNC right-of-way for work space as much as possible, but purchase its own permanent right-of-way alongside. Cardinal affiant Snowbarger is quoted in this transcript as stating, "We prefer to keep our pipelines 25 feet at a minimum apart. In some cases the pipeline [is] adjacent to the easement, in some places it is in the middle of the easement. And so we have set up to keep our easements as close as we can to their easements without impacting their expansion capabilities and their right of way." Snowbarger also stated, "I think their easement is not defined in some places." The Commission notes that PSNC witness Yoho, speaking of Cardinal Extension, testified, ". . . as our system grows . . . our needs will grow off this pipeline. And it can be expanded through compression. So you don't have to lay any more pipeline, just put some compression on it."

The Commission is concerned about the cost and environmental impact of Cardinal Extension acquiring a full new right-of-way parallel to existing utility rights-of-way. As the survey work and final alignment of the proposed pipeline proceeds, the Commission urges Cardinal Extension to use the existing utility rights-of-way to the maximum extent possible, both for work space and placement of the pipeline, and to purchase the minimum of new right-of-way necessary, consistent with prudent business practices. Since PSNC is a partner in the Cardinal Extension project, the Commission urges PSNC to allow Cardinal Extension to locate on PSNC's existing right-of-way to the fullest extent consistent with prudent business practices. The Commission recognizes that many factors influence decisions on right-of-way width and will not impose rigid requirements. However, the Commission will monitor the situation to see what the parties are able to achieve. No later than sixty (60) days after completion of the Cardinal Extension pipeline, as to those portions of the route parallel to existing PSNC pipeline right-of-way, Cardinal Extension shall file with the Commission diagrams showing, in cross section, the PSNC and Cardinal Extension rights-of-way, the width of the rights-of-way, the location of the pipelines in the rights-of-way and the distances between pipelines and to the

edges of the rights-of-way. The distances on the diagrams may be general representations of the distances over a given run of pipeline. A single diagram may cover as long a run of pipe as the diagram can reasonably represent.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35

In response to Commission order, Cardinal presented the late-filed affidavit of Richard Mogensen, to which was attached a list of 14 federal, state, and local permits required for the Cardinal project. The list included the agency involved and the anticipated submittal and approval dates. The Commission concludes that Cardinal shall obtain and comply with all applicable environment-related regulations and permits as a condition of the certificate granted herein.

IT IS, THEREFORE, ORDERED as follows:

1. That a certificate of public convenience and necessity authorizing Cardinal Extension to construct, own and operate approximately 67 miles of 24-inch diameter pipeline commencing at the terminus of the existing Cardinal pipeline, and terminating at proposed new interconnections with PSNC and with NCNG near Clayton, North Carolina, is hereby granted;

2. That the merger of Cardinal Pipeline with and into Cardinal Extension pursuant to the terms and conditions of the Merger Agreement is approved;

3. That the transfer to Cardinal Extension of all of Cardinal Pipeline's rights and authorities to provide natural gas service in North Carolina is approved;

4. That the abandonment of gas service by Cardinal Pipeline upon the consummation of the merger of Cardinal Pipeline with and into Cardinal Extension and the commencement of service by Cardinal Extension is approved;

5. That Cardinal Extension is granted a waiver of those portions of Articles 4, 6 and 7 of Chapter 6 of the Commission's Rules to the extent necessary to give effect to the billing, measurement and quality standards with regard to firm transportation service provided by Cardinal Extension's Pro Forma Service Agreement;

6. That Cardinal Extension's cost of service shall reflect the transfer of the book value of the existing Cardinal pipeline, as it appears on the books of the two members of Cardinal Pipeline at the time of the proposed merger is consummated;

7. That Cardinal Extension is authorized to charge the rates set forth in Exhibit A to the Stipulation, which are designed to produce annual operating revenues of $17,124,065. Accordingly, Cardinal Extension shall, within thirty (30) days, file a tariff consistent with the Stipulation and this Order;

8. That the Zone 1 cost of service shall be assigned to Piedmont and PSNC based on their respective ownership shares in the existing Cardinal pipeline. The Zone 2 cost of service shall be assigned to PSNC and NCNG based on their peak day entitlements;

9. That after the Cardinal pipeline extension becomes operational and Cardinal Pipeline is merged into Cardinal Extension, Piedmont and PSNC shall add the annual Cardinal charges for Zone 1 to their respective gas costs consistent with the approved PGA procedures for demand and storage charges, as may be modified by the Commission from time to time, with the exception that 100% of Piedmont's Cardinal charges will be assigned to North Carolina. At the same time, Piedmont and PSNC shall reduce their respective margins by the same amount so that there will be no change in their overall rates. Should either Piedmont or PSNC file a rate case prior to the in-service date of the Cardinal pipeline extension and consummation of the proposed merger, the Public Staff has the right to propose that the cost of existing Cardinal pipeline be classified as gas cost;

10. That Cardinal Extension shall file an application for a general rate case pursuant to G.S. 62-133 on or before January 15, 2003;

11. That the cost of future taps and modifications to existing taps on the existing and extended Cardinal pipeline shall be recovered from the entity requesting the tap, either through a contribution in aid of construction or through a surcharge;

12. That Cardinal Extension shall flow back to its capacity holders 100% of any excess CFT Revenues;

13. That the appropriate treatment of any revenues received from the resale of capacity on Cardinal Extension's pipeline by the holders of such capacity shall be determined in another proceeding. The parties to the Stipulation shall, within thirty (30) days, file a statement clarifying the circumstances in which these issues will be addressed;

14. That the effective AFUDC rate actually used by Cardinal Extension shall be the net-of-tax overall rate of return approved by this Commission.

15. That the Cardinal Extension pipeline and the capacity entitlements to be owned by PSNC, Piedmont and NCNG on Cardinal Extension will be operated in a manner consistent with CUCA Exhibit No. 1, subject to further order of the Commission;

16. That Cardinal Extension shall, within thirty (30) days of the completion of its financing, file a statement detailing the terms and conditions of the financing including the cost of debt and the calculated return on equity;

17. That the Commission urges the Public Staff to monitor the business relationships involved in the Cardinal Extension project carefully in the context of its ongoing audits and reviews of the industry;

18. That on those portions of the route of the Cardinal Extension pipeline parallel to existing pipeline rights-of-way, Cardinal Extension shall locate its line on existing rights-of-way and reduce the amount of additional right-of-way required to the fullest extent consistent with good business practices, and PSNC shall allow Cardinal Extension to locate on existing PSNC right-of-way to the fullest extent consistent with good business practices;

19. ,That no later than sixty (60) days after completion of the Cardinal Extension pipeline, as to those portions of the route parallel to existing PSNC pipeline right-of-way, Cardinal Extension shall file with the Commission diagrams providing information as hereinabove described;

20. That Cardinal Extension shall work with individual property owners in an effort to route the pipeline in areas that have the least impact on their respective properties when feasible from a technical and regulatory standpoint and without impacting adjoining property owners and, further, shall work with individual landowners as to the issues of compensation and the terms of the right-of-way agreements;

21. That Cardinal Extension shall not enter private property without first seeking written permission, obtaining prior consent of the landowner, and confirming the consent and the date and time of entry in advance by telephone; and

22. That Cardinal Extension shall obtain and comply with all applicable environment-related regulations and permits.

ISSUED BY ORDER OF THE COMMISSION.
This the 6th day of November, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioners Hughes and Cobb did not participate in this decision.

DOCKET NO. G-3, SUB 202

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Gas Service, a Division of NUI Corporation, for Approval of Gas Costs and Gas Purchasing Policies for the Period May 1, 1996 through April 30, 1997	)))))	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on September 3, 1997.

BEFORE: Commissioner Judy Hunt, Presiding; Commissioner William R. Pittman and Commissioner J. Richard Conder.

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 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 July 1, 1997, 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 9, 1997, the Commission issued its Order Scheduling Hearing and Requiring Public Notice. This Order established a hearing date of Wednesday, September 3, 1997, set prefiled testimony dates, and required NCGS to give notice to its customers of the hearing of this matter.

On July 24, 1997, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene in this proceeding, and the petition was subsequently granted by the Commission on July 28, 1997.

The direct prefiled testimony and exhibits of Company witnesses Raymond A. DeMoine and Darryl P. DeLauro were filed on July 1, 1997. Witness DeMoine subsequently prefiled supplemental testimony on August 29, 1997. The direct prefiled testimony and exhibits of Public Staff witnesses Jan A. Larsen and Henry Mbonu were filed on August 19, 1997. No other party filed testimony.

On August 29, 1997, 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 September 3, 1997, the matter came on for hearing as scheduled in Raleigh, at which time 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, that the Public Staff agreed that NCGS' adjusted gas costs were properly accounted for and prudently incurred. Witness DeMoine and witness Robert J. Clancy, Jr. (who adopted the prefiled testimony of Darryl P. DeLauro in witness DeLauro's absence) testified for the Company. Witnesses Larsen and Mbonu testified for the Public Staff. 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: (1) Raymond A. DeMoine, Director of Rates and Regulatory Affairs and (2) Darryl P. DeLauro, Manager of Revenue and Gas Cost Accounting as adopted by Robert J. Clancy, Assistant Vice President of Accounting.

For the Public Staff: (1) Jan A. Larsen, Utilities Engineer, Natural Gas Division and (2) Henry Mbonu, Staff Accountant, Accounting Division.

On September 9, 1997, and in response to the Commission's request at the September 3, 1997 hearing, NCGS filed its Late Filed Exhibit of North Carolina Gas Service Addressing Expansion Fund and Accounting Issues.

Based on the testimony and exhibits received into evidence, the live testimony given at the hearing, the Stipulation, the Company's late filed exhibit and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

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 region 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's 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, 1997.

6. During the period of review, the Company incurred fixed gas costs of $2,185,845 and collected $2,306,424 in revenues attributed to these gas costs. Commodity gas costs incurred were $8,340,369 with related benchmark commodity cost collections equaling $8,391,167. Total gas costs collected were more than costs incurred by $372,382.

7. During the period of review, NCGS incurred $281,133 in negotiated sales losses, returned $176,161 to its customers through existing temporary decrements and accrued $47,798 in interest income.

8. NCGS's gas purchasing policies are prudent and NCGS's 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, 1997, were a credit of $127,161 and a debit of ($434,105) respectively.

11. NCGS currently has in place a temporary decrement of ($0.0078/dt) relating to sales only customers and the following temporary increments relating to all customers: 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.

12. Based upon the balances of the Company's deferred accounts at April 30, 1997, the current temporary decrement and increments in NCGS's rates should be discontinued and an increment of $0.1201/dt for sales only customers should be implemented and temporary decrements should be implemented for all customers as follows: Rate Schedule 101 (Residential) - ($0.0585)/dt; Rate Schedule 102 (Small General) - ($0.0572)/dt; Rate Schedule 104 (Large General) - ($0.0318)/dt; Rate Schedule 105 (Interruptible) - ($0.0168)/dt.

13. It is not appropriate to treat all amounts associated with the Firm Service Fee as a commodity cost rather than a demand cost in the context of NCGS's annual prudency proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

These findings of fact 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 AND CONCLUSIONS FOR FINDING OF FACT 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, 1997.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 6-7

The Company's fixed gas costs ($2,185,845), commodity costs ($8,340,369) and other gas costs ($1,215,168) were presented in the prefiled testimony of Company witness DeLauro which was adopted on the stand by Company witness Clancy. These amounts were confirmed in the testimony of Public Staff witness Mbonu.

Company witness Clancy testified that the amount of funds returned to customers through the existing temporary decrements during the review period was $176,161 and that the amount of negotiated sales losses and interest income during the period of review were $281,133 and $47,798 respectively.

No other party presented evidence on these issues.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-9

Company witness Clancy testified that NCGS accounted for its gas costs in accordance with Commission Rules. Public Staff witness Mbonu testified that the Company properly accounted for its gas costs during the review period. No evidence was presented to the contrary.

Company witness DeMoine testified that NCGS's 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 DeMoine also testified that NCGS's gas costs during the review period were consistent with this policy and were prudent. During the period of review, NCGS's gas supplies were provided primarily through long-term firm supply contracts whose pricing was tied to a spot market index. Public Staff witness Larsen testified that he conducted a review of NCGS's gas purchases during the period of review, including NCGS's gas purchasing practices and philosophies, and concluded that the Company's gas costs were prudently incurred.

No other evidence was presented on these issues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Company witness DeLauro's testimony, as adopted by Company witness Clancy, indicated end of period deferred account balances as a credit of $130,037 in the All Customer Deferred Account and a debit of ($604,072) in the Sales Only Deferred Account. Public Staff witness Mbonu testified that the correct balances of the All Customer Deferred Account and the Sales Only Deferred Account at April 30, 1997, were a credit of $127,161 and a debit of ($434,105) respectively. Company witness DeMoine indicated his agreement with the Public Staff's corrected deferred account balances in his supplemental testimony. No other party presented evidence on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 11-12

Public Staff witness Larsen testified that the existing deferred account temporary adjustments established by the Commission in Docket No. G-3, Sub 194 were: (1) a decrement of ($0.0078/dt) relating to the Sales Only Deferred Account and (2) increments of: Rate Schedule 101 (Residential) - $0.0134/dt; Rate Schedule 102 (Small General) - $0.0078/dt; Rate Schedule 104 (Large General) - $0.0049/dt; and Rate Schedule 105 (Interruptible) - $0.0072/dt relating to the All Customers Deferred Account. This testimony is undisputed.

Public Staff witness Larsen testified that based on the Company's deferred account balances at April 30, 1997, the existing decrement and increments should be discontinued and a new temporary increment of $0.1201/dt for sales only customers should be instituted and new temporary decrements for all customers should be implemented as follows: Rate Schedule 101 (Residential) - ($0.0585)/dt; Rate Schedule 102 (Small General) - ($0.0572)/dt; Rate Schedule 104 (Large General) - ($0.0318)/dt; Rate Schedule 105 (Interruptible) - ($0.0168)/dt.

In his supplemental testimony, Company witness DeMoine agreed with the temporary increment and decrements proposed by the Public Staff.

No other party presented evidence on this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence in support of this finding of fact is found in the testimony of the witnesses for both the Company and Public Staff as well as the late-filed exhibit of NCGS and the Brief of CUCA.

During the review period, NCGS assigned a monthly amount of $51,011 and an annual amount of $612,139 associated with the payments of a Firm Service Fee to the Company's All Customers Deferred Account and recouped these costs through rates charged to all customers, including transportation customers. At the hearing, counsel for CUCA elicited further information concerning the nature of this Firm Service Fee from the witnesses. In its late-filed exhibit, NCGS further addressed this matter as follows:

> With regard to counsel for CUCA's question related to the firm service fee listed on Mr. DeLauro's direct testimony Schedule 2, line 1 the monthly charge of $51,011 relates to a fixed cost incurred by the Company in connection with its firm gas supply from Williams Energy Service Co., an affiliate of Transco. During the hearing, the service was described as a bundled service. That description is incorrect. This contract is a firm gas supply contract which provides the Company with daily swing flexibility from 0 to 100 percent of its contract MDQ. The commodity portion of this service is tied to an index price and those costs are accounted for in the sales only deferred account. The service benefits both sales and transportation customers as the Company uses it to maintain the operational integrity of its system. The swing flexibility provided by this contract is critical to allow the Company to respond to changes in demand on its system regardless of whether the change in demand is related to sales customers, transportation customers or both.

CUCA, through cross-examination and in its Brief, questioned the appropriate classification of the Firm Service Fee and argued that it should be treated as a commodity cost rather than a demand cost. CUCA recommended that the Commission require NCGS to treat all amounts associated with the Firm Service Fee as a commodity cost on a prospective basis.

In support of its position, CUCA argues that the Firm Service Fee is a sales service which NCGS purchases and that NCGS has presented no evidence tending to show that this service involves a pipeline capacity component of the type treated as a demand charge and storage charge. With respect to the contention that the Firm Service Fee is not affected by volumetric considerations, CUCA suggests that in the event the entire cost associated with the service related to this Firm Service Fee was aggregated, the Commission might well determine that the cost, in the aggregate, does in fact vary with the volume of gas transported or purchased.

The Commission notes that the total cost of gas, including both fixed cost components and commodity components, is determined by the Commission in the context of a general rate case. In NCGS's most recent rate case, Docket No. G-3, Sub 186, the Firm Service Fee at issue in this proceeding was included in the Company's demand and storage costs. Accordingly, the Commission concludes that it would not be appropriate to alter the treatment or classification of such costs associated with existing services outside the context of a general rate case proceeding. Therefore, the Commission will not disturb the treatment of these costs in the context of this annual prudency review proceeding. However, all parties, including CUCA, will of course have the right to challenge the appropriateness of the classification of these costs in the context of the Company's next general rate case proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the $2,185,845 in fixed gas costs and $8,340,369 in commodity gas costs and $1,215,168 in other 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; and

4. That NCGS shall implement in its next billing cycle after the date of this Order a temporary increment of $0.1201/dt relating to sales only customers and temporary decrements relating to all customers of ($0.0585)/dt for Rate Schedule 101 (Residential) customers; ($0.0572)/dt for Rate Schedule 102 (Small General) customers; ($0.0318)/dt for Rate Schedule 104 (Large General) customers; and ($0.0168)/dt for Rate Schedule 105 (Interruptible) customers.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of October, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-5, SUB 377

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company of North	)	
Carolina, Inc., for Annual Review of Gas Costs	)	ORDER ON ANNUAL
Pursuant to G.S. 62-133.4(c) and Commission	)	REVIEW OF GAS COSTS
Rule R1-17(k)(6)	)	

HEARD: Tuesday, August 12, 1997, at 10:00 a.m., and Monday, August 18, 1997, at 2:00 p.m, in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner William R. Pittman, Presiding, and Commissioners Judy Hunt and J. Richard Conder

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:

Vickie L. Moir, 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 2, 1997, 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 Robert L. Thornton, 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 6, 1997, the Commission issued its Order Scheduling Hearing and Requiring Public Notice ordering a public hearing to commence on August 12, 1997; establishing dates for the filing of petitions to intervene, testimony by the Public Staff and other intervenors and any rebuttal testimony by PSNC; and ordering public notice to be published in newspapers of general circulation.

By Order Rescheduling Hearing issued August 7, 1997, the Commission granted PSNC's oral motion to reschedule the hearing for the taking of expert testimony to August 18, 1997, and provided that the hearing previously scheduled for August 12, 1997, would be held for public witness testimony only.

On June 17, 1997, the Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene. This petition was allowed by Order Granting Petition To Intervene issued June 18, 1997. On June 30, 1997, Michael F. Easley, Attorney General of the State of North Carolina, filed a Notice Of Intervention. No other notices of intervention, or petitions to intervene have been filed in this proceeding.

On July 28, 1997, the Public Staff filed the direct testimony of Julie G. Perry, Staff Accountant in the Accounting Division of the Public Staff, and Jeffrey L. Davis, Utilities Engineer in the Natural Gas Division of the Public Staff. No other party filed any testimony.

PSNC witnesses Yoho and Thornton and Public Staff witnesses Perry and Davis presented expert testimony at the public hearing on August 18, 1997. No public witnesses appeared at the hearing on August 12.

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 and validly existing 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 to approximately 308,000 customers 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, 1997.

5. As of March 31, 1997, PSNC had a balance of $15,713,980 recoverable from customers in its sales-only deferred account and a $1,165,588 balance recoverable from customers in its all-customers deferred account.

6. The Public Staff took no exceptions to PSNC's accounting for gas costs and recoveries during the review period.

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 $0.03929 per therm will be established to collect the March 31, 1997, balance in the sales-only deferred account, and the increment for the sales-only deferred account established in Docket No. G-5, Sub 361 will be discontinued. Pursuant to PSNC's request, no rate increment will be established to collect the March 31, 1997, balance in the all-customers deferred account; that amount will remain in that deferred account and will be considered part of the activity for PSNC's next review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

These findings are essentially informational, procedural, or jurisdictional in nature, and they were not contested by any party. They are supported by information in the Commission's public files and records; the testimony, 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 AND 4

The evidence for these findings of fact is contained in the testimony of PSNC witnesses Yoho and Thornton and Public Staff witnesses Perry and Davis, and the findings are based on G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

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 Mr. Thornton'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). Mr. Thornton 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) he was aware of no outstanding issues with respect to those filings. Public Staff witness Perry stated that PSNC has properly accounted for its gas costs during the review period. 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, 1997.

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 Thornton and Public Staff witness Perry.

PSNC witness Thornton testified that the balance in PSNC's sales-only deferred account as of April 1, 1997, was $15,713,980 owed to PSNC. He summarized the activity in the sales-only deferred account during the twelve months ending March 31, 1997, as follows:

Beginning balance, April 1, 1996	$12,205,483
Commodity cost undercollections	5,744,861
Negotiated margin losses	2,296,387
G-5, Sub 361 increment	(5,876,770)
Accrued interest	1,344,019
Ending balance, March 31, 1997	$15,713,980

The balance in the all-customers deferred account as of April 1, 1997, was $1,165,588 recoverable from customers. Mr. Thornton summarized the activity in the all-customers deferred account for the twelve months ending March 31, 1997, as follows:

Beginning balance, April 1, 1996	$ 285,850
Demand cost undercollections	1,900,267
G-5, Sub 346 decrement	2,102,156
True-up of unaccounted-for gas	208,109
True-up of company-use gas	(109,710)
G-5, Sub 361 Settlement	(200,000)
Adjustment to refund for Southern Expansion Project (G-5, Sub 279)	(733,689)
True-up of E&D Refund (G-5, Sub 358)	(5,622)
Buy/sell credits	(1,096,054)
Capacity release credits	(797,337)
Other secondary market transaction credits	(779,255)
Accrued interest	390,873
Ending balance, March 31, 1997	$ 1,165,588

Witness Perry testified that the Public Staff had examined PSNC's accounting for gas costs during the review period ending March 31, 1997, and concluded that PSNC had properly accounted for its gas costs during this review period.

Based upon the testimony, 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 Davis.

Mr. Yoho testified that approximately 45% 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 electricity represents the primary competition for this market segment.

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 testified that this is done by using pricing provisions that reference market indices. PSNC has not hedged the prices that it pays for gas

because (i) it believes that its customers should decide whether or not such prices should be hedged and (ii) regulatory principles governing such transactions have not been established.

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 renegotiate the terms of the contract if PSNC's merchant function changes dramatically.

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. In addition, PSNC has a transportation agreement with CNG to move gas that PSNC will receive from the Cove Point LNG facility in Maryland.

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. He also testified that all of these contracts have provisions which ensure that the price stays market sensitive. Mr. Yoho further 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 the Federal Energy Regulatory Commission 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. PSNC renegotiated certain pricing terms in five of its long-term contracts to ensure that the prices accurately reflect market conditions.

7. 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. PSNC also added additional firm storage services from Columbia and CNG and the peaking service to be available from Pine Needle LNG Company to its portfolio of supply options.

Mr. Davis, 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. Davis 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. Davis 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. Davis 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. Also, no party has requested the Commission to take any action with respect to hedging, and none is taken in this proceeding.

Based upon the foregoing, the Commission concludes that the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1997, 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, 1997, was $15,713,980 owed to PSNC, and the all-customers deferred account balance was $1,165,588 owed to PSNC. Mr. Thornton stated that the March 31, 1997, balance due PSNC in the all-customers account should remain in the deferred account and be treated as activity during the next review period. He also requested that an increment of $0.03929 per therm be established to recover the balance due PSNC in the sales-only customers deferred account.

Mr. Thornton further requested the Commission to approve the recovery of the amount owed PSNC from sales customers beginning with the first billing cycle of the month following the issuance of the Commission's order in this docket if that order is issued before the fifteenth day of the month, or, if that order is issued on or after the fifteenth day of the month, the first billing cycle of the second month following the issuance of the order. He explained that PSNC requested this procedure because PSNC has difficulty in communicating and implementing rate changes in less than two weeks and because PSNC's industrial customers are required to elect either sales or transportation service for

the following month on or about the twentieth day of each month. The Commission concludes that it is just and reasonable to adopt the procedure proposed by PSNC witness Thornton.

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, 1997, be, and the same hereby is, approved;

2. That the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1997, 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 $15,713,980 balance in the sales-only deferred account through an increment of $0.03929 per therm as set forth above;

4. That the existing increment to sales-only deferred account approved in Docket No. G-5, Sub 361, shall be discontinued; and

5. That PSNC give notice to all of its customers of the changes in rates approved in this order by appropriate bill inserts as hereinabove provided.

ISSUED BY ORDER OF THE COMMISSION.

This the 9th day of October, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-9, SUB 393

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: Tuesday, October 7, 1997, at 10 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Judy Hunt, Presiding, and Commissioners Ralph A. Hunt and Robert V. Owens, Jr.

APPEARANCES:

For Piedmont Natural Gas Company, Inc.:

Jerry W. Amos III, 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:

Vickie L. Moir, Staff Attorney, 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

BY THE COMMISSION: On July 31, 1997, Piedmont Natural Gas Company, Inc. (Piedmont or Company), filed the direct testimony and exhibit of Ann H. Boggs, Director of Gas Accounting and direct testimony of Keith F. Maust, Director, Gas Supply and Market Sales, 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 8, 1997, the Commission issued an order scheduling a public hearing for October 7, 1997, setting dates for prefiled testimony and intervention, and requiring public notice.

On August 26, 1997, a notice of intervention was filed by the Attorney General.

On August 27, 1997, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene. By Order dated October 1, 1997, the Commission granted CUCA's Petition.

The matter came on for hearing as scheduled. The Public Staff presented the testimony of James G. Hoard, Supervisor, Natural Gas Section, Accounting Division, and Jeffrey L. Davis, Public Utilities Engineer, Natural Gas Division. Piedmont presented the testimony of Ms. Boggs and Mr. Maust.

Based on the evidence presented at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont is a public utility as defined in Chapter 62 of the North Carolina General Statutes.

2. Piedmont is engaged primarily in the purchase, distribution, and sale of natural gas and in the transportation of customer-owned gas to over 575,000 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, 1997.

5. During the review period, Piedmont incurred gas costs of $265,352,901, received $281,986,520 through rates, and the difference of $16,133,619 was reflected as a credit in its deferred accounts.

6. At May 31, 1997, Piedmont had on its books a net credit balance (payable to customers from Piedmont) of $5,251,138 in its deferred accounts, consisting of a debit balance of $1,449,807 in the Sales Only Deferred Account and a credit balance of $6,700,945 in the All Customers Deferred Account.

7. During the review period, the Company realized net compensation of $5,234,846 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, $3,926,134 of the net compensation was treated as a reduction in gas costs for the benefit of Piedmont's customers.

8. Piedmont's treatment of Transco Firm Service (FS) charges as demand charges during the review period was proper.

9. Piedmont properly accounted for its gas costs during the review period.

10. Piedmont has transportation and storage contracts with interstate pipelines which transport gas directly to Piedmont's system and long-term supply contracts with other suppliers.

11. 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 deliverability, and supplier relations.

12. Piedmont's gas costs during the review period were prudently incurred.

13. Piedmont should be permitted to recover 100% of its prudently incurred gas costs.

14. Piedmont proposed to refund the balance of $6,700,945 in the All Customers Deferred Account based on the fixed gas costs apportionment percentages for each rate schedule as set forth in the Commission's order in the Company's last rate case, Docket No. G-9, Sub 351.

15. Piedmont proposed to refund the May 31, 1997, balance in its All Customers Deferred Account by implementing the decrements for each rate schedule as shown on Company witness Boggs Schedule 11 to Exhibit AHB-1 beginning with the first billing cycle of the month that follows the date of the Commission's order in this docket.

16. Piedmont proposed to collect the net debit balance of $1,449,807 in the Sales Only Deferred Account beginning with the first billing cycle of the month that follows the date of the Commission's order in this docket.

17. Piedmont should collect the May 31, 1997, balance in its Sales Only Deferred Account by implementing an across-the-board increment of $0.0268/dt.

18. The total level of design day dekatherms utilized during this review period is reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

The evidence supporting these findings is contained in the official files and records of the Commission and the testimony of Piedmont witness Maust. These findings are essentially informational, procedural or jurisdictional in nature and are based on evidence uncontested by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 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 the purpose of her testimony was to respond to Rule R1-17(k)(6)(c). Pursuant to that rule, she presented schedules reflecting the information for the period June 1, 1996, through May 31, 1997. She also stated that Piedmont had filed information with the Commission on a monthly basis during the test period and provided copies to the Public Staff. Mr. Hoard confirmed that the Public Staff had reviewed the filings.

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 AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 - 9

The evidence supporting these findings is contained in the testimony of Piedmont witnesses Maust and Boggs and Public Staff witnesses Davis and Hoard.

In her prefiled testimony Ms. Boggs indicated that, as of May 31, 1997, Piedmont had a net credit balance (payable from Piedmont to customers) of $5,251,138 in its deferred accounts. This credit balance consisted of a debit balance of $1,449,807 in the Sales Only Deferred Account and a credit balance of $6,700,945 in the All Customers Deferred Account. Public Staff witness Hoard testified that Piedmont had properly accounted for its gas costs during the review period.

Witness Maust testified that Piedmont achieved net compensation of $5,234,846 from secondary market transactions; $3,926,134 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.

CUCA argued that the Transco Firm Service (FS) fee is a reservation fee that should be collected from sales-only customers. Public Staff witness Davis testified that a reservation fee is, ". . . any fee that would warranty the gas or make the deliverability dependable." Witness Davis made clear that in discussing reservation fees, he was referring to fees paid to " . . . producers in the Gulf . . ." to secure supplies of the commodity. The Commission has held in past proceedings that such reservation fees paid under gas purchase contracts to secure gas supplies are properly treated as commodity costs and charged to sales-only customers. However, witness Davis testified that fees paid to pipelines should be treated as demand charges. Public Staff witness Hoard testified, "The Commission has consistently classified the Transco FS charges as demand and storage charges in all of the LDCs' rate cases."

Commission Rule R1-17(k)(2)(g) defines demand and storage charges as, ". . . all Gas Costs which are not based on the volume of gas actually purchased or transported by an LDC and any other gas costs determined by the Commission to be properly recoverable from customers . . . ." The issue in this case is whether the Transco FS fee is "properly recoverable" from all customers. To determine this, the Commission looks to the purpose of the cost.

The record in this docket makes it clear that it is important for Piedmont to have the flexibility necessary to meet swings in the supply and demand for gas. Gas is put into Transco's interstate pipeline system for delivery to Piedmont's system by Piedmont under its gas purchase contracts and by producers and marketers under contract with Piedmont's transportation customers. Gas is taken out of Piedmont's system by firm sales customers, interruptible sales customers and interruptible transportation customers. There can be sharp swings in takes of gas by various customers. To maintain the operational integrity of its system, Piedmont must balance the gas going in with the gas being taken out. Piedmont witness Maust testified that Piedmont accommodates swings in demand ". . . for either our firm markets or our interruptible transportation markets . . ." using storage, flexibility in gas supply contracts and ". . . no notice swing services." Transco's FS is a no-notice swing service. Public Staff witness Hoard testified that Transco's FS provides no-notice gas deliverability and is different from supplier services in that it has a lot more swing flexibility associated with it than those other services. In responding to a question dealing with how gas supply is used to

meet swings in demand, witness Hoard stated that the FS Service is, ". . . the one that you would see the greatest swing on."

The Commission concludes that the Transco FS fee is fundamentally different from the reservation fees paid to producers under gas supply contracts. Reservation fees are paid to secure gas supply. They are properly charged to sales-only customers. The Transco FS fee is not paid to secure a source of gas per se, but rather, it is paid to secure the flexibility needed to handle swings in supply and demand. Swings in supply and demand are caused by both sales and transportation customers. The FS service benefits both sales and transportation customers since the Company uses it to maintain the operational integrity of its system. The swing flexibility provided by this contract is critical to allow Piedmont to respond to changes in supply and demand on its system regardless of whether the change in supply and demand is related to sales customers, transportation customers or both. Therefore, it is appropriate to collect the Transco FS fee from all customers.

Based on the foregoing, the monthly filings by Piedmont pursuant to Commission Rule R1-17(k)(6)(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 AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 - 13

The evidence supporting these findings is contained in the testimony of Piedmont witness Maust and Public Staff witness Davis.

Mr. Maust 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. Maust stated that all of these components are interrelated and that Piedmont weighs each of these five factors in developing an overall gas portfolio.

Mr. Maust testified that Piedmont purchases gas supplies under a diverse portfolio of contractual arrangements with a number of reputable gas producers and marketers. He stated that in general, under the Company's firm supply contracts, it pays negotiated reservation fees for the right to reserve and call on firm supply service up to a maximum daily quantity and market-based commodity prices tied to published indices. Long-term contracts typically provide for periodic reservation fee renegotiations. Piedmont purchases gas supplies in the spot market under terms of one month or less. These spot market purchases do not command reservation fees and are priced on a commodity basis.

Mr. Maust testified that Piedmont sells gas to two distinct markets: the firm market and the interruptible market. Firm sales are principally to the residential, commercial, and the small firm industrial customers. Interruptible customers consist principally of large industrial customers. The firm market generally has no alternative source of fuel and depends entirely on gas. The interruptible market has alternative sources of energy and will refuse to buy gas when its alternative fuel is cheaper.

Mr. Maust also described how the interrelationship of the five factors affects Piedmont's construction of its 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 interruptible market is supplied with off-peak firm gas supply and transportation service when the firm customers' demand declines and through spot market purchases. In order to weigh and consider the five factors, Piedmont tries to keep 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, following pricing trends and forecasts, following supply and demand developments, and subscribing to industry literature.

Mr. Maust testified that Piedmont contracted for additional firm transportation capacity to meet the needs of its rapidly growing market. Contractual arrangements have been made with Columbia Gas Transmission Corporation for 11,000 dekatherms per day (dt/day) of capacity during the review period for the months of December 1996 through February 1997. Mr. Maust testified that Piedmont solicited proposals for 11,000 dt/day of firm city gate peaking service, available for any twenty days during the delivery period of December 1996 through February 1997. Piedmont, utilizing its "best cost" purchase policy, elected to purchase this firm capacity rather than firm city gate peaking service. During the past year, so as to manage its gas costs consistent with its "best cost" policy, Piedmont has worked actively with the FERC, actively renegotiated contracts, utilized the flexibility available within its contracts to release capacity, "locked-in" gas prices where applicable, worked to improve the Company's load factor and reduce average unit costs, and been active in supply activities with its Internal Gas Committee.

Mr. Davis 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. Davis stated that he reviewed information related to (1) design day estimates, (2) forecasted load duration curves, (3) forecasted gas supply requirements, (4) projections of capacity additions and supply changes and (5) customer load profile changes. Mr. Davis 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 reasonable and prudently incurred and should be recovered.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 - 17

The evidence supporting these findings is contained in the testimony of Piedmont witness Boggs and Public Staff witness Davis.

Ms. Boggs testified that Piedmont proposes to change its rates as shown on Schedule 11 to Exhibit AHB-1. Ms. Boggs computed rate decrements for all of its rate schedules to refund the $6,700,945 balance owed to customers in the All Customers Deferred Account, based on the fixed gas cost apportionment percentages for each rate schedule as set forth in the Commission's order for the Company's last general rate case, Docket No. G-9, Sub 351. Ms. Boggs computed a rate increment of $.0268/dt for its sales rates to collect the $1,449,807 balance due from customers in the Sales Only Deferred Account. Ms. Boggs proposes to replace the temporary increments and decrements (temporaries) determined in its last Annual Review with the temporaries determined in

this proceeding. Public Staff witness Davis testified that he agreed with Piedmont's proposed rate changes.

The Commission finds that the rates proposed by Piedmont should be implemented by order of the Commission in this docket for refund and/or collection of the balances in the two deferred accounts.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence for this finding is contained in the testimony of Public Staff witness Davis.

Mr. Davis stated that in Piedmont's last annual gas cost review in Docket No. G-9, Sub 384, Company witness Fleenor indicated that it was the Company's intention to implement a 5% reserve margin beyond its peak day demand calculations. This reserve margin would be phased in at 10,000 dekatherms per day (dt/day) per year for three years, beginning with the 1996-1997 winter season and ending with the 1998-1999 winter season, at which time a full 5% reserve margin would be in effect. Mr. Davis testified that the current review period for the twelve months ending May 31, 1997, included 10,000 dt/day of reserve margin.

Mr. Davis further testified that the purpose of this reserve margin was to supplement the design day criteria of 53 heating degree days (HDD), which represents 12° Fahrenheit in average temperature for the system. According to Mr. Davis, other gas utilities in the State use design criteria of 55 HDD for planning without a reserve margin. He stated that using a 10,000 dt/day reserve margin with a 53 HDD design day is approximately the same as using a 54 HDD design day, which is well within design tolerances and an acceptable approach. For this reason, he did not question the reasonableness of Piedmont's use of a 10,000 dt/day reserve margin for capacity and supply planning during the review period. He stated, however, that the Public Staff will continue to review the matter on a case-by- case basis in future proceedings.

In a brief filed on November 12, 1997, the Attorney General stated, "The Attorney General does not oppose the prudence of the 10,000 dt/day increment in this proceeding only because the evidence does not show Piedmont has acquired capacity beyond what might be needed to meet a 'design day' using reasonable design criteria."

The Commission agrees with Mr. Davis' analysis and finds that the total level of design day dekatherms utilized in this review period is reasonable. The Commission will address the appropriate level of design day dekatherms for future periods in subsequent annual review proceedings.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont's accounting for gas costs during the twelve months ended May 31, 1997, is approved;

2. That Piedmont is authorized to recover 100% of its gas costs incurred during the twelve months ended May 31, 1997;

3. That Piedmont shall implement the temporary decrements, as shown on Schedule 11 to Exhibit AHB-1, 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;

4. That Piedmont shall implement a temporary increment of $0.0268/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 Commission will address the appropriate level of design day dekatherms for future periods in subsequent annual gas cost review proceedings; and

6. That Piedmont 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 11th day of December, 1997

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-21, SUB 355

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of North Carolina Natural	)
Gas Corporation for Annual Review of	) ORDER ON ANNUAL
Gas Costs Pursuant to G.S. 62-133.4(c)	) REVIEW OF GAS COSTS
and Commission Rule R1-17(k)(6)	)

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on April 8, 1997, at 10:00 a.m.

BEFORE: Commissioner Judy Hunt, Presiding; and Commissioners Charles H. Hughes and William R. Pittman

APPEARANCES:

For North Carolina Natural Gas Corporation:

Edward S. Finley, Jr., Post Office Box 109, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Vickie L. Moir, 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 27602-0629

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 January 31, 1997, 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 26, 1997, the Commission issued its order scheduling a public hearing for April 8, 1997, 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 March 14, 1997, Carolina Utility Customers Association, Inc. (CUCA), filed a Petition to Intervene which was allowed by the Commission on March 18, 1997. On March 3, 1997, 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 of the Natural Gas Section, on March 24, 1997. Neither the Attorney General nor CUCA filed testimony in this proceeding.

On April 29, 1997, NCNG filed Affidavits of Publication evidencing the publishing of the notice required by the Commission.

The hearing was conducted as scheduled. Witnesses Monaghan and Teele testified for NCNG. Witnesses Kibler and Davis testified for the Public Staff.

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 is engaged primarily in the purchase, distribution, and sale of natural gas (and in some instances, the transportation of customer-owned gas) to more than 153,000 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, 1996.

5. During the period of review, NCNG incurred gas costs of $125,647,970 and recovered $126,468,255 for gas costs through its rates. This resulted in an over-recovery of $820,285. However, NCNG refunded $3,429,278 through rate decrements during the review period.

6. During the period from November 1995 through October 1996, NCNG generated a net recoupment of fixed costs amounting to $1,509,820 as a result of capacity release and buy/sell agreements. The Company credited 75% of this amount to its Deferred Account - All Customers pursuant to the Commission's order in Docket No. G-100, Sub 67.

7. At October 31, 1996, NCNG had a net debit balance of $1,003,177 in its deferred gas cost accounts, consisting of a debit balance of $5,004,174 in the commodity deferred account (sales customers only) and a credit balance of $4,000,997 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 that 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 has a temporary rate increment of $.2070 per dekatherm (dt) for the deferred gas costs - sales customers only account, effective November 1, 1996, and rate decrements ranging from $(.0412)/dt for industrial customers to $(.1902)/dt for residential-heating only customers, also effective November 1, 1996. Both the increment and decrements were proposed to be in the Company's rates for twelve months ending October 31, 1997.

14. During the review year, the market price of gas was extremely volatile.

15. It is just and reasonable to continue the current temporaries until further order of the Commission.

16. NCNG and the Public Staff have agreed that the Public Staff will file a petition in a separate docket asking the Commission to open a generic proceeding to examine the advisability of changing the notice requirement for filing for changes in gas utilities' benchmark gas commodity rate and other related issues.

17. This is not the appropriate docket in which to address CUCA's proposal to authorize an experiment by which NCNG and its customers could gain experience with the use of the futures market.

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 review 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, 1997, the required information based on a twelve-month review period ended October 31, 1996. 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 Mr. Monaghan's testimony. Mr. Teele also testified that NCNG 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). 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, 1996.

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, 1996, NCNG had a debit balance of $1,003,177 in its deferred accounts. This debit balance consists of a debit balance of $5,004,174 in the commodity deferred account (sales customers only) and a credit balance of $4,000,997 in the demand deferred account (all customers).

According to Mr. Monaghan, during the period from November, 1995 through October 1996, NCNG received net recoupment of fixed costs amounting to $1,509,820 as a result of capacity release and buy/sell agreements. The Company credited 75% 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 67.

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 finding 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 the 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 acquired 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 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. 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.

Mr. Monaghan testified that NCNG continued to have 5,199 dekatherms per day of Rate Schedule FSS (firm storage service) and related transportation from Columbia Gas Transmission, 2,070 dekatherms per day of GSS storage service from Transco, and 5,320 dekatherms per day of Transco's five-day LG-A peaking service, as well as NCNG's on-system Barragan LNG peaking facility which can provide up to 90,000 dekatherms on a peak day.

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, 1996, were reasonable and prudently incurred, and NCNG should be permitted to recover 100 percent 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 rates a temporary rate increment of $.2070/dt for the deferred gas costs - sales customers only account effective November 1, 1996 and rate decrements ranging from $(.0412) for industrial customers to $(.1902)/dt for residential - heating only customers also effective November 1, 1996. Both the increment and the decrements were proposed to be in the Company's rates for the twelve months ending October 31, 1997.

Public Staff witness Davis testified that he agreed with the Company's proposal not to change its rates at this time.

The Commission believes that it is just and reasonable to continue the increment and decrements in NCNG's rates until further order by the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

NCNG witness Teele testified that the requirement set forth in Paragraph 2 of Original Sheet No. 203 that the Company give 14 days' notice of any change in its benchmark rate needs to be shortened. In his prefiled testimony, Mr. Teele advocated that NCNG should be permitted to file benchmark rate changes on one day's notice. As to other changes in rates to customers due to changes in demand or storage costs or special increments or decrements, Mr. Teele stated that providing 14 days' notice for those types of changes is reasonable and necessary.

Mr. Teele testified that for rate changes that are to be effective the first day of the following month - a normal occurrence - this notice must be given at least five to ten days before "bid week" for gas purchasing has concluded. With the extreme volatility in gas prices, it is very difficult - almost

impossible - to forecast accurately what gas prices will be several days into the future. If only one day's notice were required, NCNG could file benchmark changes after having concluded gas purchasing for the upcoming month. This procedure would enable NCNG to have a benchmark rate in line with what NCNG expects its weighted average cost of gas to be, at least for the upcoming month.

Mr. Teele testified that customers would benefit from this change. All customers would pay natural gas rates closer in line to market prices in a particular month. The procedure would also help NCNG's utility sales compete better with commodity sales by third-party marketers, particularly when NCNG's existing benchmark rate is higher than market prices. The procedure would improve the chances that all customers would be paying natural gas rates that were more in line with market prices, and the change could avoid NCNG's having huge overcollections or undercollections in a single month, such as the $5.8 million undercollection in January 1996.

Public Staff witness Davis recognized that the volatility of gas prices is a very real concern, as emphasized in the December, January and February of 1996-1997 winter heating season. He testified, however, that the problem is faced by all of the gas utilities in this state, and the Public Staff believes that a more appropriate forum would be a generic proceeding in which other natural gas utilities and intervenors may express their views and solutions to this problem. Mr. Davis testified during cross-examination that the Public Staff would be willing to request a generic investigation into this issue in the near future.

On cross-examination Mr. Teele agreed that a generic docket was an appropriate forum in which to address this issue. He also testified that NCNG would be open to the idea of bifurcating the pass-through for residential and small commercial customers so that their rates would not be subject to such frequent and volatile changes.

The Attorney General filed a brief supporting a generic proceeding to consider the need for shortening the notice period prior to changing gas costs for large customers and for setting gas costs for residential and commercial customers to minimize rate volatility.

Based on this testimony, the Commission concludes that the Public Staff should file a petition asking the Commission to open a generic proceeding to address the advisability of changing the notice requirement for filing for changes in gas utilities' benchmark gas commodity rate and other related issues. All of the LDCs in the State would be made parties to such a generic proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

In its cross examination and brief, CUCA raised an issue as to whether NCNG should be authorized to engage in an experiment with "hedging" transactions in order to gain experience in the futures market. CUCA asserts that there is a natural gas futures market and that LDCs and end-users have the opportunity to "lock in" prices for natural gas to be delivered at a specified time in the future. CUCA contends that customers who transport their own gas have the ability to use the futures market for hedging purposes, but the availability of gas transportation in any given month is uncertain and this limits the customers' ability to engage in hedging transactions in any consistent way. NCNG witness Teele testified that NCNG has not used the futures market to date for a number of

reasons, including the risk that the market price may go down, uncertainty about the regulatory treatment of such transactions and concerns about the Company's ability to recoup the costs.

CUCA suggested that the development of interim rules concerning hedging in a generic proceeding would be appropriate. Meanwhile, CUCA proposed an experiment by which NCNG and its customers could gain experience in use of the futures market. CUCA proposed that the Commission authorize NCNG to enter into multi-month negotiated rate contracts with specific customers under its existing negotiated rate tariff and encourage the Company to engage in such transactions with individual industrial customers. CUCA cites similar authorization to modify its negotiated rate schedule that was given to Piedmont Natural Gas Company, Inc. in its 1996 general rate case. CUCA states that this gives a negotiated rate customer the option to arrange to "lock in" its gas price with the utility for an extended period of time and that the utility can purchase a specific futures contract to meet that customer's needs and resell the gas from the futures contract to the customer. CUCA states that the availability of a similar mechanism would allow NCNG to experiment with hedging transactions without harming nonconsenting customers or putting the Company's ability to recoup the cost of its system supply at risk.

The Piedmont tariff change cited by CUCA was adopted in a general rate case. The Commission concludes that this prudence review is not an appropriate docket in which to consider such an experiment for NCNG.

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, 1996, is approved;

2. That NCNG is authorized to recover 100 percent of its gas costs incurred during the twelve-month period of review ended October 31, 1996, as the same are reasonable and prudently incurred; and

3. That the increments and decrements in NCNG's rates, which are presently in place, remain unchanged until further Order of the Commission.

ISSUED BY ORDER OF THIS COMMISSION.

This the 13th day of June, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. G-5, SUB 372

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Public Service Company of	)	
North Carolina, Inc. for Approval of a	)	ORDER APPROVING EXPANSION
Proposed Expansion Project and	)	PROJECT FOR FUNDING FROM
Withdrawal of Funds from PSNC's	)	EXPANSION FUND
Expansion Fund	)	

HEARD: Wednesday, March 26, 1997, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioners Laurence A. Cobb, Presiding; Ralph A. Hunt, and Jo Ann 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 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

BY THE COMMISSION: On May 22, 1992, Public Service Company of North Carolina, Inc. (PSNC) petitioned the Commission in Docket No. G-5, Sub 300, to establish an expansion fund for PSNC and to authorize the initial funding thereof. On June 3, 1993, the Commission issued its Order Establishing Expansion Fund And Approving Initial Funding, which created an expansion fund for PSNC and authorized the transfer of certain supplier refunds to that fund. The North Carolina Supreme Court affirmed that Order. State ex rel. Utilities Commission v. Carolina Utility Customers Association, Inc., 336 N.C. 657 (1994).

On December 30, 1996, PSNC filed an application in this docket, which requested the Commission to approve (i) a natural gas expansion project to extend PSNC's facilities to provide natural gas service to western Haywood County and (ii) the withdrawal of funds from the Expansion Fund of PSNC. The proposed project involves an extension of PSNC's transmission pipeline from its western terminus in the Town of Canton in eastern Haywood County for a distance of approximately 7.6 miles to the Town of Waynesville in western Haywood County. The selected route to Waynesville follows existing roadways and provides access to the Town of Clyde and the community of Lake Junaluska, which will also receive natural gas service. Maps of the proposed systems are shown on Rayner Exhibit Nos. 1 and 3. PSNC estimated that the total cost of this

proposed project would be approximately $6,995,778; considering the impact of inflation, the total estimated cost would be approximately $7,181,653. PSNC also submitted a summary of the net present value (NPV) analysis of this proposed project, calculated in a generally accepted manner as required by Rule R6-84(a)(3), in Boone Exhibit 1. PSNC estimated that the amount required to provide an NPV of $0 for the estimated cash flows over 40 years would be $5,005,944, and requested that the Commission approve the withdrawal of this amount from PSNC's Expansion Fund for this project.

By the Order Scheduling Public Hearing, Requiring Public Notice, And Setting Procedural Schedule issued January 22, 1997 (as amended by the Errata Order issued January 23, 1997), the Commission ordered a hearing on PSNC's application for approval of its Haywood County project and partial funding of that project from its Expansion Fund, required public notice, and established a procedural schedule for this proceeding.

The Carolina Utility Customers Association, Inc. (CUCA) moved to intervene in this proceeding. The Commission granted this motion by Order Granting Petition To Intervene issued January 22, 1997.

By letter dated and filed March 4, 1997, PSNC advised the Commission that it had reached an agreement as to the level of funds to be withdrawn from PSNC's Expansion Fund to reduce the NPV of its western Haywood County Project to zero pursuant to Commission Rule R6-84(d), and that the Public Staff would file information relative to that agreement in lieu of testimony on March 6, 1997. PSNC also advised the Commission that it would prepare a stipulation jointly with the Public Staff and file that stipulation before the March 26, 1997, hearing in this proceeding.

On March 6, 1997, the Public Staff filed the Public Staff's Report Of Agreement With Applicant In Lieu of Filing Testimony (Report). As set forth in the Report, the Public Staff made certain adjustments to PSNC's estimates and estimated that the amount required to provide an NPV of $0 for the estimated cash flows over 40 years would be $4,127,297.

On March 25, 1997, PSNC and the Public Staff filed a Stipulation incorporating the adjustments to PSNC's filing set forth in the Report.

This matter was heard in Raleigh on March 26, 1997. Three public witnesses testified in support of the project at this hearing: A. Lee Galloway, Town Manager of the Town of Waynesville; Jack Horton, County Manager of Haywood County; and Joe Mavretic, representing the Carolina Gas Council. The parties waived cross-examination, and PSNC requested that the testimony of its witnesses Bruce P. Barkley, Steven K. Bowen, F. William Rayner, and Sharon D. Boone be copied into the record and their exhibits admitted. The Commission granted this request. The Commission also received the Stipulation as PSNC Exhibit 1.

Based on the application described above, the Public Staff's Report, the testimony 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 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, including all of Haywood County.

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.

3. PSNC is before the Commission upon its application for approval of an expansion project filed pursuant to G.S. 62-158 and Commission Rule R6-84.

4. PSNC currently provides natural gas service in eastern Haywood County, but at this time, no other company provides natural gas service to the majority of the County, including Waynesville, Clyde, and Lake Junaluska.

5. On December 30, 1996, PSNC filed its application to extend its transmission pipeline from its western terminus in the Town of Canton in eastern Haywood County for a distance of approximately 7.6 miles to the Town of Waynesville in western Haywood County. The selected route to Waynesville follows existing roadways and provides access to the Town of Clyde and the community of Lake Junaluska, which will also receive natural gas service. Maps of the proposed systems are shown on Rayner Exhibit 1 and 3.

6. PSNC estimated that the total cost of this proposed project would be approximately $6,995,778; considering the impact of inflation, the total estimated cost would be approximately $7,181,653.

7. PSNC submitted a summary of the net present value (NPV) analysis of this proposed project, calculated in a generally accepted manner as required by Rule R6-84(a)(3), in Boone Exhibit 1. PSNC estimated that the amount required to provide an NPV of $0 for the estimated cash flows over 40 years would be $5,005,944, and requested that the Commission approve the withdrawal of this amount from PSNC's Expansion Fund for this project.

8. PSNC proposes to commence providing service to western Haywood County in late 1997 or early 1998. PSNC estimates the actual construction of this project will take approximately six (6) months. To provide service by late 1997 or early 1998, PSNC must commence construction by June 1, 1997. PSNC requires time after the Commission's decision approving this project, if it is approved, and before construction starts, (i) to determine, pursuant to Commission Rule R6-84(d), whether to proceed with this project if the Commission does not approve this stipulation and (ii) if PSNC decides to proceed, to order the materials (primarily pipe) and to acquire rights of way and applicable permits and authorizations.

9. The Public Staff made certain adjustments to PSNC's estimates as shown in the Report and estimated that the amount required to provide an NPV of $0 for the estimated cash flows over 40 years would be $4,127,297.

10. PSNC has reviewed the Public Staff's adjustments and has accepted them.

11. The negative NPV of PSNC's proposed western Haywood County expansion project is $4,127,297, and the Commission will authorize PSNC to withdraw up to that amount from its Expansion Fund.

12. As of the end of February 1997, the State Treasurer was holding approximately $11.6 million in PSNC's Expansion Fund. In addition, as of February 28, 1997, PSNC was holding approximately $6.5 million in deferred accounts for future transfer to its Expansion Fund.

13. Local government assistance payments were not included in PSNC's original petition as a source of funding that could be used for this project. The Public Staff and PSNC have discussed this potential source of funding with the economic and community development leaders for Haywood County. As of the date of the hearing, Haywood County had adopted a resolution regarding local government assistance payments, but none of the communities to receive natural gas service as a result of this project had adopted such resolutions. Witness Galloway, however, testified at the hearing that the Town of Waynesville would be receptive to a request to adopt such a resolution.

14. Local government assistance payments authorized by the resolutions referenced in Finding of Fact 13 that have been adopted or may be adopted in the future will be deposited into PSNC's Expansion Fund as received. These payments will offset in part monies from PSNC's Expansion Fund that are utilized to reduce the negative NPV of this project to zero. It is anticipated that the local governments approving resolutions will make local government assistance payments during the first five (5) years after the expansion project facilities are completed. These payments are expected to equal the amount of property tax payments that PSNC would make to these local governmental entities approving such resolutions during the corresponding five-year period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-4

These findings of fact are jurisdictional in nature and were not contested by any party. They are supported by information in the Commission's public files and records, the Commission's order scheduling a hearing in this proceeding, PSNC's application, the testimony and exhibits filed by the witnesses for PSNC, the Report, and the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5-8

The evidence for these findings of fact is found in the information contained in PSNC's application, the testimony and exhibits filed by the witnesses for PSNC, the Report, and the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-10

The evidence for these findings of fact is found in the information submitted with the Report and the Stipulation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is supported by information in PSNC's application, the testimony and exhibits filed by PSNC's witnesses, the Report, and the Stipulation. The Commission concludes that it is appropriate to authorize withdrawal of $4,127,297 from the Expansion Fund.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence for this finding of fact is found in PSNC's application, the testimony and exhibits filed by PSNC's witnesses, and the Stipulation. This finding is also supported by information which may be judicially noticed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13-14

The evidence for these findings of fact is found in the Report and the Stipulation and the testimony of public witnesses Galloway and Horton.

IT IS, THEREFORE, ORDERED as follows:

1. That PSNC's proposed project to extend natural gas service to western Haywood County is hereby approved for funding from PSNC's Expansion Fund in the amount of up to $4,127,297, which is the negative NPV of the project;

2. That disbursement of up to $4,127,297 from PSNC's Expansion Fund for this project in accordance with applicable Commission Rules and this Order is hereby authorized;

3. That PSNC shall request progress payments, in the form of reimbursements for actual amounts expended by PSNC, pursuant to the provisions of Commission Rule R6-85(b) and such requests shall be handled as provided by that Rule;

4. That PSNC shall file reports with respect to this project as required by the Commission's Rules; and

5. All local government assistance payments approved by Haywood County, and any such payments approved by any of the communities to receive natural gas service from the project approved in this proceeding, shall be deposited into PSNC's Expansion Fund as received to offset Expansion Fund monies used to make up the negative NPV of this project.

ISSUED BY ORDER OF THE COMMISSION
This the 22nd day of April 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-21, SUB 347

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of North Carolina Natural Gas Corporation to Recover Net Customer Costs from Exploration and Development Activities in Approved Programs	))))	ORDER APPROVING STIPULATION ON E&D ACTIVITIES

BY THE COMMISSION: On May 15, 1996, North Carolina Natural Gas Corporation (NCNG or Company) filed with the Commission an application to recover net customer costs from Exploration and Development (E&D) programs.

As a matter of background, NCNG, together with the other LDCs, was authorized in 1975 to engage in natural gas exploration and development projects. Four such projects were submitted to and approved by the Commission. NCNG participated in each of these projects. NCNG's most recent complete filing was its application covering exploration and development transactions for the 12 months ended December 31, 1993. The filing showed that an amount of $114,146 was due to NCNG from customers as of December 31, 1993. NCNG requested, and the Commission approved, that the $114,146 balance due from customers be deferred until the next required filing when additional funds were anticipated.

By Order issued June 2, 1994, the Commission authorized the LDCs to sell their remaining exploration and development properties and required the companies to file refund plans upon completion of the sales. NCNG, along with the other three LDCs, sold its interest in all properties included in the approved projects effective June 7, 1994, to Mosbacher U.S.A., Inc. and J.K. Energy Company. NCNG received total proceeds of $614,703 from the sale of the properties.

Subsequent Commission Orders allowed NCNG to defer its final filing to May 15, 1996.

In its May 15, 1996 filing, NCNG stated that during the 24 months ended December 31, 1995, it incurred reasonable direct costs and expenses under the approved programs of $374,604, and revenues of $822,623, including $614,703 from sale of all properties and $3,658 interest on escrow funds. The customers' portion of such net revenue amounts is $315,740 for the 24 months ended December 31, 1995. However, due to the effect of true-up adjustments relating to prior years' excessive refunds to customers, an amount of $3,206,588 is due from customers. Combining the net revenues of $315,740 for the 24 months ended December 31, 1995, with the net true-up adjustments of $3,206,588 produces a net amount of $2,890,848 due from customers which covers the 24 months ended December 31, 1995, along with the true-up of all exploration and development revenues, costs, expenses and refunds to customers from inception of the programs. That amount, together with the $114,146 due from customers as of December 31, 1993 deferred to this filing, produces a total amount of $3,004,994 due from customers.

NCNG requested that the Commission approve the recovery of the amount of $3,004,994 due from customers as the current balance of net customer costs from E&D programs as proposed herein, in accordance with the provisions of NCUC Rule R1-17(h)(8), and the Commission's Order in

Docket No. G-100, Sub 22, and that any future reasonable costs, including but not limited to costs arising from gas imbalances claimed by Transco, be recovered in the same manner. In accordance with the Commission's Order of August 8, 1979, issued in Docket No. G-100, Sub 22, all natural gas customers using over 300 dekatherms per day have been afforded individual accounting treatment in the true-up, with all other customers included in the appropriate customer classes (residential, commercial, and other industrial). However, because the true-up performed in preparation of this filing in Docket No. G-21, Sub 347 results in amounts due from customers instead of refunds to customers, NCNG further requests that the Commission waive the requirement to apply individual accounting treatment to large customers, but rather permit NCNG to charge the full amount of $3,004,994 due from customers to the Deferred Gas Cost-All Customer account as of July 1, 1996.

The Source of the Problem

The primary component of the $3,004,994, which it seeks to recover in its application, arises from a need to correct the impact of an erroneous decision that was first utilized in the Company's 1984 E&D filing. The error first occurred in 1984 in the Company's E&D filing, in Docket No. G-21, Sub 249, when an incorrect adjustment was made to income taxes (for E&D filing purposes only) for the years 1978-1982. In that filing, the Company's workpapers included a memorandum entitled "Customer Portion of Income Taxes - Exploration and Development Filings". That memo concluded (incorrectly, as the Company now has discovered) that NCNG was required to flow through to customers their share of "tax benefits" arising from the intercompany sales of gas from NCNG Exploration to its parent, NCNG. In the 1984 filing, Company personnel erroneously concluded that NCNG received an income tax deduction on the cost of gas it purchased from NCNG Exploration. As the Company now recognizes, the parent (NCNG) had revenues from the sale of this gas to end users which offset the cost of gas and, therefore, there are no profits or losses so as to cause income tax consequences. Customers should not have been given a "tax benefit" on intercompany sales because there was none to give. In addition, in its E&D filings from 1984 to 1989, NCNG erroneously continued to refund these excessive amounts to its customers.

Quantifying the Problem

In Docket No. G-21, Sub 249, the Company erroneously concluded that it had overcharged customers $1,018,637 for the years 1978 through 1982. With agreement of the Public Staff, the Company proposed to amortize the $1,018,637 of "unrealized tax benefits" over the next five filings and did so beginning with Sub 249. The amount of $203,727 was included as a tax benefit payable to customers in that Sub 249 filing for the six months ended December 31, 1984. An equal amount of $203,727 was included in the next four successive filings. The Company obviously did not know then that the amounts in question were "erroneous". If it had, it would not have paid them to customers. But, because the payments were made, the Company took the tax deductions to which it was entitled, and the resulting additional realized tax benefits were flowed through to customers, thus compounding the problem.

The Stipulation

On November 20, 1996, NCNG and the Public Staff entered into a Stipulation regarding this matter. The Public Staff indicated that it had reviewed the filing and made an offsetting adjustment for some prior period deferred taxes. NCNG agreed to this offsetting adjustment for settlement

purposes. Under the terms of the Stipulation, NCNG would be authorized to recover $1,879,853, rather than the $3,004,994 sought in its application, through its all customers deferred account. The Stipulation provides that, under its terms, if the Commission does not accept or approve the Stipulation, it would be withdrawn and not be binding on the parties.

CUCA's Position

The Carolina Utility Customers Association, Inc., (CUCA) in its Response filed on December 9, 1996, states that the amount which NCNG seeks to recover from customers results from a unilateral accounting error which the Company made over 10 years ago. CUCA argues that none of the Commission's rules relating to E&D activities authorizes the recoupment sought by NCNG. Further, CUCA argues that even if the Commission had the authority to make the deferred account entry proposed in the Stipulation, the Commission should refrain from exercising any such authority. According to CUCA, the Commission should not allow the language of the Stipulation or regulatory conventions to obscure the fact that, in an unregulated market, NCNG would never be able to force customers to "make good" a decade-old accounting error. The effect of approving the accounting adjustment proposed in the Stipulation will be to increase the bills paid by current customers to correct an accounting mistake made in 1984 and perpetuated during the five year period from 1984 through 1989. An unregulated business would have no choice except to absorb such a loss.

Finally, any amount which NCNG is allowed to recoup as a result of this decade-old accounting error should not be collected by means of an entry to the all-customers deferred account. The effect of any Commission decision approving the collection mechanism proposed in the Stipulation will be to require transportation customers as well as sales customers to reimburse NCNG for an accounting error related solely to sales service. The benefits resulting from these exploration and development programs accrued primarily to sales customers, and therefore imposing the higher rates resulting from approval of the Stipulation upon transportation customers would be totally inappropriate.

CUCA requests the Commission to deny approval of the Stipulation or, in the alternative, to allow NCNG to recoup an amount associated with the accounting error underlying its original application through an entry to the sales only customers deferred account, rather than the all customers deferred account.

NCNG and Public Staff's Position

On December 27, 1996, NCNG and the Public Staff filed Responses to CUCA's position.

NCNG argues that NCUC Rule R1-17(h) is written so as to require periodic and final true-ups to ensure that actual costs and revenues are appropriately identified and shared. The intent of the rule is that the respective participants will be made whole at the conclusion of the project when all costs and revenues are finally identified. Further, it argues that the proposed adjustment to the all customers deferred account is proper.

The Public Staff's Response is similar to that of NCNG. It provides the following:

1. **Revenues and expenses associated with exploration and development programs are, by their very nature and in accordance with Commission rule and order, subject to true-up.**

The regulatory compact between NCNG and the Commission related to the exploration and development programs assumed that NCNG would be permitted to recover its prudently incurred costs. Throughout the twenty-year history of the programs, reports under Rule R1-17(h)(6) and (8) have been approved as filed subject to Staff review and have contained adjustments to prior reporting periods for a variety of reasons. Thus, it was possible for NCNG to amortize unrealized tax benefits to customers for five consecutive reporting periods beginning with the six months ended December 31, 1984, and continuing through the six months ended December 31, 1986, on the grounds (now known to be erroneous) that customers had been overcharged for the years 1978 through 1982. The erroneous flow through of tax benefits continued through 1988, when it was inadvertently corrected. Although the effect of the error was excessive refunds to customers from 1984 to 1989, the error itself was not discovered until a discrepancy appeared in the final accounting for the 24 months ended December 31, 1995. If NCNG is prevented from recovering the remaining net loss for the programs, it will be required to write off the loss against the current period's income. Disallowance of this recovery now, when full recovery has always been expected, could have undesirable financial repercussions.

2. **The error that resulted in the excessive refunds was not unilateral.** NCNG states in the memorandum attached to its application that the amortization of tax benefits was proposed with the agreement of the Public Staff. At that time, the Public Staff was of the erroneous opinion that there were tax benefits arising from intercompany sales of gas which should be flowed through to customers. The Public Staff, therefore, shares responsibility for the excessive refunds.

3. **The appropriate true-up adjustments go both ways.** The Public Staff has carefully reviewed NCNG's exploration and development reports in connection with this final accounting to determine if additional adjustments are necessary. The only material adjustment it identified is the one related to Accumulated Deferred Income Taxes. This adjustment, to which NCNG has agreed only for settlement purposes, relates to a deficiency adjustment that was made in the company's filing for calendar year 1990 and thereafter charged to ratepayers erroneously, in the Public Staff's opinion. If the adjustment requested by NCNG is inappropriate, the partially offsetting adjustment recommended by the Public Staff may be inappropriate as well.

4. **Transportation customers benefited from the excessive refunds.** First of all, since transportation volumes were a relatively small portion of NCNG's thoughput during the 1984-89 period compared to the present, a customer who is a transporter now is likely to have been a sales customer then. To the extent that the exploration and development programs produced additional gas supplies, it was the curtailable industrial market that benefited most. Second, while it is true that the purpose of these programs was to benefit sales customers, a change in status from sales to transportation did not affect a customer's ability to receive refunds. To exclude transportation customers from the final accounting by charging the effect of the excessive refund to the sales only deferred account would be to allow transportation customers to retain a windfall.

5. **The Stipulation is just and reasonable.** Requiring ratepayer participation in exploration and development was an unusual and highly controversial action by the Commission during an era of severe gas shortages. State ex rel. Utilities Commission v. Edmisten, 294 N.C. 598, 242 S.E.2d 862 (1978). The record in Docket No. G-100, Sub 22, the Commission's orders establishing Rule R1-17(h), and the rule itself reveal the Commission's concern with segregating ratepayer and stockholder interests and achieving equity among ratepayers, while enabling the local distribution

companies to undertake every reasonable means of obtaining additional gas supplies. The Stipulation is entirely consistent with these principles and objectives.

The Commission concludes, for the reasons set forth by the Public Staff and NCNG, that the Stipulation should be approved. The Commission acknowledges that throughout the history of these programs, reports have been filed and have contained adjustments to prior reporting periods for a variety of reasons. The Commission believes that Rule R1-17(h) was written so as to require periodic and final true-ups to ensure that the respective participants will be made whole at the conclusions of these projects. While the Commission will approve the Stipulation involved herein, it recognizes that an error of substantial magnitude was made, although unintentional, and would encourage the parties to be more diligent in the future on matters of this nature.

IT IS, THEREFORE, ORDERED as follows:

1. That the Stipulation in this matter between North Carolina Natural Gas Corporation and the Public Staff is hereby approved and that North Carolina Natural Gas Corporation is hereby authorized to debit its Deferred Gas Cost Account - All Customers in the amount of $1,879,853.

2. That any appropriate and reasonable future expenses related to E&D properties, including but not limited to costs arising from gas imbalances claimed by Transco, shall be recovered in a similar manner.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of February, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt concurs.
Commissioner Pittman did not participate in this decision.

DOCKET NO. G-21, SUB 347

COMMISSIONER JUDY HUNT, CONCURRING, IN PART. It is a matter of concern that the concept of "true-up" is now being used to support "correcting" (whether unilateral or not) an accounting error committed by the Company over 10 years ago. Such is questionable at best and sets an unwise precedent although the end result may be justified - that is to ensure that the respective participants will be made whole for engaging in natural gas exploration and development projects. Rule R1-17(b); State ex. rel. Utilities Commission v. Edmisten, 294 N.C. 598, 242 S. E.2d862 (1978).

/s/ Judy Hunt
Commissioner Judy Hunt

TELEPHONE - INTERCONNECTION AGREEMENTS

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.	))))	ORDER RULING ON OBJECTIONS, COMMENTS, UNRESOLVED ISSUES, AND COMPOSITE AGREEMENT

BY THE COMMISSION: On December 23, 1996, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by AT&T Communications of the Southern States, Inc. (AT&T) against BellSouth Telecommunications, Inc. (BellSouth). The RAO required AT&T and BellSouth to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On January 22, 1997, AT&T filed certain objections to the RAO. BellSouth filed its objections to the RAO on January 23, 1997. Comments regarding the AT&T/BellSouth RAO were filed on January 22, 1997, by the Attorney General, Sprint Communications Company L.P. (Sprint), Carolina Telephone and Telegraph Company, and Central Telephone Company. The Carolina Utility Customers Association, Inc. (CUCA) filed comments on January 23, 1997. On February 21, 1997, AT&T and BellSouth filed their Composite Agreement and a list of nine unresolved issues, including the positions of the parties on each issue and each party's proposed contractual language, for consideration by the Commission.

WHEREUPON, after carefully considering all of the objections, comments, and unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended and set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

ISSUES RELATED TO COMMENTS/OBJECTIONS

ISSUE NO. 1: What services provided by BellSouth should be excluded from resale?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth is obligated to offer at resale at wholesale rates any telecommunications services it provides at retail to subscribers who are not telecommunications carriers, with certain exceptions, notably those related to cross-class resale, grandfathered or obsolete services, N11, and promotions of under 90 days. With respect to contract service arrangements (CSAs), the Commission found these to be retail services subject to resale.

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth objected to the application of wholesale discounts to CSAs, although BellSouth did not object to the finding that CSAs are retail services subject to resale. The gist of BellSouth's argument was that a requirement to resell CSAs at a wholesale discount would put BellSouth under a permanent competitive handicap whereby it would never beat the competitor's price. BellSouth cited Georgia and Kentucky decisions mandating resale but without the discount and a Louisiana decision concluding that existing CSAs will not be subject to resale while future CSAs will be subject to resale at no discount.

DISCUSSION

The Commission decision cited Paragraph 948 of the Federal Communications Commission's (FCC's) First Report and Order in CC Docket Nos. 96-98 and 95-185 issued on August 8, 1996 (the Interconnection Order), which construed Section 251(c)(4) of the Telecommunications Act of 1996 (TA96 or the Act) as having created no exceptions for promotional or discounted offerings, "including contract and other customer-specific offerings." The FCC reasoned that a "contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act."

The fundamental conflict is that BellSouth contends that it would be permanently disadvantaged if it has to offer CSAs for resale at a discount while the FCC has expressed concern that, to do otherwise, would permit shifting of customers to nonstandard offerings, thus undercutting the intent of TA96. It would also put competitors at an extreme disadvantage.

This conflict has the appearance of a true conundrum. On the one hand, it is a colorable argument that, if BellSouth is compelled to offer all CSAs with the discount, it might be permanently "locked out" from offering CSAs directly to end users. On the other hand, it is also colorable that if BellSouth does not have to offer the discount, the competitor might be permanently "locked out" from resale of CSAs because there will be no discount margin on which it can compete. Thus, in terms of pure price relative to the CSAs, there appear to be two equally distasteful alternatives.

To resolve this impasse, the Commission believes that it is reasonable to require that CSAs entered into before April 15, 1997, be subject to resale, but not at a discount, while CSAs entered into after that date will be subject to resale with the discount. The Commission believes it is unreasonable to require the "old" CSAs to be subject to the discount because they were entered into before BellSouth had any notion as to a resale requirement, and they are commonly discounted already. Applying the discount to "new" CSAs only will allow BellSouth the opportunity to adjust its pricing accordingly. At the same time, the "old" CSAs will not be absolutely sheltered from competition, because the competing local provider (CLP) can seek to compete by other means than pure price as, for example, by bundling additional services or offering a higher quality of service. Of course, the resale of CSAs is limited to the specific end-user for whom the CSA was instructed and may not be sold to the public-at-large.

CONCLUSIONS

The Commission concludes that CSAs entered into by BellSouth before April 15, 1997, shall be subject to resale at no discount, while BellSouth CSAs entered into after that date shall be subject to resale with the discount.

ISSUE NO. 2: What terms and conditions, including use and user restrictions, if any, should be applied to the resale of BellSouth services?

INITIAL COMMISSION DECISION

The Commission decided that use and user restrictions currently in BellSouth's tariff will carry forward into resold services with the exception of such prohibitions and restrictions as have been or will be specifically prohibited.

COMMENTS/OBJECTIONS

AT&T: AT&T contends that the Commission erred in this decision in shifting the burden to new entrants to prove unreasonableness. AT&T argues that the FCC excluded from the presumption of unreasonableness only restrictions on the resale of residential services to nonresidential customers and lifeline or other means-tested service offerings to non-eligible subscribers. All other restrictions are presumptively unreasonable. This reverses the burden of proof and violates the FCC Order and TA96, inasmuch as BellSouth has presented no evidence to rebut the presumption that the use and user restrictions are unreasonable. Accordingly, the RAOs should be modified to require BellSouth to remove all use and user restrictions, except as to those listed above.

DISCUSSION

The Commission in making its original decision was moved by two considerations. First, it expressed concern that use and user restrictions not applicable to a CLP but applicable to the ILEC would be discriminatory with reference to the ILEC. Second, the Commission was concerned with practicality, since there are potentially many such restrictions, and it is impossible at this point to know exactly what they are. It would not be appropriate to eliminate the restrictions in a "summary and unexamined fashion." Nevertheless, ILECs were encouraged to examine their tariffs with a view toward removing unreasonable restrictions.

BellSouth argued that TA96 does not require it to enhance or otherwise alter its retail offerings for purpose of resale. It noted that the use and user restrictions are already being applied to BellSouth customers, and those restrictions were determined to be reasonable when the Commission approved them.

The Commission does not believe that its decision unlawfully shifts the burden of proof on CLPs to prove that a use and user restriction ought to be rescinded. The Commission was simply suggesting a practical mechanism whereby use and user restrictions might be questioned. The Commission is not prepared to say that all existing use and user restrictions, not otherwise rescinded, are a priori reasonable and nondiscriminatory.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 3: What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth and for network elements provided to CLPs by BellSouth?

INITIAL COMMISSION DECISION

The Commission declined to enact specific performance standards and instructed the parties to negotiate mutually agreeable terms.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's decision to decline to enact specific performance standards and noted that the parties had tried to negotiate this issue but could not reach agreement. AT&T cited two decisions in Tennessee and Georgia requiring BellSouth to negotiate performance standards and to submit the provisions to the state commissions for approval. AT&T also argued that, pursuant to TA96, Section 252(b)(4)(c), the performance standards constituted valid issues for Commission decision.

SPRINT: Sprint also objected and emphasized that specific performance standards are necessary for parity. Sprint urged the Commission to require BellSouth to indemnify the CLP for any forfeitures or civil penalties by a BellSouth failure to meet service quality standards.

DISCUSSION

The Commission view was that it was neither appropriate nor practical for it to enact specific performance standards. The Commission viewed the parties as possessing superior expertise in this area.

The Commission continues to believe that it would be a mistake to impose performance standards on BellSouth at this time for the reasons stated in the RAO and that this constitutes a resolution of the issue within the meaning of TA96.

The Commission notes that BellSouth is expected to provide service to competitors that is at least equal to the service it provides itself.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 4: Must BellSouth take financial responsibility for its own action in causing, or its lack of action in preventing, unbillable or uncollectible competitive revenues?

INITIAL COMMISSION DECISION

The Commission declined to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues and stated that the affected parties should negotiate reasonable terms and conditions regarding liability for unbillable or uncollectible accounts.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's decision to decline to enact specific standards governing liability for errors which result in unbillable or uncollectible accounts and noted that the parties had tried to negotiate this issue in good faith, but have been unable to reach a mutual agreement. AT&T also argued that, pursuant to TA96, Section 252(b)(4)(c), liability standards for errors committed by BellSouth constitute valid issues for decision by the Commission in this arbitration proceeding. AT&T further states that the state commissions in Tennessee and Georgia have issued Orders requiring BellSouth to negotiate liability/indemnification standards with AT&T and to submit those negotiated provisions for their approval.

DISCUSSION

The view expressed by the Commission in the RAO was that 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 stated in the RAO that it did not believe it appropriate or practical to get involved, 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 opined that the parties, negotiating in good faith, could resolve this question without further need of Commission intervention.

The Commission continues to believe that it is unnecessary to impose liability standards on BellSouth at this time for the reasons stated in the RAO and that this constitutes a resolution of the issue within the meaning of TA96. Nevertheless, BellSouth is expected to conduct good faith negotiations with CLPs to resolve liability/indemnification issues and standards.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that it is appropriate to affirm the original decision on this issue declining to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues.

ISSUE NO. 5: Should BellSouth be required to provide real-time and interactive access via electronic interfaces for unbundled network elements as requested by CLPs to perform the following:

- **Pre-ordering,**
- **Ordering,**
- **Provisioning,**
- **Maintenance/repair, and**
- **Billing?**

INITIAL COMMISSION DECISION

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. The electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's failure to set a date certain by which BellSouth is required to provide such interfaces. AT&T stated that BellSouth proposed and agreed to a deadline of December 31, 1997, in the Tennessee and Georgia arbitration proceedings, and noted that this date was adopted by both of those state commissions. Accordingly, AT&T is requesting that the Commission order BellSouth in North Carolina to provide AT&T, not later than December 31, 1997, with electronic real-time interactive interfaces for each of the following five functions: pre-ordering, ordering, provisioning, maintenance and repair, and billing, assuming BellSouth can obtain a waiver of the FCC's January 1, 1997, deadline.

CUCA: CUCA urged the Commission to establish a relatively near-term date by which BellSouth must provide AT&T with real-time, interactive interfaces to the unbundled network elements necessary for the proper performance of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. CUCA stated that the Commission should adopt the initial proposal advanced by the Attorney General— i.e., the Commission should require that a firm plan to implement automated interfacing 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 and that if the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

DISCUSSION

The Commission understood that the FCC Interconnection Order stated that nondiscriminatory access to the operations support systems functions should be provided no later than January 1, 1997. The Commission's view was that the requested electronic interfaces will indeed have to be provided and that they preferably should be uniform, industry-developed interfaces. Rather than establishing a specific date other than the FCC's provision, the Commission recognized that the electronic interfaces would likely not be developed by January 1, 1997, and simply found that

the interfaces should be provided promptly through the development of uniform, industry-wide standards.

CONCLUSIONS

The Commission hereby affirms its original decision on this issue, but will require the parties to file a report not later than July 31, 1997, setting forth the status of their progress toward the accomplishment of electronic bonding through the development of uniform, industry-wide standards.

ISSUE NO. 6: Must BellSouth route calls for operator services and directory assistance services (OS/DA) directly to AT&T's platform?

INITIAL COMMISSION DECISION

The Commission declined to require BellSouth to provide customized routing at this time, saying it is not technically feasible, and encouraged the parties to continue working to develop a long-term, industry-wide solution to technical feasibility problems.

COMMENTS/OBJECTIONS

AT&T: AT&T repeated its arguments that the Act, generally, and the FCC Order, specifically, require customized routing absent a showing by BellSouth that it is not technically feasible. Pointing out that BellSouth admits that its switches are capable of performing this function through the use of line class codes (LCCs), although capacity may be limited, AT&T contended BellSouth has not met its burden of proving that customized routing is not technically feasible. AT&T also cited rulings by the Tennessee, Georgia, and Florida Commissions finding customized routing to be technically feasible through the use of LCCs. AT&T further stated that, if the recommended decision on customized routing is adopted, North Carolina consumers will be among the only consumers in BellSouth's territory who will not be able to dial "O" and reach their CLP's operators.

SPRINT: Sprint also argued that the Commission erred in declining to require customized routing and cited Section 251(c)(2) of the Act, which imposes on the incumbent LEC the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access, at any technically feasible point within the carrier's network.

CUCA: CUCA argued that providing customized routing through the use of LCCs and advanced intelligent network (AIN) is technically feasible, according to the record, and therefore the Commission violated Sections 251(c)(2) and 251(c)(3) of the Act and the FCC's implementing regulations by failing to order customized routing.

DISCUSSION

The Commission was aware when it issued the RAO that customized routing can be provided through the use of LCCs. The Commission questioned, however, whether this is technically feasible "in any practical sense" because of capacity constraints and lack of uniformity among switches even

if they are upgraded. Recognizing that this is not the long-term solution toward which the industry is working, the Commission declined to order the use of LCCs as an interim solution. The Commission was also aware that Bell Atlantic has agreed to provide customized routing through the use of AIN. Despite AT&T's suggestion that we may have applied a narrower definition of technical feasibility than Congress intended, the Commission continues to believe that it would be unreasonable to require customized routing until a long-term, industry-wide solution is developed.

CONCLUSIONS

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

ISSUE NO. 7: Must BellSouth brand services sold or information provided to customers on behalf of AT&T?

INITIAL COMMISSION DECISION

The Commission concluded 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 available. The Commission further concluded that BellSouth should not be required to unbrand or rebrand its uniforms or vehicles and that its employees should not be required to use branded materials provided by AT&T, but should be allowed to use generic "leave behind" cards.

COMMENTS/OBJECTIONS

ATTORNEY GENERAL: The Attorney General objected to the Commission's failure to require unbranding of OS/DA until customized routing is in place. The Attorney General argued that permitting BellSouth to brand OS/DA as its own, even if it is providing the service to a competing provider, has the potential to confuse the customers of another carrier. Those customers will call directory assistance or the operator expecting to deal with their own local service provider and instead will get a message that they have connected with a competitor, BellSouth.

SPRINT: Sprint argued that the Commission erred in declining to require BellSouth to unbrand services provided to customers. Sprint cited Section 251(c)(4)(B) of the Act, which prohibits BellSouth from imposing unreasonable or discriminatory conditions or limitations on resale; Section 51.513 of the FCC's rules, which provides that where operator, call completion, or directory assistance service is part of the service or service package an ILEC offers for resale, failure by an ILEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale; and Section 251(c)(2)(D), which imposes on BellSouth a duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

DISCUSSION

AT&T did not object to the decision on this issue. The Commission's rationale for not requiring BellSouth to unbrand OS/DA is explained in the RAO: BellSouth could never brand its

services, even to its own customers, while the CLPs could brand their services when reached through unique dialing patterns. No new arguments have been presented.

CONCLUSIONS

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

ISSUE NO. 8: 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?

INITIAL COMMISSION DECISION

BellSouth was 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 BellSouth Advertising & Publishing Corporation (BAPCO).

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth notes that the RAO refers to BellSouth's affiliate, BAPCO, as "a wholly-owned subsidiary of BellSouth". However, as indicated in BAPCO's Petition to Intervene, BAPCO is an affiliate but not a subsidiary of BellSouth. BellSouth requests the Commission correct the factual misstatement contained in the RAO to properly reflect BAPCO as the "affiliate and/or agent of BellSouth".

DISCUSSION

The reference to BAPCO found in the Evidence and Conclusions for Finding of Fact No. 9 in the RAO should be corrected. BAPCO should be referred to as an affiliate and/or agent of BellSouth rather than a wholly-owned subsidiary of BellSouth.

CONCLUSIONS

The Commission agrees that the RAO should be corrected to properly reflect that BAPCO is an affiliate and/or agent of BellSouth.

ISSUE NO. 9: 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**

INITIAL COMMISSION DECISION

The Commission found 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 made 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 (NID) through an adjoining network device deployed by the requesting telecommunications carrier. Therefore, the Commission concluded that BellSouth was not required to provide direct connection of an AT&T provided loop to BellSouth's NID but was required to allow an AT&T loop connection to be established through an adjoining NID of AT&T (i.e., NID to NID).

(2) BellSouth has agreed to provide integrated digital loop carrier (IDLC) delivered loops as an unbundled network element. Therefore, the Commission considered this issue resolved and encouraged the parties to further negotiate the rates, terms, and conditions of providing unbundled loops from IDLC facilities.

(3) The Commission concluded that BellSouth was not required to provide unbundled direct access to its AIN database until a mediated access mechanism such as the Open Network Access Point had been developed on an industry-wide basis. The Commission encouraged BellSouth to actively participate in an industry-wide forum to promptly address this issue.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's decision related to the matter of accessing the AIN database, and in particular, that BellSouth is not required to provide unbundled direct access to its AIN database until a mediated access mechanism such as the Open Network Access Point has been developed on an industry-wide basis. AT&T argued that BellSouth must provide AT&T access to

its signaling elements, including unmediated access to AIN Services. AT&T discusses that the use of a mediation device adversely impacts consumers in that it will increase post dial delay, create additional points of potential network failure, and increase the cost and time of implementing services to customers. AT&T asserted that, if however, the Commission determines that mediation is necessary, it should impose mediation in a nondiscriminatory manner by requiring AT&T and BellSouth to route its traffic through the same mediation device.

DISCUSSION

The Commission's view that it would not, at this time, require BellSouth to provide unbundling of its network behind the Signaling Transfer Point (STP) giving access to BellSouth's AIN until a mediated access device is developed was intended to protect the AIN database as well as the network.

With regard to AT&T's position to impose mediation upon BellSouth by requiring BellSouth to route its traffic through the same mediation device as AT&T must route its traffic, the Commission continues to believe that this would not be appropriate.

The Commission maintains that it would not be reasonable to require BellSouth to provide unbundled direct access to its AIN database until a mediated access mechanism has been developed on an industry-wide basis. Further, it would not be reasonable to require BellSouth to route its traffic through a mediation device in accessing its own call-related databases.

CONCLUSIONS

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

<u>ISSUE NO. 10</u>: Should AT&T be allowed to combine unbundled network elements in any manner it chooses?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth should submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements, if any, 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. The Commission also concluded that 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 that when vertical services are obtained through resale, the discounted resale rate should apply.

COMMENTS/OBJECTIONS

AT&T: AT&T commented that the RAO correctly concludes that AT&T should be allowed to combine unbundled network elements in any manner it chooses, regardless of the nature of the service that it may create by the rebundling of those elements. AT&T argued, however, that the Act and the FCC Order clearly do not permit BellSouth to treat certain recombinations of unbundled

network elements as essentially recreations of BellSouth services and to price that group of elements when purchased by the recombining carrier as a retail service with a wholesale discount.

BELLSOUTH: BellSouth objected to the inclusion of vertical services in the rate the CLPs pay for local switching. BellSouth argued that the various functions the Commission has ordered it to include in the local switching function are retail services which should be offered at the retail rates less the appropriate discount. BellSouth also submitted information with respect to "workable criteria" for identifying the combinations of unbundled network elements that constitute resold services. Drawing from recent decisions from Georgia and Louisiana, BellSouth contended that a CLP should bear the burden of persuasively demonstrating that the combination of unbundled elements from BellSouth does not constitute a resold BellSouth service. BellSouth further contended that if the CLP purchases an unbundled loop and unbundled local switching on behalf of a customer, the presumption should be that the CLP has effectively recombined unbundled network elements in a manner that replicates a retail service. A CLP should bear the burden of persuasively demonstrating that the combination of requested unbundled elements from BellSouth does not constitute a resold BellSouth service. It may carry this burden only by showing that it is using its own substantive capabilities or functionalities in combination with the unbundled elements from BellSouth to produce its own service offering. If the CLP substitutes anything less than a substantive capability or functionality, the status of the offering would not change. Substitution of a substantive functionality, however, such as when a CLP supplies its own switching capability or local loop, would change the status of the offering, and under those conditions the CLP would pay only the price for the unbundled network elements.

SPRINT: Sprint argued that the Commission may not allow BellSouth to treat certain combinations of unbundled network elements as resold services and price them at the wholesale rates, because that would violate Section 251(c)(3) of the Act.

CUCA: CUCA contended that treating the recombination issue as a matter of pricing rather than a limitation on the ability of CLPs to combine unbundled network elements is a distinction totally without substance. According to CUCA, the effect of the Commission's decision is to deprive new entrants of the cost benefits of using one of the three entry strategies explicitly authorized by statute. By preventing a CLP from entering the market using combined unbundled network elements when the cost is less than operating as a reseller, the decision does interfere with its ability to combine unbundled network elements in any way it deems appropriate. To BellSouth's argument that failing to adopt its position will eviscerate the resale pricing provisions of the Act, CUCA responded that acceptance of BellSouth's position will eviscerate the unbundled network pricing provisions of the same statute.

DISCUSSION

Vertical Services

BellSouth stated that, in addition to the fundamental switching capability -- e.g., the ability to provide dial tone and to switch an incoming and outgoing call -- the switch has several other capabilities that can be individually activated upon request. Each of these features, when activated, represents a capability that is identical to an existing vertical feature that BellSouth offers on a retail basis. BellSouth argued that it should not be penalized in the price it is allowed to charge just

because the vertical feature happens to be a capability inherent in the switch rather than a feature that can be accessed by the switch, such as operator services.

BellSouth further argued that the Commission has the authority to price vertical services as it chooses as long as those rates are "just, reasonable, and nondiscriminatory." TA96, Section 251(c)(3). Pricing vertical services at their retail rates, less the avoided costs reflected in the wholesale discount, will meet this statutory requirement, while preserving support for "universally available telephone service at reasonably affordable (local exchange) rates," in accordance with the Commission's authority under House Bill 161. BellSouth noted the enormous contribution that vertical services provide to the maintenance of reasonable affordable local exchange rates -- over $60 million in North Carolina revenue in 1995.

The fact that this is a pricing issue, as BellSouth contends, does not change the plain wording of the statute and the basis of the Commission's initial decision. The RAO, of course, does not preclude the pricing of vertical services at their retail rates less the wholesale discount when purchased as resale offerings. It simply requires the inclusion of these features, functions, and capabilities in the price of the unbundled switch element when purchased as such, in accordance with the Act and FCC interpretation.

Recombination of unbundled network elements

BellSouth quoted the Louisiana Public Service Commission (PSC), which ruled as follows:

> AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contains the functions, features and attributes of a retail offering that is the subject of a properly filed and approved BellSouth tariff. Services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing "services identical to a BellSouth retail offering."

BellSouth stated that the conclusions reached by the Louisiana PSC on this issue can serve as the framework for identifying the combinations of unbundled elements that constitute resold services and contended that the PSC's analysis closely aligns with the testimony of Varner and Scheye in this proceeding. BellSouth also presented an Exhibit C, which, it said, depicts the unbundled elements that, if combined, would recreate existing tariffed local exchange service offered by BellSouth: 1. Unbundled loop, including NID/protector, and 2. Unbundled local switching.

In the RAO, the Commission found merit in BellSouth's position on this issue but perceived a need for additional information before attempting to implement a plan to price combinations of elements at wholesale rates. Bearing in mind the legal, technical, and policy implications of our decision, we sought workable criteria for identifying combinations of unbundled network elements that constitute resold services. Because of the complexity of the issue, however, we are now of the

opinion that even the most detailed definition will leave open questions that will likely have to be addressed on a case-by-case basis. In reaching our final decision, we have been guided by the principle of encouraging innovation rather than arbitrage and aided by recent decisions of the Tennessee, Georgia, and Louisiana Commissions.

CONCLUSIONS

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

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

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

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

DISCUSSION

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

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

The Act defines "network element" as follows:

> (29) NETWORK ELEMENT. —The term "network element" means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service.

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

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

CONCLUSIONS

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

ISSUE NO. 12: Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions?

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

DISCUSSION

The Commission view was that the FCC Interconnection Order provided a reasonable basic methodology upon which to base the Commission's avoided cost analysis with some exceptions. In the FCC Interconnection Order, the FCC provided that the 90% avoided factor represented a reasonable estimate of avoided costs for Accounts 6611 - Product Management, 6612 - Sales, 6613 - Product Advertising, and 6623 - Customer Services Expenses. The Commission view was that this avoided cost factor is reasonable, in addition, since the Company's proposed avoided costs reflected in its avoided cost study were derived internally and, therefore, not verifiable. BellSouth's avoided cost study represents BellSouth's estimate of its avoided costs, not <u>actual</u> avoided costs.

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

CONCLUSIONS

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

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

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

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

DISCUSSION

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

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

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

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

CONCLUSIONS

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

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

INITIAL COMMISSION DECISION

Regarding recurring charges, the Commission established interim rates, subject to true-up, for unbundled network elements based on consideration of AT&T's and BellSouth's cost studies and the FCC's proxy rate guidelines or "default proxies", i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's total element long-run incremental cost-based (TELRIC-based) pricing methodology.

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

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

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

COMMENTS/OBJECTIONS

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

CUCA: CUCA commented that the true-up mechanism[1] ". . . is a potentially troublesome development which may impair the near-term development of effectively competitive local exchange markets." CUCA asserted that the true-up mechanism will cause new entrants to hesitate to enter North Carolina local exchange markets utilizing a strategy based upon the purchase of unbundled network elements for fear that the cost of such a strategy cannot be currently ascertained. CUCA further contended that the use of a true-up is probably unlawful. Additionally, CUCA commented that the Commission can avoid the danger of carriers being harmed in the absence of a true-up provision by simply conducting the proceeding necessary to permit the adoption of appropriate prices

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

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

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

DISCUSSION

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

In support of its position that the true-up mechanism is "probably unlawful", CUCA in its comments stated that "[n]othing in either 47 U.S.C. §252(d) or the now-stayed FCC rules providing for the use of proxy unbundled network element prices in any way suggests the appropriateness of such a 'true-up'." Further, CUCA stated that "[t]he absence of any statutory or regulatory provision for such a 'true-up' suggests that the Commission has no power to impose one." Contrary to CUCA's view, it would appear that the Commission clearly has such statutory authority, since the FCC in its Interconnection Order in addressing interim transport and termination rate levels stated that "[s]tates must adopt 'true-up' mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the final rate established pursuant to arbitration."[1]

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

[1]See Paragraph 1066 of the FCC Interconnection Order.

can be finally resolved within a time frame that would prevent carriers from experiencing irreparable harm should the Commission later determine that the interim rates established by the RAOs were materially inappropriate.

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

CONCLUSIONS

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

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

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

DISCUSSION

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

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

CONCLUSIONS

The Commission affirms its original decision on this issue.

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

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

DISCUSSION

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

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

CONCLUSIONS

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

UNRESOLVED ISSUES

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

Contract Location: Part I, Section 25.5.2
AT&T's Position Papers, Item No. 1
BellSouth's Post-RAO Negotiations Report, Page 14

DISCUSSION

AT&T seeks to require that BellSouth provide AT&T with copies of all existing or future CSAs. BellSouth states that, if AT&T identifies a specific CSA, it will provide a copy of the CSA

to AT&T. BellSouth noted that there appeared to be no supporting testimony on this particular subissue of CSAs. The Commission believes that it is unreasonable to require BellSouth to provide a list of all CSAs to AT&T. AT&T has already been given the right to resell CSAs; it should do its own marketing footwork to identify CSAs for which it wishes to compete.

CONCLUSIONS

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

<u>ISSUE NO. 2</u>: SERVICE PARITY MEASURES
Contract Location: General Terms and Conditions, 12.1, 12.2, 12.3, Attachment 12
AT&T's Position Papers, Item No. 3
BellSouth's Post-RAO Negotiations Report, Page 7

DISCUSSION

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

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

CONCLUSIONS

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

<u>ISSUE NO. 3</u>: FINANCIAL RESPONSIBILITY FOR UNBILLABLE AND UNCOLLECTIBLE REVENUES
Contract Location: Attachments 7 and 9; Sections 6.1, 6.2.1, 6.2.2, and 6.4.1 (Attachment 7) and Sections 2.2 and 2.3 (Attachment 9)
AT&T's Position Papers, Item No. 4
BellSouth's Post-RAO Negotiations Report, Pages 21-23, 25-26

DISCUSSION

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

(a) The first issue involves AT&T's inability to collect revenues from a customer because the customer usage data provided by BellSouth is inaccurate ("data errors"). AT&T proposes language which requires BellSouth to compensate AT&T for lost revenue resulting from data errors. BellSouth can subtract from this compensation

any revenue BellSouth demonstrates it would have received for the services provided to AT&T but which cannot be billed due to such data errors. BellSouth agrees to reimburse AT&T only for AT&T's "net loss" resulting from data errors. The term "net loss" is defined by BellSouth as "the gross revenues to AT&T attributable to the recording failures less the costs that AT&T would have incurred but were avoided because of the recording failure."

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

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

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

CONCLUSIONS

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

ISSUE NO. 4: MEDIATION OF AIN SERVICES
Contract Location: Attachment 2, Section 12.2.10.1.1
AT&T's Position Papers, Item No. 14
BellSouth's Post-RAO Negotiations Report, Page 17

DISCUSSION

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

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

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

CONCLUSIONS

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

<u>ISSUE NO. 5</u>: REBUNDLING OF NETWORK ELEMENTS
Contract Location: General Terms and Conditions, Section 1.A
AT&T's Position Papers, Item No. 15
BellSouth's Post-RAO Negotiations Report, Page 5

DISCUSSION

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

> AT&T may use one or more Network Elements to provide any feature, function, or capability, or service option that such Network Element is capable of providing or any feature, function, capability, or service option that is described in the technical references identified herein. When AT&T recombines unbundled elements to create services identical to BellSouth's retail offerings, the prices charged to AT&T for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount and offered under the same terms and conditions as BellSouth offers the service to its customers. For purposes of this Agreement, AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contains the functions, features and attributes of a retail offering that is the subject of a properly filed and approved BellSouth tariff.

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

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

CONCLUSIONS

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

ISSUE NO. 6(a): AT&T'S REQUEST FOR A COMMON DUCT FOR EMERGENCIES
Contract Location: Attachment III, Section 3.4.10.3
AT&T Position Papers, Item No. 16
BellSouth's Post-RAO Negotiations Report, Page 18

DISCUSSION

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

CONCLUSIONS

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

ISSUE NO. 6(b): AT&T'S REQUEST FOR SPACE IN MANHOLES FOR RACKING AND STORING OF CABLE AND FOR STORAGE OF EQUIPMENT
Contract Location: Attachment III, Section 3.10.2.2
AT&T Position Papers, Item No. 16
BellSouth's Post-RAO Negotiations Report, Page 20

DISCUSSION

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

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

CONCLUSIONS

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

ISSUE NO. 7: NONRECURRING AND RECURRING CHARGES FOR UNBUNDLED NETWORK ELEMENTS
Contract Location: Part II, Section 30.7
AT&T's Position Papers, Item No. 23
BellSouth's Post-RAO Negotiations Report, Page 15

DISCUSSION

AT&T's Position:

A. Nonrecurring Charges for Combined Unbundled Network Elements

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

new interconnections. AT&T also commented that it understands the Commission Order to require BellSouth to file additional nonrecurring cost studies in support of the charges that should be incurred when AT&T combines BellSouth unbundled network elements that are already in place.

B. Nonrecurring Loop and Port Charges

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

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

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

C. DS1 Digital Grade Loop

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

BellSouth's Position:

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

BellSouth further commented that AT&T's proposed prices would not allow BellSouth to recover its costs in provisioning the network element or a combination of network elements requested by

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

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

The Prices Which Remain in Dispute

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

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

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

[1]Includes the NID.

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

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

Line No.	Description (a)	AT&T's Position (b)	BellSouth's Position (c)
	Unbundled Exchange Access Loops — Nonrecurring Charges (Continued)		
11. 12.	4-Wire DS1 Digital Grade Loop	\$300.00 new install \$ 0.00 working loop[1]	\$837.92 - First \$494.19 - Add'l
	Unbundled Exchange Access Loops — Recurring Charges		
13.	4-Wire DS1 Digital Grade Loop	\$ 65.00[2]	\$238.00
	Unbundled Local Switching —Nonrecurring Charges		
14.	Unbundled Ports		
15.	2-Wire Analog	\$ 5.00	\$43.07 - First \$16.21 - Add'l
16. 17.	4-Wire Analog (coin)	\$ 5.00	\$43.34 - First \$17.26 - Add'l
18. 19.	2-Wire DID	\$50.00	\$50.00 - First \$18.00 - Add'l
20. 21.	4-Wire DID	\$60.00[3]	\$230.00 - First \$200.00 - Add'l

[1]AT&T's price list reflected these prices for "DS1".

[2]AT&T's price list reflected this price for "DS1".

[3]AT&T's price list reflected this price for "DS1 DID".

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

Line No.	Description (a)	AT&T's Position (b)	BellSouth's Position (c)
Unbundled Local Switching —Nonrecurring Charges (Continued)			
22. 23.	2-Wire ISDN	$50.00	$101.62 - First $ 76.28 - Add'l
24. 25.	4-Wire ISDN	$75.00[1]	$152.71 - First $128.50 - Add'l

Specific Language Proposed For Inclusion In The Composite Agreement

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

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

BellSouth proposed the following language in regard to the foregoing:

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

CONCLUSIONS

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

[1]AT&T's price list reflected this price for "DS1 ISDN".

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

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

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

Table B
Schedule of Interim Rates

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

Table B
Schedule of Interim Rates — Continued

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

ISSUE NO. 8: APPROPRIATE RATES FOR COLLECT, THIRD PARTY, AND CALLING CARD CALLS
Contract Location: Attachment 7 - Incollect/Outcollect Procedures, 9.1
AT&T's Position Papers, Item No. 28,
BellSouth's Post-RAO Negotiations Report, Page 24

DISCUSSION

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

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

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

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

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

"9.1 Outcollect Message -

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

BellSouth proposed the following language:

"9.1 Outcollect Message -

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

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

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

CONCLUSIONS

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

ISSUE 9(a): ENTITIES TO BE BOUND BY INTERCONNECTION AGREEMENT
Contract Location: General Terms and Conditions, Preface
AT&T's Position Papers, Item No. 29
BellSouth's Post-RAO Negotiations Report, Page 3

DISCUSSION

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

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

CONCLUSIONS

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

ISSUE NO. 9(b): PROVISION OF CUSTOMER CREDIT HISTORY
Contract Location: General Terms and Conditions, Section 13
AT&T Position Papers, Item No. 29
BellSouth's Post-RAO Negotiations Report, Page 12

DISCUSSION

AT&T requests that BellSouth be directed to report certain customer payment history information, if available, to a credit bureau, so that AT&T and other new entrants will have the same information BellSouth has. Under AT&T's proposed contract language, AT&T commits to report credit information to credit bureaus in the same manner as BellSouth. BellSouth states that AT&T did not present this issue for arbitration or offer any supporting testimony for it, so it is beyond the scope of the proceeding. BellSouth further submits that customer credit information is available to AT&T from a variety of sources and that BellSouth and AT&T are founding members of an organization, the National Consumer Telecommunications Data Exchange, which intends to incorporate and build a database of consumer accounts that have gone final owing money to members. Credit information on all BellSouth customers is not necessary for AT&T's successful entry into the local exchange market and is not required by TA96.

CONCLUSIONS

The Commission concludes that this issue is not subject to arbitration.

IT IS, THEREFORE, ORDERED as follows:

1. That the Composite Agreement submitted by BellSouth and AT&T is hereby approved, subject to the modifications required by this Order.

2. That BellSouth and AT&T shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

3. That the Commission will entertain no further comments, objections, or unresolved issues with respect to matters previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-140, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of AT&T Communications of the Southern) ORDER APPROVING
States, Inc., for Arbitration of Interconnection with) BELLSOUTH/AT&T INTER-
BellSouth Telecommunications, Inc.) CONNECTION AGREEMENT

BY THE COMMISSION: An interconnection agreement between BellSouth Telecommunications, Inc. (BellSouth), and AT&T Communications of the Southern States, Inc. (AT&T), was filed for Commission review and approval on April 28, 1997.

The agreement was filed pursuant to the Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement entered in this docket on April 11, 1997.

The Commission has reviewed the April 28, 1997, filing and notes the following:

1. With respect to the resale of semi-public payphone service as provided for in Part I, Paragraphs 25.12.5 and 25.12.6 of the agreement, the Commission notes that, pursuant to the FCC's Payphone Order, semi-public payphones are no longer offered to subscribers under tariff and thus should not be required to be offered for resale. BellSouth may, however, offer such semi-public payphone services for resale if it chooses.

2. With respect to the use of the word "interim" concerning resale prices in Part IV, Paragraph 42, the Commission directs that the word "interim" should be deleted because the resale prices are not interim prices.

After careful consideration, the Commission concludes that the agreement filed on April 28, 1997, between BellSouth and AT&T should be approved effective as of April 28, 1997, subject to the above modifications. BellSouth and AT&T shall take appropriate action, including contract amendments if necessary, to effectuate the above modifications.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of May, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-140, SUB 51

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 GTE South Incorporated) RECOMMENDED ARBITRATION ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 24, 1996, through Friday, October 25, 1996; Monday, November 4, 1996, through Tuesday, November 5, 1996; and Thursday, November 7, 1996, through Friday, November 8, 1996

BEFORE: Commissioner Allyson K. Duncan, Presiding; and Commissioners Laurence A. Cobb and Judy Hunt

APPEARANCES:

For AT&T Communications of the Southern States, Inc.:

Kenneth McNeely, Attorney 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 GTE South Incorporated:

Robert W. Kaylor, P.A., Attorney at Law, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27602

Joe W. Foster and Morris L. Sinor, Attorneys at Law, GTE South Incorporated, 4100 North Roxboro Road, Durham, North Carolina 27702

Paul Mirengoff, Andrew Shore, and Edward Finley, Hunton and Williams, Attorneys at Law, One NationsBank Plaza, 101 South Tryon Street, Suite 2650, Charlotte, North Carolina 28280

William C. Fleming, Attorney at Law, 5820 Rock Canyon Road, Raleigh, North Carolina 27613

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 AT&T Communications of the Southern States, Inc. (AT&T) on August 16, 1996, in Docket No. P-140, Sub 51. AT&T's petition requested that the Commission arbitrate certain terms and conditions with respect to interconnection between itself as the petitioning party and GTE South Incorporated (GTE).

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 and excluded intervenors other than the Attorney General from participating in arbitration proceedings. On August 21, 1996, the Commission scheduled the AT&T/GTE arbitration proceeding for hearing beginning Thursday, October 24, 1996. By Order of September 16, 1996, the Commission consolidated the AT&T/GTE arbitration proceeding in Docket No. P-140, Sub 51, for purposes of hearing with the MCI Telecommunications Corporation (MCI)/GTE arbitration proceeding in Docket No. P-141, Sub 30. Numerous other motions and pleadings have been filed in these 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 yet have appropriate cost 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 October 24, 1996, AT&T presented the testimony of the following witnesses: Joseph Gillan, Ray Crafton, David L. Kaserman, Mike Guedel, L.G. Sather, Don J. Wood, Art Lerma, and Ronald H. Shurter. GTE presented the testimony of the following witnesses: Charles F. Bailey, Allan Peters, John W. Ries, John Peterson, Jack Isbell, Timothy J. Decker, William Munsell, Larry Gaskin, Alan Plant, Myron C. Dolecki, Timothy Tardiff, David Tucek, Robert Tanimura, Douglas E. Wellemeyer, and David S. Sibley.

Based upon careful consideration of the entire record in this arbitration proceeding, the Commission now makes the following

FINDINGS OF FACT

1. GTE 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 GTE's tariffs will carry forward into resold services with the exception of such prohibitions and restrictions as have been or will be specifically imposed or as set out in Evidence and Conclusions for Finding of Fact No. 2.

3(a). The Commission declines to enact specific performance standards and instructs the parties to negotiate mutually agreeable terms.

3(b). An "as-is" transfer is a transfer of a customer's services from one communications carrier to another communications carrier. "As-is" transfers should be allowed.

3(c). GTE is required to enter into blanket letters of authorization authorizing the competing local provider (CLP) to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with the FCC rules in 47 CFR Part 64, Subpart K.

4. The Commission declines to enact specific standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues.

5. GTE 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. The electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards. Further, the parties are encouraged to negotiate the terms and conditions of how the implementation costs incurred in the development of such interfaces can be recovered, such that all benefitting users share the burden.

6. GTE does not have to provide customized routing of calls for directory assistance and operator services directly to AT&T's platform. Customized routing is not technically feasible at this time.

7. GTE does not have to brand services sold or information provided on behalf of AT&T.

8. GTE should continue to utilize the Customer Billing Services System (CBSS) to render bills to AT&T for services purchased from GTE until an industry-wide standard is developed through an industry forum.

9. The question of whether or not GTE should be required to allow AT&T to have an appearance on the cover of its white and yellow pages is not an issue in this proceeding.

10. The Commission finds that access to GTE's directory assistance databases is to be accomplished through initial loads and updates via magnetic tape. Furthermore, GTE should continue working to develop a long-term, industry-wide solution.

11. No arbitration decision from the Commission is required concerning notice provisions to wholesale customers as the parties have stipulated to a national agreement on this matter.

12. The Commission finds that GTE is implementing a process to comply with AT&T's request concerning Presubscribed Interexchange Carrier (PIC) changes.

13. GTE must file with the Commission all interconnection agreements with CLPs entered into in the future within 30 days after the conclusion of negotiations and all interconnection agreements with CLPs entered into previously within 30 days after the date of this Order. GTE 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. GTE 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 (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 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 unbundled subelements. Therefore, at this time, GTE is not required to unbundle the local loop. However, GTE may provide the loop distribution subelement in a bona fide request process and unbundle the loop into subelements should it choose to do so.

Further, GTE is not required to provide unbundled direct access to its Advanced Intelligent Network (AIN) database until a mediated access mechanism has been developed on an industry-wide basis. Such a mediated access mechanism should be promptly addressed and developed through GTE's participation in an industry-wide forum.

15. AT&T should be allowed to combine unbundled network elements in any manner it chooses. GTE 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. GTE 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. GTE must make available to AT&T remote call forwarding (RCF) and direct inward dialing (DID) as interim number portability solutions, until such time as a permanent number portability method is available. The parties must explore appropriate cost-recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefitting users share the burden and negotiate the appropriate cost-recovery mechanism.

18. The implementation and the responsibility for the cost of long-term number portability are issues are best resolved 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, GTE is not required to make dark fiber available to AT&T.

20(a). The provision of tandem to tandem local switching within the local access transport area (LATA) is not an issue in this proceeding.

20(b). Access by AT&T to Advanced Intelligent Network (AIN) services residing upon GTE's service control points (SCPs) shall be allowed through GTE's signaling transfer points (STPs). Further, access to GTE's AIN triggers is not required until a mediated access mechanism has been developed on an industry-wide basis.

20(c). GTE is not required to unbundle Signaling System 7 SCPs from STPs. The parties should actively participate in an industry-wide forum to promptly address this issue.

20(d). The selection of the Signaling System 7 signaling point of interface (SPOI) is not an issue in this proceeding.

20(e). The question of whether or not GTE should provide STP ports used for the interconnection of AT&T to the GTE Signaling System 7 network if AT&T does the same is not an issue in this proceeding.

20(f). GTE should bill AT&T for queries it initiates to GTE's "toll free" database, regardless of where the call terminates.

21. GTE must provide AT&T with copies of GTE'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 GTE.

22. GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

23. Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 22, the composite wholesale discount rate which is appropriate for GTE is 19.97%.

24. 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.

25. 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.

26. "Bill and keep" is not an appropriate alternative at this time for transport and termination charges given the probable traffic and cost imbalances between GTE and AT&T.

27. 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.

28. Access charges are not subject to arbitration in this proceeding.

29. Rates applicable to collect and third-party intraLATA calls should be priced consistent with the provisions established herein with respect to the wholesale discount and unbundled network elements.

30. The general contractual terms and conditions, including the term of the agreement, should be negotiated between AT&T and GTE, except as outlined elsewhere in this Order.

31. The types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. Disputes over the functionality of particular equipment will be resolved on a case-by-case basis.

32. Regarding the issue as to whether GTE should be required to recover in a competitively-neutral way the cost of development and implementation of any systems and processes required by the Act, due to the lack of specificity as to the specific system(s) or process(es) in question, the Commission is unable to address said issue, except to the extent it has been addressed elsewhere herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Issue: What services provided by GTE should be excluded from resale?

POSITIONS OF PARTIES

AT&T: The Act requires that GTE offer for resale to AT&T at wholesale rates all telecommunications services GTE sells at retail to non-carrier subscribers.

GTE: GTE does not believe it should be required to offer the following services for resale:

- Services priced below cost; i.e., residential services;
- Promotional offerings;
- Public pay telephone lines and semi-public pay telephone lines;
- Services that are not telecommunications services (e.g., inside wire, voice mail);
- Existing contract services will not be offered for resale; however, new contract service arrangements (CSAs) developed after the arbitration will be offered; and
- Market or operation trials.

ATTORNEY GENERAL: The Attorney General made the following analyses and recommendations:

1. Market and operational trials are non-retail services. Neither are short-term promotions (less than 90 days). These should not be available for resale.

2. Insurance plans for inside wiring or provision of voice mail are not currently regulated services and should not be compelled to be provided at retail. However, the definition of telecommunications service is evolving and these may eventually fall under the purview of the statute.

3. Payphone service to payphone location owners, semi-public payphone service to semi-public payphone location owners, and residential service to residential customers should be available for resale at wholesale.

4. Contract service arrangements (CSAs) are tailored to specific customers and should not be open to resale. However, if a party can show that these arrangements are being used to defeat competition, this position should be reevaluated.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillan, Guedel, Sather, and Shurter and GTE witness Wellemeyer.

Section 251(c)(4) of TA96 requires the ILEC (incumbent local exchange company or incumbent LEC) to offer for resale at wholesale rates any telecommunications service 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 GTE should not be allowed to prohibit or restrict resale except as set out below:

1. Services priced below cost (i.e., residential services). The Commission finds that below-cost services should be available for resale. See FCC Interconnection Order, Paragraph 956, where the FCC said that "subject to cross-class restrictions . . . we believe that below-cost services are subject to the wholesale rate obligation." The FCC continued: "[T]he resale pricing standard is not based on cost plus a reasonable profit. The resale pricing standard gives the end user the benefit of an implicit subsidy in the case of below-cost service, whether the incumbent is served by the

incumbent or by a reseller, just as it continues to take the contribution if the service is priced above cost." The FCC further noted that the ILEC will experience proportionate decreases in expenditures due to avoided costs.

2. Promotional offerings. The Commission finds these to be telecommunications services subject to resale if the promotion is over 90 days. If the promotion is 90 days or less, then it is reasonable to consider it not subject to resale. See FCC Interconnection Order, Paragraph 949 ff. However, the ILEC should not utilize promotions in such a way to evade its wholesale rate obligation, as for example with sequential promotions of 90 days or less.

3. Public and semi-public pay telephone lines. The Commission finds that Public Telephone Access Service (PTAS) lines will be subject to resale at wholesale rates but only to telecommunications carriers, not to COCOTs, and only for the purposes of resale. See FCC Interconnection Order, Paragraph 876. However, the ILEC's own public payphones will not be subject to resale because they are not per se a retail service, since no end users presubscribe to it. However, ILEC semi-public payphones should be subject to resale.

4. Services that are not telecommunications services (e.g., inside wiring and voice mail). Stated in the abstract, this exclusion is unexceptionable. Section 251(c)(4) requires resale at wholesale rates of retail telecommunications services offered to subscribers who are not telecommunications carriers. Section 3(48) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received." Section 3(51) defines "telecommunications service" essentially as the offering of telecommunications for a fee directly to the public.

Specifically, the Commission finds inside wiring and voice mail not to be telecommunications services under the Act and are thus not subject to resale.

5. Existing CSAs. As a general principle, the Commission finds these to be subject to resale. See FCC Interconnection Order, Paragraph 948, where the FCC concluded that there was no basis for creating a general exemption for CSAs from the resale requirement. However, an ILEC is not precluded from requesting exemption for a specific CSA for good cause shown.

6. Market or operation trials. The Commission finds these services not to be subject to resale.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: What terms and conditions should be applied to resale of GTE services?

POSITIONS OF PARTIES

AT&T: Resale restrictions are presumptively unreasonable and prohibited by the Act.

GTE: The following restrictions will be applied by GTE to the wholesale products:

- Cross-class selling should be prohibited, e.g., purchasing wholesale residential service and reselling that service to a business customer;

- Resale of grandfathered services should only be allowed to the grandfathered customers; and

- Discounts should not be further applied to services already priced at wholesale or to operator and directory assistance services or to nonrecurring charges. Among the services alleged to already be priced at wholesale are private line services tariffed under the special access tariff, and COCOT coin and coinless lines.

ATTORNEY GENERAL: The Attorney General agrees with cross-class selling restrictions and argues that current tariffed restrictions should apply to resale, assuming such restrictions are reasonable. Similarly, resale of grandfathered services should only be allowed to grandfathered customers. GTE has argued that there are no avoided costs associated with operator services and directory assistance and so the wholesale discount should not apply to those services. The Attorney General recommended that operator and directory assistance calls be provided at wholesale. By the same token, nonrecurring services should be provided for resale at wholesale prices.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Crafton, Sather, and Shurter and GTE witness Wellemeyer.

This issue falls into the following categories--cross-class resale, grandfathered and Lifeline/Link-Up services resale, and the non-application of the wholesale rate to services already said to be priced at wholesale (specifically, private line services tariffed under the special access tariff, and COCOT and coinless lines), operator assistance, directory assistance, and nonrecurring charges.

The first two categories--a prohibition of cross-class resale as between residential and business categories and the restriction of the resale of grandfathered services to grandfathered customers and Lifeline/Link-Up services to eligible end users--are clearly reasonable and supported by the Act and the FCC Interconnection Order. See, especially, FCC Interconnection Order, Paragraphs 962-964, 968. With respect to the services alleged to be already priced at wholesale, such as private line services tariffed under the special access tariff, and COCOT coin and coinless lines, and operator and directory assistance services and nonrecurring charges, the Commission finds no basis to exclude such services from the resale requirement. The Commission notes that resale of PTAS lines is limited to telecommunications carriers and then only for the purpose of resale.

CONCLUSIONS

The Commission concludes the following:

1. That cross-class selling of wholesale residential services should be prohibited.

2. That the resale of grandfathered services should be restricted to grandfathered customers and the resale of Lifeline/Link-Up should be restricted to eligible customers.

3. That operator and directory assistance, non-recurring charges and private line services tariffed under the special access tariff, and COCOT and coinless lines are subject to resale.

4. That use and user restrictions that are currently in ILEC tariffs should carry forward into resold services, with the exception of such prohibitions or restrictions which have been or will be specifically imposed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3(a)

Issue: What are the appropriate service standards to be provided by GTE to new entrants?

POSITIONS OF PARTIES

AT&T: The Act requires parity. 47 U.S.C.A. Sections 251(c)(2)-(4). Absent parity between the entrant and GTE, the entrant cannot compete effectively with GTE.

GTE: GTE will provide the same quality of services to the new entrant that GTE provides to its own customers.

ATTORNEY GENERAL: The same level of quality must exist between GTE and the 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 April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Kaserman, Sather, and Shurter and GTE witness Isbell.

The Commission does not believe it is appropriate or 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, as they possess superior knowledge about the processes involved. It would be premature for the Commission to impose a "one size fits all" approach, or an approach leading 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 or appropriate standards, perhaps with minor variations to accommodate specific concerns and expectations.

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. 3(b)

Issue: Should GTE be required to provide "as-is" transfers to the new entrant?

POSITIONS OF PARTIES

AT&T: GTE must execute a "change as is" service order when a GTE customer requests to switch to AT&T local service on an "as-is" basis and utilize a blanket letter of authorization. This is necessary to ensure successful provisioning of customer orders without disruption of the customer's expected local exchange services.
GTE: The new entrant should determine what services the customer desires.

ATTORNEY GENERAL: There was testimony that many customers do not necessarily know what their services are. Thus, a price quote from a new entrant for an "as-is" transfer from the ILEC may be inaccurate and necessitate further contracts between the new entrant and customer. While an interactive ordering process between the ILEC and the new entrant may be the best solution in the long run, the Attorney General found no reason to deny new entrants "as-is" transfers from the ILEC for new customers.

DISCUSSION

See discussion under Evidence and Conclusions for Finding of Fact No. 3(c).

CONCLUSIONS

The Commission concludes that "as-is" transfers must be allowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3(c)

Issue: Should GTE be required to provide customer information without a letter of authorization (LOA) from the customer to GTE?

POSITIONS OF PARTIES

AT&T: Along with executing "as-is" service orders, GTE must allow a blanket letter of authorization for such change. This process is necessary for efficient provisioning of customer orders.

GTE: If the new entrant provides GTE with a specific LOA, then customer information will be provided.

ATTORNEY GENERAL: Customers have both an expectation of privacy regarding account records and efficient transferral upon request. It is unclear whether GTE is seeking a signed piece of paper or some other verification method. The entrant should obtain authorization from its new customer <u>prior</u> to seeking release of that customer's information from the ILEC. However, GTE should honor the new entrant's request for account information without third-party verification of the end user's verification. This policy can be adjusted to require third-party verification if a significant degree of complaints arise.

DISCUSSION

Testimony regarding this issue and the issue presented under Evidence and Conclusions for Finding of Fact No. 3(b) was presented by AT&T witness Shurter and GTE witness Isbell.

An "as-is" transfer is, as the name implies, a transfer of the same customer services from one communications carrier to another.

A blanket letter of authorization is essentially an agreement between the CLP and the ILEC that the CLP will only seek a service transfer upon the authorization of the end user, but it is not necessary to actually send to the ILEC a written document with the end-user's signature requesting such service. The CLPs say a similar process is used with interexchange carriers (IXCs) and should be utilized here. They cite the FCC Interconnection Order, Paragraph 421, to the effect that entrants are disadvantaged if customer switchovers are not "rapid and transparent."

The issues of "as-is" transfers and blanket LOAs are interrelated. The CLPs argue that, because many end users are not precisely sure as to what services they receive from the ILECs, the CLPs need access to account information describing the end user's current services. They also propose blanket letters of authorization to allow them to have service efficiently changed over at the request of the end user.

GTE insists that the CLP should first determine from the end user what services the end user has, and it maintains that it should receive authorization from the end user before disclosing account information or transferring service. GTE also argues that Section 222 of the Act requires customer approval before release of this customer proprietary network information (CPNI).

The Commission concludes that the use of "as is" transfers and blanket LOAs is reasonable and necessary in order to effectuate the policy enunciated in the FCC Interconnection Order, Paragraph 421, that ILECs are to switch over customers to CLPs for local service in the same interval as LECs currently switch end users between IXCs. The Commission furthermore agrees with the FCC that new entrants will be disadvantaged if customer switch-overs are not "rapid and transparent." The CLPs have made a convincing practical argument that many end users, especially large or medium-sized businesses, do not know precisely what their services are and that it would be cumbersome and inefficient to deny expeditious access to the required information.

At the same time, the Commission is concerned about the potential for "slamming" and other abuses of the LOA process. Accordingly, the Commission believes that ILECs and CLPs should enter into blanket LOAs authorizing <u>both</u> relevant account information access or transferral of service. In this context, relevant account information refers to a customer's list of scheduled services on or about the time of a transfer. However, the CLP must obtain and, in the event of dispute, must be prepared to produce the written or third-party verified authorization by the end user for such information or transferral. Such authorization or third-party verification should be consistent with the FCC anti-slamming rules set out in 47 CFR Part 64, Subpart K. The Commission believes these requirements will satisfy Section 222 concerns about customer authorization for release of CPNI as well as reduce the likelihood of CLP "fishing expeditions" to obtain marketing information about customers <u>before</u> rather than after the customers have authorized account access or service transfer.

In any event, a carrier receiving CPNI is not to use such information for its own marketing efforts. See Section 222(b) of the Act.

The Commission further notes that Section 258 of the Act prohibits changes to subscriber carrier selections "except in accordance with such verification procedures" as the FCC prescribes. States are not precluded from enforcing verification procedures of their own respecting intrastate service. According to GTE, the FCC is undertaking a rulemaking in CC Docket 96-115 to determine appropriate verification procedures. The Commission believes that the state and federal rules on this matter should be consistent. Therefore, to the extent that the FCC may in the future prescribe a different verification process for local service changes, the federal rules should at that time supplant the practices endorsed here, subject of course to reconsideration of the applicability of such rules in North Carolina by the Commission should they be unsatisfactory.

CONCLUSIONS

The Commission concludes the following:

1. ILECs and CLPs shall enter into blanket LOAs authorizing the CLP to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with FCC Rules in 47 CFR Part 64, Subpart K.

2. The above verification procedures shall be superseded by such rules as are issued by the FCC pursuant to Section 258 of the Act, subject, after promulgation of such rules, to reconsideration by motion of the Commission or by an interested party for good cause shown.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Must GTE 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: GTE is the only party in a position to prevent the errors that lead to unbillable or uncollectible revenues. Thus, GTE should compensate AT&T for revenue losses caused by GTE errors.

GTE: If the new entrant wants GTE to indemnify it, then the new entrant should pay, not GTE, its customers, or its shareholders. GTE is liable, however, to the same extent as currently provided in its tariffs.

ATTORNEY GENERAL: The Commission should require the arbitrating parties to report to it by April 15, 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 with liberal forgiveness policies for end users who have not authorized certain toll calls.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and GTE witness Peterson.

The interconnection agreement between GTE 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 GTE customer for access service. 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. 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 GTE 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 GTE 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?**

In what time frame should the interfaces be deployed and how should the costs of the interfaces be recovered?

POSITIONS OF PARTIES

AT&T: The Act requires GTE to provide services to AT&T equal to that which GTE provides to itself and its affiliates. 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, GTE should immediately implement a mutually acceptable real-time automated interface (gateway) as an interim measure.

GTE: GTE will provide the new entrants with access to systems functions that provide parity with the functions realized by GTE. GTE is unwilling, however, to cede unrestricted control of its equipment and facilities to competing local carriers.

In regard to deployment of such interfaces, Phase 1 available today, uses an 800 number for pre-order and repair functions. Phase 2 automates the pre-ordering, ordering, and repair process using

electronic interfaces and is targeted for deployment in 1997. The unresolved issue is Phase 3. The long-term electronic interface is dependent upon industry standards. National standards should be developed before a permanent solution is developed and implemented.

The cost causer should pay for the costs of implementation of the interfaces.

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. GTE should not be required to sacrifice the reliability or accuracy of its own internal interfaces to give the new entrants parity in using electronic interfaces, but GTE's need for control of its own system should not be used to delay the implementation of interfaces. The Attorney General agrees with GTE that a long-term solution needs to conform to national standards. The Commission should require that a firm plan to implement automated interfaces with commitments to deadlines which are mutually satisfactory must be in place and reported to the Commission by April 15, 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 GTE witness Isbell.

The FCC Interconnection Order requires GTE to provide nondiscriminatory access to operational support systems, and any relevant internal gateway access, in the same time and manner in which GTE provides such functions to itself. Further, the FCC Interconnection Order, Rule 51.319, requires that the operations support systems functions be provided on an unbundled basis upon request.

GTE has agreed in principle to provide electronic interfaces on a permanent, long-term basis. However, until the permanent, long-term interface is developed, GTE has agreed to provide interim measures to provide access to the functions of its operations support systems. GTE has agreed to provide the pre-ordering, ordering, and repair process using electronic interfaces in early 1997. GTE witness Isbell testified that the FCC recognizes that the long-term electronic interface is dependent upon industry standards, thus, national standards should be developed before a permanent solution is developed and implemented. GTE has agreed to implement the national solution when it becomes available.

Presently, GTE's proposals for operations support system functions all involve a manual element. For example, if the CLP wants to obtain access to information about a customer's existing service, it must call a GTE service representative to obtain that information. In order to obtain a telephone number assignment and a service installation due date for a new CLP customer, the CLP cannot directly access GTE's electronic system, but must put its customer on hold and dial an 800-number to talk to a GTE service representative. When an order for a customer's service is submitted electronically, a GTE employee must manually enter the data into GTE's order processing system. To report a customer's trouble, the CLP must call a GTE repair center, where a GTE customer service representative enters the data into the system. AT&T argued that such manual processing

introduces costs, delays, and potential inaccuracies which would be avoided if it had direct electronic access.

The issue of service order processing and provisioning is currently before the Industry Order and Billing Forum (OBF), which has published the initial draft of the Local Service Ordering Guideline and the Local Service Request/Industry Support Interface for ordering all unbundled and resold local services. Many issues remain to be resolved, so it is apparent that non-interactive, non-real-time interfaces will continue to be in place for an interim period of time.

The costs of implementing electronic interfaces have not yet been identified. GTE argued that the electronic interfaces are being developed solely for the benefit of the competing carriers. Thus, GTE stated that the requesting carriers should be responsible for bearing the costs to access these systems — i.e., the requesting carriers should pay for development of the electronic interfaces.

AT&T requested that the real-time, interactive, electronic interfaces for unbundled network elements be made available at the earliest practicable date in 1997. Additionally, AT&T requested that not later than March 31, 1997, GTE should implement a mutually acceptable real-time automated interface and agree to a specific work schedule for a permanent solution.

CONCLUSIONS

The Commission encourages GTE 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 GTE'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.

Regarding the matter of who should be required to pay for the costs of implementation of the interfaces, the Commission finds that it is not prepared to make a decision at this time. However, the Commission encourages the parties to further negotiate the terms and conditions of how the implementation costs incurred in the development of such interfaces can be recovered, such that all benefitting users share the burden.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: Must GTE route directory assistance (DA) and operator services (OS) calls directly to AT&T's platform?

POSITIONS OF PARTIES

AT&T: The Act requires this customized routing. 47 U.S.C.A. Section 251(c).

GTE: It is technically feasible, in some central offices, to custom route calls to the new entrants' OS and DA platforms. In those offices, the custom routing is dependent on vendor delivery; cost recovery becomes an issue should custom routing become technically feasible. However, GTE's switch vendors believe a long-term solution needs to be developed.

ATTORNEY GENERAL: Lack of customized routing poses a disadvantage for the new entrant but more especially the end user who must learn new dialing patterns for OS/DA. For fairness to all parties, customized routing will have to occur. Switch capacity to provide customized routing in the long-term is not clear, and GTE's concern with national standards is well founded. Parties should be ordered to report to the Commission by April 15, 1997, what form the technical solution will be, a schedule for implementation, and an explanation of the interim solution to direct routing requests. The Commission should order compliance if the arbitrating parties are unable to reach agreement.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Crafton and Shurter and GTE witness Gaskin.

AT&T asserts that the Act generally and the FCC Interconnection Order specifically require customized routing absent a showing by GTE that it is not technically feasible. 47 U.S.C.A. Section 251(c)(2); FCC Interconnection Order, Paragraph 418. GTE must unbundle the functionalities of OS and DA in connection with resold services, to the extent technically feasible. FCC Interconnection Order, Paragraph 536. Direct routing is technically feasible, even though there may be some limit on capacity. "Technical feasibility" may include the necessity for some system modifications. Several State Commissions (Tennessee, Illinois, New York, Ohio, and Pennsylvania) have found that customized routing is technically feasible. GTE has not shown to the contrary.

AT&T also asserts that, without direct routing, consumers who choose AT&T must dial long and unfamiliar numbers to reach AT&T platforms for OS/DA services. Traditional numbers (0-, 0+) (411, 555-1212) are a scarce resource. If allowed to monopolize them, GTE would have an unfair competitive advantage as well as a unique opportunity to siphon off the OS/DA business of AT&T's customers and a unique sales opportunity with those customers. To convince consumers to switch local providers, new entrants must be able to distinguish themselves and strengthen customer relationships. Direct routing facilitates both. Unbranding OS/DA mitigates the problem somewhat, but only direct routing will solve it.

GTE states that, according to the Act, it will sell those OS/DA items that it sells now at retail, and it is not required to unbundle portions of OS/DA that are not sold separately at retail. GTE will provide those aspects of OS/DA that it currently offers at retail along with local service at just and reasonable rates for its avoided costs. AT&T avoids this issue by seeking OS/DA as an unbundled item, which would require customized routing. Switch routing capability is not an unbundled network element offered by GTE on an a la carte basis. Current switch limitations would require adding new capacity and conditioning existing switches. A long-term standard industry solution must be established. GTE will agree to unbundling only where AT&T agrees to pay all costs associated with near term unbundling and their share of costs of long-term solutions and AT&T establishes a method to ensure it pays all access charges required by law.

Testimony by both GTE and AT&T appears to agree that the only feasible method of providing customized routing at this time is by the use of line class codes (LCCs). Both parties also agree that LCCs are a finite resource. The evidence shows that a sufficient number of LCCs may not be available to serve all the parties who may wish to obtain customized routing from GTE. While it may be technically feasible to serve some CLPs on some switches, it is not technically feasible to

serve all CLPs on all switches. GTE is investigating other long-term solutions. Until a long-term solution is developed, the Commission should decline to order customized routing. GTE is willing, on an interim basis, to make available to AT&T the routing capability it has, provided AT&T pays the associated costs.

The Commission agrees with GTE that it is not required by the Act to unbundle OS/DA from resold services, because it does not provide OS/DA as a separate service to its retail customers. Thus, whether customized routing should be provided for resold services is an issue only if GTE is required to rebrand OS/DA. In the case of unbundled network elements, the issue is whether it is technically feasible for GTE to provide customized routing. AT&T urges the adoption of an interim solution using LCCs, and GTE has stated a willingness to provide it with LCCs on an interim basis where it has the capability, provided the CLP bears the cost. Nevertheless, 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. Instead of requiring customized routing using LCCs under these circumstances, the Commission believes that 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, because it is not technically feasible at this time. The Commission encourages the parties to work to develop a long-term, industry-wide solution. The Commission also encourages the parties to further negotiate concerning the recovery of development costs, such that all benefitting users share the burden.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Issue: When a GTE service is resold, is it technically feasible for GTE to brand the services (i.e., Operator and DA) with the new entrant's brand? When GTE employees interact with a new entrant's customers with respect to a service provided by GTE on behalf of the new entrant, what are GTE's branding obligations?

POSITIONS OF PARTIES

AT&T: Branding is not an issue in AT&T's post-hearing matrix.

GTE: It is not feasible for GTE to rebrand services for the new entrant. However, GTE will unbrand certain services, and GTE will leave a generic door hanger on the customer's premises.

ATTORNEY GENERAL: OS/DA services should not be branded by any arbitrating party, including GTE, until customized routing is available. GTE employees should be required to indicate either verbally or with written notice or both that they are performing work on behalf of the CLP. A generic door hanger on customer premises is one way to comply.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Isbell.

GTE asserts that it is not technically feasible to uniquely brand CLPs' services in a resale or unbundled environment; the issue of customized routing must be resolved first. Branding of services when GTE employees interact with the CLP's customers is not an issue in AT&T's post-hearing matrix. It is also an issue agreed upon in other jurisdictions, where GTE, AT&T, and MCI have stipulated as follows:

> 1. When a GTE technical representative goes to a customer premise on behalf of AT&T or MCI, in the event the representative has contact with the customer, the representative will indicate to the customer that he or she works for GTE but is at the customer premises on behalf of AT&T or MCI regarding AT&T or MCI service. If the customer is not at the premise at the time that the GTE technical representative is at the premise, GTE agrees to deliver generic material or documents to the customer, and the technical representative will write the LSP's [CLP's] name on the document or material left for the customer.
>
> 2. GTE personnel acting on behalf of AT&T or MCI will not discuss, provide, or leave information or material relative to GTE's services and products.

47 C.F.R. Rule 51.613(c)(1) provides 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. Without customized routing, however, GTE lacks the capability to rebrand OS/DA.

CONCLUSIONS

The Commission concludes that GTE should not be required to unbrand OS/DA but should be required to rebrand OS/DA when customized routing is implemented. The Commission assumes that the branding issue is settled with regard to other interaction between GTE and its employees and AT&T customers. The Commission will address problems and complaints 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 GTE?

POSITIONS OF PARTIES

AT&T: These services are necessary for accurate and timely billing services, which are important to customer satisfaction.

GTE: GTE initially will bill the end user from its billing system specified as Carrier Billing Services System (CBSS).

ATTORNEY GENERAL: Evidence at the hearing indicated national standards for billing formats were being developed. All parties should participate in good faith in establishing national standards and report to the Commission by April 15, 1997, on the progress of establishing these standards.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and GTE witness Isbell.

With regard to the billing and usage recording services, AT&T and GTE are in agreement as testified to by AT&T witness Shurter; however, the issue of related compensation is still an unresolved matter.

CONCLUSIONS

The Commission will allow GTE to continue billing through the CBSS billing process until industry-wide standards are developed through an industry forum.

With regard to the matter of who should be required to pay for the costs of implementation of the billing services requested by AT&T, the Commission is not prepared to make a decision at this time. The Commission encourages the parties to further negotiate the terms and conditions of how the implementation costs incurred in the development of such billing services can be recovered, such that all benefitting users share the burden.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: Should GTE 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: This issue has been resolved.

GTE: With respect to directory related issues, GTE believes this issue has been resolved between the parties in accordance with stipulations reached in a comprehensive settlement filed by GTE on November 20, 1996.

ATTORNEY GENERAL: The cover of the directory needs to have some indication that the directory includes listings for all local service providers; however, this appears to be an issue that can be deferred. 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.

On December 12, 1996, AT&T filed its Supplemental Post-Hearing Matrix in accordance with the Commission's Order of December 5, 1996. Said matrix stated that this issue was resolved and stipulated. Therefore, this matter is not an issue in this proceeding as evidenced by AT&T's matrix.

CONCLUSIONS

The Commission concludes that this question of whether or not GTE should be required to allow AT&T to have an appearance on the cover of its white and yellow pages is not an issue in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Issue: Must GTE provide AT&T access to GTE's directory assistance database?

POSITIONS OF PARTIES

AT&T: AT&T's access to GTE's directory assistance database is necessary for AT&T to provide directory assistance services, which are important to customer satisfaction.

GTE: GTE will provide initial loads and updates of directory listings.

ATTORNEY GENERAL: If the two sides cannot assure each other of their mutual goodwill in providing AIN services or answering directory requests and cannot cooperate in good faith, then the intermediary step for access to directory and AIN databases should be imposed on all local exchange telephone companies, both ILECs and CLPs.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter. Additionally, it was addressed by GTE attorney Sinor, in commenting with respect to a stipulation between the parties.

AT&T is requesting that GTE provide to AT&T initial loads of its directory database and to provide, by electronic transfer, updates of its directory database. However, although GTE is willing to provide these initial loads and updates, it will provide them in magnetic tape form rather than by electronic transfer.

CONCLUSIONS

The Commission concludes it is appropriate to adopt GTE's position to provide AT&T initial loads and updates via magnetic tape and, further, encourages the parties to continue working to develop a long-term, industry-wide solution.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Issue: Should GTE provide notice to its wholesale customers about network or tariff changes that may impact the wholesale customers' operations?

POSITIONS OF PARTIES

AT&T: This was not an issue in AT&T's matrix.

GTE: GTE will make information concerning network changes available to new entrants just as it does IXCs today, if the new entrant requests such information. With respect to the deployment of new technology, GTE is willing to meet periodically with interested new entrants to discuss the deployment of new technology and the introduction of new service offerings. GTE should not be required to provide a notice to new entrants concerning tariff changes since it would be impossible to anticipate the filings, weeks or months in advance of the service. Although this issue was discussed in the MCI docket only, GTE's position applies to all new entrants.

ATTORNEY GENERAL: The Attorney General recommends that the Commission urge all parties to deal in good faith and that if lack of notice becomes a burden on competition, that the Commission revisit the issue.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Peterson.

On November 20, 1996, GTE filed a copy of its Stipulations reached by GTE with AT&T during negotiation procedures in other jurisdictions. GTE stated that the Stipulation issues do not need to be further arbitrated by the North Carolina Utilities Commission.

CONCLUSIONS

No arbitration decision from the Commission is required concerning notice provisions to wholesale customers as the parties have stipulated to a national agreement on this matter.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: Must GTE refer requests for PIC changes for AT&T's local service customers to AT&T?

POSITIONS OF PARTIES

AT&T: AT&T maintains that GTE must refer Primary Interexchange Carrier (PIC) change requests made by or on behalf of AT&T's local customers 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.

GTE: GTE is implementing a process to comply with AT&T's request. GTE will reject the interexchange carrier (IXC) PIC change requests with the operating company number (OCN) of AT&T. AT&T is responsible for changing an AT&T local service customer's PIC.

ATTORNEY GENERAL: Section 258 of TA96 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." GTE should refer PIC change requests to the new entrant and then the new entrant

should fully comply with third party verification procedures to prevent unauthorized changes to an end-user's PIC choice (slamming).

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillan and Shurter and GTE witness Isbell.

GTE witness Isbell testified that GTE is implementing a process to comply with AT&T's request which should be in place near the end of the first quarter of 1997. Such a process would enable the system to automatically identify a PIC change request as a resold service when submitted by an IXC. At that point, the request would be rejected and returned to the IXC with the associated OCN so that the IXC would know who that local customer's local provider was. The requesting IXC would then have to submit the PIC change to that local provider.

GTE recommends that the Commission find no disagreement in this regard since it has agreed to implement a procedure to comply with AT&T's request, recognizing that AT&T should be responsible for properly changing its own local customer's selection of a PIC.

AT&T argues that the Commission should order GTE to implement the requested procedure not later than the date on which AT&T first offers local exchange carrier service within GTE's existing service area in North Carolina.

CONCLUSIONS

The Commission recognizes that GTE is implementing a process to comply with AT&T's request concerning PIC changes and therefore concludes that since there is agreement in principle there is no need to arbitrate this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Issue: Should GTE be required to produce all interconnection agreements to which GTE is a party, including those agreements with other ILECs that were executed prior to the effective date of the Act?

POSITIONS OF PARTIES

AT&T: This is not an issue in AT&T's post-hearing matrix.

GTE: GTE should not have to provide copies of existing incumbent LEC agreements until the date mandated by the FCC. Copies of interconnection agreements with the new entrants will be available for viewing when filed with the Commission.

ATTORNEY GENERAL: The Act provides at Section 252(a)(1) that an agreement for interconnection, voluntarily arrived at, shall be submitted to a State Commission under Section 252(e). This specifically includes any interconnection agreement negotiated before the date of enactment. The legislative history of the Act, however, speaks only of interconnection negotiations

between competing local service providers, not agreements between ILECs. GTE should be required to file all interconnection agreements it has made with CLPs, even those signed prior to the Act, but does not need at this point to file interconnection agreements with peer ILECs negotiated prior to the Act.

DISCUSSION

There was no testimony on this issue, and it does not appear in the post-hearing matrix of either party. However, because this is fundamentally a legal issue which has arisen in other arbitration dockets and on which consistency is important, it will be addressed here.

Under the plain language of the Act, agreements 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. FCC Interconnection Order, Paragraphs 165-69. The FCC has recognized 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, in its Order of June 18, 1996, in Docket No. P-100, Sub 133, the Commission allowed interim operation under interconnection agreements *filed as public records* pending Commission action, and, in its Order of August 7, 1996, in the same docket, affirmed its 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, Commission 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 concludes that GTE should be required to file all interconnection agreements with CLPs entered into in the future within 30 days after negotiations are concluded and all interconnection agreements with CLPs entered into previously within 30 days after the date of this Order. GTE should be required to file all interconnection agreements with Class A carriers on or before June 30, 1997. Such filings 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 GTE to provide AT&T 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 GTE provide access to all unbundled network elements that AT&T requests, unless not technically feasible. It is technically feasible to provide access to the 12 network elements requested by AT&T.

GTE: GTE is willing to unbundle the Network Interface Device (NID), loops, ports, Signaling System 7 (SS7) interconnection, and the network access cross-connection. Transport can be purchased from the appropriate tariff. Access to certain databases is available and can be purchased via the appropriate access tariff.

Access to the "toll free" (800/888) database is available via contract as GTE's "Carrier Selection Service" (CSS).

GTE is willing to provide access to subloop elements at the Feeder Distribution Interface on a case-by-case basis if GTE does the work, the requesting entrant pays for the costs of the unbundling, and if network issues are not comprised.

ATTORNEY GENERAL: AT&T is requesting the ability to buy elements out of an unbundled local loop. GTE is willing to provide access to subloop elements at the feeder distribution interface on a case-by-case basis if GTE does the work, and the requesting entrant pays for the costs of the unbundling, and if network reliability is not comprised. The Commission should find this approach to unbundling the loop entirely reasonable provided that all parties pledge good faith efforts to accommodate bona fide requests for unbundled local loops. The Commission should reserve the right to require unbundling of the local loop at locations other than the feeder distribution interface. Additionally, the Commission should conclude that GTE must offer the other network elements specifically required to be provided on an unbundled basis as set forth in the FCC Interconnection Order.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Crafton and Guedel and GTE witnesses Peterson, Plant, and Gaskin.

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 (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.

In addition to the elements specified in the FCC Rules, AT&T requested that the local loop be unbundled into its subelements consisting of the loop distribution, the loop concentrator/multiplexer, and the loop feeder. With regard to the loop concentrator/multiplexer and the loop feeder, AT&T states in its Proposed Order that the parties have now stipulated to a national agreement on these two loop subelements.

GTE recognizes that upon request it must provide the following elements on an unbundled basis: local loop, NID, switching ports, transport— both common and dedicated, Signaling System 7 (SS7)— except that it is not required to unbundle the links between the Signaling Transfer Point (STP) and the Service Control Point (SCP), access to databases, and operator services and directory assistance. Further, GTE states that it will consider subloop unbundling where technically feasible on a case-by-case basis.

Loop Distribution:

AT&T is requesting that the loop distribution, a subelement of the local loop, be unbundled. AT&T believes that such unbundling is technically feasible. The loop distribution is the phone lines connecting the customer's premises NID to a cross-connect point such as a feeder distribution interface or a loop concentrator/multiplexer.

AT&T argues that unbundling loop distribution is technically feasible in light of GTE's statement that it would provide access to all subloop elements, including loop distribution on a case-by-case basis. AT&T states that GTE has raised questions about the effect of unbundling the local loop facility on the security and/or reliability of its network, but failed to prove by clear and convincing evidence that such unbundling is not technically feasible. AT&T concludes that GTE has made no showing under 47 C.F.R. Rule 51.317(b) that would permit it to refuse unbundling loop distribution.

GTE claims that because there are various loop designs — principally feeder/distribution design and main cable-fed design — all loop distribution unbundling requests must be analyzed on an individual case basis. GTE states that there are special loop designs within any given feeder/distribution design or main cable-fed design that must be considered in determining whether and how subloop unbundling may be achieved.

Advanced Intelligent Network:

AT&T is seeking access to GTE's signaling elements and in particular unmediated access to its AIN triggers. AT&T argues that unmediated access to AIN triggers is technically feasible and does not threaten the security and reliability of SS7 signaling systems.

GTE stated that unbundled access to GTE's AIN need not be provided until a mediated access mechanism has been developed. If unmediated access occurs it could result in disruptions to GTE's network in a manner similar to how a computer virus disrupts the functioning of a personal computer. GTE states that standards or mediation functions have not yet been developed for unbundling AIN triggers, outside of a lab test. GTE concludes that such unbundling should not be required until standards are developed permitting proper mediation.

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 (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.

Further, the Commission makes the following additional conclusions on these matters.

The FCC did not require that the local loop be disaggregated into its subelements; therefore, the Commission concludes that GTE is not required, at this time, to unbundle the local loop. However, GTE may provide the loop distribution subelement in a bona fide request process where individual requests are analyzed on an individual case basis— i.e., to the extent GTE wants to unbundle the loop into subelements, it is allowed to do so.

GTE is not required to give AT&T access to GTE's AIN triggers until a mediated access mechanism has been developed on an industry-wide basis. Further, the Commission encourages GTE to actively participate in an industry-wide forum to promptly address this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Issue: Must GTE be prohibited from placing any limitations on AT&T's ability to combine unbundled network elements with one another, or with resold services, or with AT&T's or a

third party's facilities, to provide telecommunications services to consumers in any manner AT&T chooses?

POSITIONS OF PARTIES

AT&T: The Act imposes on GTE the prohibition against imposing limitations on the recombination of unbundled network elements. 47 U.S.C.A. Section 251(c)(3). AT&T should be permitted to request a combination of network elements that would enable it to replicate services GTE offers for resale. 47 C.F.R. Rule 51.315; FCC Interconnection Order, Paragraphs 292, 329.

GTE: Network elements should not be recombined in a manner that allows the new entrant to further discount the service from resale prices.

ATTORNEY GENERAL: The heart of this dispute appears to be arbitrage. The intent of TA96 was to bring innovation and new services to end users. Allowing arbitrage does not encourage innovation but merely perpetuates monopoly services now in place. If a new entrant buys all seven of the currently unbundled elements and reassembles them into services identical to GTE's, then such reassembled elements are essentially resale and should be priced as wholesale services.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Gillan and Crafton and GTE witness Peterson.

AT&T asserts that GTE may not place restrictions on AT&T's ability to combine unbundled network elements with one another, with resold services, or with AT&T's or a third party's facilities. 47 U.S.C.A. Section 251(c)(3); FCC Interconnection Order, Paragraphs 292, 296. GTE may not refuse to provide AT&T with the unbundled loop and switching if AT&T plans to combine them to offer service and instead require AT&T to buy GTE's existing service at wholesale rates. The ability to combine the loop and switching elements allows new entrants to create a platform configuration which it can then market or combine with its own elements such as OS/DA. According to AT&T, this allows for lower prices and ease of shifting between providers, does not require reconfiguration for a change in providers, solves the problem of local number portability, and minimizes the number of operational interfaces that have to be developed.

GTE asserts that recombination of GTE's unbundled elements that would replicate services offered for resale would eliminate the distinction in the Act between resale and unbundled elements and would enable AT&T to avoid access charges. According to GTE, the FCC did not intend to enable tariff arbitrage when it stated that the requesting carrier should be able to combine unbundled network elements in any way it wishes. Unbundled loop and port services purchased in combination constitutes the purchase of basic local services for resale and should be priced accordingly.

GTE further asserts that Congress adopted two separate pricing standards for resale and unbundled network elements for a reason. Correctly recognizing that facility-based competition would not occur overnight, it adopted resale as a quick and easier form of competition and a different standard for unbundling to encourage new entrants to begin facility based competition by being able to build in part and lease in part the elements necessary to provide service. To allow AT&T

alternative prices for exactly the same service is contrary to Congress' intent. If, for example, AT&T can simply transfer a business by calling GTE and ordering an unbundled loop and unbundled switching and recombining them, the effect is a mere billing change.

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 252(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. FCC 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 is aware 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]

GTE, however, is not urging the Commission to prohibit the recombination of unbundled network elements per se. GTE simply proposes that the Commission recognize the purchase of certain unbundled network elements in combination as resold services and require that they be priced accordingly. It is not clear from the record, however, what combinations of unbundled network elements would constitute resold services. GTE itself refers to recombinations of unbundled network elements that would "replicate" services offered for resale as well as to ordering and recombining an unbundled loop and switching. The Attorney General, on the other hand, refers to combining all seven unbundled elements into services that are "identical" to GTE's services. These terms are not synonymous.

The Commission is also aware that 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

[1] Nos. 95-0458 and 95-0531 (consol.) at 63-65 (Illinois Commerce Commission June 26, 1996).

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 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 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 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] The Commission subsequently reached the same decision regarding MCI.[3]

Apart from the overall principle adopted, 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. The Commission, therefore, will leave this issue open for further consideration upon receipt of additional information.

CONCLUSIONS

The Commission concludes that AT&T should be allowed to combine unbundled network elements in any manner it chooses. The Commission further concludes that GTE should be allowed to submit additional information within 30 days describing in full detail workable criteria for identifying combinations of unbundled network elements that constitute resold services for purposes of pricing, collection of access and subscriber line charges, and use and user restrictions in retail tariffs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Issue: Must GTE make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions equal to that it provides itself?

---

[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).

[3] No. 6865-U at 28-30 (Georgia Public Service Commission December 17, 1996).

POSITIONS OF PARTIES

AT&T: The Act requires nondiscriminatory access. Any differences in access between GTE and AT&T is discriminatory.

GTE: GTE will respond in a timely manner to requests, however, a mandatory period is unreasonable since many factors will determine how fast GTE can respond. GTE will treat all new entrants in the same manner. However, access can be denied for safety, reliability, and generally applicable engineering purposes. GTE should be allowed, however, to reserve capacity that it reasonably anticipates will be required within its normal engineering planning period.

ATTORNEY GENERAL: TA96 mandates nondiscriminatory access to ILECs' rights-of-way, poles, ducts, and conduits in a manner consistent with Section 224 of TA96. 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 report back to the Commission by April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Crafton and GTE witness Pearson.

Section 251(b)(4) of TA96 provides that incumbent 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 GTE must make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions equal to that GTE provides itself.

While GTE must make available to AT&T 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. [Section 224(h) referenced in Section 251(b)(4)] The question is then raised as to how much spare capacity, if any, GTE can reserve ("warehouse") to the detriment of the CLPs. GTE takes the position that it should have the right to reserve capacity in its conduits, poles, and other rights-of-way facilities. On the other hand, AT&T, through witness Crafton, contends that TA96 and Paragraphs 604 and 1170 of the FCC Interconnection Order specifically prohibit GTE from favoring itself and discriminating against AT&T by reserving capacity for GTE'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 GTE 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 for future capacity as has been requested by GTE. As it is impermissible for GTE to reserve spare capacity, then it follows that AT&T should not be permitted to reserve or warehouse spare capacity in GTE'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.

GTE witness Pearson raised the issue of whether AT&T should be granted an unrestricted right to "break out" of GTE's manholes once it had secured a conduit access agreement with GTE. Witness Pearson argued that any company desiring to break out of a GTE manhole should first obtain authorization from GTE. In determining whether authorization should be granted, GTE would need to address at least two issues. First, GTE would have to determine whether the desired new hole would impair the structural and operational integrity of the manhole. Second, depending on the extent of the effort required to make the desired hole, GTE should be permitted to require that all work be performed by qualified individuals in a safe and workmanlike manner. The Commission agrees with GTE that AT&T should be required to obtain authorization from GTE before breaking out of a manhole. GTE's authorization, however, should not be unreasonably withheld and must be based solely on the safety aspects of any proposed manhole breakouts.

In order to streamline AT&T's access to GTE's rights-of-way, ducts, conduits, and poles, the parties should meet and work out guidelines to be followed in handling these requests for access as well as for authorization to break out of manholes. These guidelines should provide AT&T with readily available access to unused/spare capacity in GTE's rights-of-way, poles, ducts, and conduits provided that such requests by AT&T 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 GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits to AT&T on terms and conditions equal to that GTE provides itself. The Commission further concludes that GTE cannot 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 GTE's capacity to the detriment of GTE or any other CLP. The Commission directs the parties to meet and formulate guidelines to be followed in handling requests by CLPs for access to GTE's rights-of-way, poles, ducts, and conduits. The parties are required to file a report with the Commission by April 1, 1997, detailing the results of their meetings and the guidelines that have been formulated.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Issue: Must GTE provide interim number portability (INP) solutions, including remote call forwarding (RCF), flex-direct inward dialing (DID), route index-portability hub (RI-PH) and local exchange routing guide reassignment (LERG)? How should the costs of INP be recovered?

POSITIONS OF PARTIES

AT&T: 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.

GTE: GTE recommends that INP be provided using remote call forwarding or a direct inward dialing plan. Directory Number Route Indexing will impose unwarranted costs upon GTE, and the LERG

is not a feasible method of providing either interim or long-term number portability. The costs of INP should be recovered from the new entrant by assessing a per-line charge to the new entrant for the service provided, as well as a per transmission "path" charge. This methodology should be utilized even after long-term number portability is deployed, if the new entrants are still utilizing interim number portability.

ATTORNEY GENERAL: The Attorney General recommends that the Commission order that all feasible methods of interim number portability be made available to the new entrants but that the new entrant must pay the total cost of developing those methods which GTE suggests impose unwarranted costs or are infeasible. The Attorney General also notes that this is an issue which the Commission should consider to be best handled through good faith negotiations between the parties rather than resolved by the Commission. The Attorney General suggests that the Commission order that the parties detail the methods of interim number portability to be utilized and issue a report to the Commission to be filed on or before April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Crafton and GTE witness Decker.

AT&T is requesting GTE to provide interim number portability through RCF, directory number-route indexing (DN-RI), RI-PH, and LERG at the NXX and NXX-X levels. GTE has agreed to provide RCF and DID which it claims are currently available, are widely accepted and in use today, and are the least expensive to implement. However, AT&T has not requested DID. GTE states that DN-RI and DN-RI portability hub are other technically feasible solutions to interim number portability that are not currently available. However, GTE states that these methods would be costly and time consuming to deploy. GTE has not agreed to provide interim number portability through LERG and states that it is the most expensive interim solution and requires an industry effort to change routing table and translations before it can be effective. GTE points out that the FCC is working on an industry-wide solution to number portability that should be available for implementation within the next year.

The FCC issued its Number Portability Order (CC Docket No. 95-116) in July of 1996. Paragraph 110 of the Order states that "currently RCF and DID are the only methods technically feasible," and thus required local exchange carriers "to offer number portability through RCF, DID and other comparable methods". Section 251(b)(2) of the Act requires all telecommunications carriers "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."

As far as who bears the cost, AT&T believes that costs for INP should be recovered through GTE's on-going business operations and not through direct charging to AT&T. GTE states that the new entrant should bear the cost of INP. GTE asserts that certain costs borne by GTE to provide interim number portability can be charged to AT&T under the Act and the FCC Number Portability Order. Section 251(e)(2) of the Act states, "The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis determined by the Commission."

CONCLUSIONS

The Commission concludes that GTE should make available to AT&T remote call forwarding and direct inward dialing as interim number portability solutions, until such a time that a permanent number portability method is available. The Commission also concludes that the parties should explore appropriate cost recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefitting users share the burden and negotiate the appropriate cost-recovery mechanism.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

Issue: Must GTE negotiate a long-term number portability solution?

POSITIONS OF PARTIES

AT&T: The Act requires that such a solution be implemented. 47 U.S.C.A. Section 251(b)(2)

GTE: Long-term number portability, the methods to be utilized, and cost recovery are industry issues that should not be determined between the parties in this arbitration. These issues can best be resolved at the national level.

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 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 by April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Crafton and GTE witness Decker.

An industry-wide solution with national standards is clearly necessary.

CONCLUSIONS

The Commission concludes that GTE should work with AT&T and the industry to determine a permanent solution and to decide who should pay for implementation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Issue: Must GTE provide AT&T with access to GTE's unused transmission media or dark fiber?

POSITIONS OF PARTIES

AT&T: Provision of unused transmission media will allow AT&T to add efficiently to its own transmission capabilities.

GTE: Dark fiber is not a network element; therefore, GTE should not be required to unbundle dark or dim fiber. Additionally, forcing GTE to unbundle dark fiber leads to inefficiencies and capacity problems.

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. The Attorney General, however, 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. The Attorney General, therefore, recommends that the Commission 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 Crafton and GTE witness Gaskin.

AT&T witness Crafton testified that AT&T needs the ability to lease GTE's dark fiber to facilitate its ability to efficiently build its own network transmission facilities. Without the ability to lease this media, witness Crafton stated that AT&T will face yet another capital investment barrier to developing its own network.

GTE witness Gaskin testified that the Act defines network element to include only those facilities that are used in the provision of a telecommunications service. He stated that dark fiber consists of fiber cable that is not equipped with the electronics necessary to enable voice or data to pass through it. As this cable is not lit, dark fiber should not be considered a network element.

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 telecommunications 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 LEC's "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. GTE, therefore, need not provide access to dark fiber to AT&T.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20(a)

Issue: Should GTE be required to allow tandem to tandem local switching within the LATA?

POSITIONS OF PARTIES

AT&T: AT&T requires tandem to tandem switching for the efficient transport of customer calls from one exchange to another, just as GTE does for their customer calls in their calling area.

GTE: GTE will provide inter-tandem switching at such time as (1) AT&T enters into one of the existing intraLATA toll compensation mechanisms (e.g., ITORP), or (2) signaling and AMA record standards support the recognition of multiple-tandem switching events.

ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Crafton and GTE witness Munsell.

On November 20, 1996, GTE filed Stipulations it had reached with AT&T during arbitration/negotiation procedures in other jurisdictions. GTE believes that since the Stipulations are based on national agreements, it is not necessary that those issues be further arbitrated by the North Carolina Utilities Commission.

CONCLUSIONS

The Commission concludes that this matter of whether GTE should be required to allow tandem to tandem local switching within the LATA is not an issue in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20(b)

Issue: Should a new entrant obtain access to AIN services on GTE's service control points (SCPs) and AIN triggers by whatever pathway and means that it desires?

POSITIONS OF PARTIES

AT&T: The FCC Interconnection Order requires the unbundling of signaling elements and finds such unbundling to be technically feasible. Unmediated access to AIN triggers is technically feasible and does not threaten the security and reliability of SS7 signaling systems.

GTE: GTE will offer access to AIN services resident upon its SCPs. This can be accomplished by a CLP connecting its local service switching point to GTE's SCPs through GTE's signaling transfer points (STPs), via the Signaling System 7 network, and by purchasing capacity on GTE's local switch.

ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Crafton and GTE witness Dolecki.

In the FCC Interconnection Order, Rule 51.319(e)(2)(ii), the FCC requires "access to its call-related databases, including, but not limited to . . . Advanced Intelligent Network databases, by means of physical access at the signaling transfer point linked to the unbundled database".

CONCLUSIONS

The Commission concludes that it is appropriate to adopt GTE's position and to allow access to AIN services on GTE's SCPs via GTE's STPs. Further, the Commission concludes that access to GTE's AIN triggers should not be required until a mediated access mechanism has been developed on an industry-wide basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20(c)

Issue: Should GTE unbundle Signaling System 7 SCPs, STPs, and signaling links?

POSITIONS OF PARTIES

AT&T: The FCC Interconnection Order requires the unbundling of signaling elements and finds such unbundling to be technically feasible. Unmediated access to AIN triggers is technically feasible and does not threaten the security and reliability of SS7 signaling systems.

GTE: SCPs cannot be unbundled since they rely on their associated STP pair for message routing and screening.

STPs cannot be unbundled except for the port used for interconnection to a new entrant's or other carrier's network.

Signaling links cannot be unbundled within the GTE network; however, they can be provided on an unbundled basis between a GTE STP and a new entrant's service switching point or its STP.

ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Crafton and GTE witness Dolecki.

In the FCC Interconnection Order, Rule 51.319(e)(1)(iv), the FCC states that "an incumbent LEC is not required to unbundle those signaling links that connect to switching transfer points or to permit a requesting telecommunications carrier to link its own signal transfer points directly to the incumbent LEC's switch or call-related databases".

CONCLUSIONS

The Commission concludes that GTE should not be required to unbundle its Signaling System 7 SCPs from their STPs. However, the Commission encourages the parties to actively participate in an industry-wide forum to promptly address this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20(d)

Issue: How should the Signaling System 7 signaling point of interface (SPOI) be selected?

POSITIONS OF PARTIES

AT&T: This issue was not addressed in AT&T's Supplemental Post-Hearing Matrix.

GTE: The new entrant requesting interconnection to GTE's Signaling System 7 network shall designate all SPOIs within the LATA of the GTE pair to which they will interconnect.

ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Plant.

On December 12, 1996, AT&T filed its Supplemental Post-Hearing Matrix in accordance with the Commission's Order of December 5, 1996. Said Order stated that failure to respond to an issue would be interpreted as evidence by the Commission that the party does not object to the adversary's position. Accordingly, this matter is not an issue in this proceeding as evidenced by AT&T's exclusion of this issue from its matrix.

CONCLUSIONS

The Commission concludes that the selection of the Signaling System 7 SPOI is not an issue in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20(e)

Issue: Should GTE provide STP ports used for interconnection of AT&T to the GTE SS7 network if AT&T does the same?

POSITIONS OF PARTIES

AT&T: This issue was not addressed in AT&T's Supplemental Post-Hearing Matrix.

GTE: GTE will charge new entrants and any other connecting carriers for GTE's STP ports used in an interconnection. This issue was discussed by GTE only in the MCI docket; however, it applies to all new entrants.

ATTORNEY GENERAL: This issue is not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Plant.

On December 12, 1996, AT&T filed its Supplemental Post-Hearing Matrix in accordance with the Commission's Order of December 5, 1996. Said Order stated that failure to respond to an issue would be interpreted as evidence by the Commission that the party does not object to the adversary's position. Accordingly, this matter is not an issue in this proceeding as evidenced by AT&T's exclusion of this issue from its matrix.

CONCLUSIONS

The Commission concludes that this matter of whether or not GTE should provide STP ports used for the interconnection of AT&T to the GTE Signaling System 7 network if AT&T does the same is not an issue in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20(f)

Issue: Should GTE charge for dips made by a new entrant to GTE's "toll free" database for calls terminating to a GTE customer?

POSITIONS OF PARTIES

AT&T: When an 800 call is originated by a customer of a CLP, the CLP must first determine where to send the call by querying an 800 database. If the call is to be routed to GTE, the originating CLP should forward the call with appropriate call detail information to GTE so that GTE can bill its 800 customer. GTE should compensate the CLP with appropriate 800 originating access charges and an 800 database query charge.

GTE: GTE will bill new entrants and any other carriers for queries they initiate to GTE's "toll free" database, regardless of where the call terminates. This is how GTE's "Carrier Selection Service" is offered today. The new entrant must recover its cost through whatever means it deems necessary.

ATTORNEY GENERAL: This issue is not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Guedel and GTE witness Plant.

AT&T maintains that when an 800 call is originated by one of its local service customers and it forwards the call to GTE, GTE should bill GTE's 800 customer and then compensate AT&T with appropriate 800 originating access and query charges.

It is GTE's position that when AT&T queries GTE's database, AT&T is receiving a benefit from GTE, and GTE must recover the cost of providing that functionality. GTE contends that when AT&T initiates a query, AT&T is responsible for recovering those costs.

CONCLUSIONS

The Commission concludes it is appropriate to adopt GTE's position such that GTE will bill AT&T for queries it initiates to GTE's "toll free" database, regardless of where the call terminates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

Issue: Must GTE provide copies of records regarding rights-of-way?

POSITIONS OF PARTIES

AT&T: This is not listed as an issue in AT&T's Post-Hearing Matrices.

GTE: GTE should not be required to provide all rights-of-way information to new entrants. When a request is received, GTE will furnish appropriate capacity information to the requesting party.

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 Crafton and GTE witness Pearson.

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 Finding of Fact No. 16 that GTE 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 GTE should be required to provide the needed records necessary for access to these facilities.

GTE witness Pearson testified that CLPs have no legitimate need for copies of engineering records that include customer-specific information with regard to poles, ducts, and conduits. He stated that the only information needed by a CLP with regards to space availability or accessability is where the conduit runs, where the manholes are, and where the pole lines run. He testified that GTE will give specific assignment information when it is time for a CLP to install its cable.

The Commission agrees with GTE that it should not be required to provide copies of its rights-of-way unless there is a bona fide engineering need by AT&T for this information. The Commission believes, however, that AT&T will have a valid engineering need for certain information on rights-of-way prior to the time it is ready to install cable. Before AT&T seeks to serve potential customers in a specified location, it may very well need to know whether GTE has space available for AT&T to use to reach these customers and certain engineering information regarding this capacity. GTE must make such pertinent information available to AT&T, subject to AT&T entering into a confidentiality agreement with GTE to protect the confidentiality of such information.

CONCLUSIONS

The Commission concludes that GTE 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 GTE.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Issue: Must appropriate wholesale rates for GTE services subject to resale equal GTE's retail rates less all direct and indirect costs related to retail functions? Should GTE's wholesale prices exclude any new costs GTE claims to incur because of selling at wholesale?

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. 47 U.S.C.A. Section 252(d)(3) does not provide for the recognition of any increased costs.

GTE: Avoided costs should be excluded from the wholesale discount calculation. GTE's methodology and cost study appropriately reflect the costs that are avoided. GTE's methodology is the most appropriate methodology for calculating avoided costs. However, if the Commission determines that the FCC's methodology should be used, or if the Commission decides that an aggregate (one discount rate applied uniformly to all services offered for resale at wholesale rate) is appropriate then the modifications made by GTE should be recognized.

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 regrading this issue was presented by AT&T witnesses Kaserman and Lerma and GTE witness Wellemeyer.

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 GTE 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 GTE's costs that could be avoided, whether or not they are actually avoided, should be reflected in the determination of the wholesale discount. GTE's avoided cost study is based on the premise that the Act specifies that GTE would continue to be a retail provider of services and simply add-on wholesale functions. As GTE explains, their study recognizes the fact that while some retail costs are avoided for certain activities, a similar activity is often required to offer the same service on a wholesale basis for resale. GTE believes the Act contemplates costs that are actually avoided when service is offered through wholesale, rather than retail, distribution channels.

AT&T used combined (subject to separations of interstate and intrastate regulated) North Carolina amounts from GTE'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. GTE's avoided cost study analyzes avoided costs separately for each of five major service categories (residential, business, usage, vertical, and advanced). GTE used actual annual results for GTE Telephone Operations' total domestic telephone operations for 1995. The data are reported in a managerial accounting framework reflecting the results of the business as it is managed, rather than according to traditional financial accounting rules. The numbers GTE used were for GTE total domestic operations and not specific to North Carolina. In addition, GTE's numbers are derived internally, and therefore, are not verifiable.

The FCC Interconnection Order specifically identifies costs by 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 GTE'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 GTE's and AT&T's positions, and generally agrees with the avoided cost methodology used by the FCC.

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."

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 that 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 11.41%. 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 GTE 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 $17,994,000, indirectly avoided costs of $3,942,000, and total avoided costs for GTE of $21,936,000.

CONCLUSIONS

The Commission concludes that GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

Issue: What are the appropriate wholesale rates to be established in North Carolina? (What are appropriate GTE wholesale rates?)

POSITIONS OF PARTIES

AT&T: GTE's wholesale rates should equal GTE's retail rates less 33.0%.

GTE: The appropriate discounts from retail rates are as follows for both GTE and Contel in North Carolina:

-Residence	$0.83	
-Business	$1.06	
-Usage services		7.1%
-Vertical services		
*Business		5.5%
*Residence		6.6%
*Combined		6.2%
-Advanced services		15.3%

Should the Commission opt for the FCC methodology, the discount should be 10.71% for GTE combined services and 11.41% for Contel of North Carolina combined services.

ATTORNEY GENERAL: The Attorney General does not have the analytical ability to review numbers. AT&T's study appears excessive; however, GTE'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 AT&T witness Lerma and GTE witness Wellemeyer.

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 $1,735,000 in public telephone revenues. GTE'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 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 $109,838,000.

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 19.97%.

CONCLUSIONS

Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 22, the Commission concludes that GTE's appropriate composite wholesale discount rate is 19.97%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

Issue: Must total service long-run incremental cost (TSLRIC) be used to price unbundled network elements, call transport and termination, interconnection, collocation, rights-of-ways,

poles, ducts and conduits, interim and permanent number portability, AIN, and unused transmission media and what is the appropriate price for each unbundled network element requested?

POSITIONS OF PARTIES

AT&T: The Act requires that unbundled network elements, call transport and termination, and all aspects of interconnection be priced at economic cost. 47 U.S.C.A. Sections 252(d)(1)-(2). TSLRIC reflects economic cost.

The appropriate price equals TSLRIC. GTE has provided no TSLRIC studies. GTE should be ordered to develop such studies. In the absence of TSLRIC studies, rates determined using the Hatfield Model were measured using available data. Those rates are listed in Exhibit MG-1 to the testimony of Mr. Guedel. Exhibit MG-2 to Mr. Guedel's testimony identifies operator systems and other elements that have no price because of the absence of appropriate data. For those systems and other elements, interim prices should reflect any appropriate FCC default prices.

GTE: The appropriate prices for unbundled services are identified in witness Tanimura's testimony. For example 2-wire loop prices are:

GTE	$30.00/line/mo.
Contel	$40.20/line/mo.

Basic NID prices are:

GTE	$ 2.20/line/mo.
Contel	$ 2.20/line/mo.

Option A unbundled switch prices are:

GTE Port	$ 4.00/mo.
GTE Usage	Resale rates
Contel Port	$ 4.00/mo.
Contel Usage	Resale Rates

Option B unbundled switch prices are:

GTE Port	$ 5.70/mo.
GTE Usage	$ 0.0033/min.
Contel Port	$ 5.70/mo.
Contel Usage	$ 0.0042/min.

Vertical services should not be included in the switch usage price, rather they should be purchased out of the resale tariff or from the rate schedules identified in witness Tanimura's testimony.

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 Gillan, Kaserman, Guedel, and Wood and GTE witnesses Tanimura, Tucek, Sibley, and Tardiff.

AT&T's rates were based on the "Hatfield Model", which is publicly available and which was characterized by those parties as easily examined. GTE's proposed prices for unbundled network elements were based on the Market Determined-Efficient Component Pricing Rule (M-ECPR) and its proprietary costing models.

According to GTE, application of the M-ECPR results in prices equal to total element long-run incremental cost (TELRIC) plus its opportunity cost, as constrained by market forces. Where prices based on GTE's methodology would exceed market prices for particular elements, GTE has priced those elements at market prices. Opportunity cost, as used in this instance, refers to the net return that an unbundled network element will bring GTE if it is not sold at wholesale to a competitor.

GTE asserts that the M-ECPR does not permit it to charge a price for an unbundled element that exceeds that element's stand-alone cost. GTE further asserts that M-ECPR does not afford it the opportunity to recover fully its forward-looking common costs, as would regulated rates absent competitive entry — i.e., stranded costs will arise. GTE defines stranded costs to be the present value of the firm's net revenues under regulation minus the present value of the firm's net revenues under competition. Thus, GTE argues that, to ensure that it receives a reasonable opportunity to recover all of its forward-looking common costs, it is necessary that a competitively-neutral, non-bypassable end-user charge be established, which would allow it to recover forward-looking common costs that would otherwise be stranded. According to GTE, the need for an end-user charge will diminish over time as the incumbent LEC recovers the cost of its past investment. GTE also asserted that other Commission actions, such as rate rebalancing, can reduce the need for such a charge.

As stated above, in developing its proposed rates, GTE used its own proprietary costing models, which AT&T characterized as unverifiable. GTE affirmed that the cost studies could not be audited fully as they employed proprietary software not available for public scrutiny. Additionally, AT&T contended that GTE's cost studies were flawed because they overstated costs in critical areas and contained insufficient documentation to support model inputs and outputs.

As indicated above, 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 GTE for its forward-looking economic costs. Further, AT&T contended that new entrants will be unable to remain in the market using unbundled network elements if the price new entrants must pay GTE does not reflect GTE'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.

GTE 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, has varied over time, has low joint and common costs, and has high plant utilization factors, as well as other flaws. GTE contended that costs developed by the Hatfield Model underestimated its 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. GTE 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.

Both AT&T and GTE 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 GTE's cost studies as did GTE 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.

As discussed elsewhere herein, the parties have agreed and 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. AT&T, based on the Hatfield Model, argued that the NID rate should be set at $0.53 per line-per month. GTE proposed a basic NID rate of $2.01 per line-per month, based on its TELRIC studies, and a contract rate of $2.20 per line-per month.

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 records in these proceedings do not contain all of the information needed in order for the Commission to fully analyze and evaluate the propriety of the cost studies presented by the parties. 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 these proceedings.

The FCC in its Interconnection Order recognized that not every state 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,

[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

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 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 interim 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 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.

As presented subsequently, the Commission has, for purposes of this proceeding, set an interim rate, subject to true-up, of $17.05 for a 2-wire analog voice grade loop, including the NID. Such rate exceeds the $16.71 proxy rate ceiling established by the FCC in its Interconnection Order by $0.34. The $17.05 loop rate is the rate proposed by AT&T. That rate is based on AT&T's application of the Hatfield Model. Such rate is also the interim loop rate recommended for adoption by the Attorney General. The Commission has adopted the $17.05 loop rate on an interim basis because it is within a reasonable range of the FCC's proxy rate ceiling and because no party to the proceeding advocated a rate lower than $17.05. The Commission emphasizes that its action in this regard is not intended and is not to be construed in any way to be an endorsement of the Hatfield Model or AT&T's application thereof.

The FCC Interconnection Order does not provide a proxy for the NID. However, as indicated above, NID rates have been proposed by both AT&T and GTE. After having carefully considered the positions of the parties and the entire evidence of record, the Commission has determined, and so concludes, that an interim rate of $1.36 per NID-per month, subject to true-up, would not appear

---

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."

to be unreasonable for purposes of this proceeding. Such rate represents a simple average of the $0.53 rate proposed by AT&T and the $2.20 rate proposed by GTE.

The FCC Interconnection Order does not provide proxies for operator services and directory assistance services as unbundled network elements. Moreover, no party to this proceeding has proposed specific rates for such services. Thus, due to the lack of adequate evidentiary information and data, the Commission is unable to establish rates in this regard for purposes of this proceeding. The Commission, therefore, concludes that the arbitrating parties should be directed to further negotiate the rates for operator services and directory assistance services as unbundled network elements.

In summary, based upon the foregoing and the entire evidence of record, the Commission 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)	$ 1.36	per NID-per month
2-wire analog voice grade loop, incl. NID	$ 17.05	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)	
Service control points/databases (requires access through GTE'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	Parties must negotiate	

In order to ensure that no carrier is disadvantaged by the interim rates herein approved, the Commission further 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 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. 25

Issue: What is the appropriate price for call transport and termination?

POSITIONS OF PARTIES

AT&T: $0.002 per interconnection minute of use.

GTE: Interconnection rates should be set equivalent to the current interstate switched access rates. GTE proposes that each party charge rates for interconnection which are based upon their respective costs.

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 witness Guedel and GTE witness Munsell.

AT&T's position is that call transport and termination should be set at economic costs. In the absence of adequate TELRIC studies from GTE, the Commission should implement an interim bill-and-keep arrangement. According to AT&T, because costs are to be determined on a forward-looking basis, there is no likely difference in cost between two telecommunications carriers; historic or book cost of the actual equipment in place is irrelevant.

According to GTE, although required by the FCC, symmetrical pricing is completely at odds with the requirements of the Act. GTE asserts that symmetrical pricing between AT&T and GTE will not allow GTE to recover its costs, since it is expected that AT&T's unit costs will be lower than that of GTE. Thus, GTE argues that each party should charge rates for interconnection which are based on their respective costs.

Bill-and-keep, as discussed elsewhere herein, is not an option available to the Commission at this time.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that it should adopt interim rates for GTE, 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. 26

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 TELRIC studies are performed. 47 U.S.C.A. Section 252(d)(2)(B)

GTE: Each party should charge rates for interconnection which are based upon their respective costs. However, if traffic is relatively balanced, then a "bill and keep" methodology can be utilized.

ATTORNEY GENERAL: The FCC Interconnection Order 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. The Commission should presume that the beginning traffic will be relatively unbalanced so that "bill and keep" will not be an option. The Commission should order the parties to submit their costs for termination of traffic by April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Guedel as well as GTE witness Munsell.

AT&T witness Guedel 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.

GTE Munsell testified that the Act does not require or permit the Commission or the FCC to impose "bill and keep" on GTE and AT&T. In addition, he testified that the Commission is not required to impose "bill and keep" under the FCC Interconnection Order. Paragraph 1111 of the Interconnection Order states that State Commissions may impose "bill and keep" if neither carrier has rebutted the presumption of symmetrical rates and if the volume of traffic exchanged is approximately equal. It was his opinion that GTE has rebutted the presumption of symmetrical pricing and that no way presently exists for the Commission to determine whether the volume of traffic exchanged will be equal.

The Commission agrees with GTE 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 GTE and AT&T. Since GTE as the ILEC will have the largest customer base, AT&T will likely have the majority of the traffic between these two companies to be terminated. Under "bill and keep," AT&T would, thereby, be able to keep all revenues and make no payment to GTE for terminating these customers' calls. Given the great likelihood of an imbalance in cost and traffic between GTE and AT&T, "bill and keep" does not appear to be an equitable method for cost recovery for transport and termination of calls.

CONCLUSIONS

The Commission concludes 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 GTE and AT&T.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

Issue: What is the appropriate price for certain support elements relating to interconnection and network elements?

POSITIONS OF PARTIES

AT&T: No TSLRIC cost studies exist regarding access to rights-of-way, poles, conduits and ducts, collocation, number portability, AIN, and unused transmission media. The Commission should order GTE to develop and produce appropriate TSLRIC studies for those support elements relating to interconnection and network elements. In the interim, prices should reflect any appropriate FCC default prices.

GTE: The appropriate tariff rates should be utilized for collocation and rights-of-way access. If a tariff is not available, then rates should be set to cover costs plus a reasonable contribution to joint and common costs.

ATTORNEY GENERAL: Forward-looking incremental costing studies plus a reasonable share of joint and common costs is the appropriate costing methodology for all pricing issues other than those pertaining to resale. The subject support elements are no exception. The Attorney General

submitted that the parties should be required to provide their best estimates of these costs with appropriate documentation to the Commission by June 30, 1997.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Guedel and GTE witnesses Pearson and Peters.

Generally, for the same reasons as previously stated in the discussion of the pricing of unbundled network elements, it appears that the most reasonable and appropriate course of action for the Commission to follow at this time is to adopt interim rates, subject to true-up, based on consideration of the FCC's proxies, pending resolution of the appeal of the FCC Interconnection Order and the establishment of final rates by this Commission.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission 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 concludes that the parties should be called upon to renegotiate these issues. In this regard, the Commission further concludes that GTE should not be required to develop and produce cost studies 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. 28

Issue: What is the price for providing exchange access services for the origination and termination of interexchange carrier calls?

POSITIONS OF PARTIES

AT&T: The rates for traffic termination should be the same for local and long distance traffic.

GTE: The full range of access charges should continue to be applied to interexchange traffic. TA96 did not reduce the rates that carriers currently pay for originating or terminating traffic. GTE's position applies to all new entrants.

ATTORNEY GENERAL: Access charges are not a subject of TA96 and are not subject to arbitration in this docket.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Gillan and GTE witness Tanimura.

The Commission agrees with the position taken by GTE and the Attorney General, i.e., that the prices for access are beyond the scope of the Act and this proceeding.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission 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. 29

Issue: What rates apply to collect and third-party intraLATA calls?

POSITIONS OF PARTIES

AT&T: AT&T did not include this issue in its post-hearing matrix nor address it specifically in its Proposed Order. However, in its supplemental post-hearing matrix, under new GTE issues, AT&T stated as its position that AT&T should pay the retail rate less avoided costs for the provision of operator assisted calls.

GTE: New entrants should pay the tariffed rate for operator type calls since there are not any avoided costs to these calls.

ATTORNEY GENERAL: This issue involves variants of operator-assisted calls, but it is not clear if these calls are in dispute. Because this matter does not appear to be in dispute, this is an issue which needs no resolution at this time.

DISCUSSION

Testimony concerning this issue was presented by GTE witnesses Wellemeyer and Isbell. AT&T does not appear to have addressed this issue either in testimony or in its post-hearing matrix.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that rates applicable to collect and third-party intraLATA calls should be priced consistent with the provisions established herein with respect to the wholesale discount and unbundled network elements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

Issue: 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 term of the agreement should be long enough to permit AT&T to make marketing and investment plans, with the terms and conditions not subject to modification through subsequent tariff fillings. Such terms are necessary to facilitate competition in the local market.

GTE: Due to the nature of the changing environment, GTE recommends a contract of only two years. If the new entrant wants a comprehensive insurance policy, the new entrant should pay for it.

ATTORNEY GENERAL: For interconnection disputes that are bound to arise, the parties should be required to submit themselves to mediation, followed by binding arbitration if the Commission deems necessary, by certified mediators appointed by the Commission. Contracts should be for five years with provisions for either side to request major revisions after three, with appropriate notice.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Shurter and GTE witness Peterson.

AT&T asserts that GTE provides no factual predicate for the Commission to conclude that a two-year term would be commercially reasonable and consistent with pro-competitive policies. According to AT&T, GTE's position appears inconsistent with its own planning horizons. For example, GTE uses a five-year planning horizon and suggests a three-year period for recovering certain development costs. GTE, however, asserts that, given the scope of the changes required by the Act and the uncertainty surrounding the FCC's rules, five years may be too long.

The Commission is of the opinion that it need not involve itself in general contractual terms and conditions that are not required by the Act, including whether the agreement should be for two years, five years, or any other period. The parties are, of course, free to negotiate such provisions.

CONCLUSIONS

The Commission declines to prescribe general terms and conditions, including the term of the agreement. The parties may, of course, negotiate contractual provisions that are not required by the Act or the FCC Interconnection Rules, provided that such provisions are not inconsistent with the Act.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

Issue: Must GTE be prohibited from placing any limitations on interconnection between two carriers collocated on GTE's premises, or on the types of equipment that can be collocated, or on the types of uses of the collocated space?

POSITIONS OF PARTIES

AT&T: Such interconnection and unrestricted use provide new carriers with options that will facilitate competition.

GTE: A new entrant should not be allowed to place "any" type of equipment on GTE premises. Rather, the equipment should be limited to equipment necessary for interconnection. A new entrant does not have the right to demand virtual over physical collocation, nor is this requirement mandated by the Act. GTE will allow the conversion of virtual to physical collocation; however, tariffed rates

must apply. Although this issue was discussed only in the MCI docket, GTE's position applies to all new entrants.

ATTORNEY GENERAL: The FCC will soon issue a collocation order. The Commission should defer any decision on collocation issues until the FCC's order has been published.

DISCUSSION

Testimony regarding this issue was presented by AT&T witness Crafton and GTE witness Huffman.

Section 251(c)(6) of the Act places on GTE a duty to provide "on rates, terms, and conditions that are nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements," except that virtual collocation can be provided if a State Commission finds that physical collocation is not practical for technical reasons or because of space limitations.

AT&T, citing the FCC Interconnection Order, asserts that GTE must permit interconnection between collocating telecommunications carriers on its premises. FCC Interconnection Order, Paragraphs 594, 495; 47 C.F.R. Section 323(h). According to AT&T, instances are likely where AT&T and another non-GTE carrier are collocated at the same GTE premises and want to interconnect with one another. Those interconnections can be as simple as connecting a cable, in which case the most efficient way to interconnect the carriers is directly through trunks. AT&T should be allowed to interconnect with another non-GTE collocator on GTE's premises provided sufficient space is available and that doing so would not harm GTE's facilities or services.

AT&T also notes that the FCC interpreted "necessary" equipment under Section 252(c)(6) broadly to include all equipment that is used or useful for interconnection rather than only equipment which is essential. Interconnection Order, Paragraph 579. The FCC concluded that certain equipment may be collocated but left to State Commissions to designate specific additional types. FCC Interconnection Order, Paragraph 580. According to the FCC, collocation is required to be provided in all structures that house LEC network facilities, including "any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures." FCC Interconnection Order, Paragraphs 573-75. The FCC Interconnection Order interpreted 47 U.S.C.A. Sections 252(c)(2) and (3) to require that collocation be provided to a new entrant on either a physical or virtual basis at the request of the new entrant. Paragraph 551.

GTE asserts that a CLP should not be permitted to collocate on GTE premises any equipment it chooses. While the FCC's interpretation of the "necessary" qualifier as "used or useful" is questionable, GTE observes, the FCC correctly concludes that switching equipment, enhanced services equipment, and CPE may not be collocated. FCC Interconnection Order, Paragraphs 579-582. According to GTE, if a CLP were permitted to place any type of equipment it wished on GTE's premises, it would quickly exhaust the space available. It would also impinge on GTE's ability to upgrade its equipment and expand its services, place additional demands on the facility's power supply, and require modifications to maintain the environmental stability required by central office equipment. Thus, under the language of the Act, a CLP should be permitted to install only equipment that must be near GTE network elements in order to make interconnection technically feasible.

GTE also asserts that a CLP should not be permitted to have access to any and all of GTE's buildings and structures, noting that many are very small and house network elements that do not provide routing or rating functions. GTE recognizes, however, that the FCC Interconnection Order requires collocation to be provided at all structures that house LEC network facilities, including "any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures." FCC Interconnection Order, Paragraphs 573-575. GTE submits that such an expansion of the FCC's earlier collocation requirements is unauthorized under the Act. Pending judicial review, GTE would be willing to provide collocation at such structures to the extent space is available, the interconnection request is technically feasible, security concerns can be adequately addressed, and the collocator bears some of the costs of the collocation arrangement.

GTE further asserts that a CLP should not be permitted to require virtual collocation unless physical collocation is unavailable. GTE believes that the Act does not allow the Commission to require virtual collocation as an option unless the Commission finds that "physical collocation is not practical for technical reasons or because of space limitations." U.S.C.A. Section 251(c)(6). Virtual collocation, according to GTE, involves a taking of ILEC property for the benefit of another.

In addition, GTE asserts that it should be permitted to implement reasonable safety and security measures to protect its systems, such as partitioning areas for collocating parties and installing fencing within partitioned areas for each collocator.

With regard to cross-connection, GTE asserts that a CLP should not be permitted to cross-connect with non-GTE collocators on GTE property. In GTE's view, nothing in the Act suggests that Congress contemplated requiring GTE to allow collocators on its premises to completely bypass GTE's network and cross-connect with each other. GTE recognizes, however, that the FCC has recently required that, at the option of the ILEC, such cross-connects be made available through ILEC-provided or CLP-provided facilities. Should the Commission deem itself bound to follow the FCC Interconnection Order pending judicial review, GTE states that it will permit cross-connects as long as it is at the option of GTE, the connected equipment is used for interconnection with GTE or access to GTE's unbundled network elements, space is available, reasonable security arrangements can be provided, and the CLPs pay all associated costs.

In its Proposed Order, GTE states that many of the issues related to collocation are apparently settled according to GTE's additional filing of a list of issues settled in other jurisdictions, but that whether the issue relating to the type of equipment that may be collocated on GTE's premises has been settled is not clear. GTE asserts that the Commission should find that only equipment necessary for interconnection or access to unbundled elements may be collocated on GTE's premises. Aside from the constitutional implications, the plain language of the Act resolves the issue, according to GTE, since Section 251(c)(6) limits collocation equipment to that required for interconnection or access to unbundled network elements. GTE also notes that the FCC has concluded that this does not require collocation of equipment to provide switching or enhanced services.

GTE and MCI have stipulated in other jurisdictions as follows:

> Physical collocation will be provided within GTE's wire centers or access tandem facilities and in other technically feasible locations on a case-by-case basis.

GTE shall provide virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. GTE shall take collocator demand into account when renovating existing facilities and constructing or leasing new facilities.

GTE shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the GTE premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that both telecommunications carriers are connected to GTE at those premises.

The parties did not agree on the price for the cross-connect.

The foregoing stipulation appears to settle many of the collocation issues, as GTE observes. The FCC has already addressed most of the collocation issues as well. With regard to the types of equipment that may be collocated on GTE's premises, GTE maintains that "necessary" means "required," while the FCC has interpreted the term more broadly. The FCC has declined to impose a requirement to allow collocation of any equipment without restriction, finding that the Act does not require collocation of equipment necessary to provide enhanced services and refraining from imposing a general requirement that switching equipment be collocated since it does not appear that it is used for actual interconnection or access to unbundled network elements. Paragraph 580. The FCC has left it to the states to resolve disputes over the functionality of particular equipment, however, and has reserved the right to reexamine this issue at a later date.

The Commission considers collocation issues to have been settled or addressed elsewhere except for the types of equipment that may be collocated. Pricing issues regarding collocation have been addressed elsewhere herein.

CONCLUSIONS

The Commission concludes that the types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. The Commission further concludes that disputes over the functionality of particular equipment can be resolved on a case-by-case basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

Issue: Should GTE be required to recover in a competitively-neutral way the cost of development and implementation of any systems and processes required by the Act?

POSITIONS OF PARTIES

AT&T: The procompetitive purpose of the Act requires that GTE be required to recover its costs through its ongoing business operations and not through direct charging to AT&T.

GTE: In its testimony, GTE submits that issues of a national nature which are important to all competitive carriers should be resolved in an industry-wide setting, after the issues of pricing and costing are resolved on a state-specific basis. Additionally, GTE's testimony proposes that when

changes are to be made to satisfy AT&T's particular desires, the carrier causing the change — in this case AT&T — must pay for the cost of making the change.

ATTORNEY GENERAL: The Attorney General does not appear to address this matter as a specific issue.

DISCUSSION

Testimony regarding this issue was presented by AT&T witnesses Guedel, Kaserman, and Shurter and GTE witnesses Isbell and Peterson.

GTE, in its supplemental filing dated December 12, 1996, appears to indicate that the subject matter concerned a bill format issue only. AT&T, in its supplemental filing dated December 12, 1996, appears to indicate that the question here before the Commission pertained solely to the issue concerning the cost-recovery mechanism for dialing parity. The Commission has previously addressed those issues elsewhere herein.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, due to the lack of specificity as to the specific system(s) or process(es) in question, other than those mentioned above, the Commission is unable to address this issue at this time, except to the extent it has been addressed elsewhere herein.

IT IS, THEREFORE, ORDERED as follows:

1. That GTE 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 4th day of February, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-140, SUB 51

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 GTE South Incorporated	))))	ORDER RULING ON OBJECTIONS, COMMENTS, UNRESOLVED ISSUES, AND COMPOSITE AGREEMENT

BY THE COMMISSION: On February 4, 1997, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by AT&T Communications of the Southern States, Inc. (AT&T) against GTE South Incorporated (GTE). The RAO required AT&T and GTE to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On March 6, 1997, AT&T and GTE filed their respective objections to the RAO. Comments on the RAO were filed by the following: Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Carolina and Central), the Carolina Utility Customers Association (CUCA), and Sprint Communications Company (Sprint). On March 21, 1997, GTE and AT&T filed their Composite Agreement. On March 24, 1997, AT&T filed its position papers regarding unresolved issues while, on March 27, 1997, GTE filed its comments regarding such issues. On April 1, 1997, GTE also filed a response to the Evidence and Conclusions for Finding of Fact No. 16.

WHEREUPON, after careful consideration of the objections, comments, and unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended as set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

ISSUES RELATED TO COMMENTS/OBJECTIONS

ISSUE NO. 1: What services provided by GTE should be excluded from resale?

INITIAL COMMISSION DECISION

The Commission concluded that GTE should be required to offer for resale at wholesale rates services priced below cost promotional offerings of over 90 days, public telephone access service (PTAS) lines to telecommunications carriers, semi-public payphones, and existing contract service arrangements (CSAs). Excluded from the resale requirement were promotional offerings of under 90 days, GTE's own public payphones, inside wiring, voice mail, and market or operation trials.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's decisions regarding services priced below cost, promotional offerings of over 90 days, public and semi-public phone lines (including, possibly, customer-owned, coin operated telephone (COCOT) phone lines), and existing CSAs.

CAROLINA/CENTRAL: While the Commission correctly concluded that PTAS lines should be subject to resale, the Commission erred regarding semi-public payphones, because semi-public payphone instruments are not telecommunications services and are not subject to the same resale requirement as the access line itself.

SPRINT: The Commission should have required GTE to resell promotional offerings of less than 90 days.

DISCUSSION

In its original decision, the Commission noted Section 251(c)(4) of the Telecommunications Act of 1996 (TA96 or the Act), imposing a general requirement on the incumbent local exchange company (incumbent LEC or ILEC) to resell at wholesale rates any retail telecommunications service offered by it to subscribers who are not telecommunications carriers, and the thrust of the Federal Communications Commission's (FCC's) First Report and Order in CC Docket No. 96-98 and 95-185 issued on August 8, 1996 (the Interconnection Order), which clearly disfavors restrictions on resale. Within the boundaries set by TA96 and the FCC Interconnection Order, the Commission made certain principled distinctions to allow a limited number of services not to be resold.

With respect to payphones, the Commission held that access lines would be subject to resale at wholesale rates but only to telecommunications carriers, not to COCOTs, and only for the purpose of resale. The Commission also held that the ILEC's own payphones were not subject to resale because they are not per se a retail service, but did hold that semi-public payphones would be subject to resale. GTE has pointed out that semi-public payphones do not fall under the resale mandate because they are no longer offered to subscribers at retail under tariffs due to the FCC's Payphone Order. The Commission agrees and accordingly, concludes that semi-public payphones should not be required to be offered for resale.

Otherwise, the Commission believes that the reasons articulated in the Order for the decisions continue to hold true and should not be modified.

CONCLUSIONS

The Commission affirms its original decision with the exception that semi-public payphones shall not be required to be resold.

ISSUE NO. 2: What terms and conditions should be applied to resale of GTE services?

INITIAL COMMISSION DECISION

The Commission concluded that cross-class selling of wholesale residential services should be prohibited; that resale of grandfathered services should be restricted to eligible customers; that operator and directory assistance, nonrecurring charges and private line services tariffed under the special access tariff, and COCOT and coinless lines are subject to resale; and that current use and user restrictions in ILEC tariffs should carry forward into resold services, with the exception of such prohibitions or restrictions that have been or will be specifically imposed.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's decision that operator and directory assistance, nonrecurring charge, and private line services tariffed under the special access tariff should be subject to resale. GTE also objected to the finding that COCOT and coinless lines are subject to resale.

AT&T: AT&T objected to the Commission's decision to carry forward use and user restrictions into resale, arguing that this unlawfully shifts the burden of proof regarding responsibility to the competing local provider (CLP). The Commission should also make clear that retail services provided by GTE to noncarrier subscribers, including operator and directory assistance services, nonrecurring charges, and private line services tariffed under special access tariff, and COCOT and coinless service are subject to resale.

DISCUSSION

In its original decision, the Commission found no basis to exclude operator and directory assistance, non-recurring charges and private line services tariffed under the special access tariff, and COCOT and coinless lines from resale. GTE has, generally speaking, reiterated the same arguments it used before. The Commission specifically noted that the resale of PTAS lines is limited to telecommunications carriers and then only for the purpose of resale.

With respect to AT&T's point regarding the carrying forward of use and user restrictions into resale, the Commission does not believe that its decision unlawfully shifts the burden of proof to CLPs to prove that a use and user restriction ought to be rescinded. The Commission was simply suggesting a practical mechanism whereby use and user restrictions might be questioned. The Commission is not prepared to say that all existing use and user restrictions not otherwise rescinded are a priori reasonable and nondiscriminatory.

CONCLUSIONS

The Commission affirms its original decision regarding this issue.

<u>ISSUE NO. 3</u>: Should GTE be required to provide "as-is" transfers to the new entrant? Should GTE be required to provide customer information without a letter of authorization (LOA) from the customer to GTE?

INITIAL COMMISSION DECISION

These were closely related issues and were considered together. The Commission decided that "as-is" transfers should be allowed and that ILECs and CLPs should enter into blanket LOAs authorizing the CLP to receive relevant customer information--defined as a customer's list of scheduled services on or about the time of transfer--or to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with the FCC Rules in 47 CFR Part 64, Subpart K.

COMMENTS/OBJECTIONS

GTE: GTE objected generally to the Commission's decision for the reasons it previously set out in its brief.

CAROLINA AND CENTRAL: Carolina and Central argued that the "as-is" transfer and blanket LOA requirement should go both ways--i.e., from CLP to ILEC as well as from ILEC to CLP. Since the process of accumulating and transferring relevant information may prove cumbersome until electronic interfaces are developed, each company should be allowed to recoup the costs incurred. Such costs and prices should be addressed in the generic cost proceeding proposed for determining avoided costs and unbundled network element prices.

DISCUSSION

The Commission's original decision on these issues recognized the need for such mechanisms as "as-is" transfers and blanket LOAs to effectuate meaningful competition, while at the same time recognizing the need to mitigate potential problems.

Carolina and Central have raised some valid points regarding symmetry between ILECs and CLPs and the determination of costs.

CONCLUSIONS

The Commission affirms its original decision on these issues, subject to the following:

1. That ILECs are authorized to utilize "as-is" transfers and blanket LOAs with respect to the transfer of customers from CLPs to ILECs in the same manner as has been authorized in these issues for the transfer of customers from ILECs to CLPs.

2. That the issue of prices and costs relative to these processes be considered within the context of a future generic cost proceeding concerning avoided costs and unbundled network element prices.

<u>ISSUE NO. 4</u>: Should GTE be required to provide real-time and interactive access via electronic interfaces for unbundled network elements as requested by CLPs to perform the following:

- **Pre-ordering,**
- **Ordering,**
- **Provisioning,**
- **Maintenance/repair, and**
- **Billing?**

INITIAL COMMISSION DECISION

The Commission concluded that GTE 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. Additionally, the Commission found that the electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards. Further, the Commission encouraged the parties to negotiate the terms and conditions of how the implementation costs incurred in the development of such interfaces can be recovered, such that all benefiting users share the burden.

COMMENTS/OBJECTIONS

CUCA: CUCA urged the Commission to establish a relatively near-term date by which GTE must provide AT&T with real-time, interactive interfaces to the unbundled network elements necessary for the proper performance of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. CUCA stated that the Commission should adopt the initial proposal advanced by the Attorney General— i.e., the Commission should require that a firm plan to implement automated interfacing with commitments to deadlines which are mutually satisfactory must be in place by April 15, 1997, that the interfaces should be developed and in place promptly thereafter, and that if the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

DISCUSSION

The Commission understood that the FCC Interconnection Order stated that nondiscriminatory access to the operations support systems functions should be provided no later than January 1, 1997. The Commission's view was that the requested electronic interfaces will indeed have to be provided and that they preferably should be uniform, industry-developed interfaces. Rather than establishing a specific date other than the FCC's provision, the Commission recognized that the electronic interfaces would likely not be developed by January 1, 1997, and simply found that the interfaces should be provided promptly through the development of uniform, industry-wide standards.

CONCLUSIONS

The Commission hereby affirms its original decision on this issue, but will require the parties to file a report not later than August 31, 1997, setting forth the status of their progress toward the accomplishment of electronic bonding through the development of uniform, industry-wide standards.

ISSUE NO. 5: Must GTE route directory assistance (DA) and operator services (OS) directly to AT&T's platform?

INITIAL COMMISSION DECISION

The Commission declined to require customized routing on the grounds that it is not technically feasible at this time and encouraged the parties to work to develop a long-term, industry-wide solution. The Commission also encouraged the parties to further negotiate concerning the recovery of development costs, such that all benefiting users share the burden.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the failure to order customized routing and repeated its arguments that the Act, generally, and the FCC Order, specifically, require customized routing absent a showing by GTE that it is not technically feasible. Noting GTE's admission that its switches are capable of performing this function through the use of line class codes (LCCs), and the FCC's conclusion that capacity limitations are irrelevant to the technically feasible analysis, AT&T asserted that GTE's argument that implementation should be delayed because of the possibility that its capacity for providing customized routing through such codes may become limited in the future does not meet GTE's burden of proving that customized routing is not technically feasible. Besides, AT&T stated, the line class code solution is only interim.

SPRINT: Sprint argued that the Commission erred in declining to require customized routing. Sprint cited Section 251(c)(2) of the Act, which imposes on the incumbent LEC the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access, at any technically feasible point within the carrier's network. Sprint commented that it does not believe the Commission should wait on a long-term solution and that the short-term solution to customized routing is, to the extent sufficient capacity exists, technically feasible through LCCs.

CUCA: CUCA contended that, according to Sections 251(c)(2) and (c)(3) of the Act, GTE has the obligation to provide access to services such as customized routing so long as the provision of those services is technically feasible. Citing the FCC's Interconnection Rules, CUCA argued that the burden of proving that customized routing is technically infeasible lies with GTE. Although GTE claimed that some of its North Carolina switches lack sufficient LCCs to accommodate a number of CLPs provisioned in the same manner as GTE, that fact, standing alone, should not determine the "technical infeasibility" issue. The record, CUCA commented, is replete with claims by AT&T that it will not need nearly as many LCCs as are customarily used by GTE. Moreover, the record suggests that, in the near term, many of the switches utilized by GTE are likely to accommodate many more LCCs than are currently available. Finally, the record does not establish that a large number of

potential market entrants will even request customized routing, suggesting that GTE has overstated the likely demand for LCCs. As a result, CUCA contended, providing customized routing using LCCs is not technically infeasible.

DISCUSSION

The Commission understands the importance of customized routing and was aware when it issued the RAO that customized routing can be provided through the use of LCCs in some cases. The Commission questioned, however, whether this is technically feasible "in any practical sense" because of capacity constraints and lack of uniformity among switches even if they are upgraded. Recognizing that this is not the long-term solution the industry is currently working on, the Commission declined to order the use of LCCs as an interim solution.

Despite AT&T's suggestion that the Commission may have applied a narrower definition of technical feasibility than Congress intended, the Commission continues to believe it would be unreasonable to require customized routing until a long-term, industry-wide solution is developed. This belief rests in large part on the expectation that progress is being made toward this end and that customized routing will be generally available in the near future.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed. The Commission further concludes that the parties should be required to file a report not later than August 31, 1997, setting forth the status of their progress toward developing a long-term, industry-wide method of providing customized routing.

ISSUE NO. 6: When a GTE service is resold, is it technically feasible for GTE to brand the service (e.g., Operator and Directory Assistance) with the new entrant's brand? When GTE employees interact with a new entrant's customers with respect to a service provided by GTE on behalf of the new entrant, what are GTE's branding obligations?

INITIAL COMMISSION DECISION

The Commission concluded that GTE should not be required to unbrand OS/DA but should be required to rebrand these services when customized routing is implemented.

COMMENTS/OBJECTIONS

SPRINT: Sprint contended that the Commission erred in declining to require GTE to unbrand services offered to its customers, citing Section 251(c)(4)(B) of the Act and Section 51.613 of the FCC's Rules. According to Sprint, branding is a matter of parity, which must exist if true competition is to exist. In the alternative, GTE should be required to unbrand its services until branding is offered on resold services. Sprint argued that allowing GTE to brand its OS and DA while not requiring GTE to brand CLP services would constitute discrimination, which is clearly prohibited by Section 251(c)(2)(D) of the Act.

DISCUSSION

The Commission agrees that rebranding of OS/DA should be required when customized routing is implemented. Without customized routing, however, GTE lacks this capability. As discussed previously in Issue No. 5, the Commission has decided not to require customized routing until a long-term, industry-wide solution is implemented. In the meantime, we do not believe it is reasonable or necessary to require GTE to unbrand its services, as this would prevent GTE from identifying itself even to its own customers.

CONCLUSIONS

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

ISSUE NO. 7: Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for GTE 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**

INITIAL COMMISSION DECISION

The Commission found 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 (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.

Further, the Commission made the following additional findings and conclusions on these matters.

The FCC did not require that the local loop be disaggregated into its subelements; therefore, the Commission concluded that GTE should not be required, at this time, to unbundle the local loop. However, the Commission found that GTE may provide the loop distribution subelement in a bona fide request process where individual requests are analyzed on an individual case basis— i.e., to the extent GTE wants to unbundle the loop into subelements, it is allowed to do so.

The Commission also found that GTE should not be required to give the CLPs access to GTE's AIN triggers until a mediated access mechanism has been developed on an industry-wide basis. Further, the Commission encouraged GTE to actively participate in an industry-wide forum to promptly address this issue.

COMMENTS/OBJECTIONS

AT&T: AT&T objected to the Commission's decision related to the matter of accessing AIN Services, and in particular, that GTE is not required to provide unbundled direct access to its AIN triggers until a mediated access mechanism has been developed on an industry-wide basis. AT&T argues that Paragraph 203 of the FCC Order places the burden on the ILEC to prove that specific and significant adverse impacts would result from the requested interconnection or access and states that GTE has not met that burden of proof. Therefore, AT&T believes that interconnection to GTE's Signaling System should be allowed now on an unmediated basis until a mediation device has been developed. AT&T adds that the use of a mediation device adversely impacts consumers in that it will increase post dial delay, create additional points of potential network failure, and increase the cost and time of implementing services to customers. AT&T asserted that, if however, the Commission determines that mediation is necessary, it should impose mediation in a nondiscriminatory manner by requiring AT&T and GTE to route its traffic through the same mediation device.

GTE: GTE objects to the Commission's finding that all switching capability must be provided on an unbundled basis including the requirement that vertical services be provided as part of the local switching network element.

GTE comments that the concept of network elements under the Act is rooted in discrete physical parts of the local exchange network and is limited further by the requirement that it be "used in the provision of a telecommunications service". GTE further comments that "network element" refers solely to those pieces of equipment (and their "features, functions, and capabilities") that the carrier uses for call delivery–that is, the equipment that is used to transport telephone calls from one point to another. Thus, GTE asserts that the only "local switching" element that may be required to be unbundled is the port. It is GTE's opinion that vertical services fall outside the Act's mandate as they are not "network elements" used to provide "telecommunications service".

GTE further explains that requiring access to all features and functionalities of the local switching element at all times ignores significant technical considerations and that satisfaction of this requirement would necessitate substantial re-engineering of each switch which currently is not technically feasible for all types of switches. Finally, GTE adds that unbundling of tariffed elements is unnecessary and beyond the Act's requirements, because such unbundling is not necessary to

provide the CLPs with the ability to offer any service since the CLPs may simply order out of the tariff.

DISCUSSION

Advanced Intelligent Network

The Commission's view was that it would not, at this time, require GTE to provide unbundling of its network behind the Signaling Transfer Point (STP) giving access to GTE's AIN until a mediated access device is developed. This was intended to protect the AIN database as well as the network.

With regard to AT&T's position to impose mediation upon GTE by requiring GTE to route its traffic through the same mediation device as AT&T, the Commission continues to believe that this would not be appropriate.

The Commission maintains that it would not be reasonable to require GTE to provide unbundled direct access to its AIN database until a mediated access mechanism has been developed on an industry-wide basis. Further, it would not be reasonable to require GTE to route its traffic through a mediation device in accessing its own call-related databases.

Switching Capabilities and Vertical Services

FCC Rule 51.319(c)(1)(I)(C) provides for access to local switching capability on an unbundled basis including "... all features, functions, and capabilities of the switch, which include, but are not limited to: (*1*) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and (*2*) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch."

FCC Rule 51.319(c)(2)(iii) provides for access to tandem switching capability on an unbundled basis including "... the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features;".

Based on the FCC Rules in Section 51.319, the Commission took the view that it was appropriate to require that local switching capability and tandem switching capability including vertical services be provided on an unbundled basis.

CONCLUSIONS

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

ISSUE NO. 8: Must GTE be prohibited from placing any limitations on AT&T's ability to combine unbundled network elements with one another, or with resold services, or with AT&T's or a third party's facilities, to provide telecommunications services to consumers in any manner AT&T chooses?

INITIAL COMMISSION DECISION

The Commission concluded that AT&T should be allowed to combine unbundled network elements in any manner it chooses. The Commission found merit, however, in GTE's argument that AT&T should not be allowed to purchased unbundled network elements and recombine them as resold services without paying the wholesale rate. GTE, therefore, was allowed to 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, and use and user restrictions in retail tariffs.

COMMENTS/OBJECTIONS

AT&T: AT&T commented that the RAO correctly concludes that AT&T should be allowed to combine unbundled network elements in any manner it chooses, regardless of the nature of the service that it may create by the rebundling of those elements. This finding, AT&T stated, is in compliance with the requirements of the Act, reaffirmed by the FCC Order, that the incumbent LEC provide unbundled network elements to requesting telecommunications carriers and that it price those unbundled network elements at cost (including a reasonable profit). AT&T contended, however, that the Act and the FCC Order clearly do not permit GTE to treat certain recombinations of unbundled network elements as "replications" of GTE's services and to price that group of elements when purchased by the recombining carrier as a retail service with a wholesale discount. AT&T further contended -- citing decisions from Alabama, Florida, California, Hawaii, Illinois, Minnesota, and Pennsylvania -- that the vast majority of state commissions that have treated this issue agree.

GTE: GTE objected to the finding which requires GTE to allow AT&T to combine unbundled network elements in any manner it chooses. GTE further submitted that, if its unbundled switching is combined with its unbundled local loop, then it is essentially providing a resold local service which should be treated the same as resale with respect to collection of access and subscriber line charges, and other use and user restrictions. GTE stated that combination of the loop and switch provide all the capabilities included in local exchange service, including the ability to make and receive calls, and should be priced as resold local exchange service at the appropriate tariff rate less the wholesale discount.

CAROLINA AND CENTRAL: The companies supported the Commission's finding as it allows AT&T technically to combine unbundled network elements in any manner it chooses in compliance with Section 251(c)(3) of the Act and Section 51.315 of the FCC Rules. The companies stated their belief that carriers should be allowed to combine unbundled network elements and urged the Commission to ensure that this policy is consistently developed and applied on a statewide, industry-wide basis. For example, the companies contended that they should not be required to price combined network elements which constitute resold services at the sum total of the individual network element prices if GTE is allowed to treat these combined network elements as resold services for pricing purposes. Carolina and Central further commented that the pricing policy and use and

user restrictions for combining network elements should be consistently developed and applied on a statewide, industry-wide basis to ensure nondiscriminatory rates and access to network elements as required by Sections 252(d)(1) and 251(c)(3), respectively, of the Act.

CUCA: CUCA contended that treating the recombination issue as a matter of pricing rather than a limitation on the ability of CLPs to combine unbundled network elements is a distinction totally without substance. According to CUCA, the effect of the Commission's decision is to deprive new entrants of the cost benefits of using one of the three entry strategies explicitly authorized by statute. By preventing a CLP from entering the market using combined unbundled network elements when the cost is less than operating as a reseller, CUCA contended, the implicit result of the decision in the RAO is to interfere with the CLP's ability to combine unbundled network elements in any way it deems appropriate. To GTE's argument that failing to adopt its position will eviscerate the resale pricing provisions of the Act, CUCA responded that acceptance of GTE's position will eviscerate the unbundled network pricing provisions of the same statute.

DISCUSSION

In the RAO, the Commission found merit in GTE's position on this issue but perceived a need for additional information before attempting to implement a plan to price combinations of elements at wholesale rates. Bearing in mind the legal, technical, and policy implications of our decision, we sought workable criteria for identifying combinations of unbundled elements that constitute resold services. Because of the complexity of this issue, the Commission is now of the opinion even the most detailed findings will leave open questions that will likely have to be addressed on a case-by-case basis. In reaching our final decision, we have been guided by the principle of encouraging innovation rather than arbitrage and aided by the decisions of the Tennessee and Georgia Commissions cited in the RAO and a decision in which the Louisiana Public Service Commission Louisiana Commission (LPSC) found as follows:

> AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contains the functions, features and attributes of a retail offering that is the subject of a properly filed and approved BellSouth tariff. Services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing "services identical to a BellSouth retail offering."

LPSC, Docket U-22145, January 15, 1997. GTE suggested that the Commission consider the LPSC's findings in this proceeding.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that our original decision on this issue should be modified to provide that the purchase and combination of

unbundled network elements by AT&T to produce a service offering that is included in GTE's retail tariffs on the date of the Interconnection Agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, and use and user restrictions in retail tariffs. This presumption may be overcome by a showing that AT&T is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

ISSUE NO. 9: Must GTE make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions equal to that it provides itself?

INITIAL COMMISSION DECISION

The Commission found and concluded that GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits on terms and conditions equal to that GTE provides itself. The Commission further concluded that GTE can not reserve any spare capacity unless needed for reasons of safety, reliability, and generally applicable engineering purposes. At the same time, the Commission found that AT&T should only be granted the *bona fide* capacity that it needs and not be allowed to warehouse GTE's capacity to the detriment of GTE or any other CLP. The Commission directed the parties to meet and formulate guidelines to be followed in handling requests by CLPs for access to GTE's rights-of-way, poles, ducts, and conduits. The Commission ordered the parties to file a report with the Commission by April 1, 1997, detailing the results of their meetings and the guidelines that had been formulated.

COMMENTS/OBJECTIONS

GTE: GTE has two major objections to the Commission RAO: (1) To require GTE to provide AT&T with access to GTE's poles, ducts, conduits, and rights-of-way at parity with GTE constitutes an unconstitutional taking; and (2) GTE should be permitted to reserve space on its facilities without restriction.

GTE objects to the Commission's finding that it must provide access to its poles, ducts, conduits, and rights-of-way on terms and conditions equal to that GTE provides itself. GTE argues that the Commission is misinterpreting Section 251(b)(4) of the Act which requires ILECs to afford access on a nondiscriminatory basis. GTE reads the Act narrowly to mean that GTE must treat all requesting carriers in a nondiscriminatory manner, but that the Act does not require that GTE treat the requesting carriers in parity with itself. GTE maintains the Commission's finding in the RAO requiring GTE to provide equal access to its poles, ducts, conduits, and rights-of-way constitutes an unconstitutional taking of its property.

GTE also objects to the finding and conclusion made by the Commission that GTE cannot reserve any spare capacity unless needed for reasons of safety, reliability, and general applicable engineering purposes. GTE construes Section 224(f)(1) as requiring only that an owner of poles, ducts, or conduit (i.e., the ILEC) treat all companies seeking access equally and that the ILEC not be allowed to place more onerous terms and conditions for access on a competitor than are imposed on a noncompeting company. GTE argues that nothing in Section 224(f)(1)'s nondiscrimination

requirement is intended to curtail an ILEC from reserving capacity in its own facilities as an ILEC has an ownership interest in its poles, conduits, and rights-of-way. In short, GTE argues that the fact of ownership distinguishes GTE from AT&T with regard to reservation of space. GTE takes the position that any directive by the Commission that GTE must offer access to its facilities constitutes an unconstitutional taking of its property rights.

DISCUSSION

GTE raises no new issues in its objections from those it previously propounded in the arbitration proceeding. Once again, GTE is objecting to having to make its rights-of-way, poles, ducts, and conduits available on terms and conditions equal to that it provides itself. It is GTE's position that as owner of its facilities, it has a constitutional right to reserve space for itself as it so chooses. It views as an unconstitutional taking of its property any directive from the Commission that it be required to make available its facilities upon the same terms and conditions equal to that it provides itself. According to GTE's restrictive reading of the Act, the Act only requires that AT&T should be granted access at parity with the other CLPs.

When carried to its logical conclusion, GTE's interpretation of Section 251 of the Act would render this provision a nullity. If GTE is allowed to reserve whatever space it deems necessary in its poles, ducts, and conduits, then the Act has basically conferred upon AT&T and the other CLPS no additional rights than they had prior to the enactment of Section 251. Under such interpretation, GTE could deem to reserve all of its capacity in its poles, ducts, and conduits irrespective of the fact that such capacity was not needed for reasons of safety, reliability, or engineering purposes. As GTE would not be offering any CLP with space on GTE's poles, ducts, and conduits, then GTE would argue that it would not be violating the Act as it was treating all CLPs equally—that is, at parity with each other. Such narrow reading of Section 251 is at odds with the plain meaning of this section and is contrary to the purposes for which the Act was enacted—to wit, to promote competition for American telecommunications consumers.

Section 251(b)(4) of TA96 provides that incumbent 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, clearly supports the decision made by the Commission in the RAO that GTE must make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions equal to that GTE provides itself.

CONCLUSIONS

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

<u>ISSUE NO. 10</u>: Must GTE provide AT&T with access to GTE's unused transmission media or dark fiber?

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

DISCUSSION

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

AT&T also opined that the record is sufficient to support a finding and conclusion that dark fiber is a network element within the meaning of the Act. In particular, it argues that the lack of evidence to dispute the telecommunications capability of dark fiber, whether it is currently or actively in use, supports a finding that dark fiber is a network element.

The Act defines "network element" as follows:

> "(29) NETWORK ELEMENT. – The term 'network element' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

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

AT&T failed to cite evidence in the record, if there was any, which reveals that dark fiber is a facility or equipment used in the provision of a telecommunications service, thereby, meeting the definition of network element under the plain language of the Act. AT&T contends that the mere

capability, i.e., potential of dark fiber to be used in the provision of a telecommunication service, meets the definition of network element according to the Act; however, apparently, electronics must be added to dark fiber in order for dark fiber to possess telecommunications capability. Additionally, even with the addition of electronics to dark fiber, such facilities or equipment must be used in the provision of a telecommunications service. AT&T's contentions, therefore, in this regard are not convincing. Finally, as noted in the RAO, the FCC did not address and require the unbundling of the incumbent LEC's dark fiber but did state it would continue to review and revise its rules in this area as necessary.

CONCLUSIONS

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

ISSUE NO. 11: Must appropriate wholesale rates for GTE services subject to resale equal GTE's retail rates less all direct and indirect costs related to retail functions? Should GTE's wholesale prices exclude any new costs GTE claims to incur because of selling at wholesale?

INITIAL COMMISSION DECISION

The Commission concluded that GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's reliance on the FCC's "proxy" logic to establish the wholesale discount rate. GTE argues that by using proxy pricing methods, the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which are shown in great detail in GTE's avoided cost studies. GTE stated that the Commission embraced the "proxy" analysis of the stayed provisions of the FCC's First Report and Order and argued that the Commission's ordered wholesale discount rate will cause GTE to suffer precisely the irreparable harm that the Eighth Circuit so clearly intended to prevent.

DISCUSSION

The Commission view was that the FCC Interconnection Order provided a reasonable basic methodology upon which to base the Commission's avoided cost analysis with some exceptions. The Commission's avoided cost analysis is based on a review of the entire record of evidence in the proceeding including TA96 and the FCC Interconnection Order. Section 252(d)(3) of the Act states 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. The FCC Interconnection Order provided a basic methodology to determine avoided costs which the FCC believes complies with the Act. The Commission did not simply adopt the FCC's "proxy" logic; the Commission prepared its own avoided cost analysis which it believes complies with the Act and follows the same basic methodology as the FCC Interconnection Order with some exceptions.

GTE asserts that the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which are shown in great detail in GTE's cost studies. GTE's avoided cost studies reflect GTE's estimation of avoided costs, not actual avoided costs.

The Commission continues to believe that its avoided cost analysis prepared to calculate GTE's avoided costs is based on a thorough review of all of the evidence of record and complies with the Act. The Commission also believes that GTE's avoided cost studies do not represent GTE's actual avoided costs, but GTE's estimation of its avoided costs.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 12: What are the appropriate wholesale rates for GTE to be established in North Carolina? (What are appropriate GTE wholesale rates?)

INITIAL COMMISSION DECISION

The Commission concluded that GTE's appropriate composite wholesale discount rate is 19.97%.

COMMENTS/OBJECTIONS

CAROLINA AND CENTRAL: Carolina and Central objected to the Commission's decision concerning the wholesale discount rate, viewing the Commission's wholesale discount rate as an interim rate. Carolina and Central recommended that the Commission establish a permanent wholesale discount rate on the basis of each companies' actual avoided costs.

DISCUSSION

The Commission in no way viewed the ordered wholesale discount rate as interim. The Commission did follow the basic methodology of the FCC Interconnection Order. However, the Commission did not order an interim wholesale discount rate. The Commission prepared its own avoided cost analysis based on the entire record and established a permanent wholesale discount rate which meets the requirements of the Act.

The Commission continues to believe that the RAO did not establish an interim wholesale discount rate and that the wholesale discount rate does not have to be calculated based on GTE's estimation of its avoided costs.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 13: What are the appropriate prices for unbundled network elements, transport and termination, support elements, and collect and third-party intraLATA calls?

INITIAL COMMISSION DECISION

Except as indicated below, the Commission established interim rates, subject to true-up, for unbundled network elements and transport and termination based on consideration of the FCC's proxy rate guidelines or "default proxies", i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's total element long-run incremental cost-based (TELRIC-based) pricing methodology.

The FCC Interconnection Order did not provide a proxy for the network interface device (NID) as an unbundled network element. The rate established for the NID as an unbundled network element by this Commission represented a simple average of the NID rate proposed by AT&T and that proposed by GTE. The proposed NID rates of the arbitrating parties were based on their respective cost studies.

Regarding the prices for support elements, the Commission based those rates on consideration of FCC proxy rate provisions, i.e., interstate tariffed rates, where such rates exist, pending resolution of the appeal of the FCC Interconnection Order and establishment of final rates by this Commission. Where rates could not be so established, the Commission concluded that the arbitrating parties should be called upon to renegotiate these issues. Further, regarding issues of national concern, such as permanent number portability and AIN, the arbitrating parties were encouraged to pursue resolution of any dispute of such a nature on a national level, through the appropriate industry forum or at the FCC.

With respect to rates for collect and third-party intraLATA calls, the Commission concluded that such rates should be priced consistent with the provisions established in the RAO with respect to the wholesale discount and unbundled network elements.

COMMENTS/OBJECTIONS

GTE: GTE objected to the use of proxy rates to establish prices for unbundled network elements, interconnection, and transport and termination. GTE asserted that, by using proxy pricing methods, the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which according to GTE are shown in great detail in its cost studies. GTE argued that its proposed rates are ". . . the only rates presented in these arbitration proceedings which conform to the requirements of the Act and the Constitutions of the United States and North Carolina." GTE stated that the rates established by the Commission failed to allow it to recover its forward-looking costs of providing each element or service plus a reasonable allocation of joint and common, historical, subsidy, and other costs.

GTE, after having construed the RAO to have established symmetrical rates for transport and termination, stated that such action is at odds with the requirements of the Act. GTE noted that Section 252(d)(2) of the Act states that reciprocal compensation shall not be considered just and reasonable unless "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities . . . ." Thereafter, GTE asserted that the Commission had disregarded this language and determined that

one set of rates shall apply. In conclusion in this regard, GTE stated that the Commission should establish asymmetrical rates based upon the costs of each particular carrier.

GTE also objected to the Commission's having adopted an interim loop rate of $17.05 because, according to GTE, such loop rate was the lowest rate advocated by any party to the proceeding. Further, GTE also objected to the rate established for the NID because, as noted by the Commission in its RAO, such interim rate represented a simple average of the rate proposed by GTE and that proposed by AT&T. Simply stated, GTE objected to the Commission's interim pricing of all of the foregoing rates because they were not based on GTE's costs and cost studies.

GTE stated that, while it does not favor interim prices, if the Commission needed more time to consider GTE's cost studies and pricing proposal, it would consent to interim pricing, provided the prices are set at the levels recommended by GTE. GTE asserted that the only way interim pricing can avoid an unconstitutional taking of GTE's property, and the attendant irreparable harm of lost market share and erosion of goodwill, is if the interim prices are those requested by GTE.

Finally, GTE argued that the Commission erred in refusing to adopt an end-user charge, which is required under GTE's costing approach in order to allow GTE to capture all of its true network costs, including stranded costs and a fair rate of return on its historic investments.

GTE urged the Commission to reject its earlier recommended findings regarding pricing and adopt rates which reflect GTE's actual costs as required by the Act.

CUCA: CUCA commented that the true-up mechanism[1] ". . . is a potentially troublesome development which may impair the near-term development of effectively-competitive local exchange markets." CUCA asserted that the true-up mechanism will cause new entrants to hesitate to enter North Carolina local exchange markets utilizing a strategy based upon the purchase of unbundled network elements for fear that the cost of such a strategy cannot be currently ascertained. CUCA further contended that the use of a true-up is probably unlawful. Additionally, CUCA commented that the Commission can avoid the danger of carriers being harmed in the absence of a true-up provision by simply conducting the proceeding necessary to permit the adoption of appropriate prices for unbundled network elements and similar items expeditiously. In concluding its comments in this regard, CUCA stated that "[t]he potential benefits to certain affected parties from the availability of the 'true-up' mechanism simply do not outweigh the adverse impact of this device on the competitive process." Thereafter, CUCA asserted that the Commission should remove the true-up provision contained in the RAO from any final order entered in this proceeding.

CAROLINA AND CENTRAL: These companies encouraged the Commission to expeditiously convene a generic cost proceeding to investigate the various costing methodologies to be proposed by interested parties and to determine the appropriate cost methodology to be used in developing permanent rates for unbundled network elements. Although the unbundled network element pricing sections of the FCC Rules set forth in its First Report and Order in CC Docket No. 96-98 have been stayed by the Eight Federal Circuit Court of Appeals, the Act requires the permanent

---

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

price of unbundled network elements to be based on the cost of providing the element. The Companies believe the RAO to be in compliance with the Act (and the FCC regulations) so long as the Commission moves quickly to determine the appropriate permanent rates and requires a true-up of the interim proxy rates at such time as the permanent rates are adopted.

DISCUSSION

GTE's assertion that the rates established for unbundled network elements were not based on cost appears to be without merit. As previously indicated, such rates were based on consideration of either AT&T's cost study, GTE's cost studies, or the FCC's default proxies. As clearly evidenced by its Interconnection Order, the FCC's default proxies were based on cost. Therefore, it is not unreasonable to conclude that this Commission's proxy-based, interim rates were in fact cost based, since they were based on cost studies submitted by AT&T and GTE and the FCC's proxies, which were themselves based on cost.

Regarding GTE's having construed the RAO to have established symmetrical rates for transport and termination, such Order does not so provide. The evidence of record in this proceedings is insufficient to allow the Commission to reach an informed decision in that regard.

With respect to GTE's assertion that the Commission erred in refusing to adopt an end-user charge, which is required under GTE's costing approach, since the Commission did not adopt GTE's costing approach in establishing interim rates subject to true-up, it does not appear to be unreasonable for the Commission not to have adopted an end-user charge as advocated by GTE.

GTE appears to have concluded that the Commission adopted an interim rate of $17.05 for a 2-wire analog voice grade loop, in lieu of the $16.71 proxy rate ceiling established by the FCC for such an element in its Interconnection Order solely because no party to the proceeding advocated a rate lower than $17.05. That, of course, as clearly evidenced by the Commission's RAO is not the case. While the foregoing reason was a part of the rationale on which the Commission based its decision, the Commission's decision in this regard, as explained in the RAO, was also based on consideration of other factors, including the fact that the subject rate of $17.05 was within a reasonable range of the FCC's proxy rate ceiling of $16.71 and the fact that the $17.05 rate was the interim loop rate proposed by the Attorney General, as well as by AT&T. The Commission was also well aware of the fact that the subject rate was an interim rate subject to true-up provisions as provided by the Commission in the RAO.

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

In support of its position that the true-up mechanism is "probably unlawful", CUCA in its comments stated that "[n]othing in either 47 U.S.C. §252(d) or the now-stayed FCC rules providing for the use of proxy unbundled network element prices in any way suggests the appropriateness of such a 'true-up'." Further, CUCA stated that "[t]he absence of any statutory or regulatory provision

for such a 'true-up' suggests that the Commission has no power to impose one." Contrary to CUCA's view, it would appear that the Commission clearly has such statutory authority, since the FCC in its Interconnection Order in addressing interim transport and termination rate levels stated that "[s]tates must adopt 'true-up' mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the final rate established pursuant to arbitration."[1]

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

CONCLUSIONS

The Commission hereby affirms its original decisions on these issues.

ISSUE NO. 14: Must GTE be prohibited from placing any limitations on interconnection between two carriers collocated on GTE's premises, or on the type of equipment that can be collocated, or on the types of uses of this collocated space?

INITIAL COMMISSION DECISION

The Commission concluded that the types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. The Commission further concluded that disputes over the functionality of particular equipment could be addressed on a case-by-case basis.

COMMENTS/OBJECTIONS

CUCA: The Commission should amend the RAO to indicate that equipment "used for actual interconnection or access to unbundled network elements" is not limited to equipment necessary for actual interconnection or to make access technically feasible, that cross-connection of competing local providers should not be dependent on GTE's consent, and that the types of competing local provider equipment eligible for placement on GTE's premises include any equipment which would facilitate either effective interconnection or access to unbundled elements or permit cross-connection to an otherwise eligible competing local provider. Any other result would be contrary to 47 U.S.C. Section 251(c)(6), the applicable FCC regulations, and sound public policy.

---

[1] See Paragraph 1066 of the FCC Interconnection Order.

GTE: GTE believes that the Commission should order that only equipment necessary for interconnection may be collocated on GTE's premises. In this regard, GTE argues that space limitations prevent collocation in manholes, vaults, and remote units and that such collocation is unnecessary. Moreover, GTE argues that it should be permitted to maintain a 5-year planning horizon and to reserve space in its facilities based on that horizon.

It is GTE's position that AT&T made no showing that collocation of its equipment in manholes, vaults, and remote units is necessary as required by the Act. GTE states that these facilities have limited space and that these limitations are exacerbated by the desire of all CLPs to collocate each of their equipment in these extremely small spaces. There is simply not enough room to permit this collocation. Moreover, GTE maintains that the equipment at these locations cannot measure and record traffic flow for billing purposes because such equipment lack routing and rating functions. As such, interconnection and collocation at many of these points offer few benefits that cannot be obtained by collocating at a central office, at a serving wire center, or at a tandem switch.

GTE also argues that it should be permitted to maintain a 5-year planning horizon and reserve space in its central offices on terms that are not necessarily the same as those provided to CLP collocators and that AT&T should pay for any space it requires. GTE's argument is similar to its argument regarding the CLPs' rights of access to GTE's poles, ducts, and conduits (Finding of Fact No. 16)—that is, GTE reads Section 251(c)(6) as permitting the ILEC to reserve space in its central office on differing terms than those provided to collocators. According to GTE, the Act only requires that GTE treat the CLPs/collocators in a nondiscriminatory manner *vis á vis* other CLPs/collocators. GTE asserts that it needs space in its own central offices to: (1) provide unbundled elements and other services to collocated customers whose needs for capacity may grow; and (2) provide for growth of GTE's own facilities, most importantly the switch at the central office. Finally, GTE maintains that it has no intention to use the 5-year planning horizon to warehouse space for the sole purpose of preventing collocation.

DISCUSSION

Section 251(c)(6) of the Act requires that ILECs provide "on rates, terms, and conditions that are non-discriminatory" for physical collocation of equipment necessary for interconnection or access to unbundled network elements. In 46 C.F.R. 51.323(c) the FCC stated that an ILEC is not required "to permit collocation of switching equipment or equipment used to provide enhanced service." The Commission's initial decision is clearly tailored to meet the requirements of the Act and to establish a procedure for dealing with disputes of this nature.

GTE makes the same argument here as it did in its objections to Finding of Fact No. 16—that is, the Act does not prohibit GTE as owner of its facilities to reserve whatever space it so chooses. According to GTE's narrow interpretation of Section 251(c)(6) of the Act, the only requirement is that GTE provide physical collocation to CLPs on "rates, terms and conditions that are just, reasonable and nondiscriminatory" *vis á vis* each other. The Commission has previously rejected GTE's narrow reading of the Act, and GTE has not presented any compelling reasons for the Commission to change its decision on this issue. It is the Commission's decision, therefore, that GTE should only be allowed to reserve space in its central offices where needed for purposes of safety, reliability, or good engineering practices.

The Commission found and concluded in the RAO that the type of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. The Commission further concluded that disputes over the functionality of particular equipment could be resolved on a case-by-case basis. Nothing that GTE or CUCA has filed in its objections compels a different finding or conclusion.

GTE has raised the issue of whether the CLPs should be permitted to collocate their equipment in manholes, vaults, and remote units. The argument made by GTE is these facilities have very limited space and that the equipment located at these places will lack routing and rating functions. The Commission has found in Finding of Fact No. 16 that GTE should be allowed to reserve space for safety, reliability, and proper engineering practices. Given the limited space available in manholes, vaults, and remote units, it may be justified for GTE to refuse to collocate the CLPs' equipment in these places.

CONCLUSIONS

The Commission affirms its original decision on this issue.

UNRESOLVED ISSUES

ISSUE NO. 1: WHEREAS/NOW, THEREFORE CLAUSES
Contract Location: Preface to Agreement, Page 1
AT&T Position Papers, Page 1
GTE's Comments On The Composite Agreement, Page 6

DISCUSSION

GTE wishes to include an additional "whereas" clause in the Preface of the Composite Agreement making it clear that the parties are not voluntarily entering into this agreement, but that this agreement is the product of a compulsory arbitration and the Order of the Commission dated February 4, 1997. In addition, GTE wishes to include an additional "Now, Therefore" clause in the Preface, once again pointing out that the submittal of the Composite Agreement is not a voluntary act of GTE, but pursuant to the Commission's Order.

"Whereas" and "Now, Therefore" clauses in a preface to a contract are used by way of introduction and do not generally impact the terms of the agreement that follow. GTE's right to appeal provisions of the Commission RAO or the Composite Agreement will in no way be prejudiced by leaving GTE's additional proposed "Whereas" and "Now, Therefore" clauses out of the Agreement. It should also be noted that GTE and AT&T have agreed to a number of the provisions in the Composite Agreement without Commission coercion. A statement in the Preface that the Composite Agreement was not entered into on a voluntary basis would be inaccurate as to those items where agreement was reached between the parties. The simplest course is to omit GTE's proposed additional "Whereas/Now, Therefore" clauses.

CONCLUSIONS

The Commission concludes that GTE's proposed "Whereas/Now Therefore" clauses are not required to be included in the Composite Agreement.

ISSUE NOS. 2-4: RESPONSIBILITIES OF PARTIES
Contract Location: Sections 6, 7, and 8
AT&T Position Papers, Pages 1 and 2
GTE's Comments On The Composite Agreement, Pages 7-10

DISCUSSION

In Section 6, AT&T proposes additional language making each party solely responsible for handling, transport, storage, and disposal of materials or substances or waste brought into the work locations by AT&T's contractors or agents. In Section 7, AT&T proposes language making GTE (as opposed to each party) solely responsible for obtaining governmental rights and privileges necessary to provide the services and elements covered by this Agreement. In Section 8, GTE seeks to impose upon AT&T the responsibility for hazardous materials on GTE-controlled premises which AT&T did not introduce to those premises but which may have been introduced by GTE "as a result of the operational requirements" of AT&T.

These are all new issues that were not raised in the arbitration; therefore, the Commission declines to rule on these issues. On the environmental contamination issue, for instance, GTE is proposing detailed contractual provisions. Some of these have merit whereas other provisions do not. These are issues, however, that the parties are in a better position to work out than the Commission.

CONCLUSIONS

The Commission declines to rule on these issues.

ISSUE NOS. 5 AND 6: REGULATORY MATTERS
Contract Location: General Terms and Conditions, Sections 9.3 and 9.4, Pages 7 and 8
AT&T's Position Papers, Pages 2 and 3
GTE's Comments On The Composite Agreement, Page 11

DISCUSSION

GTE proposes language stating that this is an arbitrated agreement rather than one entered into by the parties voluntarily and that either party may seek judicial review under the Act, which may result in modification of the Agreement. AT&T argues that the parties have adequately preserved their right to appeal on the cover page of the preface to the Agreement and adds that, although the Commission ordered certain provisions, others were negotiated by the parties. GTE's language also provides that each party disclaims any liability for violations of the Agreement other than such liability as may be imposed by the Commission. AT&T contends that the disclaimer of responsibility to perform is completely unacceptable as a matter of contract law. AT&T further notes that under

Attachment 1, negotiation and arbitration are the parties' exclusive remedies for disputes arising out of the Agreement or its breach.

GTE also proposes language providing that any modifications to the legal requirements in the Agreement, including those resulting from judicial review of the Interconnection Order, will be deemed to automatically supersede any terms and conditions of the Agreement that are no longer required by law. AT&T argues that this provision is overbroad and would potentially open the door to renegotiation of every clause and make the contract process a never-ending one. AT&T's proposed language, which the parties agreed to in a joint submission in Michigan, reads as follows:

> If any final and nonappealable legislative, regulatory, judicial or other legal action, including a change in applicable law, materially affects any material terms of this agreement, or the ability of AT&T or GTE to perform any material terms of this agreement, AT&T or GTE may, on 30 days' written notice (delivered not later than 30 days following the date on which such action has become legally binding and has otherwise become final and nonappealable) require that such terms be renegotiated, and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. If such new terms are not renegotiated within 90 days after such notice, the dispute shall be referred to the alternative dispute resolution procedures set forth in Attachment 1.

The Commission believes that the cover page of the Agreement accurately and adequately describes the legal positions of the parties, while Attachment 1 covers the parties' legal remedies under the Agreement. GTE's proposed language, in our opinion, is both unnecessary and inappropriate. AT&T's proposed language regarding legal action that affects the Agreement appears to be both reasonable and workable, inasmuch as it would permit modifications which the law requires without requiring modifications where the law permits the parties to negotiate.

CONCLUSION

The Commission concludes that GTE's proposed Sections 9.3 and 9.4 should be rejected and that AT&T's proposed Section 9.3 should be approved.

ISSUE NO. 7: LIABILITIES OF GTE
Contract Location: Section 10.2
AT&T's Position Papers, Page 3
GTE's Comments On The Composite Agreement, Page 11

DISCUSSION

GTE proposes language stating that its liability during any contract year under the Agreement shall not exceed an amount equal to any amounts due and owing by AT&T to GTE under the Agreement. AT&T has proposed contract language which would generally limit GTE's liability to AT&T during any contract year to the amount owed by AT&T under the Agreement plus any access or exchange access fees payable by AT&T to GTE. GTE takes the position that AT&T's proposed language inappropriately expands GTE's potential liability well beyond payments AT&T will make under the Agreement to include payments AT&T makes for other services under other regulatory

requirements. According to GTE, AT&T should not be able to avoid paying validly incurred charges unrelated to the Agreement because of a dispute related to the Agreement. Since the access and exchange access fees payable by AT&T are not technically owed under the Agreement, AT&T states that the additional language which it has proposed ties the maximum GTE liability for a contract year to the total amount AT&T expends in connection with the arrangement for the same contract year, which is reasonable.

The Commission has generally declined to prescribe general contractual terms and conditions, including questions such as liability/indemnity, in arbitration proceedings, thereby leaving the parties free to negotiate such provisions. While it is certainly not inappropriate to include a liability provision in the Agreement, the specific terms of any such provision do not involve issues of fact or law suitable for arbitration by the Commission.

CONCLUSIONS

The Commission hereby declines to decide this issue since it involves a matter (the contractual liability of one party to the Agreement) which is best resolved through arms-length negotiations by the affected parties.

<u>ISSUE NO. 8</u>: CONSEQUENTIAL DAMAGES
Contract Location: Section 10.3
AT&T's Position Papers, Page 3
GTE's Comments On The Composite Agreement, Page 11

DISCUSSION

AT&T has proposed contract language which would make both parties liable to each other for consequential damages in the case of willful misconduct, gross negligence, or actions which result in bodily injury, death, or damage to personal property. AT&T states that these provisions will ensure that GTE has an economic incentive to abide by the terms and conditions of the Agreement and are necessary to properly allocate liability in a competitive marketplace. AT&T has also proposed language stating that the remedy limitations of Section 10 of the Agreement do not apply to the parties' indemnification obligation. AT&T considers this language to be essential to preserve the indemnification remedy. GTE states that limitations of liability for consequential damages, from any cause, are quite common in contracts and are commercially reasonable. According to GTE, the prices it charges end-user customers, which are the basis for the discounted wholesale prices to be charged to AT&T under the Agreement, are not set at a level to cover indemnity for consequential damages. GTE states that if AT&T wishes indemnification from GTE for these types of damages, the prices charged by GTE to AT&T must be increased accordingly.

The Commission has generally declined to prescribe general contractual terms and conditions, including questions such as damages, in arbitration proceedings, thereby leaving the parties free to negotiate such provisions. While it is certainly not inappropriate to include a consequential damages provision in the Agreement, the specific terms of any such provision do not involve issues of fact or law suitable for arbitration by the Commission.

CONCLUSIONS

The Commission hereby declines to decide this issue since it involves a matter (consequential damages) which is best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 9: OBLIGATION TO DEFEND; NOTICE; COOPERATION
Contract Location: Section 10.5
AT&T's Position Papers, Page 4
GTE's Comments On The Composite Agreement, Page 12

DISCUSSION

GTE's proposed language requires an indemnitee to be consulted if a compromise or settlement would *adversely* affect the indemnitee. AT&T states that the proposed use of the term "adversely" in the Agreement by GTE provides insufficient protection for the indemnitee. According to AT&T, the GTE proposed language, in addition to severely limiting the types of rights that are protected, creates the situation that the indemnifying party would determine whether the indemnitee's rights are adversely affected and that such a determination can, in fairness, only be made by the indemnitee. GTE asserts that additional language proposed by AT&T is far too broad and refers ambiguously to "other rights" and "other relief." GTE opposes inclusion of such ambiguous language in the Agreement.

The Commission has generally declined to prescribe general contractual terms and conditions, including questions such as the duty to consult or defend, in arbitration proceedings, thereby leaving the parties free to negotiate such provisions. While it is certainly not inappropriate to include such a provision in the Agreement, the specific terms of any such provision do not involve issues of fact or law suitable for arbitration by the Commission.

CONCLUSIONS

The Commission hereby declines to decide this issue since it involves matters (obligation to defend, notice, and cooperation) which are best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 10: SERVICE PARITY AND STANDARDS
Contract Location: Section 11.5
AT&T's Position Papers, Page 4
GTE's Comments On The Composite Agreement, Page 12

DISCUSSION

GTE proposes a contractual provision which states that if AT&T requests a service standard higher than that which GTE provides to itself, AT&T shall pay the incremental cost of such higher standard or other measurement of quality. AT&T has proposed language which would require the cost of any such higher standard to be recovered on a competitively-neutral basis. GTE takes the position that AT&T's proposed language ("prorated in a competitively-neutral manner") should be rejected as a transparent attempt to impose a portion of the cost on other CLPs, and probably on

GTE, rather than accepting the cost caused by its own request. AT&T states that it is quite possible that GTE or another carrier would also benefit from the new, higher standard and that AT&T should not be required to solely bear the cost of the new, higher standard of service. AT&T takes the position that its proposed language promotes local exchange competition, is in compliance with the requirements of TA96 and the FCC's Interconnection Order, and should, therefore, be adopted.

CONCLUSIONS

The Commission hereby disapproves the specific contractual provisions as proposed by both GTE and AT&T and sets forth the following cost principles to be observed and followed by the parties to this arbitration proceeding. AT&T should bear the cost when it requests GTE to provide it with a higher standard of service or other measurement of quality than GTE provides to itself. However, this cost should be developed in a manner consistent with certain provisions of the RAO; i.e., that AT&T should be required to pay an appropriate proportionate share of the costs associated with the provisioning of the foregoing services by GTE. The fee(s) to be charged AT&T in this regard should be developed in a manner such that all benefiting users share the cost burden. The cost assigned to each benefiting user should be in proportion to the benefit(s) received; i.e., the proportional cost assigned to a benefiting user expressed as a percentage of total cost should be equal to proportional benefit(s) expressed as a percentage of total benefit(s). To the extent it is necessary for AT&T or AT&T and GTE to pay the full amount of the initial costs, because current benefits and/or prospective benefits to others, including GTE in the first instance, cannot be reasonably determined at the time of inception of the provisioning of the subject facilities and services, arrangements shall be put in place that will allow for fee adjustments, including retroactive adjustments and refunds, with interest, to AT&T in the first instance and to AT&T and GTE in the second instance should future circumstances and events so require; e.g., should it later be determined that others are benefiting or will benefit from facilities and services paid for initially by AT&T or by AT&T and GTE.

The parties shall incorporate the above-stated policy decisions regarding costing principles into any negotiated contractual provisions included in their final agreement which is hereafter filed for approval by the Commission.

ISSUE NO. 11: BRANDING
Contract Location: Section 18.1
AT&T's Position Papers, Pages 4 and 5
GTE's Comments On The Composite Agreement, Pages 12 and 13

DISCUSSION

AT&T has proposed contract language to address, where technically feasible, customized routing and branding of operator services and directory assistance (OS/DA) services provided by GTE to AT&T local service customers. AT&T also proposes a cost-recovery provision which states that AT&T shall pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such branding. GTE states that it disputes the branding language proposed by AT&T because such language obligates GTE to provide branded OS/DA, in contravention of page 23 of the RAO which states that GTE should not be required to unbrand OS/DA at this time. Therefore, GTE takes the

position that the Agreement should not obligate GTE to provide branded OS/DA service. AT&T takes the contrary position that, since the Agreement is a three-year contract which makes it likely that the industry solution for customized routing will be developed and implemented during the term of the contract, it is essential that the contract language address customized routing and branding. GTE takes the further position that, if the Commission accepts AT&T's proposed language concerning branding, the Commission should also approve the language proposed by GTE requiring exclusive use by AT&T of GTE rebranded or unbranded OS/DA for the duration of the Agreement. GTE states that it has proposed the exclusivity provision because the contract as proposed by AT&T provided no incentive to prohibit AT&T from requiring GTE to reconfigure its network only to be abandoned by AT&T a short time later. GTE proposes that, to the extent the costs of these services are not covered by the underlying element charge, AT&T must reimburse GTE for the total cost of implementing rebranding of OS/DA on a nonrecurring charge basis. GTE states that its proposed cost-recovery provision will fairly compensate it for the expenses incurred in reconfiguring its network. AT&T takes the position that GTE's proposed three-year exclusivity provision is anticompetitive and would prevent AT&T from providing its own services or from contracting with a third party at a later date. AT&T also takes the position that GTE improperly seeks to recover all of its costs for implementation from AT&T without regard to benefits conferred on other parties, including GTE.

In the Evidence and Conclusions for Findings of Fact Nos. 6 and 7 of the RAO, the Commission declined to require GTE to immediately provide customized routing or to rebrand OS/DA based upon a finding that customized routing is not technically feasible at this time. The Commission encouraged the parties to (1) work to develop a long-term, industry-wide solution regarding customized routing and (2) conduct further negotiations concerning the recovery of development costs, such that all benefiting users share the burden. Under the RAO, GTE is only required to rebrand OS/DA when generic customized routing is implemented.

CONCLUSIONS

The Commission finds good cause to delete the contested language proposed by both AT&T and GTE from Section 18.1 of the Agreement, but concludes that, assuming GTE is willing on an interim basis to unbrand or use line class codes (LCCs) to provide customized routing, the parties are free to negotiate mutually agreeable terms covering those matters for inclusion in the final Agreement. The Commission restates its policy decision that all benefiting users should share the burden of the costs of developing a long-term solution to allow generic customized routing. With respect to the three-year exclusivity provision proposed by GTE, the Commission reaffirms its previously stated disinclination to prescribe general contractual terms and conditions and hereby declines to decide this issue since it involves a matter which is best left to resolution through arms-length negotiations by the affected parties.

ISSUE NO. 12: DISPUTED CONTRACT LANGUAGE RE: COST RECOVERY
Contract Location: Section 18.1
AT&T's Position Papers, Pages 5 and 6
GTE's Comments On The Composite Agreement, Page 16

DISCUSSION

This particular issue addresses the cost recovery of implementing rebranding of OS (operator services) and DA (directory assistance). GTE's proposed language states that to the extent the costs of these services are not covered by the underlying element charge, AT&T will reimburse GTE for the total cost of implementing rebranding of OS and DA on a nonrecurring charge basis. GTE asserts that AT&T should pay for the total cost of implementing rebranding of OS and DA. AT&T states that its proposed language sets the framework for cost-based and competitively-neutral pricing. AT&T's proposed language states that AT&T shall pay GTE's costs pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission. AT&T argues that GTE's contract language to require AT&T to pay "all cost" of services which may be used by others, including GTE, represents a "double dipping" or double recovery.

This issue is discussed in detail in the preceding Issue No. 11.

CONCLUSIONS

The Commission adopts the conclusions presented in Issue No. 11 concerning cost recovery of implementing rebranding of OS and DA.

<u>ISSUE NOS. 13-16</u>: DISPUTED CONTRACT LANGUAGE RE: COST RECOVERY
Contract Location: Sections 28.1, 28.2, 28.3, 28.7.1 and 28.7.2
AT&T's Position Papers, Pages 5 and 6
GTE's Comments On The Composite Agreement, Page 16

DISCUSSION

These particular issues address the cost recovery for customized routing and implementation of such routing of DA and OS directly to AT&T's platform. GTE's proposed language states that AT&T will be responsible for all costs associated with any request for customized routing and implementation of such routing. AT&T states that its proposed language sets the framework for cost-based and competitively-neutral pricing. AT&T's proposed language states that AT&T shall pay GTE's costs pursuant to the pricing standards of Section 252(d) of the Act and in such amounts or levels as determined by the Commission for implementation of such routing.

The Commission's RAO addresses cost recovery of development costs for customized routing (RAO, page 22). The Commission encouraged the parties to further negotiate the recovery of development costs, such that all benefiting users share the burden. The Commission has concluded, in response to objections and comments to the RAO, that its original decision in Finding of Fact No. 6, be affirmed.

CONCLUSIONS

The Commission concludes that all benefiting users should share the burden of the cost of developing customized routing consistent with the Commission's conclusions presented in Issue No. 11.

ISSUE NOS. 17-20: AUTHORITY, GOVERNING LAW, SEVERABILITY
Contract Location: Sections 23.3, 23.9, 23.12, and 23.15
AT&T Position Papers, Page 6
GTE's Comments On The Composite Agreement, Pages 13-15

DISCUSSION

These sections deal with boilerplate language that GTE wishes to exclude from the Composite Agreement. Specifically, these sections are as follows:

> *Section 23.3 Authority* - Each party represents that the person whose signature appears on this Agreement on behalf of such party has authority to bind such party.
>
> *Section 23.9 Governing Law* - The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties shall be governed by the Laws of the State and shall be subject to the exclusive jurisdiction of the Courts therein, except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect. The parties submit to personal jurisdiction in the State, and waive any and all objections to the State's venue.
>
> *Section 23.12 - Severability* - ... Provided, however, that if such invalid or unenforceable term, condition or provision is material to this Agreement, either party may require that such term, condition or provision be renegotiated in accordance with Section 9.3.
>
> Section 23.15 - *Executed in Counterparts* - This Agreement may be executed in any number of counterparts, each of which shall be deemed an original; but such counterparts shall together constitute one and the same instrument.

These are standard contractual provisions. AT&T points out that GTE has agreed to these provisions in an agreement with MCI filed with the Public Utility Commission of Texas on January 17, 1997. The Commission finds and concludes that these sections should be included in the Composite Agreement except that Section 23.9 shall be amended to make it clear that North Carolina is the state under which the construction and enforcement of this contract shall be governed.

CONCLUSIONS

The Commission concludes that these sections relating to standard contractual provisions as proposed by AT&T should be included in the Composite Agreement except that Section 23.9 should read as follows:

> *Section 23.9 Governing Law* - The validity of this Agreement, the construction and enforcement of its terms, and the interpretation of the rights and duties of the parties shall be governed by the Laws of the State of North Carolina and shall be subject to the exclusive jurisdiction of the Courts therein, except insofar as federal law may control any aspect of this Agreement, in which case federal law shall govern such aspect. The parties submit to personal jurisdiction in this State, and waive any and all objections to the State of North Carolina's venue.

ISSUE NO. 21: REGULATORY AGENCY CONTROL
Contract Location: Section 23.8
AT&T's Position Papers, Pages 6 and 7
GTE's Comments On The Composite Agreement, Pages 13 and 14

DISCUSSION

GTE has proposed language that postpones the effective date of the Agreement until such time as the Commission has (1) put in place a mechanism to provide GTE the opportunity to recover its historic costs, and (2) established a universal service system that is competitively neutral. GTE argues that it has extensively discussed GTE's belief that the pricing methodology adopted by the FCC and the Commission will not allow GTE to recover all of the investment and costs in the network GTE has installed, maintains, and continues to improve. GTE states that its proposal postpones the effective date of the Agreement until regulatory policies are in effect which will not unconstitutionally deprive GTE of its property in contravention of the federal and state constitutions. GTE asserts that its language complies with the Act [Section 252(d) and 254(b)(4)]. Under the Act, GTE states, GTE must be provided the opportunity to recover its historic costs. GTE contends that a universal service system that is competitively neutral must, therefore, be established.

AT&T notes that under the Act, GTE's obligations as an ILEC are in no way contingent upon these events happening. AT&T references Section 252(d) of the Act which states that rates for interconnection and elements shall be cost-based and nondiscriminatory. AT&T further states that the Commission has the discretion to set rates within these guidelines. AT&T also points out that Section 254 of the Act addresses universal service for which the details are to be determined by the FCC and the state commissions. AT&T notes that the timeline for determining the new universal service scheme is independent of the timeline for entering interconnection agreements.

The Commission agrees with AT&T that, indeed, there are no provisions in either the Act or the FCC Interconnection Order which require postponement of the effective date of the Agreement as recommended by GTE.

CONCLUSIONS

The Commission requires GTE to delete its recommended language in Section 23.8 from the Agreement.

ISSUE NO. 22: TELECOMMUNICATIONS SERVICES PROVIDED FOR RESALE
Contract Location: Section 24
AT&T's Position Papers, Page 8
GTE's Comments On The Composite Agreement, Page 15

DISCUSSION

AT&T has proposed additional contract language stating that local telecommunications services provided by GTE for resale shall include the "same service support functions" identified in Section 29 of the Agreement and those provided by GTE to itself without regard to whether the customer is AT&T's or GTE's. In support of its position, AT&T asserts that Paragraph 970 of the

FCC Interconnection Order requires ILECs to provide and provision services at the same quality level as the service which they provide and provision for themselves or any third party. GTE asserts that AT&T's proposed language is, at best, ambiguous. GTE states that its obligation in a resale environment is to provide service to AT&T's customers in essentially the same manner in which the service is provided to GTE's customers. According to GTE, this will obviously involve the use of the same "service support functions" whether the customer receives service from AT&T or GTE. To the extent this is what is required by AT&T's proposed language, such language is superfluous. However, GTE further states that, to the extent AT&T's proposed language means something else, such language goes beyond GTE's obligations under the Act, was not requested by AT&T in its petition for arbitration, was not considered by the Commission, and was certainly not decided by the Commission.

CONCLUSIONS

The Commission finds good cause to disallow and delete as unnecessary the contested contractual language in Section 24 as proposed by AT&T. GTE, in its comments, concedes that it has an obligation in a resale environment to provide service to AT&T's customers in essentially the same manner in which it provides service to its own customers and that such obligation will obviously involve the use of the "same service support functions" whether the customer receives service from AT&T or GTE. The differences between the parties on this issue appear to be more semantical in nature than substantive. The proposed additional language, which tends to promote confusion and appears to be unnecessary to the Agreement, should be deleted. Section 29 of the Agreement appears to adequately address AT&T's concerns.

ISSUE NO. 23: VOICE MAIL RELATED SERVICES
Contract Location: Section 26.7
AT&T's Position Papers, Page 8
GTE's Comments On The Composite Agreement, Page 16

DISCUSSION

AT&T proposes contract language in Section 26 of the Agreement entitled "Requirements for Specific Services." Section 26.7, as proposed by AT&T, requires GTE to provide AT&T with certain specified interfaces and features related to voice mail services. AT&T states that it is not requesting that GTE permit the resale of GTE voice mail services, but is simply requesting the features and functions necessary to permit AT&T to offer its own voice mail service to its local exchange customers. AT&T further states that GTE has agreed to provide such interfaces to MCI in Texas pursuant to an interconnection agreement filed with the Texas Public Utility Commission. According to AT&T, GTE's refusal to enable AT&T to offer voice mail together with resold local services is unreasonable and discriminatory under TA96. GTE takes the position that neither TA96 nor the RAO obligates GTE to provide voice mail or voice mail related services, since they are not "telecommunications services." GTE further states that AT&T cannot, in a resale context, require GTE to provide AT&T with individual component parts of voice mail and that unbundling of voice mail is addressed in the Agreement in Section 4.2.1.30 of Attachment 2. GTE states that AT&T's proposed contract language is not only inappropriate in a resale context, but also conflicts with similar provisions contained elsewhere in the Agreement.

In the Evidence and Conclusions for Finding of Fact No. 1 of the RAO, the Commission concluded that voice mail is not a telecommunications service under the Act and that such service is thus not subject to resale. Notwithstanding such determination, voice mail related **tariffed** services, such as SMDI, Message Waiting Indicator, Call Forward On Busy/Don't Answer Feature, and Forwarded Call Information are themselves retail telecommunications services. Therefore, where voice mail related services are available on a retail basis, they are subject to resale under the Agreement.

CONCLUSIONS

The parties are hereby instructed to negotiate mutually agreeable contract language consistent with the above-stated conclusions.

ISSUE NOS. 24-30: ROUTING TO DIRECTORY ASSISTANCE, OPERATOR, REPAIR SERVICES

Contract Location: Part I, Sections 28.1, 28.2, 28.3, 28.4, 28.5, 28.7.1, and 28.7.2, Pages 31-34
AT&T's Position Papers, Pages 8 and 9
GTE's Comments On The Composite Agreement, Page 16

DISCUSSION

AT&T maintains that it is essential that the Agreement address customized routing, because (1) GTE has said it will make the routing capability it has (i.e., line class codes) available to AT&T on an interim basis and (2) it is likely that the industry solution for customized routing will be developed and implemented during the three-year contract term. AT&T has proposed language requiring customized routing, where technically feasible, and providing that AT&T will pay GTE's costs, if any, pursuant to the pricing standards of Section 252(d) of the Act and in such amounts as determined by the Commission for such routing. GTE states that the order does not require customized routing and disputes the inclusion of AT&T's proposed language in the Agreement. To the extent GTE agrees to provide such services, however, GTE proposes language requiring AT&T to be responsible for paying all associated costs.

In the RAO, the Commission declined to order GTE to provide customized routing using line class codes (LCCs) despite GTE's expressions of willingness to do so under certain circumstances. The Commission encouraged the parties instead to work together to develop a long-term, industry-wide solution and to negotiate terms and conditions of how the implementation costs incurred in the development of customized routing can be recovered such that all benefiting users share the burden. Both requiring GTE to agree to provide customized routing on an interim basis and requiring AT&T to pay all the costs are inconsistent with the RAO.

Disputed language regarding cost recovery in Sections 28.1, 28.2, and 28.3 is discussed under Issue Nos. 13-16.

CONCLUSIONS

The Commission concludes that the disputed provisions should be rejected but notes that, if GTE is willing on an interim basis to use LCCs to provide customized routing, the parties are free to negotiate mutually agreeable terms for inclusion in the final Agreement. In the event GTE is

willing to provide such customized routing, AT&T should be required to pay a proportionate share of the costs associated with the provisioning of the services and facilities by GTE as more fully described under Issue No. 10.

ISSUE NO. 31: EMERGENCY CALLS
Contract Location: Section 28.6
AT&T's Position Papers, Page 9
GTE's Comments On The Composite Agreement, Pages 16 and 17

DISCUSSION

AT&T's is requesting an interface and transmittal of emergency number information in order to handle emergency calls for its customers and desires to include language which would allow for the transmission of any changes, alterations, modifications, and updates to such data.

GTE represents that it does not currently maintain the data AT&T is requesting in a separate electronic file and must call directory assistance in order to obtain such information. GTE states that it is willing to work out a solution to extract the information and provide it to AT&T in an electronic format if AT&T is willing to pay for such extraction and if AT&T will give GTE some assurance as to the accuracy of the numbers by agreeing to verify them.

CONCLUSIONS

The Commission concludes that GTE be required to provide AT&T emergency number information as well as all changes, alterations, modifications, and updates to such data in a timely manner. The Commission also concludes that AT&T be required to verify the accuracy of such information provided by GTE. As to who will pay for the extraction of such information, the companies should refer to the cost-sharing principles set out in Issue No.10.

ISSUE NOS. 32 - 35: PAYPHONE LINES AND PAYPHONE SERVICES
Contract Location: Sections 30, 30.2.1, 30.6, 30.7, 30.8, and 30.9
AT&T's Position Papers, Page 9
GTE's Comments On The Composite Agreement, Pages 17 and 18

DISCUSSION

GTE proposes contract language in Section 30.2.1 which provides that Public Telephone Access Service (PTAS) lines will be subject to resale under the Agreement at wholesale rates, but only to telecommunications carriers, not to COCOTs, and only for purposes of resale. GTE's proposed language further states that GTE's own public payphones will not be subject to resale. Section 30 as proposed by AT&T is merely a title. AT&T also proposes to add language to Section 30.2.1 which states that GTE's semi-public payphones are also subject to resale. In its comments, GTE states that it recognizes that the RAO provides that its semi-public payphones should be subject to resale and that the language proposed by AT&T is unnecessary. GTE further states that the language which it is proposing is meant to make clear the fact that certain services are subject to resale only under certain conditions. In support of its position, AT&T states that the text proposed by GTE fails to include the full reference from the RAO which specifies that semi-public payphones

are subject to resale and that the GTE text could be interpreted to restrict the resale of such payphones. AT&T further states that it will agree to the GTE text, subject to an amendment to the language including the full text from the RAO regarding the requirement for GTE to resell semi-public payphones. Regarding Sections 30.6, 30.7, and 30.8, GTE objects to the inclusion of the words "PIC protection" stating that it does not currently offer PIC protection for all 1+ local and intraLATA traffic and is not required by law to do so. GTE also objects to certain language proposed by AT&T for inclusion in Sections 30.6, 30.8, and 30.9 on the theory that such language extends beyond the Act, the FCC Interconnection Order, and the RAO. Regarding Section 30.8, GTE states that it has proposed language in line 4 to clarify the reference to call timing for "intra"LATA toll calls. In line 6, GTE has proposed clarifying language because not all of its payphones are permitted to employ two-way calling. With respect to Section 30.9, GTE has proposed additional language regarding semi-public payphones. In support of its proposed language regarding semi-public payphones, AT&T states that it must obtain the features and functions listed in Section 30.9 from GTE.

CONCLUSIONS

In response to the objections filed by GTE with respect to Finding of Fact No. 1 of the RAO, the Commission has previously concluded that GTE's semi-public payphones are not required to be resold. In its objections, GTE has correctly pointed out that semi-public payphones do not fall under the RAO resale mandate because they are no longer offered to subscribers at retail under tariffs due to the FCC's Payphone Order. Therefore, the Commission finds good cause to require the parties to include, as part of the Agreement, Title Section 30 as proposed by AT&T and Section 30.2.1 as proposed by GTE modified to state that GTE's own public and semi-public payphones will not be subject to resale. Section 30.9 should be deleted from the Agreement altogether since it deals specifically with requirements related to the resale of semi-public lines and such resale is no longer required as a result of the action recently taken by the FCC to detariff such service. With regard to the remainder of the contested language which is, at best, confusing and not well-defined, the Commission declines to rule on the specific issues raised by the parties, but observes that GTE is only required to offer for resale to AT&T those services which GTE provides at retail to subscribers who are not telecommunications carriers.

<u>ISSUE NO. 36</u>: NETWORK ELEMENTS
Contract Location: Section 32.4
AT&T's Position Papers, Page 10
GTE's Comments On The Composite Agreement, Page 18

DISCUSSION

AT&T wants to combine network elements in any manner it chooses to provide services to its local exchange customers. AT&T comments that GTE wants to limit the use of elements to their *designed* function while AT&T believes it can use an element for any *capable* function. AT&T cites Paragraph 296 of the FCC Interconnection Order which states, "that incumbent LECs are also required to perform the functions necessary to combine elements, even if they are not ordinarily combined in that manner, or they are not ordinarily combined in the incumbent's network, provided such combination is technically feasible". GTE argues that some network elements may be capable

as a *general* matter of providing a particular use but may not in *specific* instances be capable of providing a particular use.

The specific language in dispute is as follows:

Language agreed to in Michigan Joint Submission 12/23/96 which GTE now disputes: **"AT&T MAY USE ONE OR MORE NETWORK ELEMENTS TO PROVIDE ANY FEATURE, FUNCTION, OR SERVICE OPTION THAT SUCH NETWORK ELEMENT IS CAPABLE OF PROVIDING."**

GTE proposal to which AT&T has not agreed: "Pursuant to the terms of this Agreement, AT&T may use each Network Element provided pursuant to Part II of this Agreement to provide any Telecommunications Service that such Network Element has been designed to provide."

FCC Rule 51.315 provides that, "Upon, request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination is: (1) technically feasible; and (2) would not impair the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network." Furthermore, Paragraph 292 of the FCC Interconnection Order states that "incumbent LECs may not restrict the types of telecommunications services requesting carriers may offer through unbundled elements" and concludes that the FCC believes "this interpretation provides new entrants with the requisite ability to use unbundled elements flexibly to respond to market forces, and thus is consistent with the procompetitive goals of the 1996 Act".

CONCLUSIONS

The FCC Interconnection Order supports the use and combination of network elements in any technically feasible manner. Therefore, the Commission adopts AT&T's position and allows for AT&T to use one or more network elements to provide any feature, function, or service option of which such network element is capable, provided that it does not harm the ability of other carriers to access unbundled network elements or interconnect with GTE's network.

ISSUE NO. 37: NETWORK ELEMENTS
Contract Location: Section 32.7
AT&T's Position Papers, Page 10
GTE's Comments On The Composite Agreement, Page 19

DISCUSSION

AT&T comments that GTE should not be able to place any limits or restrictions it does not place on itself, including equipment or charges. GTE believes that based on the FCC Interconnection Order, it is entitled to recover any costs incurred for combining various unbundled network elements as requested by AT&T.

The specific language AT&T wants to include is as follows:

Language agreed to in Michigan Joint Submission 12/23/96 which GTE now disputes: "**GTE SHALL NOT CHARGE AT&T AN INTERCONNECTION FEE OR DEMAND OTHER CONSIDERATION FOR DIRECTLY INTERCONNECTING ANY NETWORK ELEMENT OR COMBINATION TO ANY OTHER NETWORK ELEMENT OR COMBINATION PROVIDED BY GTE TO AT&T IF GTE DIRECTLY INTERCONNECTS THE SAME TWO NETWORK ELEMENTS OR COMBINATIONS IN PROVIDING ANY SERVICE TO ITS OWN CUSTOMERS OR A GTE AFFILIATE, INCLUDING THE USE OF INTERMEDIATE DEVICES, SUCH AS A DIGITAL CROSS CONNECT PANEL, TO PERFORM SUCH INTERCONNECTION .**"

AT&T cites Paragraph 970 of the FCC Interconnection Order as concluding "that service made available for resale be at least equal in quality to that provided by the incumbent LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier directly provides the service, such as end users".

FCC Rule 51.315 allows for the combination of unbundled network elements in any manner, even if those elements are not ordinarily combined in the ILEC's network provided that such combination is technically feasible and would not impair the ability of other carriers to obtain access or interconnection.

CONCLUSIONS

The Commission concludes that GTE is entitled to recover costs incurred for combining network elements provided they are not included in the nonrecurring or recurring rates set forth in the pricing of the unbundled network elements.

<u>ISSUE NO. 38</u>: NETWORK ELEMENTS
Contract Location: Section 32.8
AT&T's Position Papers, Page 10
GTE's Comments On The Composite Agreement, Page 19

DISCUSSION

AT&T comments that GTE should not be able to place any limits or restrictions it does not place on itself, including equipment or charges. GTE believes that based on the FCC Interconnection Order, it should be allowed to recover any costs incurred for combining various unbundled network elements as requested by AT&T and cites Section 252(d)(1) of the Act as entitling it to recover its costs plus a reasonable profit.

The specific language AT&T wants to include is as follows:

Language agreed to in Michigan Joint Submission 12/23/96 which GTE now disputes: "**THE TOTAL CHARGE TO AT&T TO INTERCONNECT ANY NETWORK ELEMENT OR COMBINATION TO ANY OTHER NETWORK ELEMENT OR COMBINATION PROVIDED BY GTE TO AT&T IF GTE**

DOES NOT DIRECTLY INTERCONNECT THE SAME TWO NETWORK ELEMENTS OR COMBINATIONS IN PROVIDING ANY SERVICE TO ITS OWN CUSTOMERS OR A GTE AFFILIATE (E.G., THE INTERCONNECTION REQUIRED TO CONNECT THE LOOP FEEDER TO GTE'S COLLOCATED EQUIPMENT) SHALL BE THE TOTAL SERVICE LONG-RUN INCREMENTAL COST OF PROVIDING THE INTERCONNECTION ."

CONCLUSIONS

The Commission concludes that GTE is entitled to recover costs incurred for combining network elements provided they are not included in the nonrecurring or recurring rates set forth in the pricing of the unbundled network elements.

ISSUE NO. 39: UNBUNDLED NETWORK ELEMENT RESTRICTIONS
Contract Location: Section 32.5
AT&T Position Papers, Page 10
GTE's Comments On The Composite Agreement, Page 19

DISCUSSION

This section permits GTE to submit to the Commission additional information describing workable criteria for identifying combinations of unbundled network elements which constitute resold services for purposes of pricing, collection of access charges, and end-user restrictions in the retail tariffs. AT&T is opposed to the concept that unbundled elements, no matter how combined, should ever be deemed as resold services. Consequently, AT&T objects to inclusion of this language in the Composite Agreement. On the other hand, GTE argues that its language tracks the language of the Commission's Order and will allow changes in accordance with the Commission's final decision, whatever that decision provides.

The Commission is of the opinion that the contractual language on this issue should mirror the language that the Commission has ruled is appropriate in Issue No. 8 of AT&T's Comments and Objections to the RAO. The Commission in its discussion of that issue found and concluded as follows:

> The purchase and combination of *unbundled network elements* by a CLP to produce *a service offering that is included in GTE's retail tariffs on the date of the interconnection agreement* will be presumed to constitute a resold service for purpose of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This presumption may be overcome by a showing that functionalities and capabilities the CLP is using its own *substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links*, in addition to the unbundled elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purpose of this provision.

CONCLUSIONS

The Commission finds and concludes that the contractual language on this issue should mirror the language that the Commission has ordered in its ruling on the comments and objections filed by the parties on the issue of unbundled network elements—that is, Issue No. 8 of AT&T's Comments and Objections to the RAO. The appropriate language is as set out herein above.

ISSUE NO. 40: SUBLOOP UNBUNDLING
Contract Location: Section 32.9
AT&T's Position Papers, Pages 10 and 11
GTE's Comments On The Composite Agreement, Page 19

DISCUSSION

GTE wants to insert language into this section related to the local loop which gives GTE the sole option to refuse to provide Loop Distribution, the Loop Concentrator/Multiplexer and/or the Loop Feeder as an unbundled network element even if there is a bona fide request. GTE states that the language proposed by GTE tracks the Commission's RAO in Finding of Fact No. 14 which does not require GTE, at this time, to unbundle the local loop but allows GTE to do so if it chooses. AT&T argues that AT&T and GTE reached a stipulation during the Texas arbitration proceedings, which both parties agreed to incorporate as stipulations in a national agreement, in which GTE agreed to subloop unbundling pursuant to a bona fide request.

CONCLUSIONS

The Commission affirms its original position with regard to Finding of Fact No. 14 of the RAO and declines to approve specific language in this instance, recognizing that to the extent the parties can negotiate an agreement relating to subloop unbundling they are free to do so.

ISSUE NO. 41: STANDARDS FOR NETWORK ELEMENTS
Contract Location: Section 32.10
AT&T's Position Papers, Page 11
GTE's Comments On The Composite Agreement, Pages 19 and 20

DISCUSSION

Both GTE and AT&T have proposed alternative language in Section 32.10.3.1 regarding standards for network elements which address the circumstances under which AT&T should be allowed to obtain copies of GTE's engineering and design data. AT&T has also proposed language in Section 32.10.3.2 stating that GTE agrees to work cooperatively with AT&T to provide network elements that will meet AT&T's needs in providing services to its customers. Regarding proposed Section 32.10.3.2, GTE states that the language proposed by AT&T is, at best, ambiguous, if not meaningless. According to GTE, its obligations are specified in the Act and FCC and Utilities Commission orders and rules. GTE states that nothing obligates GTE to "meet AT&T's needs" and that AT&T's proposed language should be rejected.

This issue involves matters which are closely related to performance standards. In Finding of Fact No. 3(a) of the RAO, the Commission declined to enact specific performance standards and, instead, instructed the parties to negotiate mutually agreeable terms. The Commission's view was that it was neither appropriate nor practical for it to enact specific performance standards, since the parties were viewed as possessing superior expertise in that area.

CONCLUSIONS

The Commission hereby declines to decide this issue since it involves matters which are best resolved through arms-length negotiations by the affected parties, provided that AT&T may elect to accept the language proposed by GTE or the parties may negotiate other mutually agreeable terms.

ISSUE NO. 42: GTE'S PROVISION OF ANCILLARY FUNCTIONS
Contract Location: Section 34
AT&T Position Papers, Page 11
GTE's Comments On The Composite Agreement, Pages 20-22

DISCUSSION

AT&T proposes in Sections 34.1, 34.2, and 34.3 to incorporate into the Composite Agreement wording similar to that included in the Act providing that GTE will offer ancillary functions to AT&T on rates, terms, and conditions that are just, reasonable, and nondiscriminatory and in accordance with the terms and conditions of this agreement. AT&T also seeks to include language in the Composite Agreement that will permit AT&T to interconnect AT&T's equipment and facilities or equipment and facilities provided by AT&T or by third parties for purposes of interconnection or access to network elements at any point that is technically feasible. In AT&T's proposed Section 34.3, AT&T seeks to include language in the Composite Agreement that it may use any ancillary function of a service that it takes from GTE to provide any feature, function, or service that such ancillary function is capable of providing.

GTE argues that AT&T's proposed language is ambiguous and confusing. According to GTE, its obligations are spelled out in the Act, the FCC's Rules, and in the Commission RAO and that there is no need to restate these obligations in the Composite Agreement.

The Act, the FCC Interconnection Order and Rules, and the RAO cover generally what ancillary services GTE must provide to AT&T. The Commission does not believe that AT&T's language is needed nor particularly useful.

CONCLUSIONS

The Commission concludes that AT&T's proposed Sections 34.1, 34.2, and 34.3 are not required to be included in the Composite Agreement as these matters are clearly specified in the Act, the FCC's orders and rules, and the RAO.

ISSUE NO. 43: STANDARDS FOR ANCILLARY FUNCTIONS
Contract Location: Section 35
AT&T's Position Papers, Pages 11 and 12
GTE's Comments On The Composite Agreement, Pages 22 and 23

DISCUSSION

Both GTE and AT&T have proposed alternative language in Sections 35.2 and 35.4 regarding the standards which will apply under the Agreement for the provision of ancillary functions to AT&T. In these sections, AT&T proposes language stating that GTE must provide ancillary functions to AT&T that are "equal" in quality and "at least equal" on a priority basis to those which GTE provides "to itself, its own customers, its affiliates, or any other entity." GTE proposes language in Section 35.2 stating that each ancillary function provided to AT&T shall be made available on terms and conditions that are "equivalent to those that GTE uses to provide such ancillary functions to itself." The alternative language for Section 35.4 proposed by GTE states that each ancillary function shall be made available to AT&T on a priority basis that is "equivalent to the priorities that GTE provides to itself." Both parties have proposed alternative language in Section 35.3 regarding standards for ancillary functions which address the circumstances under which AT&T should be allowed to obtain copies of GTE's engineering and design data.

CONCLUSIONS

Section 35.3 involves matters which are closely related to performance standards. In Finding of Fact No. 3(a) of the RAO, the Commission declined to enact specific performance standards and, instead, instructed the parties to negotiate mutually agreeable terms. The Commission's view was that it was neither appropriate nor practical for it to enact specific performance standards, since the parties were viewed as possessing superior expertise in that area. Therefore, the Commission declines to decide the issues raised by Section 35.3 since that section involves matters which are best resolved through arms-length negotiations by the affected parties, with the proviso that AT&T may elect to accept the language proposed by GTE or the parties may negotiate other mutually agreeable terms. In Finding of Fact No. 16 of the RAO, the Commission stated that GTE must make its rights-of-way, poles, ducts, and conduits available to AT&T on terms and conditions "equal to that which it provides to itself." That being the case, the Commission approves Sections 35.2 and 35.4 as proposed by GTE, with the proviso that AT&T may request that the term "equal" be used in place of the term "equivalent" in those sections.

ISSUE NO. 44: NONDISCRIMINATORY INTERCONNECTION
Contract Location: Section 37.8
AT&T's Position Papers, Page 12
GTE's Comments On The Composite Agreement, Page 23

DISCUSSION

AT&T has proposed that it will pay a competitively neutral share of the cost of any higher quality interconnection that it requests. This calculation would include the availability to, and usage by, GTE of such higher quality interconnection. GTE argues that AT&T's proposal would require GTE to share the cost of the higher quality interconnection, notwithstanding whether GTE desires

to provide, or is able to use, the higher quality deployed solely at AT&T's request. Further, GTE maintains that the requesting party should bear the cost of its request.

CONCLUSIONS

In determining who is responsible for the cost associated with implementing a "higher quality" interconnection, the Commission directs the parties to follow the cost-sharing principles set out in Issue No. 10.

ISSUE NO. 45: DESCRIPTION OF SERVICE
Contract Location: Part IV, Section 37.10.1
AT&T's Position Papers, Page 12
GTE's Comments On The Composite Agreement, Pages 23 and 24

DISCUSSION

In its position papers AT&T stated as follows:

> "AT&T requests that GTE provide the ten-digit POTS (plain old telephone service) number for each PSAP (public safety answering point). This is information which GTE has available to it and which AT&T needs in order to provide 911 service to its customers. GTE proposed this language in the draft contracts which it sent to AT&T in December 1996. AT&T has accepted the GTE language which GTE now disputes. GTE has agreed to provide the ten-digit POTS number for each PSAP to MCI in the agreement filed with the Public Utility Commission of Texas, Article VII, Section 3.1, MCI-GTE Joint Interconnection Agreement, filed January 17, 1997."

The following language appears to be included in the MCI-GTE Joint interconnection Agreement filed with the Public Utility Commission of Texas:

> "GTE will provide MCIm with the appropriate CLLI codes and specifications of the tandem office serving area and the 10-digit POTS number of each PSAP."

GTE in its comments stated that it does not maintain a list of PSAP ten-digit numbers; therefore, GTE would have to create a process to obtain and forward these to AT&T. According to GTE, the process would require GTE to telephone Directory Assistance, compile the lists, periodically update the lists, and provide an automated delivery system to AT&T. GTE believes that AT&T could perform the same function internally at a lower cost.

Further, AT&T objects to the inclusion of the double underlined language presented in the following excerpt from Section 37.10.1:

> "If an AT&T Central Office serves end users in an area served by more than one GTE 911/E911 selective router, AT&T will install a minimum of two dedicated trunks in accordance with this section to each of such 911/E911 selective routers. AT&T will pay a pro rata selective router fee per trunk termination."

Regarding the above highlighted language, GTE asserted that such language is necessary because the selective routers cannot handle an unlimited quantity of trunks. According to GTE, with wireless companies, private switch companies, and CLPs requiring access to the selective routers, the capacity of the selective routers will soon be exhausted. The fee proposed by GTE charges a portion of the selective router costs to enable GTE to expand the processing capacity (or purchase a new one if expansion is not viable) to be able to serve these new customers. The pro-rata fee applies to all carriers using the selective routers.

AT&T generally takes the position that it is willing to pay for services, interconnection, and network elements as determined by GTE's costs pursuant to Section 252(d) of the Act and this Commission's RAO and that prices should be cost-based and competitively neutral. AT&T further asserted that to the extent the Commission addressed the issue of cost recovery in its RAO, it was consistent in directing that all benefiting users share the burden. According to AT&T, GTE's pricing proposals are contrary to the Commission's RAO regarding pricing and cost-recovery procedures.

CONCLUSIONS

The Commission concludes that GTE should be required to provide the ten-digit POTS number for each PSAP and that AT&T should be required to pay for such service. Further, the Commission concludes that AT&T should be required to pay a selective router fee per trunk termination. Fees charged AT&T by GTE for these services are to be determined and administered in a manner consistent with the cost recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

ISSUE NO. 46: OVERFLOW 911 TRAFFIC
Contract Location: Section 37.10.3.6
AT&T's Position Papers, Page 12
GTE's Comments On The Composite Agreement, Page 24

DISCUSSION

AT&T desires GTE to provide for overflow 911 traffic to be routed to GTE Operator Services and states that GTE has not proposed an alternative for handling this emergency overflow traffic. GTE asserts that it does not provide this service to itself and that the routing of overflow traffic to GTE Operator Services will not result in more efficient handling of 911 overflow traffic for the following reasons:

1) GTE Operator Services will often be located in a geographic region other than the 911 call and the operators will not be familiar with the proper routing of the regional 911 traffic,

2) such overflow calls will not result in the Automatic Numbering Identification (ANI) being forwarded to the Public Safety Answering Point (PSAP), thus eliminating the automatic retrieval of the Automatic Location Identification (ALI) that identifies the calling party's telephone number, address, and responsible Emergency Response Agencies, and

3) the 911 caller can more often reach the correct PSAP faster by hanging up and redialing, instead of discussing location with the operator.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution.

ISSUE NO. 47: INTERCONNECTION
Contract Location: Section 43.3.5
AT&T Position Papers, Page 13
GTE's Comments On The Composite Agreement, Pages 24-25

DISCUSSION

GTE proposes to include a section in the Composite Agreement that in the event a toll call is completed through an interim service provider's number portability arrangement to a customer of the new Carrier of Record, the new Carrier of Record is entitled to a portion of the applicable End Office switched access charges (e.g. local switching, line termination, carrier common line, residential interconnection). AT&T, on the other hand, argues that the Commission should adopt AT&T's proposed language which requires that the terminating carrier receive all, not just a portion of, the applicable access charges.

GTE argues that the party terminating a toll call through interim number portability provisions should receive only a portion of the applicable access charges. GTE draws an analogy to the way GTE is compensated for providing access services to an interexchange carrier (IXC) for (1) Entrance Facilities (flat rate, billed to IXC) between IXC POP (point of presence) and Serving Wire Center, (2) Transport and Tandem Switching (flat rate, billed to IXC) between the Serving Wire Center and End Office, End Office Switching (per minutes of use) at the End Office and CCL (common carrier line) and RIC (residual interconnection charge per minutes of use) for LOOP and other costs allocated to access charges by the FCC and state commissions. In an interim number portability arrangement, a terminating call from an IXC to a ported number will be routed in the identical manner including being switched at GTE's End Office. GTE will be the recording company (at the first point of switching, either the tandem or End Office) for billing purposes. The only difference is that GTE will switch the call to the CLP's End Office which will in turn switch back to a loop that GTE provides on an unbundled basis.

This issue was not addressed by the Commission in the RAO and is an issue that the industry is struggling to resolve. The Commission is of the opinion that the issue should be left to the parties to resolve.

CONCLUSIONS

The Commission concludes that this matter does not represent an issue subject to arbitration.

<u>ISSUE NOS. 48-50</u>: TRANSITING TRAFFIC
Contract Location: Part V, Section 43.3.6.4, 43.3.6.5, and 43.3.6.6
AT&T's Position Papers, Page 13
GTE's Comments On The Composite Agreement, Pages 25 and 26

DISCUSSION

In its position papers AT&T stated as follows:

"AT&T's proposal concerns the payment of compensation when traffic originates or terminates on a third party's network. These arrangements are required for interconnection. GTE has agreed to AT&T's proposed language in Section 43.3.6.3. This provision requires AT&T to compensate GTE for transporting AT&T customer originated traffic to a third party at the rate GTE will pay to the third party for termination of the traffic. This permits GTE to be made whole as the transiting carrier. AT&T's proposed language in 43.3.6.4, to which GTE will not agree, simply requests that GTE likewise compensate AT&T for terminating traffic originated on the third party's network at the rate the third party will pay GTE."

In its comments GTE stated as follows:

"<u>Section 43.3.6.4</u> -- AT&T's proposed language is unacceptable because it would require GTE to pay AT&T transport and termination charges for calls which GTE end users did not originate. Under the transiting scenario in this section, GTE's only responsibility is to provide tandem switching between the trunk groups of the third party and the trunk groups of AT&T. AT&T's proposed Section 43.3.6.4 would improperly require GTE to act as a billing agent for AT&T and would require GTE to pay AT&T transport and termination charges for calls that GTE end users did not originate."

"<u>Section 43.3.6.6</u> -- GTE's proposed language correctly states the obligations of AT&T to compensate the third party LEC based on the third party LEC's rates, and not GTE's. GTE, as provider of the tandem switching and transport functions, would bill AT&T for these functions. If GTE is to provide tandem switching at GTE access tandems for traffic between AT&T and non-GTE end offices subtending GTE access tandems, there must be a mechanism in place whereby all parties will be properly compensated for such traffic. GTE's proposed sections set forth a mechanism which will reasonably compensate all parties for such traffic. AT&T's proposed Section 43.3.6.4 would improperly require GTE to act as a billing agent for AT&T. AT&T's proposed Section 43.3.6.4 purports to make GTE pay AT&T transport and termination charges for calls that GTE end users did not originate. Under the transiting scenario in section 43.3.6.4, GTE's only responsibility is to tandem switch traffic between the trunk groups of the third party and the trunk groups of AT&T. GTE's proposed Section 43.3.6.5 only makes AT&T responsible for traffic which AT&T originates through a GTE access tandem.

The specific language proposed for inclusion in the Composite Agreement by AT&T in this regard is as follows:

"43.3.6.4 **For traffic originating on a third party LEC or ILEC network and terminating on AT&T's network, GTE will pay to AT&T the terminating mutual compensation rate agreed upon between GTE and such LEC or ILEC. GTE shall pay AT&T for IntraLATA Toll Traffic terminating to AT&T from such third party LEC or ILEC."**

GTE's specific language is presented below:

"43.3.6.5 GTE will provide tandem switching at GTE access tandems for traffic between AT&T and GTE end offices subtending the GTE access tandem, as well as for traffic between AT&T and non-GTE end offices subtending GTE access tandems. By transporting traffic to a non-GTE end office(s) via a GTE tandem, AT&T assumes responsibility for compensation to GTE for all tandem switched traffic between AT&T and the non-GTE end office(s). This responsibility may be fulfilled either by payment by AT&T to GTE for all tandem switched traffic between AT&T and the non-GTE end office(s) or by an agreement between AT&T and the non-GTE end office LEC pursuant to which GTE is expressly made a third party beneficiary and GTE would receive compensation from either AT&T or the non-GTE end office LEC, depending upon which entity originated the traffic. GTE will bill AT&T for each minute of use AT&T generates that is tandem switched."

"43.3.6.6 By transporting traffic to non-GTE end offices via a GTE tandem, AT&T assumes responsibility for compensation to the non-GTE end office company. AT&T assumes responsibility for negotiating a compensation arrangement with the non-GTE end office for IntraLATA Toll Traffic terminating to AT&T from such third party LEC or ILEC."

CONCLUSIONS

The Commission concludes that GTE's language should be adopted in this regard.

ISSUE NOS. 51-57: CUSTOMIZED ROUTING
Contract Location: Attachment 2, Sections 4.1, 4.2.1.3, 4.2.1.27, 4.2.1.28, and 4.2.1.29, Pages 10-12, 14, 15, 18, 19, and 21
AT&T's Position Papers, Pages 13 and 14
GTE's Comments On The Composite Agreement, Page 27

DISCUSSION

AT&T maintains that it is essential that the Agreement address customized routing, because (1) GTE has said it will make the routing capability it has (i.e., line class codes) available to AT&T on an interim basis, and (2) it is likely that the industry solution for customized routing will be developed and implemented during the three-year contract term. AT&T has proposed to add the following sentence to the agreed upon definition of Local Switching:

> Local Switching will also be capable of routing local directory assistance and operator services calls to alternative directory assistance and operator services platforms.

GTE disputes the inclusion of this sentence on the grounds that it attempts to obligate GTE to provide customized routing which the RAO specifically declined to do. GTE appears to be correct. The sentence as it is currently written contains no reference to technical feasibility.

In the Technical Requirements section, AT&T has proposed several provisions requiring GTE to provide customized routing. GTE disputes these provisions, citing the RAO, but argues that if the Commission accepts them, GTE's proposed language requiring AT&T to pay all associated costs not otherwise included in the underlying element cost is necessary, because under the Act GTE is entitled to recover its costs plus a reasonable profit for any function performed by GTE for AT&T.

In the RAO, the Commission declined to order GTE to provide customized routing using line class codes (LCCs) despite GTE's expressions of willingness to do so under certain circumstances. The Commission encouraged the parties instead to work together to develop a long-term, industry-wide solution and to negotiate terms and conditions of how the implementation costs incurred in the development of customized routing can be recovered such that all benefiting users share the burden. Both requiring GTE to agree to provide customized routing on an interim basis and requiring AT&T to pay all the costs are inconsistent with the RAO.

Disputed language regarding cost recovery in Sections 4.1.1.3 and 4.2.1.27 is discussed under Issue Nos. 58 and 61.

CONCLUSIONS

The Commission concludes that the disputed provisions should be rejected but notes that, assuming GTE is willing on an interim basis to use LCCs to provide customized routing, the parties are free to negotiate mutually agreeable terms for inclusion in the final Agreement. In the event GTE is willing to provide such customized routing, AT&T should be required to pay a proportionate share of the costs associated with the provisioning of the services and facilities by GTE as more fully described in the conclusions regarding Issue No. 10.

ISSUE NOS. 58-64, 68, 71, AND 78 (ISSUE NOS. 65-67 ARE ADDRESSED AND RESOLVED IN CONJUNCTION WITH ISSUE NOS. 74-76, ISSUE NOS. 69-70 AND ISSUE NOS. 72-77 ARE ADDRESSED SUBSEQUENTLY): COST RECOVERY RELATED TO TECHNICAL REQUIREMENTS, OPERATOR SERVICE, DIRECTORY ASSISTANCE SERVICE, AND TANDEM SWITCHING

Contract Location: Attachment 2, Sections 4.2.1.3, 4.2.1.6, 4.2.1.9, 4.2.1.27, 5.1.2, 5.1.2.15, 6.2.2, and 12.3.5
AT&T's Position Papers, Page 14
GTE's Comments On The Composite Agreement, Pages 27-30

DISCUSSION

AT&T essentially described the issues here as "overarching issues" concerning cost recovery. AT&T stated that it is willing to pay for services, interconnection, and network elements as determined by GTE's costs pursuant to Section 252(d) of the Act and this Commission's RAO; that prices should be cost-based and competitively neutral; and that, throughout the Composite Agreement, GTE insists that AT&T agree to pay for costs up front, before the real costs are known and that AT&T should bear the cost for changes that benefit others, including GTE. AT&T further stated that, to the extent the Commission addressed the issue of cost recovery in its RAO, it was consistent in directing that all benefiting users share the burden. According to AT&T, GTE's pricing proposals are contrary to the Commission's RAO regarding pricing and cost recovery procedures.

Generally, regarding cost recovery, GTE commented that it is entitled to recover its costs and a reasonable profit for any function performed by GTE for AT&T. GTE submitted that there is nothing in AT&T's proposed language to prohibit AT&T from requiring GTE to reconfigure its network only to be abandoned by AT&T a short time later. GTE, therefore, contended that its proposed contract language will fairly compensate GTE for expenses incurred in reconfiguring the network.

Presented below are sectional excerpts from the Composite Agreement which reflect the language here in dispute. The Commission's conclusions regarding the disputed language in each sectional excerpt follow each excerpt.

Attachment 2, Section 4.2.1.3

> *AT&T proposal to which GTE has not agreed:* "**GTE shall route local directory assistance, repair and operator services calls on a per line or per screening class basis to (1) GTE platforms providing Network Elements or additional requirements, (2) AT&T designated platforms, or (3) third-party platforms.**
>
> *GTE proposal to which AT&T has not agreed:* "AT&T shall pay all costs associated with such routing, e.g., the features and functionality required to modify GTE's switch to perform such routing."

CONCLUSIONS

The Commission did not in its RAO require GTE to route the calls here at issue. Nevertheless, it now appears that GTE has agreed to provide such routing, provided AT&T agrees to pay all costs associated therewith. The Commission concludes that, if GTE is willing to provide the subject routing services, AT&T should be required to pay for such services. The Commission further concludes that fees charged AT&T by GTE for these services should be determined and administered in a manner consistent with the cost-recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

Attachment 2, Section 4.2.1.6

> *GTE proposal to which AT&T has not agreed, i.e., the text that is double underlined:* "GTE shall perform routine testing (e.g., Mechanized Loop Tests (MLT) and test calls such as 105, 107, and 108 type calls) and fault isolation on a reasonable schedule designated by AT&T. AT&T shall pay all costs associated thereof to the extent not otherwise included in the underlying element costs."

CONCLUSIONS

The Commission concludes that GTE has an obligation to provide the same basic level of testing, technical support, and performance data to AT&T which it provides to itself, and the Commission assumes that the costs of those basic levels of testing, technical support, and performance data are included in the prices paid to GTE by AT&T for resale services and unbundled network elements. If AT&T requests more than the basic level of such services/resources which GTE provides to itself, AT&T should be required to reimburse GTE for the cost of providing such additional services/resources. Fees charged AT&T by GTE for these services are to be determined and administered in a manner consistent with the cost-recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

Attachment 2, Section 4.2.1.9

> *GTE proposal to which AT&T has not agreed, i.e., the text that is double underlined:* "GTE shall perform manual call trace as designated by AT&T and permit customer originated call trace. AT&T shall pay all costs associated thereof to the extent not otherwise included in the underlying element cost."

CONCLUSIONS

With respect to manual call trace and customer originated call trace, the Commission concludes that the costs of basic services provided in these regards are included in the prices paid to GTE by AT&T for resale services and unbundled network elements. If AT&T requests more than the basic level of such services/resources which GTE provides to itself, AT&T should be required to reimburse GTE for the cost of providing such additional services/resources. Fees charged AT&T by GTE for these services are to be determined and administered in a manner consistent with the cost-

recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

Attachment 2, Section 4.2.1.27

AT&T proposal to which GTE has not agreed: **GTE shall assign each AT&T Customer line the class of service designated by AT&T (E.G., using line class codes or other switch specific provisioning methods), and shall route local directory assistance calls from AT&T Customers to AT&T directory assistance operators at AT&T's option.**

Language agreed to prior to March 3, 1997, which AT&T now disputes: "AT&T SHALL PAY ALL COSTS ASSOCIATED THEREWITH TO THE EXTENT THAT SUCH COSTS ARE NOT OTHERWISE INCLUDED IN THE UNDERLYING ELEMENT COST CONSISTENT WITH PART V OF THIS AGREEMENT."

CONCLUSIONS

The Commission concludes that, if GTE is willing to provide the subject services, AT&T should be required to pay for such services. Fees charged AT&T by GTE for these services are to be determined and administered in a manner consistent with the cost-recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

Attachment 2, Section 5.1.2

AT&T proposal to which GTE has not agreed: **"Operator Services provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Operator Services on a switch-by-switch basis, subject to capability and capacity limitations."**

GTE proposal to which AT&T has not agreed: "For those offices that AT&T has requested GTE to provide customized Operator Services, AT&T shall continue exclusively to use GTE customized Operator Services for the duration of this Agreement."

Language agreed to prior to March 3, 1997, which AT&T now disputes: "TO THE EXTENT THE COSTS OF THESE SERVICES ARE NOT COVERED BY THE UNDERLYING ELEMENT CHARGE, AT&T AGREES TO REIMBURSE GTE FOR THE TOTAL COST OF IMPLEMENTING CUSTOMIZED OPERATOR SERVICES IN ACCORDANCE WITH THIS AGREEMENT."

CONCLUSIONS

The Commission concludes that, if GTE is able and willing to provide the subject services, AT&T should be required to pay for such services. Fees charged AT&T by GTE for these services are to be determined and administered in a manner consistent with the cost-recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

Attachment 2, Section 5.1.2.15

> The disputed language proposed for inclusion in this section of the Composite Agreement is identical to that presented immediately above with respect to Attachment 2, Section 5.1.2.

CONCLUSIONS

The Commission's conclusions with respect to the language here in dispute are the same as those reached and set forth immediately above with respect to the issue(s) raised concerning Attachment 2, Section 5.1.2.

Attachment 2, Section 6.2.2

> *AT&T proposal to which GTE has not agreed:* **"Directory Assistance Services provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Directory Assistance Services on a switch-by-switch basis, subject to capability and capacity limitations."**
>
> *GTE proposal to which AT&T has not agreed:* "For those offices that AT&T has requested GTE to provide customized Directory Assistance, AT&T shall continue exclusively to use GTE customized Directory Assistance for the duration of this Agreement."
>
> *Language agreed to prior to March 3, 1997, which AT&T now disputes:* " TO THE EXTENT THE COSTS OF THESE SERVICES ARE NOT COVERED BY THE UNDERLYING ELEMENT CHARGE, AT&T AGREES TO REIMBURSE GTE FOR THE TOTAL COST OF IMPLEMENTING CUSTOMIZED DIRECTORY ASSISTANCE SERVICE IN ACCORDANCE WITH THIS AGREEMENT."

CONCLUSIONS

The Commission's conclusions with respect to the language here in dispute are the same as those reached and set forth hereinabove with respect to the issue(s) raised concerning Attachment 2, Section 5.1.2.

Attachment 2, Section 12.3.5

GTE proposal to which AT&T has not agreed, i.e., the text that is double underlined: "At AT&T's request, Tandem Switching shall provide overflow routing of traffic from a given trunk group or groups onto another trunk group or groups according to the methodology that AT&T designates. AT&T shall pay all costs associated therewith to the extent that such costs are not otherwise included in the cost of the element."

CONCLUSIONS

The Commission assumes and so concludes that the costs of basic services provided in this regard are included in the prices paid to GTE by AT&T for resale services and unbundled network elements. If AT&T requests more than the basic level of such services/resources which GTE provides to itself, AT&T should be required to reimburse GTE for the cost of providing such additional services/resources. Fees charged AT&T by GTE for these services are to be determined and administered in a manner consistent with the cost-recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

ISSUE NOS. 65 - 67 and 74 - 76: TESTING, TECHNICAL SUPPORT, AND PERFORMANCE DATA

Contract Location: Sections 11.7.1.3, 11.7.2.1, and 12.2.15 of Attachment 2
AT&T's Position Papers, Page 15
GTE's Comments On The Composite Agreement, Pages 28 and 29

DISCUSSION

In Section 11.7.1.3 of the Agreement, GTE has proposed inclusion of language which requires AT&T to reimburse GTE for the cost of providing testing services. AT&T takes the position that these costs are already included in the price of the element under TELRIC and that GTE should not, therefore, be permitted a double recovery of such costs. GTE states that, because the costs in question are not included in the prices which AT&T will be paying for resale services and unbundled network elements, there is no double recovery of such costs. In Section 11.7.2.1 of the Agreement, GTE has proposed inclusion of language which requires AT&T to reimburse GTE for the cost of providing Service Creation Environment (SCE) resources to AT&T. AT&T takes the position that costs related to the provision of SCE resources are already included in the price of the element under TELRIC and that GTE should not be permitted a double recovery of such costs. GTE states that the additional language which it has proposed is necessary to assure recovery of its costs for making SCE resources available to AT&T. GTE also opposes the inclusion of Figure 2 (Attachment 2, Page 44), as well as all other figures and drawings which AT&T wants included in the Agreement. GTE states that, although AT&T takes the position that Figure 2 and all other figures and drawings are merely illustrative, GTE is concerned that such figures and drawings may introduce ambiguity into the Agreement. According to GTE, it is the language of the Agreement which sets forth the parties' respective obligations. Consequently, if the Commission permits figures and drawings to remain in the Agreement, such permission should include the caveat that figures and drawings may only be used for illustrative purposes and not in any interpretation of the Agreement. In Section 12.2.15 of the Agreement, GTE has proposed inclusion of language which requires AT&T to pay all costs incurred by GTE to provide any performance data requested by AT&T to the extent that such costs are not otherwise included in the cost of the element. AT&T again asserts that these costs are already

included in the price of the element under TELRIC and that GTE should not be permitted a double recovery of such costs. GTE responds that AT&T is required, in accordance with TA96 and the FCC Interconnection Order, to pay all costs which are not included in the underlying cost and price of the service requested.

CONCLUSIONS

The Commission hereby declines to decide the cost issues raised by Sections 11.7.1.3, 11.7.2.1, and 12.2.15, because there is no basis in the record to determine whether or not there is a double recovery of the costs in question by GTE. This is a matter best left to resolution through arms-length negotiations by GTE and AT&T. Regarding the inclusion of Figure 2 and other figures and drawings in the Agreement, the Commission also declines to decide this issue, but observes that, while the figures in question appear to be unnecessary to the Agreement, this is a matter best left to resolution through arms-length negotiations by the affected parties. If, as GTE states, AT&T intends to include figures and drawings in the Agreement for illustrative purposes only, the parties can certainly include a caveat to that effect in the contract, thereby resolving the matter in a way which should satisfy and protect the interests of both GTE and AT&T.

ISSUE NOS. 69 AND 70: CUSTOMIZED OPERATOR SERVICES; CUSTOMIZED DIRECTORY ASSISTANCE
Contract Location: Attachment 2, Sections 5.1.2, 5.1.2.15, and 6.2.2, Pages 18, 19, and 21
AT&T's Position Papers, Pages 14 and 15
GTE's Comments On The Composite Agreement, Pages 27 and 28

DISCUSSION

GTE maintains that these sections should be deleted from the Agreement for two reasons: (1) the Commission's procedure does not allow the contract approval process to be used by AT&T to impose language to which GTE disagrees and which concerns issues that were not resolved by the RAO; (2) AT&T did not actively litigate these issues. AT&T maintains that it is essential that the Agreement address customized routing because (1) GTE has stated that it will make available to AT&T on an interim basis the routing capability it has (i.e., line class codes), (2) the Commission has required GTE to rebrand OS/DA when customized routing is available, and (3) it is likely that the industry solution for customized routing will be developed and implemented within the three-year contract term. The language in dispute reads as follows:

> *AT&T proposal to which GTE has not agreed*: **"Operator Services [Directory Assistance Service] provided by GTE to AT&T local service customers under this Agreement will be customized exclusively for AT&T, where technically feasible, at rates specified in Attachment 14. GTE will perform necessary software upgrades to allow for customized Operator Services [Directory Assistance Service] on a switch-by-switch basis, subject to capability and capacity limitations."**
>
> *GTE proposal to which AT&T has not agreed*: "For those offices that AT&T has requested GTE to provide customized Operator Services [Directory Assistance

Service]. AT&T shall continue exclusively to use GTE customized Operator Services for the duration of this Agreement."

Language agreed to prior to March 3, 1997, which AT&T now disputes: "TO THE EXTENT THE COSTS OF THESE SERVICES ARE NOT COVERED BY THE UNDERLYING ELEMENT CHARGE, AT&T AGREES TO REIMBURSE GTE FOR THE TOTAL COST OF IMPLEMENTING CUSTOMIZED OPERATOR SERVICES [DIRECTORY ASSISTANCE SERVICE] IN ACCORDANCE WITH THIS AGREEMENT."

GTE does not agree to AT&T's proposed language, because the RAO does not require customized routing, but argues that if the Commission accepts AT&T's language, GTE's cost-recovery language is also appropriate. Otherwise, GTE contends, AT&T could require GTE to reconfigure its network only to be abandoned a short time later if AT&T decides to provide OS/DA from its own platform. GTE states that its language would require AT&T to fairly compensate GTE and to carefully consider its branding requests. AT&T, on the other hand, states that GTE's language places unacceptable restrictions on AT&T's right to obtain AT&T branded or unbranded OS/DA from GTE and would prevent AT&T from providing its own services or from contracting with a third party at a later date. According to AT&T, in addition to being anticompetitive, GTE's proposal might freeze existing technology.

In the RAO, the Commission declined to order GTE to provide customized routing using line class codes despite GTE's expressions of willingness to do so under certain circumstances. The Commission encouraged the parties instead to work together to develop a long-term, industry-wide solution and to negotiate terms and conditions of how the implementation costs incurred in the development of customized routing can be recovered such that all benefiting users share the burden. Both requiring GTE to agree to provide customized routing on an interim basis and requiring AT&T to pay all the costs are inconsistent with the RAO.

Requiring AT&T to use GTE Operator Services exclusively for three years would involve the Commission in prescribing general contractual terms and conditions, which the Commission has repeatedly left for negotiation between the parties.

Disputed language regarding cost recovery in Sections 5.1.2, 5.1.2.15, and 6.2.2 is discussed under Issue Nos. 61-64.

CONCLUSIONS

The Commission concludes that the disputed provisions should be rejected but notes that, assuming GTE is willing on an interim basis to use LCCs to provide customized routing, the parties are free to negotiate mutually agreeable terms for inclusion in the final Agreement. In the event GTE is willing to provide such customized routing, AT&T should be required to pay a proportionate share of the costs associated with the provisioning of the services and facilities by GTE as more fully described in the conclusions regarding Issue No. 10. With respect to the three-year exclusivity provision, the Commission declines to decide this issue, since it involves a matter best left to resolution through arms-length negotiation.

ISSUE NOS. 72-73: COST RECOVERY AND ELECTRONIC PROVISIONING
Contract Location: Part V, Attachment 2, Sections 8.2.10 and 8.2.12
AT&T's Position Papers, Page 15
GTE's Comments On The Composite Agreement, Page 28

DISCUSSION

The following language appears to be the language here at issue:

Attachment 2, Section 8.2.10

> *AT&T proposal to which GTE has not agreed:* **"GTE shall provide physical access to the POT for personnel designated by AT&T (for testing, facility interconnection, and other purposes designated by AT&T) 24 hours a day, 7 days a week."**

Attachment 2, Section 8.2.12

> *AT&T proposal to which GTE has not agreed:* **"Upon AT&T's request, GTE shall provide AT&T with electronic provisioning control of an AT&T specified Dedicated Transport."**

In its position papers AT&T stated as follows:

> "AT&T has proposed technical requirements for dedicated transport and has requested that the transport system be designed according to AT&T specifications. Since this type of transport will be dedicated to AT&T's use, and AT&T alone will be paying for it, AT&T should be permitted to specify its requirements. Further, AT&T has requested that GTE provide AT&T with physical access to the Point of Termination at all times. GTE states that it cannot provide such access to AT&T, however, GTE has agreed to provide it to MCI. See Article VI, Sections 9.2.8 - 9.2.10, MCI-GTE Joint Interconnection Agreement, filed January 17, 1997, with the Public Utility Commission of Texas."

Article VI, Sections 9.2.8 - 9.2.10, of the MCI-GTE Joint Interconnection Agreement appears to provide as follows:

> "9.2.8 GTE shall provide physical access to the POT for personnel designated by MCIm (for testing, facility interconnection, and other purposes designated by MCIm) in accordance with the provisions of Article XIII.
>
> "9.2.9 For Dedicated Transport provided as a system, GTE shall design the system (including but not limited to facility routing and termination points) according to MCIm specifications.
>
> "9.2.10 Upon MCIm's request when technically feasible, GTE shall provide MCIm with electronic provisioning control of an MCIm specified Dedicated Transport."

In its comments GTE stated as follows:

Section 8.2.10: "This language is unacceptable because GTE does not staff its wire centers on a seven days a week, 24 hours a day basis. GTE, therefore, cannot provide AT&T access on that basis. Outside the normal 8 a.m. to 5 p.m., 5 days a week basis that GTE provides access to the POT, GTE provides repair and access on a "call out" basis. This is all that should be required."

Section 8.2.12: "GTE does not provide electronic provisioning control of dedicated transport. To do so would potentially allow one customer to "bump" the facilities of another customer. It should not be required."

CONCLUSIONS

Regarding AT&T's request that GTE be required to provide access to GTE's wire centers on a seven days a week, 24 hours a day basis, the Commission concludes that GTE should be required to so do and that AT&T should be required to pay for such services. Fees charged AT&T by GTE for these services are to be determined and administered in a manner consistent with the cost recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

Regarding AT&T's request that GTE be required to accommodate AT&T's proposed technical requirements for dedicated transport and that the transport system be designed according to AT&T's specifications, where such transport will be dedicated to AT&T's use, and where AT&T alone will be paying for it, the Commission concludes that AT&T should be permitted to specify its requirements. It is noted, notwithstanding AT&T's comments, that this matter does not appear to be in dispute based upon the Commission's review of the Composite Agreement.

Regarding the issue concerning electronic provisioning control of dedicated transport, the Commission concludes that upon AT&T's request when technically feasible, GTE should be required to provide AT&T with electronic provisioning control of an AT&T specified dedicated transport.

ISSUE NO. 77: TANDEM SWITCHING
Contract Location: Attachment 2, Section 12.3.4
AT&T's Position Papers, Page 16
GTE's Comments On The Composite Agreement, Pages 29 and 30

DISCUSSION

AT&T is requesting that the tandem switch record and keep records of traffic for billing purposes. GTE argues that AT&T's language is overly broad and that it could require GTE to create an originating access record at its tandem switch when an AT&T customer makes an interLATA call through an interexchange carrier that transits the GTE tandem. Instead, GTE supports reference to the Multiple Exchange Carrier Access Billing (MECAB) guidelines, which specify the circumstances in which the tandem will produce records that enable the end office company to bill. Therefore, GTE wants to include language which allows AT&T to establish Meet-Point Billing arrangements with GTE in order to provide switched access services to third parties via a GTE access tandem in

accordance with the Meet-Point Billing guidelines adopted by and contained in the Ordering and Billing Forum's (OBF) MECAB and Multiple Exchange Carriers Ordering and Design (MECOD) documents.

CONCLUSIONS

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

ISSUE NO. 79: COOPERATIVE TESTING
Contract Location: Section 13.1
AT&T's Position Papers, Page 16
GTE's Comments On The Composite Agreement, Page 30

DISCUSSION

GTE wants to include the word "designed" before any reference to network elements in this section. AT&T argues that including the term "designed" denies AT&T the ability to enforce the technical requirements for any standard element; otherwise, AT&T would be permitted to accept or reject any network element if testing reveals that the element does not meet the technical requirements specified in the Agreement. AT&T agrees on the need for cooperative testing of custom-designed network elements for initial turn-up and maintenance but does not believe cooperative testing should be so limited as to GTE's "designed" network elements. AT&T further adds that one of the most basic of rights granted to a buyer under long established contract law principles is the buyer's right to accept or reject nonconforming goods.

GTE states that it has requested the use of the term "designed" to clarify that only specifically fashioned network elements are to be included under cooperative testing. GTE defines a designed network element as a service where GTE is required to review the facility and add or remove network equipment in order to meet the standard technical specifications for the service. GTE gives an example of a designed network loop as a service that is engineered to technical specifications by adding or removing certain network equipment to bring the facility into compliance with the technical specifications. GTE submits, however, a Network Interface Device (NID) as an example of a network element which is not designed to meet any particular performance standards.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution and encourages the parties to negotiate mutually agreeable terms.

ISSUE NO. 80: SS7 NETWORK INTERCONNECTION
Contract Location: Attachment 2, Section 13.5.1
AT&T's Position Papers, Page 16
GTE's Comments On The Composite Agreement, Pages 31 and 32

DISCUSSION

With regard to SS7 Network Interconnection, GTE would like to add that the interconnection is "for the purpose of providing local exchange or exchange access services". AT&T believes that this language is unnecessarily restrictive and limits AT&T's use of SS7 Interconnection. AT&T cites Section 251(c)(3) of the Act as requiring ILECs to provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service rather than limiting the use of SS7 interconnection for the purpose of providing local exchange or exchange access services only.

Furthermore, GTE would like to insert the term "call-related" in referring to its databases involving the exchange of messages.

CONCLUSIONS

The Commission rejects GTE's proposed language with regard to SS7 Network Interconnection. However, the Commission allows for the inclusion of the term "call-related" in reference to databases involving the exchange of messages; this agrees with the FCC's description of databases in Section 51.319(e)(2) of its Rules .

ISSUE NOS. 81-82: COLLOCATION
Contract Location: Attachment 3, Sections 2.1.1 and 2.2.15
AT&T Position Papers, Page 17
GTE's Comments On The Composite Agreement, Pages 32 and 33

DISCUSSION

GTE proposes in Section 2.1.1 of the Composite Agreement that GTE will provide collocation for purposes of interconnection or access to unbundled elements pursuant to the terms and conditions in the applicable GTE federal and state collocation tariffs. In addition, GTE agrees that the terms and conditions set forth in this section shall apply to physical collocation provided to AT&T. AT&T argues that GTE proposes that its federal and state collocation tariff terms govern the provision of collocation to AT&T. It asserts that the Act and the FCC's Order make it clear that the requesting carrier has a choice of either negotiating an interconnection agreement pursuant to Sections 251 and 252, or taking tariffed interstate service under both tariffs filed pursuant to the FCC's expanded interconnection rules. AT&T says that it has clearly elected to take collocation under the terms of the Agreement subject to this arbitration.

In GTE's Proposed Order, GTE stated that many of the issues related to collocation have apparently been settled according to GTE's additional filing of a list of issues settled in other jurisdictions. The only unsettled issue related to the type of equipment that may be collocated on GTE's premises. The Commission in the Evidence and Conclusions for Finding of Fact No. 31 in its RAO concluded that the types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. The Commission, therefore, did not have before it the issue now being raised by GTE and AT&T.

The Commission notes that this issue was not previously raised in the arbitration.

CONCLUSIONS

The Commission concludes that this matter does not represent an issue subject to arbitration.

ISSUE NO. 83: LOCATIONS OF SPACE BEING PROVIDED
Contract Location: Attachment 3, Section 2.2.1
AT&T Position Papers, Page 17
GTE's Comments On The Composite Agreement, Page 33

DISCUSSION

GTE has proposed language in Section 2.2.1 of Attachment 3 as follows:

> Upon request by AT&T, GTE shall provide space, as required by 47 CFR §51.323 and as requested by AT&T, to meet AT&T's needs for placement of equipment, interconnection, or provision of services *where it is technically feasible to do so.* Such space shall be provided in GTE's proposed central offices, serving wire center and tandem switches and at controlled environmental vaults, huts and cabinets...

AT&T takes issue with GTE's proposed inclusion in this section that its provision of collocation of space is contingent upon whether it is "technically feasible." According to AT&T, GTE and AT&T had previously agreed to language in a National Agreement which does not include such condition and that such language is contrary to AT&T's understanding that the parties have reached a National Agreement with regards to this section.

GTE states that one of the stipulations was that physical collocation will be provided within GTE's wire centers or access tandem facilities and in other technically feasible locations on a case-by-case basis. (Commission RAO at page 70.) GTE's insertion of the phrase "where technically feasible to do so" recognizes that GTE need not provide collocation at all locations if collocation at a given location is technically infeasible. To more closely comply with the stipulation, GTE does not oppose the deletion of its proposed language in the first sentence and the placement of the same language in the second sentence as follows: "such space shall be provided in GTE's proposed central offices, serving wire center, and tandem switches and where technically feasible to do so at controlled environmental vaults, huts, and cabinets."

The Commission believes that GTE's revised language is in line with the stipulation entered into by the parties pursuant to the National Agreement as cited on page 70 of the RAO. While AT&T objects to the proposed language, it does not give the reasons for its objections other than its statement that such language is contrary to AT&T's understanding of the Agreement.

CONCLUSIONS

The Commission concludes that the alternate language proposed by GTE for the first two sentences of Section 2.2.1 be approved; thus, this section should read as follows:

2.2.1 Upon request by AT&T, GTE shall provide space, as required by 47 CFR § 51.323 and as requested by AT&T, to meet AT&T's needs for placement of equipment, interconnection, or provision of services. Such space shall be provided in GTE's proposed central offices, serving wire center and tandem switches and where technically feasible to do so at controlled environmental vaults, huts, and cabinets. GTE will provide collocation as follows: physical collocation will be provided on a first-come, first-served basis, provided there is space available for collocation and provided there are reasonable security arrangements. If GTE determines that space is not available GTE shall provide virtual collocation for AT&T equipment, unless GTE demonstrates that virtual collocation is not technically feasible. GTE and AT&T shall adhere to reasonable industry standard security measures, applied on a nondiscriminatory basis.

ISSUE NO. 84: ACCESS TO EXISTING SPACE
Contract Location: Section 2.2.1.1 of Attachment 3
AT&T's Position Papers, Pages 17 and 18
GTE's Comments On The Composite Agreement, Pages 33 and 34

DISCUSSION

GTE states that it is required by the RAO to provide collocation for interconnection equipment on terms that are nondiscriminatory and that the language which it has proposed for inclusion in this section of the Agreement reflects such duty. GTE states that its proposed contract language prohibits GTE from reserving space for the type of equipment that AT&T may collocate for interconnection functions without allowing AT&T and other CLPs to reserve space for the collocation of the same type of equipment. According to GTE, the language proposed by AT&T for this section of the Agreement goes beyond the scope of GTE's duty to provide nondiscriminatory collocation for interconnection equipment and would allow AT&T to reserve space for equipment that is not for interconnection purposes, if GTE needs to reserve space for non-interconnection equipment. GTE states that this result is clearly beyond the scope of the duty imposed on GTE by the Act and the RAO. AT&T states that it has proposed contract language which implements the requirement that GTE may not reserve space for itself on terms that are more favorable than the terms made available to other carriers. According to AT&T, GTE has proposed language which would permit the ILEC to reserve space for future use, including offices, filing, etc., while denying space to AT&T for collocation purposes and that GTE proposes to apply the nondiscrimination rules only when it reserves space for use of telecommunications equipment.

Finding of Fact No. 31 of the RAO states that the types of equipment that may be collocated should be limited to those that are **used for actual interconnection or access to unbundled network elements** and that disputes over the functionality of particular equipment would be resolved on a case-by-case basis. Section 2.2.1 of the Agreement specifically provides that GTE will provide space to AT&T as required by FCC Rule 51.323. That being the case, the Commission is of the opinion that the contested contract language proposed by both GTE and AT&T for inclusion in Section 2.2.1.1 of the Agreement is confusing and unnecessary.

CONCLUSIONS

The Commission concludes that the contested language should be deleted from Section 2.2.1.1 as proposed by both GTE and AT&T and further concludes that, unless the affected parties can negotiate mutually agreeable language, no such provision should be included in the final Agreement.

ISSUE NO. 85: GTE ESCORTS IN COLLOCATED SPACES
Contract Location: Attachment 3, Section 2.2.3
AT&T Position Papers, Page 18
GTE's Comments On The Composite Agreement, Page 34

DISCUSSION

GTE proposes in Section 2.2.3 that where AT&T's physical collocated space is located in a space that is not partitioned separately from GTE's facilities, GTE shall provide AT&T designated personnel escort service to and from AT&T's collocated space, at AT&T's expense. AT&T objects to GTE's requirement that AT&T pay for a GTE escort service when there is no limitation on where an escort may be required or how much will be charged to AT&T for this escort service. AT&T is also concerned that a separate GTE escort service fee could result in double recovery by GTE of any necessary security costs. AT&T believes that imposing escort costs on AT&T and other new service providers runs counter to the principle of establishing cost parity between the ILEC and new service providers. On the other hand, GTE argues that its language is more appropriate because it clearly states that if GTE must provide escort service, it will be at AT&T's expense. GTE thus argues that it is not reasonable to require GTE to bear the cost of providing the escort service and that AT&T has not previously objected to paying this fee when it is required.

The Commission in the Evidence and Conclusions for Finding of Fact No. 16 found and concluded that GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits on terms and conditions equal to that GTE provides to itself. In the original arbitration, neither party raised the issue of whether escorts would be needed for AT&T to access these rights-of-way, poles, ducts, and conduits and how such costs should be handled.

The question of whether GTE escorts will be required and who will pay for these escorts is raised in three separate issues—Issue Nos. 85, 92, and 93. Issue No. 85 addresses the general question of whether GTE can dictate that an escort is needed and that AT&T will have to pay for such escort before accessing GTE's rights-of-way, poles, ducts, and conduits. Issue Nos. 92 and 93 address the specific question whether GTE shall provide AT&T designated personnel with an escort service at AT&T's expense when AT&T is breaking out of GTE's conduit or breaking out of GTE's manholes or making manhole interconnections.

The Commission in its Conclusions for Issue Nos. 92 and 93 has adopted GTE's language requiring a GTE escort at AT&T's expense in the specific cases where AT&T is breaking out of GTE conduit or breaking out of GTE's manholes or manhole connections. A full discussion of these recommendations are contained in the discussion of those issues.

In Issue No. 85, GTE seeks to require AT&T to pay for a GTE escort when AT&T designated personnel seek to access collocated space where the collocated space is situated in a space

that is not partitioned separately from GTE's facilities. (Attachment 3, Section 2.2.3.) As a general proposition, the Commission believes that it should decline to rule on the general proposition of whether GTE should be permitted to charge AT&T with the cost of GTE escorts to all collocated space where the collocated space is situated in a space that is not partitioned separately from GTE's facilities. In the Commission's opinion, the Commission does not have before it a sufficient record to find unequivocally that in every instance a GTE escort will be necessary and should be paid for by AT&T. This is an issue that the parties, acting with reason and good faith, will need to work out among themselves as specific instances arise.

CONCLUSIONS

The Commission declines to rule on the general issue of whether GTE escorts will be necessary in *every* instance that AT&T wishes to access collocated space where the collocated space is situated in a space that is not partitioned separately from GTE's facilities.

ISSUE NO. 86: COLLOCATED EQUIPMENT
Contract Location: Attachment 3, Section 2.2.4
AT&T's Position Papers, Page 18
GTE's Comments On The Composite Agreement, Page 34

DISCUSSION

GTE withdraws its proposed language related to equipment that can perform switching functions; however, still in dispute is the following language:

> *GTE proposal to which AT&T has not agreed:* "If GTE disputes that any equipment AT&T desires to collocate is necessary for interconnection functions, whether collocation of such equipment shall be allowed will be decided on a case by case basis."

Finding of Fact No. 31 of the Commission's RAO concluded that equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements and further concluded that disputes over the functionality of particular equipment can be resolved on a case-by-case basis.

CONCLUSIONS

The Commission concludes that this issue is addressed in Finding of Fact No. 31 of the RAO and recognizes that there is an Alternative Dispute Resolution process provided for in the Agreement.

ISSUE NOS. 87, 88, and 90: GENERAL DUTIES
(Note: Issue No. 89 Covered In Discussion of Next Issue.)
Contract Location: Attachment 3, Sections 3.1.4.1, 3.2.2, 3.2.3
AT&T Position Papers, Pages 18 and 19
GTE's Comments On The Composite Agreement Pages 35-38

DISCUSSION

The issue of contention in these three sections is whether the definition of "structures" or "poles, conduits, or rights-of-way" should be given an expanded meaning to include all possible pathways to the end-user customer such as entrance facilities, manholes, panels, boxes, risers, equipment rooms, closets, cable vaults, and other similar passageways. AT&T in Section 3.1.4.1 takes the position that Sections 224 and 251 of the Act should be read to give it access to all of these pathways no matter how ancillary. In addition, AT&T proposes language in Section 3.2.2 that would enable it to share rights-of-way granted to GTE by third parties, unless there is an expressed restriction contained in the third party easement which would prohibit sharing. Finally, AT&T in Section 3.2.3 would impose on GTE the requirement that GTE consider AT&T's access needs when negotiating with landowners.

GTE takes the position that the FCC in its Order rejected a broad interpretation of the terms "poles, ducts, conduit, or right-of-way." In this regard, GTE points to Paragraph 1185 of the FCC Interconnection Order where the FCC acknowledged that an overly broad interpretation of these terms could impact owners and managers of small buildings, as well as ILECs, by requiring additional resources to effectively control and monitor such rights-of-way located on their properties. GTE goes on to point out that the FCC concluded in Paragraph 1185 of its Order that "[t]he intent of Congress in Section 224(f) was to permit cable operators and telecommunications carriers to 'piggyback' along distribution networks owned or controlled by utilities, as opposed to granting access to every piece of equipment or real property owned or controlled by the utility." GTE goes on to state that "pathways" are not part of the distribution network and rights-of-way used to place GTE's facilities. Rather, they are the linking point between GTE's facilities and the customer's premise equipment and are not always controlled by GTE.

GTE has agreed in Section 2.2.1 that AT&T may collocate its equipment in GTE's central offices, serving wire centers, tandem switches, and at controlled environmental vaults, huts, and cabinets. Given the language in Paragraph 1185 of the FCC Interconnection Order, the Commission rejects AT&T's attempt to expand the meaning of the terms "poles, ducts, conducts, and rights-of-way" to include all possible pathways to the end-user customer such as entrance facilities, panels, boxes, risers, equipment rooms, closets, cable vaults, and other similar passageways. Moreover, the Commission does not see any language in the Act or the FCC Interconnection Order which requires GTE to consider AT&T's needs when negotiating with landowners.

CONCLUSIONS

The Commission rejects AT&T's proposed Sections 3.1.4.1, 3.2.2, and 3.2.3.

<u>ISSUE NO. 89</u>: SHARING RIGHTS-0F-WAY
Contract Location: Attachment 3, Sections 3.7, 3.7.1, 3.7.2
AT&T Position Papers, Not Referenced
GTE's Comments On The Composite Agreement, Pages 40 and 41

DISCUSSION

AT&T proposes language in Section 3.7.1 that would create an affirmative duty on the part of GTE to negotiate with landowners on AT&T's behalf to obtain permission for AT&T to use a right-of-way or to increase the amount of space granted by a landowner to GTE in a right-of-way. AT&T in the last part of Section 3.7.1 seeks to require that GTE shall cooperate with AT&T in obtaining such permission and shall not prevent or delay any third party assignment of rights-of-way to AT&T. In GTE's opinion, there is no reason why AT&T cannot conduct these negotiations on its own behalf. In addition, GTE argues that such a provision requires GTE to act as AT&T's agent without compensation.

By Section 3.7.2, AT&T seeks to require GTE to offer AT&T space in any space that GTE controls through a lease regardless of whether network facilities are housed in the facility. This provision provides as follows:

> Where GTE has any ownership or other rights to ROW to buildings or building complexes, or within building or building complexes, GTE shall offer to AT&T: (a) The right to use any available space owned or controlled by GTE in the building or building complex to install AT&T equipment and facilities; (b) Ingress and egress to such space; and (c) The right to use electrical power at parity with GTE's rights to such power.

According to GTE, this section reaches beyond access to rights-of-way. In addition, GTE cannot grant AT&T the right to use electrical power at parity with GTE as the rights to electrical power are controlled by the landowner. GTE argues that AT&T is attempting to extend collocation rights far beyond what was agreed to in Section 2.2.1.

GTE has agreed in Section 2.2.1 that AT&T may collocate its equipment in GTE's central offices, serving wire centers, tandem switches, and at controlled environmental vaults, huts, and cabinets. Given the language in Paragraph 1185 of the FCC Interconnection Order, the Commission under the preceding discussion for Issue Nos. 87, 88, and 90, has rejected AT&T's attempt to expand the meaning of the terms "poles, ducts, conducts, and rights-of-way" to include all possible pathways to the end-user customer such as entrance facilities, panels, boxes, risers, equipment rooms, closets, cable vaults, and other similar passageways. The same reasoning should be applied to AT&T's proposed language in Sections 3.7, 3.7.1, and 3.7.2.

CONCLUSIONS

The Commission concludes that AT&T's proposed language should not be included in Sections 3.7.1 and 3.7.2.

ISSUE NO. 91: COST OF CAPACITY MODIFICATIONS
Contract Location: Attachment 3, Section 3.6.1
AT&T Position Papers, Page 19
GTE's Comments On The Composite Agreement Pages 38 and 39

DISCUSSION

Both AT&T and GTE agree that AT&T should have to pay for work needed to expand capacity for an AT&T attachment. The question raised in this section, however, deals with how AT&T should be reimbursed if GTE or another entity later decides to make an attachment or occupy the new or expanded conduit. AT&T proposes that GTE collect from the attaching entity (e.g. another CLP) an amount equal to the modification costs attributable to the proportionate use of the attachment by the attaching entity. GTE would then pass that reimbursement back to AT&T. It is GTE's position, on the other hand, that it should not be the middleman; hence, AT&T should have the responsibility to collect from the entity connecting/utilizing the new expansion.

Both parties agree that AT&T should be reimbursed for the cost it pays for an expansion when subsequently another entity utilizes a portion of the expansion. In this regard, the FCC Order at Paragraph 1214 provides that the party paying for the modifications will be allowed to recover a proportionate share of the modification costs from parties that later are able to obtain access as a result of the modification. The parties disagree over which party the FCC and the Act require to collect such fees.

CONCLUSIONS

The Commission concludes that GTE be required to collect from the attaching party then pass the reimbursement back to AT&T. The reasoning for this is that all parties wishing to attach to the new capacity addition must first go to GTE for the attachment. GTE is in the best position to collect the reimbursement from these new attachees and pass this reimbursement along to AT&T.

ISSUE NOS. 92 AND 93: GTE ESCORTS
Contract Location: Attachment 3, Sections 3.6.2 and 3.6.3
AT&T's Position Papers, Page 20
GTE's Comments On The Composite Agreement, Pages 39 and 40

DISCUSSION

GTE is proposing language which states that where required by GTE, GTE shall provide AT&T designated personnel with an escort service at AT&T's expense when AT&T is breaking out of GTE's conduit or breaking out of GTE's manholes or making manhole interconnections. GTE argues that it is standard GTE practice to have an escort on site when a company is working in GTE's conduits or manholes to ensure structural integrity and to ensure that the network remains reliable. In addition, GTE asserts that failure to obtain necessary approvals or to adhere to any local guidelines and regulations before entering a manhole can affect GTE's ability to obtain timely approvals for work activities from municipalities in the future since as the owner of the manhole, the municipality faults GTE for noncompliance by others.

AT&T's proposed language states that prior to the start of work, the parties will discuss the manner in which the work will be performed, and AT&T will address GTE's reasonable requirements for ensuring the integrity of the conduit or manhole and for preventing service interruptions. AT&T asserts that GTE's proposed language does not contain any limitations on when an escort may be required or on how much will be charged to AT&T for the escort. AT&T argues that imposing

escort costs runs counter to the principle of establishing cost parity between ILECs and CLPs. Finally, AT&T points out that it has agreed to indemnify GTE for any damages caused by negligent conduct in the Agreement.

In the Commission's RAO (Finding of Fact No. 16), the Commission concluded that GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits to AT&T on terms and conditions equal to that GTE provides itself. The Commission further directed the parties to meet and formulate guidelines to be followed in handling requests by CLPs for access to GTE's rights-of-way, poles, ducts, and conduits with a report to be filed with the Commission by April 1, 1997, detailing the results of their meetings and the guidelines that have to be formulated.

The Commission believes that GTE's proposal concerning escorts when AT&T is ***breaking out*** of GTE's conduit or ***breaking out*** of GTE's manholes or making manhole interconnections is reasonable and appropriate. GTE's proposed language in Sections 3.6.2 and 3.6.3 is specific and relates only to escorts when AT&T is breaking out of GTE's conduits or breaking out of GTE's manholes or making manhole interconnections. Issue No. 85 also addresses escorts, however, in a general manner. Finally, the Commission notes that the BellSouth/AT&T interconnection agreement (Docket No. P-140, Sub 50, Paragraph 3.5.5.2) has language similar to GTE's proposed language in this docket concerning the monitoring of AT&T while working in BellSouth's manholes at AT&T's expense.

CONCLUSIONS

The Commission concludes that GTE's proposed language for Sections 3.6.2 and 3.6.3 should be adopted.

<u>ISSUE NO. 94</u>: DEFAULT
Contract Location: Attachment 3, Section 3.14.1
AT&T's Position Papers, Page 20
GTE's Comments On The Composite Agreement, Page 41

DISCUSSION

GTE is proposing to add two additional items to what constitutes a Material Default by AT&T related to (1) failure by Licensee to pay any fee or other sum required to be paid under the terms of the Agreement and (2) failure by Licensee to perform or observe any other term, condition, covenant, obligation, or provision of the Agreement. AT&T believes GTE's proposed language would permit GTE to unilaterally terminate the Interconnection Agreement based upon GTE's subjective determination that AT&T is in default on a payment and that GTE should be required to first submit any dispute to the alternative dispute resolution procedures (Attachment 1 of the Agreement). GTE states it has no objection to submitting for arbitration the issue of whether AT&T has, in fact, committed a Material Default under the Agreement in Section 3.3. However, GTE argues that AT&T's refusal to pay or perform under the terms of this Attachment should not leave GTE without a remedy; and therefore, GTE should be permitted to declare AT&T in default.

CONCLUSIONS

The Commission concludes this issue is not subject to resolution and recognizes that the parties already have in place a means of settling disputes through the Alternative Dispute Resolution.

ISSUE NO. 95: 911 REQUIREMENTS FOR INTERIM NUMBER PORTABILITY
Contract Location: Attachment 8, Section 3.7
AT&T Position Papers, Page 21
GTE's Comments On The Composite Agreement, Page 41

DISCUSSION

As GTE is not currently transferring emergency numbers to AT&T, a verification procedure will need to be put in place to verify that the numbers reaching AT&T's database are correct. According to GTE, this procedure will only become necessary as a result of AT&T demanding such numbers. The issue raised, however, is what are the reasonable costs associated with this verification service. GTE takes the position that to the extent it incurs costs in the development of the verification service, for enhancements or features beyond those which currently reside in its network, GTE shall recover such incremental costs in a manner that is competitively neutral and otherwise consistent with Section 252 of the Act. GTE proposes to track the costs it incurs and proposes rates for this service that are based on those costs, to be submitted with appropriate documentation, for review and approval by the Commission.

It is AT&T's position that it is GTE's responsibility as database administrator to input data into the database and to do so accurately. AT&T, therefore, views this as a parity issue and that GTE must provide quality of service to AT&T at least equal to that it provides, itself, although it may charge extra if AT&T demands superior service. In demanding a verification fee, GTE is saying that it otherwise would not provide as accurate database information to AT&T as it does to itself. Consequently, AT&T argues that GTE's demand for a verification fee should be rejected as unreasonable and contrary to the principle of parity.

The Commission concluded in the Evidence and Conclusions for Finding of Fact No. 17 in its RAO that the parties should explore appropriate cost-recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefiting users share the burden and negotiate the appropriate cost-recovery mechanism. At this point, the Commission does not believe that the parties have adequately explored whether verification is necessary, and if so, what costs are associated with the implementation and development of this interim portability solution.

CONCLUSIONS

The Commission directs the parties to explore further whether verification will be needed for 911 interim number portability and to determine the reasonable costs associated with such verification and how it should be shared.

ISSUE NO. 96: REVENUE PROTECTION
Contract Location: Attachment 9, Section 2.1
AT&T's Position Papers, Page 21
GTE's Comments On The Composite Agreement, Pages 41-43

DISCUSSION

According to GTE, the unacceptable word in AT&T's proposed last sentence in Section 2.1 is the word "access". GTE argues that if AT&T is granted "access" to the systems used to detect and prevent fraud, over 20 other systems could be compromised from a network security aspect. GTE argues that these systems contain proprietary information on GTE customers for all of which GTE is accountable. GTE states that it is willing to provide AT&T with the same information generated by GTE's fraud and revenue protection features that the parties have cooperatively exchanged for the last quarter century.

AT&T's proposed language provides that GTE shall provide access to fraud prevention, detection, and control functionality within pertinent operations support systems provided, however, that such access will only be provided *to those systems which GTE provides to itself.* AT&T argues that its proposed language would allow it to provide its customers with services which are at parity with GTE services and which are protected from fraud regardless of who has initiated the fraud. AT&T points out that GTE has agreed to the language it proposed in previous filings for Michigan and Hawaii.

CONCLUSIONS

The Commission concludes that, due to the lack of evidentiary information and data, it is unable to arbitrate this issue.

ISSUE NO. 97: REVENUE PROTECTION
Contract Location: Attachment 9, Section 2.2
AT&T's Position Papers, Page 21
GTE's Comments On The Composite Agreement, Pages 43 and 44

DISCUSSION

Section 2.2 addresses the responsibility of uncollectible or unbillable revenues resulting from provisioning, maintenance, or signal network routing errors. GTE proposes language which states that if AT&T has uncollectible or unbillable revenues resulting from provisioning, maintenance, or signal network routing errors which are the responsibility of GTE, GTE shall issue AT&T a credit for the monthly recurring charge or other charges for the underlying local service or network element on a pro-rata basis for the period of time during which the error occurred. AT&T proposes language which states that the party causing such uncollectible or unbillable revenues shall be responsible. AT&T argues that GTE's language limits its liability to an insignificant amount of damages based upon the charges for the service during the period of error regardless of the actual damages suffered by AT&T or its customers. GTE argues that its language explicitly limits GTE's liability to that which GTE would pay under the appropriate tariff to a customer.

On Page 17 of the RAO, the Commission specifically addressed the issue of GTE's liability for errors that lead to unbillable or uncollectible revenues. The Commission reached the following conclusion:

> "The Commission declines to enact specific standards governing liability by GTE 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."

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as beyond the scope of this proceeding and not subject to resolution. The Commission continues to decline to enact specific standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO, wherein the Evidence and Conclusions for Finding of Fact No. 4 stated that the Commission "...declines to enact specific standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues."

<u>ISSUE NO. 98</u>: REVENUE PROTECTION
Contract Location: Attachment 9, Section 2.3
AT&T's Position Papers, Page 21
GTE's Comments On The Composite Agreement, Pages 43 and 44

DISCUSSION

Section 2.3 addresses the responsibility of uncollectible or unbillable revenues resulting from work errors or software alterations. GTE proposes language which states that if AT&T has uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties for which GTE has administrative control of access to these systems, GTE shall issue AT&T a credit for the monthly recurring charge or other charges on a pro-rata basis for the period of time during which the alteration occurred. AT&T proposes language which states that uncollectible or unbillable revenues resulting from work errors or software alterations shall be the responsibility of GTE only where it has direct control over the work or software alterations. AT&T argues that GTE's language limits its liability to an insignificant amount of damages based upon the charges for the service during the period of error regardless of the actual damages suffered by AT&T or its customers. GTE argues that its language explicitly limits GTE's liability to that which GTE would pay under the appropriate tariff to a customer.

On Page 17 of the RAO, the Commission specifically addressed the issue of GTE's liability for errors that lead to unbillable or uncollectible revenues. The Commission reached the following conclusion:

> "The Commission declines to enact specific standards governing liability by GTE 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."

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as beyond the scope of this proceeding and not subject to resolution. The Commission continues to decline to enact specific standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO, wherein the Evidence and Conclusions for Finding of Fact No. 4 stated that the Commission "...declines to enact specific standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues."

ISSUE NO. 99: REVENUE PROTECTION
Contract Location: Attachment 9, Section 2.4
AT&T's Position Papers, Page 21
GTE's Comments On The Composite Agreement, Pages 43 and 44

DISCUSSION

Section 2.4 addresses the responsibility of uncollectible or unbillable revenues resulting from unauthorized physical attachment to loop facilities (under GTE's responsibility or control) from the Main Distribution Frame up to and including the Network Interface Device (NID), including clip on fraud. GTE proposes language which states that if AT&T has uncollectible or unbillable revenues resulting from unauthorized physical attachment to loop facilities, GTE shall issue AT&T a credit for the monthly recurring charge or other charges on a pro-rata basis for the period of time during which the unauthorized attachment occurred. AT&T proposes language which states that the party that holds legal title to, and the rights to maintain and control the physical integrity of, local loop facilities which are used by the other party to provide services to its customers, shall be responsible to such other party for any uncollectible or unbillable revenues resulting from the unauthorized physical attachment to such local loop facilities. AT&T argues that GTE's language limits its liability to an insignificant amount of damages. GTE argues that its language explicitly limits GTE's liability to that which GTE would pay under the appropriate tariff to a customer.

On Page 17 of the RAO, the Commission specifically addressed the issue of GTE's liability for errors that lead to unbillable or uncollectible revenues. The Commission reached the following conclusion:

> "The Commission declines to enact specific standards governing liability by GTE 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."

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as beyond the scope of this proceeding and not subject to resolution. The Commission continues to decline to enact specific

standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO, wherein the Evidence and Conclusions for Finding of Fact No. 4 stated that the Commission "...declines to enact specific standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues."

ISSUE NO. 100: INTERCONNECTION
Contract Location: Attachment 11, Page 6
AT&T's Position Papers, Page 22
GTE's Comments On The Composite Agreement, Page 44

DISCUSSION

Attachment 11 is a glossary of definitions related to the agreement. The specific definition which AT&T desires to include is as follows:

> *AT&T proposal to which GTE has not agreed:* **"'Interconnection' is as described in the Act and refers to the connection of separate pieces of equipment, facilities or platforms between or within networks for the purpose of transmission and routing of Telephone Exchange Service traffic and Exchange Access."**

AT&T stated that it proposed the definition used in the Telecommunications Act while GTE wanted to limit interconnection to "between" networks and would in so doing limit AT&T's ability to interconnect "within" GTE's network using UNEs (Unbundled Network Elements), collocation, ROW (Right-of-Way) and other such items.

GTE contended that the use of the words "within networks" is incorrect and that interconnection is between networks. GTE argued that AT&T does not cite any particular provision of the Act and that, in fact, the Act does not specifically define "interconnection". GTE remarked that "Section 251(c)(2) clearly states that the duty of interconnection is the duty to provide interconnection of a requesting telecommunication carrier's equipment and facilities 'with the local exchange carrier's network' [and] in no place does the Act require GTE to provide 'interconnection' within a network."

Section 251(c)(2) of the Act reads as follows: "Interconnection: The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network — . . .", while Section 251(c)(2)(B) of the Act provides as follows: ". . . at any technically feasible point within the carrier's network." Further, Section 251(c)(2)(C) of the Act provides that the interconnection is to be ". . . at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection . . . ."

CONCLUSIONS

The Commission concludes that the positions of both arbitrating parties should be rejected because neither party's position is entirely consistent with applicable provisions of the Act.

ISSUE NO. 101: WORK LOCATIONS
Contract Location: Attachment 11, Page 11
AT&T's Position Papers, Page 22
GTE's Comments On The Composite Agreement, Page 45

DISCUSSION

As previously indicated, Attachment 11 is a glossary of definitions related to the agreement. The language here in dispute relates to Work Locations. The specific language proposed by GTE to which the arbitrating parties cannot agree is double underlined in the quote presented below. AT&T's proposed language is presented in the quote below in all upper case bold face type:

> "'**Work Locations**' means any real estate that either party **GTE** owns, leases or licenses or in which it holds easements or other rights to use, or does use, for the purpose of providing Telecommunications Services in connection with this Agreement."

AT&T's proposed definition would have the effect of limiting the term to only apply to GTE-owned property whereas GTE's proposal would have the term include both GTE-owned and AT&T-owned property. AT&T in its comments argued as follows:

> "GTE attempts to make certain provisions of the Agreement reciprocal by defining the term to include real property owned by either Party. GTE's expansion of the term to include AT&T-owned property is insupportable. For example, in Section 7, both Parties agree to abide by the applicable laws as defined in the Agreement as they relate to "work locations". It makes no sense, however, that AT&T would be making such a representation with relation to real property AT&T owns, as it is very unlikely that GTE will be using AT&T real property to provide the services GTE is to provide to AT&T. Moreover, GTE's definition would limit a "work location" to only real property which GTE has the right to use or does use for the purpose of providing telecommunications services. Again, this limitation is unduly narrow and may exclude property that AT&T will be properly entitled to access for the purpose of obtaining services under the Agreement. AT&T's proposed language, which places the appropriate emphasis on GTE's obligations to provide services under the Agreement, should be approved."

GTE in its comments argued:

> ". . . that in order to properly conform to the context in which this term is used, the term 'Work Locations' should also include real estate owned, leased or licensed by AT&T and should be limited to such real estate that is used for the purposes of providing telecommunications services. All local exchange carriers have obligations under the Act, and AT&T must be held accountable for its obligations just as incumbent LECs are responsible for their obligations.
>
> "The term 'Work Locations' should also include AT&T's real estate since it is very possible that AT&T property will be used to provide services under this

document. Thus, the compliance with law provision (Section 7) and environmental contamination provisions (Section 8) where the term 'Work Locations' is used should apply to either party's real estate."

CONCLUSIONS

The Commission concludes that GTE's position in this regard should be adopted.

ISSUE NO. 102: SERVED PREMISES
Contract Location: Attachment 11, Page 9
AT&T's Position Papers Do Not Appear To Address This Issue
GTE's Comments On The Composite Agreement, Pages 44 and 45

DISCUSSION

As previously indicated, Attachment 11 is a glossary of definitions related to the agreement. The language here in dispute relates to "served premises". The specific language proposed by GTE to which the arbitrating parties cannot agree is double underlined in the quote presented below. AT&T's proposed language is presented in the quote below in bold face type:

"'**Served Premises**' means collectively, **the AT&T designated** locations for **to** which AT&T orders Network Elements, Ancillary Functions or Combinations."

In its comments GTE argued as follows:

"GTE's proposed definition of 'Served Premises' is more accurate because GTE defines 'Served Premises' in a manner that includes each location where AT&T has ordered Network Elements, Ancillary Functions or Combinations. AT&T's proposed language would allow AT&T to 'designate' (i.e., pick and choose) which of the locations for which it has ordered Network Elements, Ancillary Functions or Combinations which it wants to have considered 'Served Premises'. Each of the locations for which AT&T has ordered Network Elements, Ancillary Functions or Combinations must be considered 'Served Premises'; not just those locations which AT&T wishes to designate as a Served Premises.

As indicated above, AT&T does not appear to have commented on this issue.

CONCLUSIONS

The Commission concludes that it is unable to arbitrate this issue due to inadequate evidentiary information and data.

ISSUE NOS. 103 AND 104: LOCAL SERVICE RESALE AND SUMMARY OF WHOLESALE CHARGES
Contract Location: Appendix 1 and Annexes 1 and 2 of Attachment 14
AT&T's Position Papers, Pages 22 and 23
GTE's Comments On The Composite Agreement, Pages 45 and 46

DISCUSSION

In Appendix 1 of Attachment 14, GTE proposes to define the term "Retail Offering" to include only **tariff** retail rate offerings, while AT&T proposes to define that term to include both **contract or** retail rate offerings. These same proposals are carried forward by both GTE and AT&T into Annexes 1 and 2 of Attachment 14. In addition, GTE proposes language in Appendix 1 stating that a nonrecurring **Initial Service Order Charge, per Order** shall apply for the conversion of existing customers of GTE services to AT&T local service. AT&T proposes alternative language stating that a nonrecurring **change or record charge, rather than service establishment charges,** would apply for the conversion of existing customers of GTE services to AT&T local service. GTE takes the position that in a resale context, that an Initial Service Order Charge is the proper charge for the conversion of existing GTE customers to AT&T service. According to GTE, an Initial Service Order Charge reflects costs associated with transferring a customer in the resale context, including the following elements required for conversion: install orders, summary bill master orders, disconnect orders, telephone number assignment, completion/displacement notification, permanent non-treatment, billing inquiries, and local service provider verification. GTE takes the position that AT&T's "change" or "record" charge is unclear as to meaning and is subject to alternative interpretations and disputes. For instance, GTE states that AT&T's proposed language could be interpreted to mean the Transfer of Service Charge which is appropriate only in the unbundled network element (UNE) context. GTE states that a Transfer of Service Charge reflects only the costs of a change order such as pertains to the unbundling of a particular loop or port and that such a charge is completely inappropriate in the context of the disputed paragraph. GTE asserts that, in order to resolve any future disputes, its proposed language should be adopted. AT&T takes the position that GTE is now proposing to revise language previously agreed to by the parties and that GTE is now attempting to apply retail service establishment charges to AT&T to convert GTE local customers to AT&T. According to AT&T, these charges are not cost based and are typically significantly higher than "change or record charges." AT&T states that, in a local service resale environment, the local service is simply being transferred, requiring a record change, as opposed to being newly established. AT&T takes the position that GTE's language, if adopted, would create a significant competitive disadvantage to new entrants and that it is anticompetitive, contrary to the previous agreement between the parties, and without basis in the RAO.

Finding of Fact No. 1 of the RAO states that, with certain exceptions, GTE is obligated to offer for resale at wholesale rates any telecommunications services that it provides at retail to subscribers who are not telecommunications carriers. This resale requirement includes contract service arrangements (CSAs).

CONCLUSIONS

With respect to the first issue raised by GTE and AT&T, the Commission finds good cause to require the parties to include references to both **contract service arrangements** and **tariff** rates, charges, or services in Section 1.2 of Appendix 1 and at the contested location in Annex 2 of Appendix 1. Section 1.2 should be revised to define the term "Retail Offering" as "an individual contract service arrangement or tariff retail rate element..." The introductory sentence to Annex 2 of Appendix 1 should be revised to read as follows: "This Annex refers to contract service arrangements and tariffed charges." The change to Annex 1 of Appendix 1 proposed by GTE to include the word "Tariffed" should be included in the final Agreement. These decisions should satisfy

the concerns expressed by both parties and will serve to more clearly delineate those types of services to which the wholesale rates apply. Further, the Commission hereby approves, for the reasons generally given by GTE, the position advocated by GTE regarding the nature of the nonrecurring charge which should apply for the conversion of existing GTE customers to AT&T local service. GTE's current tariffs use the term "Primary Service Order Charge," rather than "Initial Service Order Charge," to designate the charge which applies to both new requests for service and transfers of service. That being the case, the Agreement should be revised, in Section 2 of Appendix 1 and elsewhere in the Agreement as appropriate, to utilize the term "Primary Service Order Charge" rather than "Initial Service Order Charge." GTE also correctly points out in its comments that this issue involves resold services, not the resale of unbundled elements, and that the Primary Service Order Charge is clearly the appropriate charge to be applied in the context of resold services for the transfer of existing GTE customers to AT&T local service.

ISSUE NO. 105: LOCAL SERVICE RESALE
Contract Location: Attachment 14, Appendix 1
AT&T's Position Papers, Pages 22 and 23
GTE's Comments On The Composite Agreement, Pages 45 and 46

DISCUSSION

GTE proposes language to reference the charge for the conversion of existing customers of GTE services to AT&T local service as a nonrecurring "Initial Service Order Charge, per Order." AT&T refers to the charge as "change" or "record" charge rather than service establishment charges.

This exact issue is discussed previously in Issue Nos. 103 and 104.

CONCLUSIONS

The Commission adopts the conclusions presented in Issue Nos. 103 and 104.

ISSUE NO. 106: PRICES FOR TRUNKING INTERCONNECTION
Contract Location: Attachment 14, Appendix 6, Page 16
AT&T's Position Papers, Page 23
GTE's Comments On The Composite Agreement, Page 46

DISCUSSION

This issue concerns AT&T's proposal that GTE's interstate Tariffed Rates for Dedicated Transport also be established as Dedicated Transport rates for AT&T. In this regard, AT&T in its comments stated as follows:

> "GTE is proposing to delete references to AT&T Dedicated Transport rates. However, there may be circumstances when it will be appropriate for AT&T to charge GTE for transport applicable to trunking interconnection. Further, GTE implies that even if it were appropriate for AT&T to charge GTE for transport, that different rates should be charged to GTE than GTE charges AT&T. However, the prices for reciprocal compensation have typically been set at one rate such that one

party is not advantaged or disadvantaged over the other. GTE's proposed language is contrary to this approach."

GTE commented as follows:

"With regard to Dedicated Transport Rates, GTE disputes AT&T's attempt to use GTE's interstate Tariffed Rates for AT&T Dedicated Transport. The Act requires AT&T to develop its own rates based on AT&T's costs, not GTE's. As a separate company, AT&T will incur separate costs and, thus, the requirement that the rate reflect such costs. As the proposed language now stands, the rate for AT&T Dedicated Transport inappropriately reflects GTE's costs. The proposed language should be modified to reflect a rate based on the appropriate AT&T costs."

CONCLUSIONS

The Commission concludes that, due to the lack of evidentiary information and data, it is unable to arbitrate this issue.

ISSUE NO. 107: RIGHTS-OF-WAY, CONDUITS, DUCTS, AND POLE ATTACHMENTS
Contract Location: Attachment 14, Appendix 8
AT&T's Position Papers, Page 23
GTE's Comments On The Composite Agreement, Pages 46 and 47

DISCUSSION

In Appendix 8, the parties disagree on the cost allocation of costs associated with situations in which AT&T requests GTE to identify a route in GTE's network to be used by AT&T, however, GTE subsequently determines that the route is not available. GTE's proposed language states that AT&T agrees to cooperate jointly with GTE to verify and confirm that a requested route is available. Where AT&T has verified and confirmed that the requested route is available and subsequently it is determined (by GTE) that a portion of the route is not available, the parties shall bear the costs equally of all make-ready work performed on the route up to the time of discovery of its unavailability. GTE views its proposed language as an obligation for AT&T to cooperate with GTE in providing AT&T's routing needs and requirements. GTE sees the language as necessary to hold AT&T to some level of accountability. Finally, GTE views the proposal to share these costs as reasonable given that they could argue that AT&T should be entirely responsible for these costs, especially in light of AT&T's confirmation that the route would be suitable. AT&T proposes language which states that if GTE advises AT&T that a route is available and subsequently it is determined that a portion of the route is not available, then AT&T will not be required to pay for any work performed by GTE with respect to the route and any prepaid amounts will be refunded to AT&T. AT&T asserts that all of the procedures and information with regard to route availability are under the control of GTE and that GTE's proposal seeks to put the burden upon AT&T of determining if a route is available.

The Commission notes that throughout the RAO, the Commission concluded that cost recovery of various services should be further negotiated so that all benefiting users share the burden.

CONCLUSIONS

The Commission concludes that AT&T should be required to pay for make-ready work performed on a route up to the time of discovery of its unavailability. The Commission also concludes that charges to AT&T by GTE for this make-ready work be determined and administered in a manner consistent with the cost-recovery provisions set forth herein with respect to the Commission's conclusions regarding Issue No. 10.

ISSUE NO. 108: RECIPROCAL COMPENSATION
Contract Location: Attachment 15
AT&T's Position Papers, Page 24
GTE's Comments On The Composite Agreement, Page 48

DISCUSSION

Attachment 15 considers how the flow of calls between the parties will be handled for reciprocal compensation purposes. In Attachment 15, AT&T is requesting that the phrase "if such charges are required by the Commission" be included to several charges. AT&T asserts that GTE is attempting to include access charges and other surcharges in the compensation in addition to that ordered by the Commission. AT&T references Pages 63-65 of the RAO which states that access charges are not an issue subject to arbitration in this proceeding. The Commission's RAO references the price of access charges, not the application of those access charges as is the issue here.

GTE is more specific and states that the disagreement is over the application of the Residual Interconnection Charges (RIC) on the interstate side, as well as the Carrier Common Line (CCL) charge. GTE asserts these charges are not included in the unbundled switching element charge, and GTE should be permitted to bill these rate elements in connection with intrastate and interstate toll calls where the GTE unbundled switch is used.

The Commission finds that it is premature to address this issue until more is known about access reform and universal service.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution through arbitration.

ISSUE NO. 109: COOPERATION ON FRAUD MINIMIZATION
Contract Location: Section 12.2

DISCUSSION

Section 12.2 of the Agreement contains language regarding cooperation on fraud minimization which has been negotiated and agreed to by the parties. The last sentence of this contractual provision reads as follows:

> "...Although in most circumstances the end user's current telephone number may be retained by the end user when switching local service providers, if an end user has

past due charges associated with the account, for which payment arrangements have not been made with one Party, the end user's previous telephone number will not be made available to the other Party until the end user's outstanding balance has been paid."

The Commission has recently entered Orders in Docket Nos. P-19, Subs 286, 287, 288, and 289 and P-141, Sub 30, approving negotiated interconnection agreements on the condition that the affected parties, including GTE, had agreed to voluntarily remove the above-quoted provision from those agreements. In so ruling, the Commission announced that it would soon initiate a rulemaking proceeding to examine the issues raised by the contested provision. That investigation was initiated by Order dated June 17, 1997, in Docket No. P-100, Sub 133.

CONCLUSIONS

The Commission, on its own motion, finds good cause to delete the above-quoted language from Section 12.2 of the GTE/AT&T Agreement in order to be consistent with actions previously taken in prior GTE dockets. The remainder of Section 12.2 will remain unchanged and may be included in the final agreement. The issues raised by the contested language will be subject to consideration in the generic rulemaking proceeding.

ISSUE NO. 110: EXECUTION OF INTERCONNECTION AGREEMENT
GTE's Comments On The Composite Agreement, Page 4

DISCUSSION

GTE contends that, if the Commission approves the Interconnection Agreement, the Commission should not order GTE to execute it. Section 252(e)(1) of TA96 only requires that an agreement adopted by arbitration be submitted for approval. There is no execution requirement.

AT&T did not address this issue.

The Commission views the execution of the Interconnection Agreement as integral to its approval and inseparable from it. Black's Law Dictionary (Revised Fourth Edition) defines "execute" as "[t]o complete; to make; to perform; to do; to follow out." Although GTE may disagree with many of the results of the arbitration, it is nevertheless obliged to carry them out and to so signify by appending its signature to the Interconnection Agreement. This is, of course, without prejudice to GTE's rights to appeal concerning any or all of its provisions.

CONCLUSIONS

The Commission concludes that GTE should execute the interconnection agreement.

IT IS, THEREFORE, ORDERED as follows:

1. That the Composite Agreement submitted by GTE and AT&T is hereby approved, subject to the modifications required by this Order.

2. That GTE and AT&T shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

3. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of July, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Duncan dissents with respect to Issue No. 1 in the Comments/Objections section of this Order regarding the issue of resale of contract service arrangements (CSAs). Rather than affirming the original decision on CSA resale as set forth in the Recommended Arbitration Order in this proceeding, Commissioner Duncan would adopt the decision reached by the Commission in the BellSouth/AT&T and BellSouth/MCI arbitration proceedings in Docket Nos. P-140, Sub 50 and P-141, Sub 29 that CSAs entered into before April 15, 1997, are subject to resale at no discount, while CSAs entered into after that date are subject to resale with the discount.

DOCKET NO. P-141, SUB 29

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of MCI Telecommunications Corporation	)	ORDER RULING ON
For Arbitration of Interconnection with BellSouth	)	OBJECTIONS, COMMENTS,
Telecommunications, Inc.	)	UNRESOLVED ISSUES, AND
	)	COMPOSITE AGREEMENT

BY THE COMMISSION: On December 23, 1996, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by MCI Telecommunications, Inc. (MCI) against BellSouth Telecommunications, Inc. (BellSouth). The RAO required MCI and BellSouth to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On January 22, 1997, MCI filed certain objections to the RAO. BellSouth filed its objections to the RAO on January 23, 1997. Comments regarding the MCI/BellSouth RAO were filed on January 22, 1997, by the Attorney General, Sprint Communications Company L.P. (Sprint), Carolina Telephone and Telegraph Company (Carolina), and Central Telephone Company (Central). The Carolina Utility Customers Association, Inc. (CUCA) filed comments on January 23, 1997. On

February 7, 1997, MCI and BellSouth filed their Composite Agreement and a Joint List of Unresolved Issues for consideration by the Commission.

WHEREUPON, after carefully considering the objections, comments, and joint list of unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended as set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

ISSUES RELATED TO COMMENTS/OBJECTIONS

ISSUE NO. 1: What services provided by BellSouth should be excluded from resale?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth is obligated to offer at resale at wholesale rates any telecommunications services it provides at retail to subscribers who are not telecommunications carriers, with certain exceptions, notably those related to cross-class resale, grandfathered or obsolete services, N11, and promotions of under 90 days. With respect to contract service arrangements (CSAs), the Commission found these to be retail services subject to resale.

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth objected to the application of wholesale discounts to CSAs, although BellSouth did not object to the finding that CSAs are retail services subject to resale. The gist of BellSouth's argument was that a requirement to resell CSAs at a wholesale discount would put BellSouth under a permanent competitive handicap whereby it would never beat the competitor's price. BellSouth cited Georgia and Kentucky decisions mandating resale but without the discount and a Louisiana decision concluding that existing CSAs will not be subject to resale while future CSAs will be subject to resale at no discount.

DISCUSSION

The Commission decision cited Paragraph 948 of the Federal Communications Commission's (FCC's) First Report and Order in CC Docket Nos. 96-98 and 95-185 issued on August 8, 1996 (the Interconnection Order), which construed Section 251(c)(4) of the Telecommunications Act of 1996 (TA96 or the Act) as having created no exceptions for promotional or discounted offerings, "including contract and other customer-specific offerings." The FCC reasoned that a "contrary result would permit incumbent LECs to avoid the statutory resale obligation by shifting customers to nonstandard offerings, thereby eviscerating the resale provisions of the 1996 Act."

The fundamental conflict is that BellSouth contends that it would be permanently disadvantaged if it has to offer CSAs for resale at a discount while the FCC has expressed concern that, to do otherwise, would permit shifting of customers to nonstandard offerings, thus undercutting the intent of TA96. It would also put competitors at an extreme disadvantage.

This conflict has the appearance of a true conundrum. On the one hand, it is a colorable argument that, if BellSouth is compelled to offer all CSAs with the discount, it might be permanently

"locked out" from offering CSAs directly to end users. On the other hand, it is also colorable that, if BellSouth does not have to offer the discount, the competitor might be permanently "locked out" from resale of CSAs because there will be no discount margin on which it can compete. Thus, in terms of pure price relative to the CSAs, there appear to be two equally distasteful alternatives.

To resolve this impasse, the Commission believes that it is reasonable to require that CSAs entered into before April 15, 1997, should be subject to resale, but not at a discount, while CSAs entered into after that date will be subject to resale with the discount. The Commission believes it is unreasonable to require the "old" CSAs to be subject to the discount because they were entered into before BellSouth had any notion as to a resale requirement, and they are commonly discounted already. Applying the discount to "new" CSAs only will allow BellSouth the opportunity to adjust its pricing accordingly. At the same time, the "old" CSAs will not be absolutely sheltered from competition, because the competing local provider (CLP) can seek to compete by other means than pure price as, for example, by bundling additional services or offering a higher quality of service. Of course, the resale of CSAs is limited to the specific end user for whom the CSA was constructed and may not be sold to the public-at-large.

CONCLUSIONS

The Commission concludes that CSAs entered into by BellSouth before April 15, 1997, shall be subject to resale at no discount, while BellSouth CSAs entered into after that date shall be subject to resale with the discount.

ISSUE NO. 2: What are the appropriate standards, if any, for performance metrics, service restoration, and quality assurance related to services provided by BellSouth and for network elements provided to CLPs by BellSouth?

INITIAL COMMISSION DECISION

The Commission declined to enact specific performance standards and instructed the parties to negotiate mutually agreeable terms.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission decision and emphasized that BellSouth must provide nondiscriminatory service, and stated that in the absence of specific performance standards, BellSouth would have no incentive to provide equal quality of service and could create competitive barriers in the marketplace by providing inferior service to MCI.

SPRINT: Sprint also objected and emphasized that specific performance standards are necessary for parity. Sprint urged the Commission to require BellSouth to indemnify the CLP for any forfeitures or civil penalties by a BellSouth failure to meet service quality standards.

DISCUSSION

The Commission view was that it was neither appropriate nor practical for it to enact specific performance standards. The Commission viewed the parties as possessing superior expertise in this area.

The Commission continues to believe that it would be a mistake to impose performance standards on the incumbent local exchange company (incumbent LEC or ILEC) at this time for the reasons stated in the RAO and that this constitutes a resolution of the issue within the meaning of TA96.

The Commission notes that the ILECs are expected to provide service to competitors that is at least equal to the service it provides itself.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 3: 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?**

INITIAL COMMISSION DECISION

The Commission concluded that 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. Additionally, the Commission found that the electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission's failure to set a date certain by which BellSouth is required to provide such interfaces. MCI remarked that the term "promptly" as used in the RAO is a nebulous term. MCI stated that a reasonable date is April 1, 1997. Further, MCI stated that if BellSouth does not meet that deadline, then BellSouth should be required to specify the impediments it faces; outline its plans for developing the required electronic bonding; identify the date by which deployment of such systems will be possible; and detail the interim systems it plans to implement in the absence of electronic bonding.

CUCA: CUCA urged the Commission to establish a relatively near-term date by which BellSouth must provide MCI with real-time, interactive interfaces to the unbundled network elements necessary for the proper performance of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. CUCA stated that the Commission should adopt the initial proposal advanced by the Attorney General— i.e., the Commission should require that a firm plan to implement automated interfacing 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 and that if the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

DISCUSSION

The Commission understood that the FCC Interconnection Order stated that nondiscriminatory access to the operations support systems functions should be provided no later than January 1, 1997.

The Commission view was that the requested electronic interfaces will indeed have to be provided and that they preferably should be uniform, industry-developed interfaces. Rather than establishing a specific date other than the FCC's provision, the Commission recognized that the electronic interfaces would likely not be developed by January 1, 1997, and simply found that the interfaces should be provided promptly through the development of uniform, industry-wide standards.

CONCLUSIONS

The Commission hereby affirms its original decision on this issue, but will require the parties to file a report not later than July 31, 1997, setting forth the status of their progress toward the accomplishment of electronic bonding through the development of uniform, industry-wide standards.

ISSUE NO. 4: Must BellSouth route calls for operator services and directory assistance services (OS/DA) directly to MCI's platform?

INITIAL COMMISSION DECISION

The Commission declined to require BellSouth to provide customized routing at this time, saying it is not technically feasible, and encouraged the parties to continue working to develop a long-term, industry-wide solution to technical feasibility problems.

COMMENTS/OBJECTIONS

MCI: MCI pointed out that Finding of Fact No. 5 of the RAO fails to meet the requirements of Section 251 of TA96. Further, the FCC Interconnection Order requires customized routing in each BellSouth switch unless BellSouth establishes by clear and convincing evidence that customized routing is not technically feasible. MCI stated that at least 30% of BellSouth's switches are fully capable of providing customized routing. MCI also cited rulings by the Tennessee, Georgia, and Florida Commissions finding customized routing to be technically feasible through the use of line class codes (LCCs). MCI urged the Commission to consider the logic employed by these three state

commissions and the FCC. Customized routing is technically feasible and is necessary to ensure that MCI and BellSouth compete on an equal playing field.

SPRINT: Sprint also argued that the Commission erred in declining to require customized routing and cited Section 251(c)(2) of the Act, which imposes on the incumbent LEC the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point with the carrier's network.

CUCA: CUCA argued that providing customized routing through the use of LCCs and the advanced intelligent network (AIN) is technically feasible, according to the record, and therefore the Commission violated Sections 251(c)(2) and 251(c)(3) of the Act and the FCC's implementing regulations, by failing to order customized routing.

DISCUSSION

The Commission was aware when it issued the RAO that customized routing can be provided through the use of LCCs. The Commission questioned, however, whether this is technically feasible "in any practical sense" because of capacity constraints and lack of uniformity among switches even if they are upgraded. Recognizing that this is not the long-term solution the industry is working on, however, the Commission declined to order the use of LCCs as an interim solution. The Commission was also aware that Bell Atlantic has agreed to provide customized routing through the use of AIN. The Commission continues to believe it would be unreasonable to require customized routing until a long-term, industry-wide solution is developed.

CONCLUSIONS

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

ISSUE NO. 5: Must BellSouth brand services sold or information provided to customers on behalf of MCI?

INITIAL COMMISSION DECISION

The Commission concluded 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 available. The Commission further concluded that BellSouth should not be required to unbrand or rebrand its uniforms or vehicles and that its employees should not be required to use branded materials provided by MCI but should be allowed to use generic "leave-behind" cards.

COMMENTS/OBJECTIONS

MCI: MCI objected to the failure to require BellSouth to brand services or information. Citing Paragraph 971 of the Interconnection Order ("failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes unreasonable discrimination of resale"), MCI

argued that BellSouth has not rebutted the presumption that it lacks the capability to brand MCI's services. MCI also objected to the generic "leave-behind" cards.

ATTORNEY GENERAL: The Attorney General objected to the Commission's failure to require unbranding of OS/DA until customized routing is in place. The Attorney General argued that permitting BellSouth to brand OS/DA as its own, even if it is providing the service to a competing provider, has the potential to confuse the customers of another carrier. Those customers will call directory assistance or the operator expecting to deal with their own local service provider and instead will get a message that they have connected with a competitor, BellSouth.

SPRINT: Sprint argued that the Commission erred in declining to require BellSouth to unbrand services provided to customers. Sprint cited Section 251(c)(4)(B) of the Act, which prohibits BellSouth from imposing unreasonable or discriminatory conditions or limitations on resale; Section 51.513 of the FCC Rules, which provides that where operator, call completion, or directory assistance service is part of the service or service package an ILEC offers for resale, failure by an ILEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale; and Section 251(c)(2)(D), which imposes on BellSouth a duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

DISCUSSION

The Commission's reason for not requiring BellSouth to unbrand OS/DA is explained on page 16 of the RAO: BellSouth could never brand its services, even to its own customers, while the CLPs could brand their services when reached through unique dialing patterns. No new arguments have been presented. With regard to generic "leave-behind" cards, the Composite Agreement between BellSouth and MCI states: "If technician does not have a company specific card available at the time services are performed, the BellSouth technician shall use a generic card." There is no need to address this issue further.

CONCLUSIONS

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

ISSUE NO. 6: 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?

INITIAL COMMISSION DECISION

The Commission concluded 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 BellSouth Advertising & Publishing Corporation (BAPCO).

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth notes that the RAO refers to BellSouth's affiliate, BAPCO, as "a wholly-owned subsidiary of BellSouth". However, as indicated in BAPCO's Petition to Intervene, BAPCO is an affiliate but not a subsidiary of BellSouth. BellSouth requests the Commission correct the factual misstatement contained in the RAO to properly reflect BAPCO as the "affiliate and/or agent of BellSouth".

DISCUSSION

The reference to BAPCO in the Evidence and Conclusions for Finding of Fact No. 8 in the RAO should be corrected. BAPCO should be referred to as an affiliate and/or agent of BellSouth rather than a wholly-owned subsidiary of BellSouth.

CONCLUSIONS

The Commission agrees that the RAO should be corrected to properly reflect BAPCO as an affiliate and/or agent of BellSouth.

<u>ISSUE NO. 7</u>: **Should MCI be allowed to combine unbundled network elements in any manner it chooses?**

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth should submit additional information describing in full detail workable criteria for identifying the combinations of unbundled network elements, if any, 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. The Commission also concluded that 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 that when vertical services are obtained through resale, the discounted resale rate should apply.

COMMENTS/OBJECTIONS

MCI: MCI argued that allowing BellSouth to submit a supplemental, unilateral filing on the pricing of unbundled network elements without providing MCI an opportunity to comment or rebut is discriminatory and therefore fails to meet the standards set forth in Section 252(d) of the Act. MCI further argued that permitting BellSouth to characterize the combination of unbundled network elements as a pricing issue would restrict MCI's ability to combine unbundled network elements and would contravene Section 251(c)(3) of the Act.

BELLSOUTH: BellSouth objected to the inclusion of vertical services in the rate the CLPs pay for local switching. BellSouth argued that the various functions the Commission has ordered it to include in the local switching function are retail services which should be offered at the retail rates less the appropriate discount. BellSouth also submitted information with respect to "workable criteria" for identifying the combinations of unbundled network elements that constitute resold services. Drawing from recent decisions from Georgia and Louisiana, BellSouth contended that a

CLP should bear the burden of persuasively demonstrating that the combination of unbundled elements from BellSouth does not constitute a resold BellSouth service. BellSouth further contended that if the CLP purchases an unbundled loop and unbundled local switching on behalf of a customer, the presumption should be that the CLP has effectively recombined unbundled network elements in a manner that replicates a retail service. A CLP should bear the burden of persuasively demonstrating that the combination of requested unbundled elements from BellSouth does not constitute a resold BellSouth service. It may carry this burden only by showing that it is not using its own substantive capabilities or functionalities in combination with the unbundled elements from BellSouth to produce its own service offering. If the CLP substitutes anything less than a substantive capability or functionality, the status of the offering would not change. Substitution of a substantive functionality, however, such as when a CLP supplies its own switching capability or local loop, would change the status of the offering, and under those conditions the CLP would pay only the price for the unbundled network elements.

SPRINT: Sprint argued that the Commission may not allow BellSouth to treat certain combinations of unbundled network elements as resold services and price them at the wholesale rates, because that would violate Section 251(c)(3) of the Act.

CUCA: CUCA contended that treating the recombination issue as a matter of pricing rather than a limitation on the ability of CLPs to combine unbundled network elements is a distinction totally without substance. According to CUCA, the effect of the Commission's decision is to deprive new entrants of the cost benefits of using one of the three entry strategies explicitly authorized by statute. By preventing a CLP from entering the market using combined unbundled network elements when the cost is less than operating as a reseller, the decision does interfere with its ability to combine unbundled network elements in any way it deems appropriate. To BellSouth's argument that failing to adopt its position will eviscerate the resale pricing provisions of the Act, CUCA responded that acceptance of BellSouth's position will eviscerate the unbundled network elements network pricing provisions of the same statute.

DISCUSSION

Vertical Services

BellSouth stated that the fundamental switching capability -- e.g., the ability to provide dial tone and to switch an incoming and outgoing call -- is represented by two rates: a rate for the port, the traffic insensitive portion of the switch, and the local switching charge, a per-minute charge to recognize the traffic sensitive components. In addition, the switch has several other capabilities that can be individually activated at the request of the CLP purchasing the capabilities. Each of these features, when activated, represents a capability that is identical to an existing vertical feature that BellSouth offers on a retail basis. BellSouth argued that it should not be penalized in the price it is allowed to charge just because the vertical feature happens to be a capability inherent in the switch, rather than a feature that can be accessed by the switch, such as operator services.

BellSouth further argued that the Commission has the authority to price vertical services as it chooses as long as those rates are "just, reasonable, and non- discriminatory." TA96, Section 251(c)(3). Pricing vertical services at their retail rates, less the avoided costs reflected in the wholesale discount, will meet this statutory requirement, while preserving support for "universally

available telephone service at reasonably affordable (local exchange) rates," in accordance with the Commission's authority under House Bill 161. BellSouth noted the enormous contribution that vertical services provide to the maintenance of reasonable affordable local exchange rates -- over $60 million in North Carolina revenue in 1995.

The RAO, of course, does not preclude the pricing of vertical services at their retail rates less the wholesale discount when purchased as resale offerings. It simply requires the inclusion of these features, functions, and capabilities in the price of the unbundled switch element when purchased as such, in accordance with the Act and FCC interpretation. The fact that this is a pricing issue, as BellSouth contends, does not change the plain wording of the statute and the basis of the Commission's initial decision.

Recombination of unbundled network elements

BellSouth stated that the conclusions reached by the Louisiana Public Service Commission (PSC) on this issue can serve as the framework for identifying the combinations of unbundled elements that constitute resold services and contended that the PSC's analysis closely aligns with the testimony of witnesses Varner and Scheye in this proceeding, both of whom testified that the combination of an unbundled loop and unbundled local switching would replicate BellSouth's retail local service. BellSouth presented an Exhibit C which it said depicts the unbundled elements that, if combined, would recreate existing tariffed local exchange service offered by BellSouth: (1) unbundled loop, including NID/protector, and (2) unbundled local switching.

In the RAO, the Commission found merit in BellSouth's position on this issue but perceived a need for additional information before attempting to implement a plan to price combinations of elements at wholesale rates. Bearing in mind the legal, technical, and policy implications of our decision, we sought workable criteria for identifying combinations of unbundled network elements that constitute resold services. Because of the complexity of the issue, however, we are now of the opinion that even the most detailed definition will leave open questions that will likely have to be addressed on a case-by-case basis. In reaching our final decision, we have been guided by the principle of encouraging innovation rather than arbitrage and aided by recent decisions of the Tennessee, Georgia, and Louisiana Commissions.

CONCLUSIONS

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

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

ISSUE NO. 8: Must BellSouth provide MCI with access to BellSouth's unused transmission media or dark fiber?

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

MCI: MCI states that the FCC did not specifically require that incumbent LECs make available unbundled optical fiber or "dark fiber," because it did not have a sufficient record on which to decide this issue. MCI submits that the FCC did not, however, prohibit the states from making the determination and points out that three other BellSouth states have found dark fiber to be a network element. MCI believes there is a sufficient record before the Commission to establish a similar finding.

DISCUSSION

MCI opines that the record is sufficient to support a finding and conclusion that dark fiber is a network element within the meaning of the Act. However, MCI did not cite evidence where the record reveals that dark fiber is a facility or equipment used in the provision of a telecommunications service, thereby meeting the definition of network element under the plain language of the Act.

The Act defines "network element" as follows:

> "(29) NETWORK ELEMENT. —The term 'network element' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

As stated in the RAO, unused transmission media or dark fiber is cable that has no electronics connected to it and is not functioning as part of the telephone network. Consequently, the Commission is unconvinced that dark fiber qualifies as a network element. Finally, as noted in the RAO, the FCC did not address and require the unbundling of the incumbent LECs' dark fiber but did state it would continue to review and revise its rules in this area as necessary.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission affirms its original decision on this issue.

ISSUE NO. 9: Must appropriate wholesale rates for BellSouth services subject to resale equal BellSouth's retail rates less all direct and indirect costs related to retail functions?

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

DISCUSSION

The Commission view was that the FCC Interconnection Order provided a reasonable basic methodology upon which to base the Commission's avoided cost analysis with some exceptions. In the FCC Interconnection Order, the FCC provided that the 90% avoided factor represented a reasonable estimate of avoided costs for Accounts 6611 - Product Management, 6612 - Sales, 6613 - Product Advertising, and 6623 - Customer Services Expenses. The Commission view was that this avoided cost factor is reasonable, in addition, since the Company's proposed avoided costs reflected in its avoided cost study were derived internally and, therefore, not verifiable. BellSouth's avoided cost study represents BellSouth's estimate of its avoided costs, not actual avoided costs.

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

CONCLUSIONS

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

ISSUE NO. 10: What are the appropriate wholesale rates for BellSouth to charge when a competitor purchases BellSouth's retail services for resale?

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

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

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

DISCUSSION

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

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

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

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

CONCLUSIONS

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

ISSUE NO. 11: What is the appropriate price for each unbundled network element?

INITIAL COMMISSION DECISION

Regarding recurring charges, the Commission established interim rates, subject to true-up, for unbundled network elements based on consideration of MCI's and BellSouth's cost studies and the FCC's proxy rate guidelines or "default proxies", i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's total element long-run incremental cost-based (TELRIC-based) pricing methodology.

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

The parties were directed to make a good faith effort to negotiate rates for operator systems services if the negotiated interconnection agreement did not include pricing for a particular operator or directory assistance service desired by MCI. Other recurring charges established for unbundled network elements were based on the FCC's default proxies.

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

COMMENTS/OBJECTIONS

MCI: MCI objected to the manner in which the Commission established rates for unbundled network elements. MCI alleged that Finding of Fact No. 23 failed to meet the requirements of Section 251 of TA96, including regulations prescribed by the FCC, and that such finding failed to meet the standards set forth in subsection (d) of Section 252 of TA96. Specifically, MCI alleged that this Finding of Fact established interim rates for unbundled network elements which are not based on the cost of providing the interconnection or network element.

MCI also objected to the true-up requirement of Finding of Fact No. 23. MCI alleged that this requirement created uncertainty because the interim rates are subject to change and as such will chill the entry of competing local exchange carriers into the market. MCI thus asserted that the true-up provision is inconsistent with the purpose of TA96.

BELLSOUTH: After noting that the Commission did not establish nonrecurring charges for unbundled network elements in the RAO, BellSouth asserted that the only nonrecurring charges in the record for unbundled network elements were those proffered by BellSouth. BellSouth pointed out that the Hatfield Model, which was employed by MCI to derive MCI's recommended prices for unbundled network elements, does not produce discrete nonrecurring charges. Rather, its nonrecurring costs, according to proponents of the Hatfield Model, are covered by the recurring rates that it produces.

CUCA: CUCA commented that the true-up mechanism[1] ". . . is a potentially troublesome development which may impair the near-term development of effectively competitive local exchange markets." CUCA asserted that the true-up mechanism will cause new entrants to hesitate to enter North Carolina local exchange markets utilizing a strategy based upon the purchase of unbundled network elements for fear that the cost of such a strategy cannot be currently ascertained. CUCA further contended that the use of a true-up is probably unlawful. Additionally, CUCA commented that the Commission can avoid the danger of carriers being harmed in the absence of a true-up provision by simply conducting the proceeding necessary to permit the adoption of appropriate prices for unbundled network elements and similar items expeditiously. In concluding its comments in this regard, CUCA stated that "[t]he potential benefits to certain affected parties from the availability of the 'true-up' mechanism simply do not outweigh the adverse impact of this device on the competitive process." Thereafter, CUCA asserted that the Commission should remove the true-up provision contained in the RAO from any final Order entered in this proceeding.

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

DISCUSSION

MCI's assertion that the rates established for unbundled network elements were not based on cost appears to be without merit. As previously indicated, such rates were based on consideration of MCI's cost study, BellSouth's cost studies, or the FCC's default proxies. As clearly evidenced by its Interconnection Order, the FCC's default proxies were based on cost. Therefore, it is not unreasonable to conclude that this Commission's proxy-based interim rates were in fact cost-based, since they were based on cost studies submitted by MCI or BellSouth and the FCC's proxies which were themselves based on cost.

MCI and CUCA's argument that the negative consequences of the true-up mechanism outweigh potential benefits is not persuasive. There might be some validity to the argument that the Commission's decision in this regard might potentially have an adverse effect on the advent of competition. However, the likelihood of occurrence of such a potentiality and the potential

---

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

significance thereof do not appear to outweigh the obvious and very real benefits gained from the true-up provision, i.e., protecting carriers from irreparable harm.

In support of its position that the true-up mechanism is "probably unlawful", CUCA in its comments stated that "[n]othing in either 47 U.S.C. §252(d) or the now-stayed FCC rules providing for the use of proxy unbundled network element prices in any way suggests the appropriateness of such a 'true-up'." Further, CUCA stated that "[t]he absence of any statutory or regulatory provision for such a 'true-up' suggests that the Commission has no power to impose one." Contrary to CUCA's view, it would appear that the Commission clearly has such statutory authority, since the FCC in its Interconnection Order in addressing interim transport and termination rate levels stated that "[s]tates must adopt 'true-up' mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the final rate established pursuant to arbitration."[1]

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

The arbitrating parties submitted additional information regarding matters related to the prices issue in conjunction with the filing of the Composite Agreement. Therefore, certain matters (such as nonrecurring charges, true-up provisions, etc.) will be addressed further subsequently in that part of this Order dealing with unresolved issues related to the Composite Agreement.

CONCLUSIONS

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

<u>ISSUE NO. 12</u>: What is the appropriate price for certain support elements relating to interconnection and network elements?

INITIAL COMMISSION DECISION

The Commission established interim rates, subject to true-up, for support elements based on BellSouth's tariffed rates, where such rates exist, pending resolution of the appeal of the FCC Interconnection Order and the establishment of final rates by this Commission. Where such

---

[1]See Paragraph 1066 of the FCC Interconnection Order.

rates could not be so established, the Commission required the arbitrating parties to renegotiate these issues.

COMMENTS/OBJECTIONS

MCI: MCI objected to this Finding of Fact for the same reasons that it objected to Finding of Fact No. 23, i.e., the Company contended that these rates were unlawfully established since, according to MCI, they were not based on cost and that the true-up provision is inconsistent with the purpose of TA96 because it will chill market entry by competing local service providers due to pricing uncertainty.

CUCA: CUCA's concern and comments in this regard are the same as those presented earlier under Issue No. 11 and need not be repeated here.

DISCUSSION

MCI takes the position that unbundled network elements and related support elements should be priced at total service long-run incremental cost (TSLRIC) and TELRIC. BellSouth's position is that the pricing of support elements should be consistent with the pricing which it recommended that the Commission employ for unbundled network elements.

For reasons discussed earlier under Issue No. 11, arguments offered by MCI and CUCA in support of their positions in this regard are unpersuasive.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 13: What actions should the Commission take to supervise the implementation of its decisions?

INITIAL COMMISSION DECISION

The Commission concluded that it has already made provisions for the supervision of the implementation of its decisions. The Commission concluded that it would follow its previously approved 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.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission's failure to provide a procedure for the parties if they fail to reach a comprehensive Composite Agreement. MCI requested that the Commission adopt the following:

> "If the parties are unable to reach a comprehensive agreement in the specified time frame, each party should submit its own version of a proposed agreement, and the

Commission will choose and approve the agreement that best comports with its decision."

"In the event that a comprehensive Composite Agreement is not reached by the deadline, the Commission does not bind itself to accept, in its entirety, the proposed agreement submitted by either party. The Commission will retain the flexibility (a) to accept the entire proposed agreement submitted by either party, or (b) to accept, on an issue-by-issue basis, parts of the proposed agreements offered by each party."

DISCUSSION

The Commission's view was that previous Commission Orders had been issued setting forth a reasonable implementation process. In its Order issued on October 31, 1996, in Docket No. P-141, Sub 29, relating to MCI's petition for clarification, the Commission concluded and found the following:

"If the parties still have outstanding differences at the time the composite agreement is submitted, they should submit the composite agreement as to the agreed terms and a joint list of unresolved issues stating each party's position, with appropriate citation, along with recommendations as to how the Commission should proceed, whether through further arbitration, mediation, continued negotiations, or otherwise."

The Commission believed that this language provided the parties with sufficient guidance as to how any unresolved issues should be handled.

On February 7, 1997, MCI and BellSouth submitted their Composite Agreement as to the agreed terms, in accordance with the RAO, and a "Joint List of Unresolved Issues" stating each party's position, along with recommendations as to how the Commission should proceed. The Commission considers that such filing indicates that the Commission has already provided a procedure for the parties if they fail to reach a comprehensive Composite Agreement.

CONCLUSIONS

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

UNRESOLVED ISSUES

ISSUE NO. 1: NOTICE OF CHANGES TO BELLSOUTH'S NETWORK
Contract Location: Part A, General Terms and Conditions, Section 1.2
Page 1 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

BellSouth proposes to provide prior written notice to MCI of its intent to discontinue any service provided or required under the agreement and not to discontinue any service without MCI's prior written consent. MCI objects to the omission of language prohibiting BellSouth from

reconfiguring, reengineering, or redeploying its network "in a manner which would impair MCI's ability to offer Telecommunications Services," and the omission of language stating that all obligations are material and that time is of the essence. The language proposed by BellSouth satisfies the requirements in Finding of Fact No. 10, and the Evidence and Conclusions for Finding of Fact No. 10, of the Commission's RAO of December 23, 1996, in Docket No. P-141, Sub 29, and is the same language that has been accepted by AT&T Communications of the Southern States, Inc. (AT&T) in Docket No. P-140, Sub 50. There is no evidentiary support for the argument that the additional language introduced by MCI is necessary.

CONCLUSIONS

The Commission concludes that the language proposed by BellSouth satisfies the requirements of its Order and should be approved.

ISSUE NO. 2: INDEMNIFICATION AND LIMITATION OF LIABILITY
Contract Location: Part A, General Terms and Conditions, Sections 11 and 12
Page 4 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

BellSouth proposes to use language largely taken from the May 15, 1996, partial interim agreement between BellSouth and MCI. MCI's proposed language contains fewer express limitations of liability. MCI suggests that it is willing to accept BellSouth's language if the limitation of liability does not apply to amounts payable under Attachment X, which applies to partial recovery of direct damages or either party's indemnification obligations..

The Commission declined to prescribe general terms and conditions, specifically including liability and indemnity, in Finding of Fact No. 31 and the Evidence and Conclusions for Finding of Fact No. 31 of the RAO, leaving the parties free to negotiate contractual provisions that are not required by the Act or by the FCC's Rules. While a provision of this nature is not inappropriate, the terms of the provision are not issues of fact or law suitable for arbitration. Furthermore, to the extent there are factual questions, there is not a sufficient evidentiary basis for a decision.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters such as liability and indemnity which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

ISSUE NO. 3: WHEN BELLSOUTH FAILS TO SWITCH A CUSTOMER TO MCI IN A TIMELY MANNER, BELLSOUTH WILL BE DEEMED TO HAVE SLAMMED THAT CUSTOMER AND PENALTIES WILL BE ASSESSED
Contract Location: Part A, General Terms and Conditions, Section 15.2
Page 8 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

In Finding of Fact No. 31 and the Evidence and Conclusions for Finding of Fact No. 31 of the RAO, the Commission declined to prescribe general terms and conditions, specifically including liability and indemnity, leaving the parties free to negotiate contractual provisions that are not required by the Act or by the FCC's Rules. MCI argues that BellSouth's failure to switch a customer in a timely fashion is a violation of the prohibition on slamming. The difficulty arises in defining "timely." Specifying a schedule for switching customers would bring the Commission into the area of general terms and conditions which it has declined to enter.

While a provision of this nature is not inappropriate, the terms of such a provision are not issues of fact or law suitable for arbitration. Furthermore, to the extent there are factual questions, there is not a sufficient evidentiary basis for a decision.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters such as liability and indemnity which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

ISSUE NO. 4: "MORE FAVORED" PROVISIONS
Contract Location: Part A, General Terms and Conditions, Section 19 (Non-Discriminatory Treatment)
Page 10 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes language for the "more favored" provision that is general in nature and would apply "...in the event BellSouth provides any of the services provided hereunder to any other entity..." BellSouth proposes to take the language in the "more favored" provision of the existing negotiated partial interconnection agreement, dated May 15, 1996, which already includes interconnection and interim number portability, and add a list of additional issues to be included in the "more favored" provision. The additional issues BellSouth proposes to include in the "more favored" provision are: local and toll interconnection; access to unbundled network elements, poles, ducts, conduits, rights-of-way, 911/E911 emergency network and telephone numbers; collocation; and resale.

MCI submits that its proposed nondiscriminatory treatment language implements Section 252(i) of the Act, while BellSouth's proposed language is overly restrictive and would prevent MCI from ensuring it receives nondiscriminatory treatment with respect to other carriers. BellSouth takes the position that this issue is not properly before the Commission since this issue has been approved by the Commission as part of a previous interconnection agreement.

The Commission disagrees with BellSouth that this issue has been approved by the Commission as part of a previous interconnection agreement since even BellSouth proposes to insert an additional list of issues to be covered by the "more favored" provision beyond those issues included in the existing negotiated agreement.

The Commission notes that AT&T and BellSouth have reached agreement on a "more favored" provision as contained on pages 5 and 6 of the filed Composite Agreement between those two parties dated February 21, 1997. The Commission also notes that Section 252(i) of the Act requires that:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

CONCLUSIONS

The Commission directs the parties to continue to negotiate this issue considering Section 252(i) of the Act and the agreement reached on this issue between AT&T and BellSouth.

ISSUE NO. 5: TRANSITION PERIOD FOLLOWING TERMINATION
Contract Location: Part A, General Terms and Conditions Section 20.2
Page 12 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI seeks greater flexibility regarding termination of service than BellSouth is willing to allow. Specifically, BellSouth argues that MCI should not be able to receive the benefit of a term discount, yet be able to terminate without liability. BellSouth also stated that there was no supporting testimony for this issue and therefore it is not subject to resolution and that MCI was attempting to circumvent Finding of Fact No. 2, authorizing the carrying forward of current use and user restrictions. BellSouth also noted that the language it proposes was agreed to by AT&T.

CONCLUSIONS

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

ISSUE NO. 6: AUDITS
Contract Location: Part A, General Terms and Conditions, Section 22.1 through 22.4
Page 14 of "Joint List of Unresolved Issues"

DISCUSSION

There are several major differences between MCI and BellSouth concerning the unresolved audits issue. First, MCI's proposed language would limit the ability to audit to only MCI, while BellSouth advocates reciprocity. According to MCI, it has offered BellSouth provisions which would allow BellSouth to conduct limited audits of MCI related to evaluating usage pertaining to transport and termination of local traffic, which BellSouth declined. Second, MCI wants the ability to audit up to four times per year. BellSouth objects to four audits per year and recommends one. BellSouth is concerned that the constant presence of auditors at its facilities could be disruptive. Third, MCI

proposes that BellSouth pay MCI's audit expenses if an audit results in an adjustment of charges by an annualized amount which is greater than one percent of the aggregate charges for all services purchased under the Agreement. Finally, MCI proposes that the highest interest rate allowable by law for commercial transactions should be paid by BellSouth for any overcharges to MCI.

While BellSouth furnished its substantive position, as contained above, BellSouth takes the position that this issue is not subject to resolution by the Commission in this arbitration because it is unable to find any supporting testimony for the audit issue in the record.

The Commission notes that AT&T and BellSouth have reached agreement on each of the differences between MCI and BellSouth with respect to the audit issue. (See AT&T and BellSouth Composite Agreement, pages 10-12.)

CONCLUSIONS

The Commission directs the parties to continue to negotiate the audit issue, provided that MCI may elect to accept similar language as contained in the Audits and Inspections section of the AT&T and BellSouth Composite Agreement.

ISSUE NO 7: PRICES
Contract Location: Attachment 1, Entire Attachment
Page 17 of "Joint List of Unresolved Issues" Filed February 7, 1997

DISCUSSION

MCI and BellSouth apparently have several differences with respect to a number of provisions in each party's proposed language concerning the prices issue. MCI proposes that BellSouth should be responsible for all costs and expenses BellSouth incurs in (1) complying with and implementing its obligations under the Agreement, the Act, and the rules, regulations, and orders of the FCC and the Joint Board and (2) the development, modification, technical installation, and maintenance of any systems or other infrastructure which it requires to comply with its responsibilities and obligations under the Agreement. BellSouth contends such language is overreaching, and the Act, as well as the FCC Interconnection Order, requires a requesting carrier to bear such costs in certain situations. BellSouth recommends that this provision should be dismissed because it can find no supporting testimony in the record.

MCI also proposes that the wholesale discount rate found by the Commission for BellSouth (which was 21.5% for residential and 17.6% for business) should be adjusted for volume discounts and credits for performance standard failures. BellSouth replies that it is not obligated to provide volume discounts, nor is it willing to agree to volume discounts of the type demanded by MCI. BellSouth believes that MCI is simply attempting to have the Commission award it a benefit to which it is not entitled to receive and again recommends that the Commission dismiss this provision because it can find no supporting testimony in the record.

MCI's proposed language also states that all rates provided under the Agreement are interim and such rates include wholesale rates for resold services of BellSouth. Apparently, MCI regards the permanent wholesale discount rates established in the Commission's RAO as interim rates, subject

to true-up, although no such provision is contained in the Commission's RAO with respect to the wholesale discount rates established therein. While BellSouth did not address MCI's proposed language in this regard, BellSouth's proposed language establishes that BellSouth does not consider the wholesale discount rates established by the Commission as interim rates subject to true-up provisions.

Further, MCI's proposed price list contains only the wholesale discount rates and the prices for unbundled network elements as established by the Commission in the RAO. No rates are shown on this price list for certain interconnection support elements or for operator and directory assistance services even though the Commission directed the parties to negotiate such rates as found in the Evidence and Conclusions for Findings of Fact Nos. 23 and 28 in the Commission's RAO. It is unclear why such rates are omitted.

BellSouth's proposed language contains procedures it recommends to implement a true-up when final prices are established. MCI's proposed language does not address procedures which it recommends to implement a true-up, nor does MCI address BellSouth's proposed language in this regard. Even though the Evidence and Conclusions for Finding of Fact No. 23 in the Commission's RAO explicitly called upon the parties to meet and jointly develop the necessary mechanisms to implement the appropriate administrative arrangements needed to accomplish the true-up, it is unclear to what degree, if any, the parties negotiated and accomplished true-up mechanisms and arrangements prior to filing the Joint List of Unresolved Issues on February 7, 1997.

BellSouth's proposed price list contains proposed recurring and nonrecurring rates for several rate elements and services, some of which are in accordance with the Commission's RAO, plus proposed rates which were not established in the Commission's RAO. According to BellSouth, some of the rates displayed in its price list were based on further negotiations with MCI. Yet, in comparison, MCI's proposed price list contains only the rates established by the Commission for unbundled network elements and wholesale discount rates. Therefore, it is not clear what rate elements or services MCI is requesting for BellSouth to provide, what rates have been agreed upon in further negotiations, or exactly which rates are in dispute at this time, based upon a comparison of these price lists.

Finally, as mentioned above, BellSouth's proposed price list also contains several nonrecurring charges for unbundled network rate elements. While neither MCI nor BellSouth commented on nonrecurring charges in the "Joint List of Unresolved Issues," BellSouth's objections to the RAO, filed on January 23, 1997, pointed out that the MCI/BellSouth RAO did not contain any nonrecurring charges for unbundled network elements. In BellSouth's objections, BellSouth stated that the Hatfield Model, used by MCI, does not produce nonrecurring charges. Rather, nonrecurring charges are supposedly recovered by the recurring rates that the Hatfield Model produces. Since BellSouth proffered the only nonrecurring rates in the record, in its objections, BellSouth requested the Commission to adopt its proposed nonrecurring rates. MCI's proposed price list contains no nonrecurring charges.

On April 1, 1997, BellSouth and MCI made a joint filing which stated that the parties were able to reach agreement as to the language concerning the prices issue; however, the parties have not been able to reach agreement on the rates. According to the agreed-upon language, the parties have now reached agreement on a true-up provision. While the wholesale discount rates established by

the Commission are not subject to the true-up provision of this agreement, the Commission notes that this agreement continues to refer to prices for resold local services as interim. The Commission does not regard the wholesale discount rates established by the RAO to be interim rates.

CONCLUSIONS

The Commission directs the parties to continue to negotiate the prices issue. The wholesale discount rates established by the RAO are not interim rates and, therefore, the Commission directs the parties to remove the word "interim" with reference to prices for resold local services.

ISSUE NO. 8: REBUNDLING OF NETWORK ELEMENTS TO CREATE AN EXISTING BELLSOUTH SERVICE

Contract Location: Attachment III, Section 2.3
Page 26 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

The basic difference in the proposed contract language is that BellSouth believes that if a CLP has recombined an unbundled loop and local switching on behalf of a customer, the burden should be on the CLP to demonstrate that it has substituted a substantive functionality of its own. Until that burden is met, the CLP should be required to pay the appropriate resale rates. MCI believes that the only workable solution is for the Commission to identify which services are identical.

BellSouth's proposed language: "MCIm may use one or more Network Elements to provide any feature, function, capability, or service option that such Network Element is capable of providing or any feature, function, capability, or service option that is described in the technical references identified herein. When MCIm recombines unbundled elements to create services identical to BellSouth's retail offerings, the prices charged to MCIm for the rebundled services shall be computed at BellSouth's retail price less the wholesale discount and offered under the same terms and conditions as BellSouth offers the service to its customers. For purposes of this Agreement, MCIm will be deemed to be 'recombining unbundled elements to create services identical to BellSouth's retail offerings' when the service offered by MCIm contain the functions, features and attributes of a retail offering that is the subject of a properly filed and approved BellSouth tariff."

MCI's proposed language: "MCIm may use one or more Network Elements to provide any feature, function, capability, or service option that such Network Elements(s) is capable or providing or any feature, function, capability or service option that is described in the technical references identified herein, provided, however, that if MCIm recombines Network Elements to create services identified by the NCUC to constitute resold services, for the purpose of pricing MCIm would pay to BellSouth an amount identical to the price MCIm would pay using the resale discount."

CONCLUSIONS

The Commission concludes that the contract language should reflect the decision reached by the Commission on this issue in the section of this Order addressing Comments/Objections.

ISSUE NO. 9: REBUNDLING OF NETWORK ELEMENTS TO CREATE AN EXISTING BELLSOUTH SERVICE
Contract Location: Attachment III, Section 2.4
Page 28 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

BellSouth's proposed language: " Subject to Section 2.3 above, BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements to permit MCIm to provide Telecommunication Services to its subscribers."

MCI's proposed language: "Subject to the provisions of Section 2.3 of this Attachment, BellSouth shall offer each Network Element individually and in combination with any other Network Element or Network Elements in order to permit MCIm to provide Telecommunications Services to its subscribers."

CONCLUSIONS

The Commission concludes that the language for this section should reflect the decision reached by the Commission on this issue in the section of this Order addressing Comments/Objections.

ISSUE NO. 10: PERFORMANCE STANDARDS
Contract Location: Attachment III, Section 13.4.2.25 (Including 13.4..2.25.1 through 13.4.2.25.4)
Page 29 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes specific Line Information Database (LIDB) performance standards while those proposed by BellSouth are less specific. BellSouth also cited Finding of Fact No. 3, where the Commission declined to impose performance standards, and stated that there was no specific testimony supporting MCI's request. BellSouth recommended that the Commission dismiss this issue as beyond the scope of this proceeding. The Commission has concluded, in response to objections and comments, that its original decision in Finding of Fact No. 3, be affirmed.

CONCLUSIONS

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

ISSUE NO. 11: TANDEM DEEMED AN END OFFICE FOR PURPOSES OF COMPENSATING MCI
Contract Location: Attachment IV
Page 32 of "Joint List of Unresolved Issues" Filed February 7, 1997

DISCUSSION

In the Commission's RAO, both BellSouth and MCI agreed that the price for call transport and termination was not an issue in this proceeding because the parties had negotiated the price of local interconnection in the interim agreement. The Commission concurred. However, now MCI proposes that when BellSouth terminates calls to MCI's subscribers using MCI's switch, BellSouth should pay MCI dedicated transport charges plus a charge symmetrical to BellSouth's own charges for tandem switching, tandem-to-end-office transport, and end-office termination. While this issue is not clear, the MCI switch referenced in MCI's proposal is evidently only an end-office switch. However, in its comments, MCI states that according to Rule 51.711(a) of the FCC Interconnection Order, rates for transport and termination of local telecommunications traffic shall be symmetrical and reciprocal. More specifically, under FCC Rule 51.711(a)(3), where the switch of a carrier other than the incumbent LEC serves a geographic area comparable to the area served by its incumbent LEC's tandem switch, the appropriate rate for the carrier other than the incumbent LEC is the incumbent LEC's tandem interconnection rate. In summary, apparently MCI takes the position that when BellSouth terminates calls to MCI's subscribers using MCI's end-office switch, FCC Rule 51.711 entitles MCI to be compensated by BellSouth for end-office switching, tandem switching, and transport, regardless of MCI's costs or MCI's facilities actually used to terminate local calls from BellSouth's customers.

BellSouth argues that it is unable to find any supporting testimony for this issue in the record and, thus, this issue should be dismissed as beyond the scope of this proceeding. Substantively, BellSouth also argues that MCI is simply seeking a windfall by demanding that BellSouth should pay MCI tandem switching charges in situations where there is no tandem switch. BellSouth points out that the FCC Rule which MCI relies upon to support its request is now stayed and that is completely contrary to cost-based pricing.

CONCLUSIONS

The Commission concludes that this issue is beyond the scope of this arbitration.

ISSUE NO. 12: DEFINITION OF SPARE CAPACITY
Contract Location: Attachment VI, Section 1.1.28 "Spare Capacity"
Page 35 of "Joint List of Unresolved Issues" Filed February 7, 1997

DISCUSSION

The parties differ in their definition of spare capacity. MCI proposes that there should be a common duct shared by all companies for maintenance, repair, or emergency, while BellSouth has agreed to offer one duct to any licensee who wishes to reserve spare capacity needed for reasons of safety, reliability, and generally applicable engineering purposes.

MCI contends that all companies should not have their own spare ducts because there is not enough existing capacity. BellSouth notes that in Finding of Fact No. 32, page 15 of the RAO, the Commission authorized BellSouth to reserve capacity "needed for reasons of safety, reliability, and generally applicable engineering purposes," and its position to allow other carriers to reserve spares for these same reasons is consistent with the Commission's decision. BellSouth posits that a common

emergency duct as advocated by MCI raises questions and creates potential conflict and confusion among occupants of the conduit about access to the common duct and priority of service restoration, which could inappropriately hamper reliability and safety when responding to emergencies.

The Commission notes that this issue is related to Issue No. 14, which is MCI's request for common duct for emergencies as discussed subsequently herein. In stating its substantive position to Issue No. 14, BellSouth states it would have no objection to MCI reserving a duct for itself for emergency purposes and then offering to share such capacity with other telecommunications carriers willing to enter into such a sharing arrangement. Thus, evidently MCI does not want to reserve and pay for an emergency duct for itself and does not want other carriers to be able to do so for fear of diminishing capacity MCI may wish to use in the future. MCI's proposal, if adopted, would presumably limit other carriers who may be willing to pay for an emergency duct.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding.

ISSUE NO. 13: ENCUMBRANCES ON BELLSOUTH'S ABILITY TO CONVEY ITS PROPERTY RIGHTS

Contract Location: Attachment VI, Section 1.2.6 No Effect on BellSouth's Right to Convey Property
Page 37 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI accepts BellSouth's proposed language but proposes to add the following: "... and such conveyance shall be subject to MCI's rights hereunder". This language does not in itself create any rights or encumber any property. Rather it simply recognizes that rights or encumbrances may already exist and states that the agreement does not affect such rights or encumbrances.

While a provision of this nature is not inappropriate, the terms of such a provision are not issues of fact or law suitable for arbitration. Furthermore, to the extent there are factual questions, there is not a sufficient evidentiary basis for a decision.

CONCLUSIONS

The Commission declines to decide this matter since it involves matters which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

ISSUE NO. 14: MCI'S REQUEST FOR COMMON DUCT FOR EMERGENCIES

Contract Location: Attachment VI, Section 1.2.9.5
Page 39 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

This issue is related to Issue No. 12 as previously discussed herein. MCI proposes language requesting a common duct for use by all carriers for emergency purposes. According to MCI, BellSouth should establish one set of emergency spares for everyone and should not require all companies to pay for their own emergency duct. MCI fears that requiring each company to reserve their own emergency duct will quickly use up existing capacity and exhaust critical rights-of-way.

BellSouth would delete all language in this section proposed by MCI. BellSouth states it is unable to find supporting testimony in the record for this provision, and thus recommends that the Commission dismiss this issue as beyond the scope of the proceeding. Substantively, BellSouth takes the position that it will reserve space for itself and for other licensees, upon request, capacity for use in emergencies and for maintenance based upon a one-year forecast. It contends that this position is consistent with the Commission's determination that BellSouth can reserve spare capacity when needed for reasons of safety, reliability, and generally applicable engineering purposes. BellSouth acknowledges that MCI's proposed language addresses cases where an emergency affects service to more than one occupant by inclusion of a priority list, but BellSouth argues that its experience shows that most emergencies affect all occupants of a space and therefore, prioritization would still be an issue. BellSouth believes such complexity can be avoided by adopting its position on this issue. BellSouth also states it has no objection to MCI reserving a duct for itself for emergency purposes and then offering to share such capacity with other telecommunications carriers willing to enter such a sharing arrangement.

CONCLUSIONS

Consistent with the Commission's conclusions for Issue No. 12 discussed in the unresolved issues herein, the Commission dismisses this issue as beyond the scope of this arbitration.

ISSUE NO. 15: COMPLIANCE WITH BELLSOUTH'S PRACTICES RELATING TO PUMPING AND PURGING BELLSOUTH'S MANHOLES
Contract Location: Attachment VI, Section 1.3.6.7
Page 41 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

BellSouth proposes that all manhole pumping and purging should be performed in compliance with BellSouth Practice Section 620-145-011BT and any amendments, revisions, or supplements thereto and in compliance with all regulations and standards established by the Environmental Protection Agency (EPA) and any applicable state or local environmental regulators. BellSouth cites Finding of Fact No. 15 of the RAO which requires that nondiscriminatory access to its rights-of-way, poles, ducts, and conduits must be provided to MCI on terms and conditions equal to that it provides itself. BellSouth believes that the above language is consistent with the Commission's ruling. Also, since these manholes are property of BellSouth, BellSouth believes it is appropriate that all pumping and purging by MCI should be done pursuant to BellSouth's standards and practices. (AT&T has agreed to BellSouth's proposal.) MCI agrees to comply with applicable regulatory agencies, however it does not agree to adopt the BellSouth Standard. MCI cites differences in its own procedures for accessing and working in manholes, especially with hazardous materials. In addition, MCI states that

the BellSouth Standards are interpretations of EPA and Occupational Safety and Health Agency (OSHA) requirements and that some Standards are contrary to law and some are in excess of what the law requires.

CONCLUSIONS

The Commission adopts BellSouth's proposed language requiring MCI to comply with BellSouth Practice Section 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures," and any amendments, revisions, or supplements thereto in addition to compliance with all regulations and standards established by the EPA and any applicable state or local environmental regulators.

ISSUE NO. 16: MCI'S DEVELOPMENT OF PROCEDURES TO ENSURE COMPLIANCE WITH THIS SECTION

Contract Location: Attachment VI, Section 1.3.9.3
Page 43 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

BellSouth has established procedures and controls which assure that it is in compliance with regulations regarding rights-of-way. MCI has not established appropriate procedures and controls and states in its comments that it is already obligated to comply with the requirements put forth in BellSouth's proposed Section 1.3.9.3. Therefore, MCI states that it has no need for a corresponding section.

CONCLUSIONS

The Commission adopts BellSouth's proposed language requiring MCI to establish appropriate procedures and controls to assure compliance with all requirements of Section 1.3.9.3.

ISSUE NO. 17: PRACTICES RELATING TO COMPLIANCE WITH ENVIRONMENTAL LAWS

Contract Location: Attachment VI, Section 1.3.9.4
Page 45 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

BellSouth proposes that all personnel performing work on behalf of MCI should comply with BellSouth Practice Section 620-145-011BT and any amendments, revisions, or supplements thereto and in compliance with all regulations and standards established by the EPA and any applicable state or local environmental regulators. BellSouth cites Finding of Fact No. 15 of the RAO which requires that nondiscriminatory access to its rights-of-way, poles, ducts, and conduits must be provided to MCI on terms and conditions equal to that it provides itself. BellSouth believes that the above language is consistent with the Commission's ruling. MCI agrees to comply with applicable regulatory agencies, however it does not agree to adopt the BellSouth Standard. MCI cites differences in its own procedures for accessing and working in manholes, especially with hazardous materials. In addition, MCI states that the BellSouth Standards are interpretations of EPA and

OSHA requirements and that some Standards are contrary to law and some are in excess of what the law requires.

CONCLUSIONS

The Commission adopts BellSouth's proposed language requiring MCI to comply with BellSouth Practice Section 620-145-011BT, "Manhole Contaminants, Water, Sediment or Debris Removal and Reporting Procedures," and any amendments, revisions, or supplements thereto in addition to compliance with all regulations and standards established by the EPA and any applicable state or local environmental regulators.

ISSUE NO. 18: BELLSOUTH'S PROVISION OF INFORMATION RELATING TO AVAILABILITY OF SPACE
Contract Location: Attachment VI, Section 1.5.2.2
Page 47 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes that BellSouth provide pole, conduit, and rights-of-way availability information in response to a written request within three business days. MCI states that there must be some maximum time limit on producing information which is readily available. BellSouth recommends that the Commission dismiss this issue as beyond the scope of this proceeding but also states that MCI's demand is not reasonable. The ability of BellSouth to process requests within three business days is dependent on many factors: the number of pending requests from other carriers, the magnitude of the request from MCI, the complexity of the requests, etc. BellSouth further states that AT&T has agreed that such operational issues can be dealt with outside of the agreement through a task force that shall determine the appropriate time frames.

The RAO does not set forth specific time frames for processing information requests but directs BellSouth and MCI to formulate guidelines to be followed in handling requests.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution but encourages the formation of a task force by BellSouth and MCI to determine mutually acceptable time frames.

ISSUE NO. 19: BELLSOUTH'S PROVISION OF INFORMATION RELATING TO AVAILABILITY OF SPACE
Contract Location: Attachment VI, Section 1.6.3
Page 49 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes that within ten business days after it has submitted its written application for a license, BellSouth shall advise MCI whether an environmental, health, and safety inspection has been performed and shall supply MCI with any inspection report. MCI contends that environmental information is critical to making a decision to occupy conduits or poles. BellSouth proposes to delete

this section and recommends that the Commission dismiss this issue as beyond the scope of this proceeding. BellSouth, however, has investigated MCI's request and found that it is highly unlikely BellSouth would have actual knowledge of any inspection or assessment and that it would have to check in many different departments and locations to determine if an inspection or assessment had been performed.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution.

ISSUE NO. 20: BELLSOUTH'S PROVISION OF CUSTOMER CREDIT HISTORY THROUGH ELECTRONIC INTERFACES
Contract Location: Attachment VIII--8, Section 2.1.5.3
Page 51 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes the inclusion of contract language that requires BellSouth to provide MCI with a real-time electronic interface to some customer proprietary network information (CPNI) to obtain customer payment history information that it considers as essential to the sales process. Further, MCI proposes that the contract also state that the parties shall mutually agree upon restrictions that will appropriately safeguard subscribers' privacy. However, MCI argues that a signed letter of authorization (LOA) cannot be administered as part of this process.

BellSouth opposes the inclusion of this proposal in the contract. BellSouth argues that the FCC has determined that credit information is not CPNI, therefore, MCI's position is inappropriate. Further, BellSouth states that there was no specific testimony supporting MCI's request, and thus, pursuant to the Commission's Order of October 31, 1996, the Commission should dismiss this issue as beyond the scope of this proceeding.

The Composite Agreement does include mutually agreed upon terms that allows for the release of a customer's payment history to MCI if the subscriber authorizes the release of such information. Specifically, in the Composite Agreement, the parties have agreed to include contract language which provides the following:

Subscriber Payment History (Attachment VIII, Sections 2.1.5 through 2.1.5.1.8)

> To the extent each party has such information, MCI and BellSouth agree to make available to each other such of the following subscriber information as the subscriber authorizes BellSouth or MCI to release: applicant's name; address; previous phone number, if any; amount, if any, of unpaid balance in applicant's name; whether applicant is delinquent on payments; length of service with prior local or intraLATA toll provider; whether applicant had local or intraLATA toll service terminated or suspended within the last six months with an explanation of the reason therefor; and whether applicant was required by prior local or intraLATA toll provider to pay a deposit or make an advance payment, including the amount of each.

In the arbitration proceeding, the parties requested that the Commission resolve the parties' disagreement over the provision of real-time and interactive access via electronic interfaces for the operations support system functions consisting of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions and that was addressed in the RAO. However, as to this unresolved issue of an electronic interface to access BellSouth's customer proprietary network information to obtain customer payment history information, the Commission is unable to find testimony in this regard, or any discussion in the parties' respective Proposed Orders or Briefs, and thus, concludes that this matter was not appropriately presented for arbitration.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding and, thus, finds this issue not subject to resolution.

ISSUE NO. 21: BELLSOUTH'S PROVISION OF CUSTOMER CREDIT HISTORY WITH BLANKET LETTER OF AUTHORIZATION.
Contract Location: Attachment VIII, Section 2.1.5.4
Page 5 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI seeks use of a blanket letter of authorization (LOA) to have access to a customer credit history. BellSouth argues that blanket LOAs do not adequately protect customer privacy and maintains that there is no supporting testimony in the record for this issue.

The Commission views customer credit history as sensitive information that should not be required to be accessible through electronic interface. Since this is the case, the argument for access to such information by means of a blanket LOA is less than compelling. The Commission further notes that credit history can be obtained through a variety of sources, as, for example, from the prospective customers themselves or credit reporting agencies.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution.

ISSUE NO. 22: CUSTOMER SERVICE RECORDS
Contract Location: Attachment VIII. Section 2.32.3.1.2
Page 53 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI seeks use of a blanket letter of authorization (LOA) to have access to customer service records. BellSouth argues that blanket LOAs do not adequately protect customer privacy and maintains that there is no supporting testimony in the record for this issue.

While the Commission notes that this was not originally an issue in this docket, the Commission has dealt with a similar arbitration issue in Docket No. P-140, Sub 51, [GTE South

Incorporated (GTE)/AT&T] and Docket No. P-141, Sub 30 [GTE/MCI] as Issue No. 3(c). In those dockets, the Commission reached a policy conclusion favoring the use of blanket LOAs with respect to "relevant account information," defined in that context as a "customer list of scheduled services on or about the time of transfer." Customer privacy is protected by requiring that the CLP must obtain and, in the event of a dispute, be prepared to produce the written or third-party verified authorization of the customer in a manner consistent with FCC Rules.

The Commission views access to customer service records through a blanket LOA to be reasonable subject to safeguards, such as a requirement that the CLP must obtain and, in the event of a dispute, be prepared to produce a written or third-party verified authorization of the customer access to such information.

CONCLUSIONS

The Commission concludes that the parties be instructed to negotiate mutually agreeable terms consistent with the Commission's decision in the GTE dockets.

ISSUE NO. 23: DATE FOR ON-LINE ACCESS TO TELEPHONE NUMBERS
Contract Location: Attachment VIII--19, Section 2.3.2.6
Page 54 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes the inclusion of contract language that requires BellSouth to provide on-line access to telephone number reservations by January 1, 1997, whereas BellSouth proposes a date of April 1, 1997.

BellSouth states that its proposal is consistent with the determination of the Commission regarding the development of electronic interfaces. In the RAO, in Finding of Fact No. 4, the Commission encouraged BellSouth to diligently pursue the development of electronic interfaces, such that they will be provided promptly. It is BellSouth's opinion that the date of April 1, 1997, reflects its intent to provide on-line access as expeditiously as practicable.

CONCLUSIONS

The Commission recognizes that BellSouth's proposal represents its intent to provide on-line, electronic access as expeditiously as practicable, which is consistent with the Commission's finding in the MCI/BellSouth--RAO, regarding the development and implementation of electronic interfaces. Accordingly, the Commission considers that BellSouth's proposal is reasonable in this regard.

ISSUE NO. 24: PERFORMANCE MEASUREMENTS
Contract Location: Attachment VIII, Section 2.5
Page 55 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

This is a variation of the unresolved issue previously discussed in Issue No. 10, but with reference to various service measurements.

CONCLUSIONS

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

ISSUE NO 25: PERFORMANCE MEASUREMENTS
Contract Location: Attachment VIII, Section 3.4
Page 61 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes specific performance standards for billing measurements while BellSouth is proposing more general language. BellSouth also cited Finding of Fact No. 3 where the Commission declined to impose performance standards, and stated that there was no specific testimony supporting MCI's request. BellSouth recommended that the Commission dismiss this issue as beyond the scope of this proceeding.

CONCLUSIONS

The Commission has previously declined to enact specific performance standards and instructed the parties to negotiate mutually agreeable terms. This original decision is affirmed by the Commission in the Comments/Objections section of this Order.

ISSUE NO. 26: BILLING OF CALLS FROM MCI SUBSCRIBERS TO INFORMATION SERVICE PROVIDERS
Contract Location: Attachment VIII, Section 4.1.1.7
Page 63 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes that until such time as an agreement with an Information Service Provider (ISP) is negotiated, BellSouth shall record and rate all calls to ISPs and shall bill and keep the revenue from such calls from the MCI subscriber. If BellSouth incurs additional costs as a result of handling ISP traffic on MCI's behalf, which are not covered under BellSouth's contract with the ISP, BellSouth may recover those costs from MCI. MCI states that BellSouth is seeking to place additional burdens on MCI that would slow MCI's entry into the market by requiring MCI to engage in additional negotiations to provide their customers with a range of services equivalent to BellSouth's.

BellSouth proposes that MCI shall negotiate with ISPs (e.g. 976 and N11 service calls) for provision of such services to MCI's end users, including the billing of such services to its end users. BellSouth also states that it is unable to find any supporting testimony for this issue in the record and, thus, pursuant to the Commission's Order of October 31, 1996, this issue is not subject to resolution by the Commission. BellSouth recommended that the Commission dismiss this issue as beyond the scope of this proceeding.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution pursuant to the Commission's Order of October 31, 1996.

ISSUE NO. 27: PERFORMANCE MEASUREMENTS
Contract Location: Attachment VIII, Section 4.4 and 4.5
Page 64 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes specific performance standards for billing measurements while BellSouth proposes to incorporate the OLEC Daily Usage File service into a BellSouth and MCI billing forum which will develop the appropriate billing measurements for service parity. BellSouth also cited Finding of Fact No. 3, where the Commission declined to impose performance standards, and stated that there was no specific testimony supporting MCI's request. BellSouth recommended that the Commission dismiss this issue as beyond the scope of this proceeding pursuant to its Order of October 31, 1996. The Commission concluded, in response to objections and comments, that its original decision in Finding of Fact No. 3 should be affirmed.

CONCLUSIONS

The Commission declined to enact specific performance standards in its RAO issued in this docket. This original decision is affirmed by the Commission in the Comments/Objections section of this Order.

ISSUE NO 28: BRANDING OF 611 REPAIR CALLS
Contract Location: Attachment VIII, Section 5.1.14
Page 70 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI proposes that: "All MCIm subscribers shall be able to continue to use the established local dialing protocol to access the repair center. Upon dialing '611,' the subscriber shall be presented with a non-branded menu that requests the input of the subscriber's telephone number. Once the telephone number is provided, the subscriber shall be transferred to the MCIm repair center. Whenever BellSouth receives a repair call directly from an MCIm subscriber, without voice response menu prompts, the call shall be unbranded and transferred to the appropriate MCIm repair center." MCI states that this provision ensures that MCI's subscribers have access to repair centers at parity with the access BellSouth provides to its subscribers.

BellSouth proposes that: "Until a long-term industry solution is established for customized routing, MCIm shall establish a seven or ten digit toll-free number for access to its repair center. When such a solution is available, BellSouth shall make available to MCIm the ability to route non-branded 611 repair calls dialed by MCIm subscribers directly to the MCIm repair center." BellSouth cited Finding of Fact No. 5, where the Commission declined to require customized routing at this time and encouraged all parties to work to develop a long-term, industry-wide solution to technical

problems. BellSouth stated it cannot route 611 repair calls to the MCI repair center without customized routing.

The Commission declined to require customized routing in its original decision in Finding of Fact No. 5 and encouraged all parties to work to develop a long-term, industry-wide solution to technical problems and affirmed its original decision in the Comments/Objections section of this Order.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution, provided that MCI may agree to BellSouth's language or the parties may agree to other mutually agreeable terms.

ISSUE NO. 29: PERFORMANCE MEASUREMENTS
Contract Location: Attachment VIII, Section 5.4
Page 71 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

This is a variation of the unresolved issues previously discussed in Issue No. 10 and Issue No. 24, with reference to various maintenance measurements.

CONCLUSIONS

The Commission finds that this issue is not subject to resolution provided that MCI may elect to accept the language proposed by BellSouth or the parties may negotiate other mutually agreeable terms.

ISSUE NO. 30: BUSY LINE VERIFICATION IN CONTEXT OF INTERIM NUMBER PORTABILITY
Contract Location: Attachment VII, Section 5.4
Page 74 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

The issue presented is one of technical feasibility. MCI requests that BellSouth operators redirect calls which are not switched correctly. BellSouth states that its operators cannot access the information needed to direct such calls. In the absence of evidence that the procedure requested by MCI is technically feasible, there is no basis for requiring the language proposed by MCI.

CONCLUSIONS

The Commission concludes that this section should be deleted as proposed by BellSouth.

ISSUE NO. 31: ELECTRONIC INTERFACES -- DATE OF IMPLEMENTATION
Contract Location: Attachment VIII--64, Section 6.1.4.1.1
Page 76 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI and BellSouth have agreed that BellSouth will accept orders via electronic interface in accordance with approved Telecommunications Industry Forum/Electronic Data Interchange (TCIF/EDI) technical mapping within nine months of published release of that approved standard. However, in the interim, MCI proposes that BellSouth be required to provide a standard format for electronic exchange for placing orders by January 1, 1997, whereas BellSouth proposes a date of April 1, 1997.

BellSouth states that its proposal is consistent with the determination of the Commission regarding the development of electronic interfaces. In the RAO, in Finding of Fact No. 4, the Commission encouraged BellSouth to diligently pursue the development of electronic interfaces, such that they will be provided promptly. It is BellSouth's opinion that the date of April 1, 1997, reflects its intent to provide on-line access as expeditiously as practicable. Further, BellSouth stated that the date of April 1, 1997, was derived from an Order of the Georgia Public Service Commission.

CONCLUSIONS

The Commission recognizes that BellSouth's proposal represents its intent to provide on-line, electronic access as expeditiously as practicable, which is consistent with the Commission's finding in the MCI/BellSouth RAO, regarding the development and implementation of electronic interfaces. Accordingly, the Commission considers that BellSouth's proposal is reasonable in this regard.

ISSUE NO. 32: BELLSOUTH'S PROVISION OF FRAUD PREVENTION FEATURES AND FUNCTIONALITIES
Contract Location: Attachment IX--4, Section 3.1
Page 77 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

In regard to this Section on future fraud prevention or revenue protection features, the distinction between BellSouth's proposal and the language proposed by MCI lies in the specific information digits used in the payphone context. As part of the fraud prevention features to be made available by BellSouth, MCI requests that BellSouth provide information digits '29' and '70' which indicate prison and COCOT payphone originating line types, respectively. BellSouth is proposing to provide information digits assigned such as code '07' which indicate special handling of the call is required.

MCI states that BellSouth is capable of assisting MCI in reducing the risk of fraud by providing the information digits, '29' and '70'. MCI argues that BellSouth should not be able to sell a product over which it can control the risk without taking reasonable steps to assist in reducing the risks of such fraud occurring.

BellSouth states that it currently sends the '07' code indicating the call requires special handling and that it is developing a query system that will allow MCI and others to gain further information when the '07' code is sent. According to BellSouth, the FCC, In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third

Report and Order, 61 FR 26466, adopted April 5, 1996, recognized that the '29' and '70' codes which MCI is demanding ". . . would generally be included in the larger 06 or 07 categories." Additionally, BellSouth states that there was no specific testimony supporting MCI's request, and thus, pursuant to the Commission's Order of October 31, 1996, the Commission should dismiss this issue as beyond the scope of this proceeding.

Additionally, the Commission understands that it is quite possible that the requested '29' and '70' information digits cannot be provided by BellSouth at this time.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding and, thus, finds this issue not subject to resolution. However, the Commission further concludes that MCI may agree to BellSouth's proposed language or that, otherwise, the parties should negotiate other mutually agreeable terms.

ISSUE NO. 33: LIABILITY FOR LOST REVENUES RESULTING FROM HACKER FRAUD

Contract Location: Attachment IX--4, Section 3.1.2
Page 79 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI requests that BellSouth assume the risk associated with all third-party fraud upon the software underlying the network elements or their subtending operational support systems and reimburse MCI for its losses associated with such third-party fraud. MCI argues that where BellSouth has administrative control over the network elements, BellSouth should use reasonable care to prevent losses to MCI caused by third-party fraud. MCI proposes the following language:

> "Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the party having administrative control of access to said Network Element or operational support system software."

BellSouth proposes that the MCI language should be changed as follows (the underlined text reflects the difference between the parties, — i.e. it is the language added by BellSouth):

> "Uncollectible or unbillable revenues resulting from the accidental or malicious alteration of software underlying Network Elements or their subtending operational support systems by unauthorized third parties shall be the responsibility of the party having administrative control of access to said Network Element or operational support system software <u>to the extent such unbillable or uncollectible revenue results from the gross negligence or willful act or omission of the party having such administrative control</u>."

Under BellSouth's proposal, BellSouth would assume the risk of unbillable or uncollectible revenue resulting only from its own gross negligence or willful act or omission. BellSouth argues that MCI's position is inappropriate, as it would place BellSouth in the position of being an insurer against the action of others, including the illegal acts of third parties. BellSouth further argues that MCI is attempting to impose a general term with respect to liability, contrary to the Commission's RAO. Furthermore, BellSouth states that the pricing requirements of Section 252(d) of the Act do not contemplate the cost associated with the assumption of such risk. Additionally, BellSouth states that there was no specific testimony supporting MCI's request, and thus, pursuant to the Commission's Order of October 31, 1996, the Commission should dismiss this issue as beyond the scope of this proceeding.

The issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues was not set forth by MCI and BellSouth in their respective matrices as an issue in the MCI/BellSouth arbitration proceeding. However, this matter of liability was raised as an issue in the AT&T/BellSouth arbitration proceeding. In the AT&T/BellSouth--RAO, the Commission specifically addressed the issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues. The Commission reached the following conclusion:

> "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."

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding and, thus, concludes that this issue is not subject to resolution. The Commission declines to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO issued for AT&T/BellSouth in Docket No. P-140, Sub 50, wherein at the Evidence and Conclusions for Finding of Fact No. 4, the Commission stated that it ". . . does not believe it is appropriate or practical for the Commission to get involved, at this stage, in adopting provisions governing liability for errors."

ISSUE NO. 34: LIABILITY FOR LOST REVENUES RESULTING FROM CLIP-ON FRAUD AND OTHER ILLEGAL OR UNAUTHORIZED ENTRY INTO THE BELLSOUTH NETWORK

Contract Location: Attachment IX--4, Section 3.1.3
Page 81 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

This issue is virtually the same issue as that just addressed in Issue No. 33, except that it pertains to fraud arising from unauthorized physical attachment to loop facilities.

MCI requests that BellSouth assume the risk associated with unauthorized use of the service provider network whether that compromise is initiated by software or physical attachment to loop

facilities from the main distribution frame up to and including the network interface device, including clip-on (toll) fraud and reimburse MCI for its losses associated with such third-party fraud. MCI states that it has no control over the local network elements or the services it purchases from BellSouth. It is MCI's opinion that without such control, it cannot prevent such fraud and so it should not be held liable for such. MCI proposes the following language:

> "BellSouth shall be responsible for any uncollectible or unbillable revenues resulting from the unauthorized use of the service provider network whether that compromise is initiated by software or physical attachment to loop facilities from the Main Distribution Frame up to and including the Network Interface Device, -including clip-on fraud. BellSouth shall provide soft dial tone to allow only the completion of calls to final termination points required by law."

BellSouth proposes that the MCI language should be changed as follows (the underlined text reflects the language added by BellSouth and the stricken text reflects what BellSouth has deleted):

> "BellSouth shall be responsible for any uncollectible or unbillable revenues resulting from the unauthorized ~~use of the service provider network whether that compromise is initiated by software or~~ physical attachment to loop facilities from the Main Distribution Frame up to and including the Network Interface Device, -including clip-on fraud <u>to the extent such unbillable or uncollectible revenue results from the gross negligence or willful act or omission of BellSouth</u>. BellSouth shall provide soft dial tone to allow only the completion of calls to final termination points required by law."

Under BellSouth's proposal, BellSouth would assume the risk of unbillable or uncollectible revenue resulting only from its own gross negligence or willful act or omission. BellSouth argues that MCI's position is inappropriate, as it would place BellSouth in the position of being an insurer against the action of others, including the illegal acts of third parties. BellSouth further argues that MCI is attempting to impose a general term with respect to liability, contrary to the Commission's RAO. Furthermore, BellSouth states that the pricing requirements of Section 252(d) of the Act do not contemplate the cost associated with the assumption of such risk. Additionally, BellSouth states that there was no specific testimony supporting MCI's request, and thus, pursuant to the Commission's Order of October 31, 1996, the Commission should dismiss this issue as beyond the scope of this proceeding.

The issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues <u>was</u> <u>not</u> set forth by MCI and BellSouth in their respective matrices as an issue in the MCI/BellSouth arbitration proceeding. However, this matter of liability was raised as an issue in the AT&T/BellSouth arbitration proceeding. In the AT&T/BellSouth--RAO, the Commission specifically addressed the issue of BellSouth's liability for errors that lead to unbillable or uncollectible revenues. The Commission reached the following conclusion:

> "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."

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding and, thus, concludes that this issue is not subject to resolution. The Commission continues to decline to enact specific standards governing liability by BellSouth for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO issued for AT&T/BellSouth in Docket No. P-140, Sub 50, wherein at the Evidence and Conclusions for Finding of Fact No. 4, the Commission stated that it ". . . does not believe it is appropriate or practical for the Commission to get involved, at this stage, in adopting provisions governing liability for errors."

ISSUE 35: PENALTY PROVISION
Contract Location: Attachment X, Entire Attachment is Disagreed
Page 83 of "Joint List of Unresolved Issues" filed February 7, 1997

DISCUSSION

MCI contends on the basis of experience that the imposition of specific standards and penalties on the incumbent carrier are necessary to ensure the creation of a competitive market. BellSouth's position is that such provisions are, or require the creation of, detailed performance standards. In Finding of Fact No. 3 of the MCI/BellSouth--RAO, the Commission declined to involve itself in the setting of performance standards. While a provision of this nature is not inappropriate, the terms of the provision are not issues of fact or law suitable for arbitration. Furthermore, to the extent there are factual questions, there is not a sufficient evidentiary basis for a decision.

CONCLUSIONS

The Commission declines to decide this matter since it involves matters such as performance standards which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

IT IS, THEREFORE, ORDERED as follows:

1. That the Composite Agreement submitted by BellSouth and MCI is hereby approved, subject to the modifications required by this Order.

2. That BellSouth and MCI shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

3. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of April, 1997.

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 for	)	ORDER APPROVING
Arbitration of Interconnection with BellSouth	)	INTERCONNECTION
Telecommunications, Inc.	)	AGREEMENT

BY THE COMMISSION: An Interconnection Agreement between BellSouth Telecommunications, Inc. (BellSouth) and MCImetro Access Transmission Services, Inc. (MCI), on behalf of itself and its affiliates, was filed in this docket for Commission review and approval on April 28, 1997. This document was filed pursuant to Ordering Paragraph No. 2 in the Commission's Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement dated April 11, 1997, which ordered the parties to revise the Composite Agreement in conformity with the provisions of the April 11, 1997 Order and to file the revised Composite Agreement for review and approval by the Commission.

On April 17, 1997, BellSouth filed a letter in this docket requesting clarification of the Commission's Order dated April 11, 1997 relative to the issue of nonrecurring charges. In its letter, BellSouth cites language in the Order which specifically addresses the issue of nonrecurring charges. Notwithstanding the language of the Order cited in its letter, BellSouth states that the Commission neither granted nor refused to grant nonrecurring charges, and therefore BellSouth requested the Commission to clarify the Order with respect to nonrecurring charges.

On April 28, 1997, MCI responded by letter to the BellSouth letter described above. In its letter, MCI submits that the issue of nonrecurring charges has been resolved for purposes of this proceeding. MCI cites that neither the Recommended Arbitration Order (RAO) of December 23, 1996, nor the April 11, 1997 Order adopted BellSouth's proposed nonrecurring charges. MCI recommended that BellSouth's request for clarification be denied.

The joint letter of the parties filed with the Interconnection Agreement (Agreement) on April 28, 1997, states that the parties have agreed, for the time being, to leave blank the section of the Interconnection Agreement relating to nonrecurring rates in the Price Schedule which is located in Table 1 of Attachment I. According to the parties, if the Commission orders the inclusion of nonrecurring rates, such rates will be applied to elements and services ordered retroactive to the date of filing of the Agreement.

By separate letter dated April 28, 1997, BellSouth noted that the Price Schedule referenced above contains few rates, particularly when compared to the Price Schedule of the Interconnection Agreement between AT&T Communications of the Southern States, Inc. (AT&T) and BellSouth filed on this same date in Docket No. P-140, Sub 50. Since BellSouth and MCI were faced with a large number of network elements and services for which there were no arbitrated or negotiated rates, BellSouth reports that it offered to make available to MCI the prices in the AT&T agreement. MCI, however, allegedly rejected that offer. As a result, and in the absence of Commission-arbitrated rates for a number of unbundled network elements and services, BellSouth advised the Commission that

BellSouth will be unable to provision any service or unbundled network elements to MCI for which a rate is not specified in the MCI Interconnection Agreement. BellSouth then recommended that the Commission adopt the rates contained in the AT&T agreement in this proceeding, on an interim basis, in order to obviate the difficulties that will arise under the incomplete MCI Interconnection Agreement.

By letter filed on May 2, 1997, MCI responded to the BellSouth letter discussed immediately above. In this letter, MCI submits that there is no basis in the record for adopting the additional rates proposed by BellSouth and MCI requests that BellSouth's request for adoption of additional prices be denied.

CONCLUSIONS

While BellSouth's letter dated April 17, 1997 correctly cites language in the Order dated April 11, 1997, which specifically addresses the issue of nonrecurring charges, the following language on page 27 of this Order is also relevant to the nonrecurring charges issue:

> BellSouth's proposed price list contains proposed recurring and nonrecurring rates for several rate elements and services, some of which are in accordance with the Commission's RAO, plus proposed rates which were not established in the Commission's RAO. According to BellSouth, some of the rates displayed in its price list were based on further negotiations with MCI. Yet, in comparison, MCI's proposed price list contains only the rates established by the Commission for unbundled network elements and wholesale discount rates. <u>Therefore, it is not clear what rate elements or services MCI is requesting for BellSouth to provide, what rates have been agreed upon in further negotiations, or exactly which rates are in dispute at this time, based upon a comparison of these price lists</u>. (Emphasis added.)

Notwithstanding the language in the Order which specifically addresses nonrecurring charges, this language clearly explains why the Commission did not establish nonrecurring or recurring rates beyond those established by the Commission in the RAO in this docket. Thus, the Commission directed the parties to continue to negotiate the prices issue, which includes nonrecurring charges.

In light of the filings of the parties in this docket since the issuance of the Commission's Order dated April 11, 1997, as described above, MCI and BellSouth have reached an impasse with respect to nonrecurring charges and apparently have been unable to reach agreement on the prices or rates for several other services through the negotiation process thus far. In order to further assist the parties and move closer to the ultimate goal of enabling fair competition between the parties with its attendant benefits for consumers, the Commission believes that the parties need further direction from the Commission. After careful consideration of the record, the filings of the parties and the prices contained in the Commission-approved Interconnection Agreement between AT&T and BellSouth in Docket No. P-140, Sub 50 of which the Commission takes judicial notice, the Commission concludes that MCI and BellSouth should be allowed to continue to negotiate prices for services or elements desired by MCI beyond those established by the Commission in the RAO in this docket. Should such negotiations fail, the Commission directs the parties to adopt the prices contained in the Commission-approved AT&T and BellSouth Interconnection Agreement, including any nonrecurring charges. All such prices established through either negotiation or from the Interconnection

Agreement between AT&T and BellSouth, shall be interim, subject to true-up, in accordance with the prices established by the Commission for unbundled network elements in the RAO in this docket.

In addition, the Commission has reviewed the Agreement filed on April 28, 1997 in this docket and notes the following:

1. With respect to the resale of semi-public payphone service as provided for in Attachment II, Section 2.3.9.5 of the Agreement, the Commission notes that, pursuant to the FCC's Payphone Order, semi-public payphones are no longer offered to subscribers under tariff and thus should not be required to be offered for resale. BellSouth may, however, offer such semi-public payphone services for resale if it chooses.

2. Attachment I, Section 1.1 provides that "All rates provided under this Agreement are interim, subject to true-up,..." The Commission directs the parties to insert the phrase "except the rates for Local Service Resale," immediately after the comma following the phrase "subject to true-up" cited above because the resale prices are not interim prices.

After careful consideration, the Commission concludes that the Agreement filed on April 28, 1997, between BellSouth and MCI should be approved effective as of April 28, 1997, subject to the above modifications. BellSouth and MCI shall take appropriate action, including contract amendments if necessary, to effectuate the above modifications.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 12th day of May, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-141, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In The Matter of
Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with GTE South Incorporated) RECOMMENDED ARBITRATION ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Thursday, October 24, 1996, through Friday, October 25, 1996; Monday, November 4, 1996, through Tuesday, November 5, 1996; and Thursday, November 7, 1996, through Friday, November 8, 1996

BEFORE: Commissioner Allyson K. Duncan, Presiding; and Commissioners Laurence A. Cobb and Judy Hunt

APPEARANCES:

For MCI Telecommunications Corporation:

Ralph McDonald, Bailey & Dixon, L.L.P., Attorneys at Law, Post Office Box 1351, Raleigh, North Carolina 27602-1351

Marsha Ward, Attorney at Law, MCI Telecommunications Corporation, 780 Johnson Ferry Road, Suite 700, Atlanta, Georgia 30342

For GTE South Incorporated:

Robert W. Kaylor, P.A., Attorney at Law, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27602

Joe W. Foster and Morris L. Sinor, Attorneys at Law, GTE South Incorporated, 4100 North Roxboro Street, Durham, North Carolina 27702

Paul Mirengoff, Andrew Shore, and Edward Finley, Hunton and Williams, Attorneys at Law, One NationsBank Plaza, 101 South Tryon Street, Suite 2650, Charlotte, North Carolina 28280

William C. Fleming, Attorney at Law, 5820 Rock Canyon Road, Raleigh, North Carolina 27613

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 September 10, 1996, in Docket No. P-141, Sub 30. MCI's petition requested that the Commission arbitrate certain terms and conditions with respect to interconnection between MCI, as the petitioning party, and GTE South Incorporated (GTE).

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 and excluded intervenors other than the Attorney General from participating in arbitration proceedings. On August 21, 1996, the Commission scheduled a hearing in Docket No.

P-140, Sub 51, an arbitration proceeding between AT&T Communications of the Southern States, Inc. (AT&T), and GTE to begin on Thursday, October 24, 1996. By Order of September 16, 1996, the Commission consolidated the AT&T/GTE arbitration proceeding in Docket No. P-140, Sub 51, for purposes of hearing with the MCI/GTE arbitration proceeding in Docket No. P-141, Sub 30. Numerous other motions and pleadings have been filed in these 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 or incumbent LEC) 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 yet have appropriate cost 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 October 24, 1996, MCI presented the testimony of the following witnesses: Sarah Goodfriend, Jerry Murphy, John Ruja, Don J. Wood, Greg Darnell, and Steven A. Inkellis. GTE presented the testimony of the following witnesses: Charles F. Bailey, Allan Peters, John W. Ries, Mark E. Johnson, John Peterson, Jack Isbell, Timothy J. Decker, William Munsell, Larry Gaskin, Alan Plant, Myron C. Dolecki, Timothy Tardiff, David Tucek, Robert Tanimura, Douglas E. Wellemeyer, and David S. Sibley.

Based upon careful consideration of the entire record in this arbitration proceeding, the Commission now makes the following

FINDINGS OF FACT

1. GTE 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 GTE's tariffs will carry forward into resold services with the exception of such prohibitions and restrictions as have been or will be specifically imposed or as set out in the Evidence and Conclusions for Finding of Fact No. 2.

3(a). The Commission declines to enact specific performance standards and instructs the parties to negotiate mutually agreeable terms.

3(b). An "as-is" transfer is a transfer of a customer's services from one communications carrier to another communications carrier. "As-is" transfers should be allowed.

3(c). GTE is required to enter into blanket letters of authorization authorizing the competing local provider (CLP) to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with the FCC rules in 47 CFR Part 64, Subpart K.

4. GTE 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. Further, the parties are encouraged to negotiate the terms and conditions of how the implementation costs incurred in the development of such interfaces can be recovered, such that all benefitting users share the burden.

5. GTE 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 GTE, until customized routing becomes technically feasible. Customized routing is not technically feasible at this time.

6. GTE is not required to unbrand operator assisted and directory assistance (OS/DA) services, but must rebrand OS/DA when customized routing is implemented.

7. GTE should be allowed to continue billing through the Customer Billing Services System (CBSS) to render bills to MCI for services purchased from GTE until an industry-wide standard is developed through an industry forum.

8. Neither the Act nor the FCC Interconnection Rules require GTE to include the name/logo of MCI on a directory cover.

9. The issue of whether GTE must provide MCI with access to GTE's directory assistance database has been resolved between MCI and GTE.

10. The issue of whether GTE should provide notice to MCI about network or tariff changes that may impact MCI's operations has been resolved in a national agreement and is no longer in need of arbitration.

11. GTE is implementing a process to comply with MCI's request concerning presubcribed interexchange carrier (PIC) changes.

12. GTE must file with the Commission all interconnection agreements entered into in the future with CLPs within 30 days after the conclusion of negotiations and all interconnection agreements previously entered into with CLPs within 30 days after the date of this Order. GTE 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. GTE 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),
- 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 unbundled subelements. Therefore, at this time, GTE is not required to unbundle the local loop. However, GTE may provide the loop distribution subelement in a bona fide request process and unbundle the loop into subelements should it choose to do so.

Further, GTE is not required to provide unbundled direct access to its advanced intelligent network (AIN) database until a mediated access mechanism has been developed on an industry-wide basis. Such mediated access mechanism should be promptly addressed and developed through GTE's participation in an industry-wide forum.

14. MCI should be allowed to combine unbundled network elements in any manner it chooses. GTE 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. GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits available to MCI on terms and conditions equal to that it provides itself. GTE 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 GTE's capacity to the detriment of GTE or any other CLP.

16. GTE must make available to MCI remote call forwarding (RCF) and direct inward dialing (DID) as interim number portability solutions, until such time as a permanent number portability method is available. The parties must explore appropriate cost-recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefitting users share the burden and negotiate the appropriate cost-recovery mechanism.

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 that dark fiber is a network element; therefore, GTE is not required to make dark fiber available to MCI.

19(a). The provision of tandem to tandem local switching within the local access transport area (LATA) is not an issue in this proceeding.

19(b). MCI's access to AIN services residing in GTE's service control points (SCPs) should be allowed through GTE's signaling transfer points (STPs). Access to GTE's AIN triggers is not required until a mediated access mechanism has been developed on an industry-wide basis.

19(c). GTE is not required to unbundle Signaling System 7 SCPs from STPs. The parties should actively participate in an industry-wide forum to promptly address this issue.

19(d). The selection of the Signaling System 7 signaling point of interface (SPOI) is not an issue in this proceeding.

19(e). The question of whether or not GTE should provide STP ports used for the interconnection of MCI to the GTE Signaling System 7 network if MCI does the same is not an issue in this proceeding.

19(f). The issue of "toll free" database dips is not an issue in this proceeding.

20. GTE must provide MCI with copies of GTE'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 GTE.

21. GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

22. Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 21, the composite wholesale discount rate which is appropriate for GTE is 19.97%.

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 GTE and MCI.

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. The pricing issues for collect and third-party intraLATA calls have been addressed and resolved in the pricing issues discussed elsewhere in this Order.

29. The general contractual terms and conditions, including the term of the agreement, should be negotiated between MCI and GTE, except as outlined elsewhere in this Order.

30. The development of a cost-recovery mechanism for dialing parity is beyond the scope of this proceeding.

31. The types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. Disputes over the functionality of particular equipment will be resolved on a case-by-case basis.

32. The arbitration procedures adopted by Commission Orders issued on 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 GTE should be excluded from resale?

POSITIONS OF PARTIES

MCI: The Act and FCC Interconnection Order require GTE to offer all retail telecommunications services including obsolete/grandfathered services, trials and promotions, contract service arrangements, volume and term discounts, and Lifeline and Link-Up 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 Interconnection Order for GTE to refuse to offer any of these services for resale. GTE is permitted, however, to base the wholesale price for resold short-term promotions on the ordinary retail rate rather than the promotional rate.

GTE: GTE does not believe it should be required to offer the following services for resale:

- Services priced below cost, i.e., residential services;

- Promotional offerings;
- Public pay telephone lines and semi-public pay telephone lines;
- Services that are not telecommunications services (e.g., inside wire, voice mail);
- Existing contract services will not be offered for resale, however, new contract service arrangements (CSAs) developed after the arbitration will be offered; and
- Market or operation trials.

ATTORNEY GENERAL: The Attorney General made the following analyses and recommendations:

1. Market and operational trials are non-retail services. Neither are short-term promotions (less than 90 days). These should not be available for resale.

2. Insurance plans for inside wiring or provision of voice mail are not currently regulated services and should not be compelled to be provided at retail. However, the definition of telecommunications service is evolving and these may eventually fall under the purview of the statute.

3. Payphone service to payphone location owners, semi-public payphone service to semi-public payphone location owners, and residential service to residential customers should be available for resale at wholesale.

4. Contract service arrangements are tailored to specific customers and should not be open to resale. However, if a party can show that these arrangements are being used to defeat competition, this position should be reevaluated.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Wellemeyer and MCI witness Darnell.

Section 251(c)(4) of TA96 requires the ILEC to offer for resale at wholesale rates any telecommunications service 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.

TELEPHONE - INTERCONNECTION AGREEMENTS

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. See FCC Interconnection Order, Paragraph 939.

CONCLUSIONS

The Commission concludes that GTE should not be allowed to prohibit or restrict resale except as set out below:

1. Services priced below cost (i.e., residential services). The Commission concludes that below-cost services should be available for resale. In the FCC Interconnection Order, Paragraph 956, the FCC said that "subject to cross-class restrictions . . . we believe that below cost services are subject to the wholesale rate obligation." The FCC continued: "[T]he resale pricing standard is not based on cost plus a reasonable profit. The resale pricing standard gives the end-user the benefit of an implicit subsidy in the case of below-cost service, whether the incumbent is served by the incumbent or by a reseller, just as it continues to take the contribution if the service is priced above cost." The FCC further noted that the ILEC will experience proportionate decreases in expenditures due to avoided costs.

2. Promotional offerings. The Commission concludes these to be telecommunications services subject to resale if the promotion is over 90 days. If the promotion is 90 days or less, then it is reasonable to consider it not subject to resale. See FCC Interconnection Order, Paragraph 949 ff. However, the ILEC should not utilize promotions in such a way to evade its wholesale rate obligation, as, for example, with sequential promotions of 90 days or less.

3. Public and semi-public pay telephone lines. The Commission concludes that Public Telephone Access Service (PTAS) lines will be subject to resale at wholesale rates but only to telecommunications carriers, not to customer owned coin-operated telephone providers (COCOTs), and only for the purposes of resale. See FCC Interconnection Order, Paragraph 876. However, the ILECs' own public payphones will not be subject to resale because they are not per se a retail service, since no end-users presubscribe to it. However, ILEC semi-public payphones should be subject to resale.

4. Services that are not telecommunications services (e.g., inside wiring and voice mail). Stated in the abstract, this exclusion is unexceptionable. Section 251(c)(4) requires resale at wholesale rates of retail telecommunications services offered to subscribers who are not telecommunications carriers. Section 3(48) defines "telecommunications" as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information sent and received." Section 3(51) defines "telecommunications service" essentially as the offering of telecommunications for a fee directly to the public.

Specifically, the Commission concludes inside wiring and voice mail not to be telecommunications services under the Act and are thus not subject to resale.

5. Existing CSAs. As a general principle, the Commission concludes these to be subject to resale. In the FCC Interconnection Order, Paragraph 948, the FCC concluded that there was no

basis for creating a general exemption for CSAs from the resale requirement. However, an ILEC is not precluded from requesting exemption for a specific CSA for good cause shown.

6. Market or operation trials. The Commission concludes these services not to be subject to resale.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: What terms and conditions should be applied to resale of GTE services?

POSITIONS OF PARTIES

MCI: Restrictions on resale are prohibited. GTE should be ordered to impose no use, user or other restrictions that restrict or limit the resale of any of its services. At a minimum, MCI must be able to resell flat-rate basic local residential service to residential customers, grandfathered services to grandfathered customers, and Lifeline and Link-Up to qualifying low income customers.

GTE: The following restrictions will be applied by GTE to the wholesale products:

- Cross-class selling should be prohibited, e.g., purchasing wholesale residential services and reselling that service to a business customer;
- Resale of grandfathered services should only be allowed to the grandfathered customers; and
- Discounts should not be further applied to services already priced at wholesale or to operator and directory assistance services or to nonrecurring charges. Among the services alleged to already be priced at wholesale are private line services tariffed under the special access tariff, and COCOT coin and coinless lines.

ATTORNEY GENERAL: The Attorney General agrees with cross-class selling restrictions and argues that current tariffed restrictions should apply to resale, assuming such restrictions are reasonable. Similarly, resale of grandfathered services should only be allowed to grandfathered customers. GTE has argued that there are no avoided costs associated with operator services and directory assistance and so the wholesale discount should not apply to those services. The Attorney General recommends that operator and directory assistance calls be provided at wholesale. By the same token, nonrecurring services should be provided for resale at wholesale prices.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Wellemeyer and MCI witness Darnell.

This issue falls into the following categories--cross-class resale, grandfathered and Lifeline/Link-Up services resale, and the non-application of the wholesale rate to services already said

to be priced at wholesale (specifically, private line services tariffed under the special access tariff, and COCOT and coinless lines), operator assistance, directory assistance, and nonrecurring charges.

The first two categories--a prohibition of cross-class resale as between residential and business categories and the restriction of the resale of grandfathered services to grandfathered customers and Lifeline/Link-Up services to eligible end-users--are clearly reasonable and supported by the Act and the FCC Interconnection Order. See, especially, FCC Interconnection Order, Paragraphs 962-964, 968. With respect to the services alleged to be already priced at wholesale, such as private line services tariffed under the special access tariff, and COCOT coin and coinless lines, and operator and directory assistance services and nonrecurring charges, the Commission finds no basis to exclude such services from the resale requirement at wholesale rates. The Commission notes that resale of PTAS lines is limited to telecommunications carriers and then only for the purpose of resale.

CONCLUSIONS

The Commission concludes the following:

1. That cross-class selling of wholesale residential services should be prohibited.

2. That the resale of grandfathered services should be restricted to grandfathered customers and the resale of Lifeline/Link-Up should be restricted to eligible customers.

3. That operator and directory assistance, non-recurring charges and private line services tariffed under the special access tariff, and COCOT and coinless lines are subject to resale.

4. That use and user restrictions that are currently in ILEC tariffs should carry forward into resold services, with the exception of such prohibitions or restrictions which have themselves been or will be specifically imposed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3(a)

Issue: What are the appropriate service standards to be provided by GTE to new entrants?

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 GTE provides to itself. Similar quality of service obligations should be imposed on GTE with respect to the provision of resold services. GTE should be ordered to adhere to performance metrics, installations intervals, repair intervals, and other standards that are equal to the higher of the standards that GTE is required to provide, or actually provides, to its own customers or to customers of any other carrier.

GTE: GTE will provide the same quality of services to the new entrant that GTE provides to its own customers.

ATTORNEY GENERAL: The same level of quality must exist between GTE and the 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 April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by GTE witnesses Petersen and Isbell and MCI witnesses Goodfriend, Darnell, and Ruja.

The Commission does not believe it is appropriate or 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, as they possess superior knowledge about the processes involved. It would be premature for the Commission to impose a "one size fits all approach" or an approach leading 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 or appropriate standards, perhaps with minor variations to accommodate specific concerns and expectations.

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. 3(b)

Issue: Should GTE be required to provide "as-is" transfers to the new entrant?

POSITIONS OF PARTIES

MCI: "As-is" transfers are needed to enable MCI to transfer customers from ILECs quickly and easily. Customers are often unaware of the full range of services they subscribe to and without "as-is" transfers, new entrants will be disadvantaged.

GTE: The new entrant should determine what services the customer desires.

ATTORNEY GENERAL: There was testimony that many customers do not necessarily know what their services are. Thus, a price quote from a new entrant for an "as-is" transfer from the ILEC may be inaccurate and necessitate further contracts between the new entrant and customer. While an interactive ordering process between ILEC and new entrant may be the best solution in the long run, the Attorney General found no reason to deny new entrants "as-is" transfers from the ILEC for new customers.

DISCUSSION

See the discussion under the Evidence and Conclusions for Finding of Fact No. 3(c).

CONCLUSIONS

The Commission concludes that "as-is" transfers must be allowed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3(c)

Issue: Should GTE be required to provide customer information without a letter of authorization (LOA) from the customer to GTE?

POSITIONS OF PARTIES

MCI: MCI argues that a blanket letter of authorization process is appropriate.

GTE: If the new entrant provides GTE with a specific LOA, then customer information will be provided.

ATTORNEY GENERAL: Customers have both an expectation of privacy regarding account records and efficient transferral upon request. It is unclear whether GTE is seeking a signed piece of paper or some other verification method. The entrant should obtain authorization from its new customer prior to seeking release of that customer's information from the ILEC. However, GTE should honor the new entrant's request for account information without third-party verification of the end-user's verification. This policy can be adjusted to require third-party verification if a significant degree of complaints arise.

DISCUSSION

Testimony regarding this issue and the issue presented in the Evidence and Conclusions for Finding of Fact No. 3(b) was presented by GTE witness Isbell and MCI witnesses Darnell, Ruja, and Goodfriend.

The issues of "as-is" transfers and letters of authorization are interrelated. The CLPs argue that, because many end-users are not precisely sure as to what services they receive from the ILECs, the CLPs need access to account information describing the end-user's current services. They also propose blanket LOAs to allow them to have service efficiently changed over at the request of the end-user.

An "as-is" transfer is, as the name implies, a transfer of the same customer services from one communications carrier to another.

A blanket LOA is essentially an agreement between the CLP and the ILEC that the CLP will only seek a service transfer upon the authorization of the end-user, but it is not necessary to actually send to the ILEC a written document with the end-user's signature requesting such service. The CLPs say a similar process is used with interexchange carriers (IXCs) and should be utilized here. They cite the FCC Interconnection Order, Paragraph 421, to the effect that entrants are disadvantaged if customer switchovers are not "rapid and transparent."

GTE is resisting the blanket LOA. GTE insists that the CLP should first determine from the end-user what services the end-user has, and it maintains that it should receive authorization from the end-user before disclosing account information or transferring service. GTE also argues that Section 222 of the Act requires customer approval before release of this customer proprietary network information (CPNI).

The Commission concludes that the use of "as is" transfers and blanket LOAs is reasonable and necessary in order to effectuate the policy enunciated in the FCC Interconnection Order, Paragraph 421, that ILECs are to switch over customers to CLPs for local service in the same interval as LECs currently switch end-users between IXCs. The Commission furthermore agrees with the FCC that new entrants will be disadvantaged if customer switch-overs are not "rapid and transparent." The CLPs have made a convincing practical argument that many end-users, especially large or medium-sized businesses, do not know precisely what their services are and that it would be cumbersome and inefficient to deny expeditious access to the required information.

At the same time, the Commission is concerned about the potential for "slamming" and other abuses of the LOA process. Accordingly, the Commission believes that ILECs and CLPs should enter into blanket LOAs authorizing both relevant account information access or transferral of service. In this context, relevant account information refers to a customer's list of scheduled services on or about the time of a transfer. However, the CLP must obtain and, in the event of dispute, must be prepared to produce the written or third-party verified authorization by the end-user for such information or transferral. Such authorization or third-party verification should be consistent with the FCC anti-slamming rules set out in 47 CFR Part 64, Subpart K. The Commission believes these requirements will satisfy Section 222 concerns about customer authorization for release of CPNI as well as reduce the likelihood of CLP "fishing expeditions" to obtain marketing information about customers before rather than after the customers have authorized account access or service transfer. In any event, a carrier receiving CPNI is not to use such information for its own marketing efforts. See Section 222(b) of the Act.

The Commission further notes that Section 258 of the Act prohibits changes to subscriber carrier selections "except in accordance with such verification procedures" as the FCC prescribes. States are not precluded from enforcing verification procedures of their own respective intrastate service. According to GTE, the FCC is undertaking a rulemaking in CC Docket 96-115 to determine appropriate verification procedures. The Commission believes that the state and federal rules on this matter should be consistent. Therefore, to the extent that the FCC may in the future prescribe a different verification process for local service changes, the federal rules should at that time supplant the practices endorsed here, subject to reconsideration of the applicability of such rules in North Carolina by the Commission should they be unsatisfactory.

CONCLUSIONS

The Commission concludes the following:

1. ILECs and CLPs shall enter into blanket LOAs authorizing the CLP to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with FCC Rules in 47 CFR Part 64, Subpart K.

2. The above verification procedures shall be superseded by such rules as are issued by the FCC pursuant to Section 258 of the Act, subject, after promulgation of such rules, to reconsideration by motion of the Commission or by an interested party.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Should GTE 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?**

In what time frame should the interfaces be deployed and how should the costs of the interfaces be recovered?

POSITIONS OF PARTIES

MCI: GTE 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 GTE provides to its customers. The FCC Interconnection Order, Rule 51.319(f), 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."

GTE: GTE will provide the new entrants with access to systems functions that provide parity with the functions realized by GTE. GTE is unwilling, however, to cede unrestricted control of its equipment and facilities to competing local carriers.

In regard to deployment of such interfaces, Phase 1 available today, uses an 800 number for pre-ordering and repair functions. Phase 2 automates the pre-ordering, ordering, and repair process using electronic interfaces and is targeted for deployment in 1997. The unresolved issue is Phase 3. The long-term electronic interface is dependent upon industry standards. National standards should be developed before a permanent solution is developed and implemented.

The cost causer should pay for the costs of implementation of the interfaces.

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. GTE should not be required to sacrifice the reliability or accuracy of its own internal interfaces to give the new entrants parity in using electronic interfaces, but GTE's need for control of its own system should not be used to delay the implementation of interfaces. The Attorney General agrees with GTE that a long-term solution needs to conform to national standards. The Commission should require that a firm plan to implement automated interfaces with commitments to deadlines which are mutually satisfactory must be in place and reported to the Commission by

April 15, 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 Ruja and GTE witness Isbell.

The FCC Interconnection Order requires GTE to provide nondiscriminatory access to operational support systems, and any relevant internal gateway access, in the same time and manner in which GTE provides such functions to itself. Further, the FCC Interconnection Order, Rule 51.319, requires that the operations support systems functions be provided on an unbundled basis upon request.

GTE has agreed in principle to provide electronic interfaces on a permanent, long-term basis. However, until the permanent, long-term interface is developed, GTE has agreed to provide interim measures to provide access to the functions of its operations support systems. GTE has agreed to provide the pre-ordering, ordering, and repair process using electronic interfaces in early 1997. GTE witness Isbell testified that the FCC recognizes that the long-term electronic interface is dependent upon industry standards, thus, national standards should be developed before a permanent solution is developed and implemented. GTE has agreed to implement the national solution when it becomes available.

Presently, GTE's proposals for operations support system functions all involve a manual element. For example, if the CLP wants to obtain access to information about a customer's existing service, it must call a GTE service representative to obtain that information. In order to obtain a telephone number assignment and a service installation due date for a new CLP customer, the CLP cannot directly access GTE's electronic system, but must put its customer on hold and dial an 800-number to talk to a GTE service representative. When an order for a customer's service is submitted electronically, a GTE employee must manually enter the data into GTE's order processing system. To report a customer's trouble, the CLP must call a GTE repair center, where a GTE customer service representative enters the data into the system. MCI argued that such manual processing introduces costs, delays, and potential inaccuracies which would be avoided if they had direct electronic access.

The issue of service order processing and provisioning is currently before the Industry Order and Billing Forum (OBF), which has published the initial draft of the Local Service Ordering Guideline and the Local Service Request/Industry Support Interface for ordering all unbundled and resold local services. Many issues remain to be resolved, so it is apparent that non-interactive, non-real-time interfaces will continue to be in place for an interim period of time.

MCI requested that GTE be required to file a schedule detailing its plans for developing real-time, interactive, electronic interfaces by January 1, 1997. Further, MCI stated that if GTE cannot meet this deadline then GTE should be required to specify the impediments it faces, outline its plans for developing the required electronic bonding, identify the date by which deployment of such systems will be possible, and detail the interim systems it plans to implement in the absence of electronic bonding.

The costs of implementing electronic interfaces have not yet been identified. GTE argued that the electronic interfaces are being developed solely for the benefit of the competing carriers. Thus, GTE stated that the requesting carriers should be responsible for bearing the costs to access these systems — i.e., the requesting carriers should pay for development of the electronic interfaces.

MCI argued that there will be shared benefits to such interfaces since GTE will be able to eliminate costly manual processes that are required in the absence of electronic bonding. According to MCI, in this situation, where both parties benefit, each party should bear its own costs of implementing the necessary interfaces. Further, MCI stated that this will provide an incentive to GTE to keep its systems development expenses reasonable, which is not the result if GTE can simply look to its competitors for payment of those costs. MCI believes that all parties have the obligation to develop a competitive local market and stated that requiring new entrants to pay all of the costs of GTE's system would place a huge financial burden on the new entrants, would unduly favor GTE, and would not be competitively neutral.

CONCLUSIONS

The Commission encourages GTE 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 GTE'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.

Regarding the matter of who should be required to pay for the costs of implementation of the interfaces, the Commission concludes that it is not prepared to make such a decision at this time. However, the Commission encourages the parties to further negotiate the terms and conditions of how the implementation costs incurred in the development of such interfaces can be recovered, such that all benefitting users share the burden.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Must GTE route calls for operator services and directory assistance (OS/DA) services directly to MCI's platform?

POSITIONS OF PARTIES

MCI: The Act and the FCC Interconnection Rules require this customized routing.

GTE: It is technically feasible, in some central offices, to custom route calls to the new entrants' OS and DA platforms. In those offices, the custom routing is dependent upon vendor delivery; cost recovery becomes an issue should custom routing become technically feasible. However, GTE's switch vendors believe a long-term solution needs to be developed.

ATTORNEY GENERAL: Lack of customized routing poses a disadvantage for the new entrant but more especially the end-user who must learn new dialing patterns for OS/DA. For fairness to the parties, especially the end-user, customized routing will have to occur. Switch capacity to provide

customized routing in the long-term is not clear, and GTE's concern with national standards is well founded. Parties should be ordered to report to the Commission by April 15, 1997, what form the long-term, technical solution will be, a schedule for the implementation of the long-term solution and an explanation of the interim solution to direct routing requests. If the arbitrating parties are unable to reach agreement on the technical solution and scheduling, the Commission should order compliance if the arbitrating parties are unable to reach agreement.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Darnell and Murphy and GTE witnesses Gaskin and Johnson.

MCI notes that Section 251(b)(3) of the Act requires LECs to permit "nondis-criminatory access to telephone numbers, operator services, directory assistance, and directory listing...." The FCC has concluded that if a carrier requests an ILEC to unbundle the facilities and functionalities providing OS/DA as separate network elements, the ILEC must provide the CLP with nondiscriminatory access to such facilities and functionalities at any technically feasible point. Paragraph 534. This includes unbundling the facilities and functionalities providing OS/DA from resold services and other unbundled network elements to the extent technically feasible. Paragraph 536.

MCI also notes that FCC Rule 51.319(c)(1)(i)(C)(2) requires GTE to unbundle "any technically feasible customized routing functions" provided by a local switch. MCI has requested customized routing to allow calls by MCI's local customers to DA (911), repair service (611), or operator service (0-) to be routed to an appropriate MCI platform. GTE does not appear to contend that customized routing is technically infeasible, but GTE witness Gaskin testified that GTE will agree to switch unbundling only where (1) MCI agrees to pay all costs associated with near-term, interim unbundling, including the cost of adding new capacity or conditioning existing switches, (2) all users pay for the long-term, industry standard solution, and (3) MCI establishes a method to ensure it pays for all the access charges required by law. Line Class Codes (LCCs) are only one of the available methods of implementing customized routing. Bell Atlantic - Pennsylvania has recently agreed to use AIN capabilities for customized routing. If GTE needs to undertake additional development work to use AIN for this purpose, it should use LCCs during the interim period. Where GTE must incur costs to provide a network capability to a new entrant, it should be allowed to recover no more than the TELRIC costs of implementing such capability in the most efficient manner possible.

GTE states that in order for calls to be routed to specific trunk groups as MCI requests, appropriate LCCs must be identified and activated. More specifically, MCI wants to offer its end-users the ability to have their OS, DA, and long distance calls routed to separate providers. To offer this functionality, a unique LCC value must be determined for every permutation of the required options, and the LCCs must then be placed on each customer's switch entry. GTE would be required to perform a manual search to find the required LCC values. The time and labor needed to accomplish this task would depend on: (1) the number of routing possibilities MCI requests for a given switch and (2) the number of different routing options MCI makes available to its customers. MCI also ignores the fact that substantial costs will be incurred to provide existing switches with the

capability of performing the routing requested by MCI. In addition, MCI's request also could exhaust the capacity of the switch and adversely affect network capabilities.

Testimony by both GTE and MCI appears to agree that the only feasible method of providing customized routing at this time is by the use of LCCs. Both parties also agree that LCCs are a finite resource. The evidence indicates, however, that a sufficient number of LCCs may not be available to serve all the carriers who may wish to obtain customized routing from GTE. While it may be technically feasible to serve some CLPs on some switches, it is not technically feasible to serve all CLPs on all switches. GTE is investigating other long-term solutions. Until a long-term solution is developed, the Commission declines to require customized routing. GTE is willing, on an interim basis, to make available to MCI the routing capability it has, provided MCI pays the associated costs.

In the case of unbundled network elements, the issue is whether it is technically feasible for GTE to provide customized routing. MCI urges the adoption of an interim solution using LCCs, and GTE has stated a willingness to provide it with LCCs on an interim basis where it has the capability, provided the CLP bears the cost. Nevertheless, 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. Instead of requiring customized routing using LCCs under these circumstances, the Commission believes that 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 because it is not technically feasible. The Commission encourages all parties to work to develop a long-term, industry-wide solution to technical problems as soon as possible.

In regard to the matter of who should be required to pay for the costs of implementation of such customized routing, the Commission is not prepared to make a decision at this time. The Commission encourages the parties to further negotiate the terms and conditions of how the implementation costs incurred in the development of such customized routing can be recovered such that all benefitting users share the burden.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: When a GTE service is resold, is it technically feasible for GTE to brand the services (i.e., OS/DA) with the new entrant's brand? When GTE employees interact with a new entrant's customers with respect to a service provided by GTE on behalf of the new entrant, what are GTE's branding obligations?

POSITIONS OF PARTIES

MCI: GTE should be ordered to brand, as MCI, any operator services, directory assistance services, and any other like services provided to end-users who use GTE local exchange services that are being resold by MCI. Such branding is required by the Act and FCC Rules unless GTE proves a particular restriction is reasonable and nondiscriminatory.
GTE: It is not feasible for GTE to rebrand services for the new entrant. However, GTE will unbrand certain services, and GTE will leave a generic door hanger on the customer's premises.

ATTORNEY GENERAL: OS/DA services should not be branded by any arbitrating party, including GTE, until customized routing is available. GTE employees should be required to indicate either verbally or with written notice or both that they are performing work on behalf of the CLP. A generic door hanger on customer premises is one way to comply.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Darnell and GTE witnesses Isbell and Johnson.

FCC Rules provide 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.

MCI asserts that it is important that OS/DA be properly branded. According to MCI, in a resale environment, branding of OS/DA is essential to enable a reseller to establish an identity in the marketplace, to attempt to differentiate its services, and to avoid customer confusion.

GTE asserts that it is not technically feasible to uniquely brand CLP's services in a resale or unbundled environment. The issue of customized routing must first be resolved.

Branding of services when GTE employees interact with MCI customers is an issue agreed upon in other jurisdictions, and the Commission is of the opinion that this particular branding issue has been settled and is no longer subject to arbitration in this proceeding.

CONCLUSIONS

GTE is not required to unbrand. The Commission does require GTE to rebrand OS/DA when customized routing is implemented. Any problems or complaints shall be addressed on a case-by-case basis. The Commission also concludes that the branding issue with regards to other interaction between GTE and its employees and MCI customers is resolved.

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 GTE?

POSITIONS OF PARTIES

MCI: MCI has requested GTE to provide billing for resold services in a Carrier Access Billing Systems (CABS) format to facilitate standard industry auditing practices. GTE has agreed to provide billing in the requested format for access-like services, but will only agree to provide billing from the Customer Billing Services System (CBSS) system for other resold services. The use of the CBSS billing is unacceptable, because it does not involve a standardized billing format, and makes the bills virtually inauditable.

GTE: GTE is in agreement with MCI as to initial bill format, migration to CABS, and record usage format options. GTE initially will bill from the end-user billing system CBSS and will migrate to a CABS format when industry standards are defined.

ATTORNEY GENERAL: Evidence at the hearing indicated national standards for billing formats were being developed. All parties should participate in good faith in establishing national standards and report to the Commission by April 15, 1997, on the progress of establishing these standards. The Commission should conclude that GTE's offer to migrate MCI to the CABS format is reasonable and order GTE to report to it by April 15, 1997, the schedule for migrating MCI to a CABS format.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Ruja and GTE witness Isbell.

It appears that GTE has agreed to provide, or is working to provide a billing system in the CABS format.

CONCLUSIONS

The Commission will allow GTE to continue billing through the CBSS billing process until industry-wide standards are developed through an industry forum.

In regard to the matter of who should be required to pay for the costs of implementation of such billing services as requested by MCI, the Commission is not prepared to make a decision at this time. The Commission encourages the parties to further negotiate the terms and conditions of how the implementation costs incurred in the development of such billing services can be recovered such that all benefitting users share the burden.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: Should GTE 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 GTE directories.

GTE: GTE believes this issue was settled in accordance with the stipulations reached in a comprehensive settlement filed by GTE on November 20, 1996.

ATTORNEY GENERAL: The cover of the directory needs to have some indication that the directory includes listings for all local service providers; however, this appears to be an issue that can be deferred. The Attorney General requests that 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 arbitration will not be necessary.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Darnell and GTE witness Peters.

GTE believes this issue has been resolved with MCI based upon stipulations reached in another jurisdiction. MCI, however, still considers this an issue for arbitration. In testimony, MCI witness Darnell states that MCI is willing to pay the same cost per book GTE incurs for having customized phone book covers. GTE publishes its own directory and is of the opinion that MCI has the same option. Also, the logo is not a part of any resold service.

CONCLUSIONS

The Commission concludes that neither the Act nor the FCC's Interconnection Rules require GTE 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 the publisher of the directory.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: Must GTE provide MCI access to GTE's directory assistance database?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: GTE will provide initial loads and updates of directory listings.

ATTORNEY GENERAL: If the two sides cannot assure each other of their mutual goodwill in providing AIN services or answering directory requests and cannot cooperate in good faith, then the intermediary step for access to directory and AIN databases should be imposed on all local exchange telephone companies, both ILECs and CLPs.

DISCUSSION

MCI stated in its revised post-hearing matrix that this was not an issue in this proceeding. Additionally, GTE attorney Sinor addressed this issue in commenting with respect to a stipulation between the parties.

CONCLUSIONS

Based upon MCI not addressing this issue in its post-hearing matrix nor in its Proposed Order, the Commission considers this issue to have been resolved between MCI and GTE.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Issue: Should GTE provide notice to MCI about network or tariff changes that may impact MCI's operations?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: GTE will make information concerning network changes available to new entrants just as it does IXCs today, if the new entrant requests such information. With respect to the deployment of new technology, GTE is willing to meet periodically with interested new entrants to discuss the deployment of new technology and the introduction of new service offerings. GTE should not be required to provide a notice to new entrants concerning tariff changes since it would be impossible to anticipate the filings weeks or months in advance of the service. Although this issue was discussed in the MCI docket only, GTE's position applies to all new entrants.

ATTORNEY GENERAL: The Attorney General recommends that the Commission urge all parties to deal in good faith and that if lack of notice becomes a burden on competition, that the Commission revisit the issue.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Peterson.

On November 20, 1996, GTE filed a copy of its Stipulations reached by GTE with MCI during negotiation procedures in other jurisdictions. GTE stated that the stipulated issues do not need to be further arbitrated by the North Carolina Utilities Commission.

CONCLUSIONS

No arbitration decision from the Commission is required on this issue as the parties have stipulated to a national agreement on this matter.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Issue: Must GTE refer requests for PIC changes for MCI's local service customers to MCI?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: GTE is implementing a process to comply with MCI's request.

ATTORNEY GENERAL: Section 258 of TA96 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." GTE should refer PIC change requests to the new entrant and then the new entrant should fully comply with third party verification procedures to prevent unauthorized changes to an end-user's PIC choice (slamming).

DISCUSSION

Testimony regarding this issue was presented by GTE witness Isbell.

GTE witness Isbell testified that GTE is implementing a process to comply with MCI's request. GTE expects that such process will likely be in place near the end of the first quarter of 1997. After the implementation of such process, when a PIC change request is submitted by an interexchange carrier for a resold service, the system could automatically identify that it is a resold service. At that point, a PIC change request would be rejected and returned to the interexchange carrier with the operating company number. Then the interexchange carrier would know who that local customer's local provider was and would then have to submit the PIC change to that local provider.

CONCLUSIONS

The Commission recognizes that GTE is implementing a process to comply with MCI's request concerning PIC changes and therefore concludes that since there is agreement in principle there is no need for arbitration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: Should GTE be required to produce all interconnection agreements to which GTE is a party, including those agreements with other ILECs that were executed prior to the effective date of the Act?

POSITIONS OF PARTIES

MCI: This is required by Section 252(a)(1) of TA96, the North Carolina Public Records Law (G.S. 132-1, et seq.), and the Order of August 7, 1996, in Docket No. P-100, Sub 133. The Act requires that all interconnection agreements, including those negotiated prior to enactment, be submitted to the relevant state commission. An interconnection agreement filed with the Commission is a public record. This issue was addressed in the Commission's Order of August 7, 1996, in Docket No. P-100, Sub 133.

GTE: GTE should not have to provide copies of existing incumbent LEC agreements until the date mandated by the FCC. Copies of interconnection agreements with the new entrants will be available for viewing when filed with the Commission.

ATTORNEY GENERAL: The Act provides at Section 252(a)(1) that an agreement for interconnection, voluntarily arrived at, shall be submitted to a state commission under Section 252(e). This specifically includes any interconnection agreement negotiated before the date of enactment. The legislative history of the Act, however, speaks only of interconnection negotiations between competing local service providers, not agreements between ILECs. GTE should be required to file

all interconnection agreements it has made with CLPs, even those signed prior to the Act, but does not need at this point to file interconnection agreements with peer ILECs negotiated prior to the Act.

DISCUSSION

This issue was not discussed by witnesses for GTE or MCI but was addressed in post-hearing filings.

This is fundamentally a legal issue. Under the plain language of the Act, agreements 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. See FCC Interconnection Order, Paragraph 166. The FCC has recognized 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 requesting telecommunications carrier upon the same terms and conditions. 47 U.S.C.A. Section 252(i). Moreover, in its Order of June 18, 1996, in Docket No. P-100, Sub 133, the Commission allowed interim operation under interconnection agreements *filed as public records* pending Commission action, and, in its Order of August 7, 1996, in the same docket, affirmed its 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, Commission 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 concludes that GTE should be required to file all interconnection agreements entered into in the future with CLPs within 30 days after negotiations are concluded and all interconnection agreements previously entered into with CLPs within 30 days after the date of this Order. GTE should also be required to file all interconnection agreements with Class A carriers on or before June 30, 1997. The Commission notes that such filings 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: Must GTE provide MCI access to each of the following 12 unbundled network elements requested by MCI, including all of the features, functions, and capabilities of each element?

- **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: GTE 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. GTE'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.

GTE: GTE is willing to unbundle the network interface device (NID), loops, ports, Signaling System 7 (SS7) interconnection, and the network access cross-connection. Transport can be purchased from the appropriate tariff. Access to certain databases is available and can be purchased via the appropriate access tariff.

Access to the "toll free" (800/888) database is available via contract as GTE's "Carrier Selection Service" (CSS).

GTE is willing to provide access to subloop elements at the feeder distribution interface on a case-by-case basis if GTE does the work and the requesting entrant pays for the costs of the unbundling, and if network issues are not comprised.

ATTORNEY GENERAL: MCI is requesting the ability to buy elements out of an unbundled local loop. GTE is willing to provide access to subloop elements at the feeder distribution interface on a case-by-case basis, if GTE does the work and the requesting entrant pays for the costs of the unbundling, and if network reliability is not comprised. The Commission should find this approach to unbundling the loop entirely reasonable provided that all parties pledge good faith efforts to accommodate bona fide requests for unbundled local loops. The Commission should reserve the right to require unbundling of the local loop at locations other than the feeder distribution interface. Additionally, the Commission should conclude that GTE must offer the other network elements specifically required to be provided on an unbundled basis as set forth in the FCC Interconnection Order.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Murphy and Goodfriend and GTE witnesses Peterson, Plant, and Gaskin.

The FCC Interconnection 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 (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.

In addition to the elements specified in the FCC Rules, MCI has asked GTE to unbundle loop distribution (where there is an existing cross-connect to GTE's network) and the multiplexing/digital cross-connect element. Further, MCI stated in its Proposed Order that the multiplexing/digital cross-connect element is not now in dispute except for price.

GTE recognizes that upon request it must provide the following elements on an unbundled basis: local loop, NID, switching ports, transport— both common and dedicated, access to databases, operator services and directory assistance, and Signaling System 7 except that it is not required to unbundle the links between the signaling transfer point (STP) and the service control point (SCP). Further, GTE stated that it will consider subloop unbundling where technically feasible on a case-by-case basis.

Loop Distribution:

MCI requested 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 argued 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 GTE's unbundled loop distribution at existing cross-connect points, MCI could carry traffic from a customer directly to MCI's local switch. Thus, MCI stated that the unbundling of loop distribution facilities will encourage more rapid development of facilities-based competition.

GTE claimed that because there are various loop designs — principally feeder/distribution design and main cable-fed design —, all loop distribution unbundling requests must be analyzed on

an individual case basis. Further, GTE stated that there are special loop designs within any given feeder/distribution design or main cable-fed design that must be considered in determining whether and how subloop unbundling may be achieved.

MCI agreed that a bona fide request process would be appropriate in the case of main cable-fed design (with this type of design there may not be a distinct physical point where a feeder loop section ends and a distribution section begins). However, MCI argued that there is no need for individual case analysis when GTE uses the more common feeder/distribution design, since in that case MCI simply needs to connect its feeder plant to GTE's loop at an existing cross-connect point in the same way that GTE connects its feeder plant today. Additionally, MCI stated that it is willing to have all the work at the cross-connect point performed for MCI by GTE personnel, such that this subloop unbundling request should not create network or reliability concerns. Further, MCI argued that anytime case-by-case analyses are made there are delays and there is no reason to require such decision where MCI seeks interconnection only at existing cross-connect points.

Advanced Intelligent Network:

GTE stated that unbundled access to GTE's AIN need not be provided until a mediated access mechanism has been developed. If unmediated access occurs it could result in disruptions to GTE's network in a manner similar to how a computer virus disrupts the functioning of a personal computer. GTE states that standards or mediation functions have not yet been developed for unbundling AIN triggers, outside of a lab test. GTE concludes that such unbundling should not be required until standards are developed permitting proper mediation. MCI witness Murphy testified that MCI is not seeking unmediated access to AIN functionality at this time.

CONCLUSIONS

The Commission concludes that the following network elements 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 (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 conclusions on these matters:

(1) The FCC did not require that the local loop be disaggregated into its subelements. Therefore, the Commission concludes that GTE should not be required at this time to unbundle the local loop. However, GTE may provide the loop distribution subelement in a bona fide request

process where individual requests are analyzed on an individual case basis— i.e., to the extent GTE wants to unbundle the loop into subelements, it should be allowed to do so.

(2) GTE is not required to give MCI access to GTE's AIN triggers until a mediated access mechanism has been developed on an industry-wide basis. Further, the Commission encourages GTE to actively participate in an industry-wide forum to promptly address this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Issue: Must GTE be prohibited from placing any limitations on MCI's ability to combine unbundled network elements with one another, or with resold services, or with MCI's or a third party's facilities, to provide telecommunications services to consumers in any manner MCI chooses?

POSITIONS OF PARTIES

MCI: The Act and FCC Rules require GTE to allow MCI to use unbundled network elements in any combination. There are limited exceptions only where GTE 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.

GTE: Network elements should not be recombined in a manner that allows the new entrant to further discount the service from resale prices.

ATTORNEY GENERAL: The heart of this dispute appears to be arbitrage. The intent of TA96 was to bring innovation and new services to end-users. Allowing arbitrage does not encourage innovation but merely perpetuates monopoly services now in place. If a new entrant buys all seven of the currently unbundled elements and reassembles them into services identical to GTE's, then such reassembled elements are essentially resale and should be priced as wholesale services.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Murphy and Goodfriend and GTE witnesses Peterson and Wellemeyer.

MCI notes that GTE does not appear to oppose MCI using combinations of network elements with one exception. It contends that MCI should not be permitted to combine a loop and a port to provide local exchange service. The only rationale is that such recombination would render meaningless the Act's distinction between unbundled elements and wholesale services. The FCC Rules--Sections 307(c), 309(a), and 309(c)--on this issue have not been stayed, so the Commission must require GTE to allow these elements to be combined. GTE's objection seems to be based on its desire to retain access charges whenever possible. The Act provides three methods for a new carrier to enter the local market and two distinct pricing methods for resold services and unbundled network elements. In either scenario, according to MCI, GTE is fully compensated for the service it provides. In the case of unbundled elements, GTE may lose some "contribution" that it would have obtained from access charges had it retained the end-user customer, but GTE has no right to expect to remain revenue neutral when it loses a customer to competition.

GTE asserts that recombination of GTE's unbundled elements that would replicate services offered for resale would eliminate the distinction in the Act between resale and unbundled elements and would enable MCI to avoid access charges. According to GTE, the FCC did not intend to enable tariff arbitrage when it stated that the requesting carrier should be able to combine unbundled network elements in any way it wishes. Unbundled loop and port services purchased in combination constitutes the purchase of basic local services for resale and should be priced accordingly.

GTE further asserts that Congress adopted two separate pricing standards for resale and unbundled network elements for a reason. Correctly recognizing that facility-based competition would not occur overnight, it adopted resale as a quick and easier form of competition and a different standard for unbundling to encourage new entrants to begin facility-based competition by being able to build in part and lease in part the elements necessary to provide service. To allow MCI alternative prices for exactly the same service is contrary to Congress's intent. If, for example, MCI can simply transfer a business by calling GTE and ordering an unbundled loop and unbundled switching and recombining them, the effect is a mere billing change.

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 252(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. See FCC 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 is aware 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]

GTE, however, is not urging the Commission to prohibit the recombination of unbundled network elements per se. GTE simply proposes that the Commission recognize the purchase of certain unbundled network elements in combination as resold services and require that they be priced accordingly. It is not clear from the record, however, what combinations of unbundled network elements would constitute resold services. GTE itself refers to recombinations of unbundled network

---

[1]Nos. 95-0458 and 95-0531 (consol.) at 63-65 (Illinois Commerce Commission June 26, 1996).

elements that would "replicate" services offered for resale as well as to ordering and recombining an unbundled loop and switching. The Attorney General, on the other hand, refers to combining all seven unbundled elements into services that are "identical" to GTE's services. These terms are not synonymous.

The Commission is also aware that Tennessee and Georgia have recently sided with BellSouth on this issue. Under the Tennessee decision, AT&T and MCI may purchase unbundled network elements, capability, 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 and MCI clearly may purchase unbundled elements and recombine them in any manner they choose. 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's retail offerings would allow AT&T and MCI 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 and MCI recombine 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 and MCI are not using their own switching or other functionality or capability together with the unbundled elements to produce their service; operator services is not considered a functionality or capability for this purpose.[2]

Apart from the overall principle adopted, 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. The Commission, therefore, will leave this issue open for further consideration upon receipt of additional information.

CONCLUSIONS

The Commission concludes that MCI should be allowed to combine unbundled network elements in any manner it chooses. The Commission further concludes that GTE should be allowed to submit additional information within 30 days describing in full detail workable criteria for

---

[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, No. 6865-U at 28-30 (Georgia Public Service Commission December 3, 1996 and December 17, 1996).

identifying combinations of unbundled network elements that constitute resold services for purposes of pricing, collection of access and subscriber line charges, and use and user restrictions in retail tariffs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Issue: Must GTE make rights-of-way, poles, ducts, and conduits available to MCI on terms and conditions equal to that it provides itself?

POSITIONS OF PARTIES

MCI: Section 251 of the Act requires GTE 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. GTE 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.

GTE: GTE will respond in a timely manner to requests, however, a mandatory period is unreasonable since many factors will determine how fast GTE can respond. GTE will treat all new entrants in the same manner. However, access can be denied for safety, reliability, and generally applicable engineering purposes. GTE should be allowed, however, to reserve capacity that it reasonably anticipates will be required within its normal engineering planning period.

ATTORNEY GENERAL: TA96 mandates nondiscriminatory access to ILECs' rights-of-way, poles, ducts, and conduits in a manner consistent with Section 224 of TA96. 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 April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Darnell and GTE witness Pearson.

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 language of TA96, therefore, supports MCI's position that GTE must make rights-of-way, poles, ducts, and conduits available to them 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 GTE can reserve ("warehouse") to the detriment of MCI. GTE takes the position that it should have the right to reserve capacity in its conduits, poles, and other rights-of-way facilities. MCI, however, contends that the Act and the FCC Interconnection Order specifically prohibit GTE from favoring

itself and discriminating against MCI by reserving capacity for GTE's future needs at the expense of MCI's current needs.

The Commission agrees with MCI that the Act does not allow GTE to reserve capacity for itself other than as required for reasons of safety, reliability, and generally applicable engineering purposes. In this regard, neither can GTE reserve for future capacity as it has requested. Just as GTE cannot reserve spare capacity, MCI should not, itself, be permitted to reserve or warehouse spare capacity in GTE'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. Spare capacity will then be available to all parties on an "as needed" basis.

GTE's witness Pearson raised the issue of whether MCI should be granted an unrestricted right to "break out" of GTE's manholes once it had secured a conduit access agreement with GTE. Pearson argued that any company desiring to break out of a GTE manhole should first obtain authorization from GTE. In determining whether authorization should be granted, GTE would need to address at least two issues. First, GTE would have to determine whether the desired new hole would impair the structural and operational integrity of the manhole. Second, depending on the extent of the effort required to make the desired hole, GTE should be permitted to require that all work be performed by qualified individuals in a safe and workmanlike manner. The Commission agrees with GTE that MCI should be required to obtain authorization from GTE before breaking out of a manhole. GTE's authorization, however, should not be unreasonably withheld and must be based solely on the safety aspects of any proposed manhole breakouts.

In order to streamline MCI's access to GTE's rights-of-way, poles, ducts, and conduits, the parties should meet and work out guidelines to be followed in handling requests for access as well as for authorization to break out of manholes. These guidelines should provide MCI with readily available access to unused/spare capacity in GTE's rights-of-way, poles, ducts, and conduits provided that such requests by MCI 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 concludes that GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits available to MCI on terms and conditions equal to that it provides itself. GTE 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 GTE's capacity to the detriment of GTE or any other CLP. The Commission directs the parties to meet and formulate guidelines to be followed in handling requests by MCI for access to GTE's rights-of-way, poles, ducts, and conduits. The parties are required to file a report with the Commission by April 1, 1997, detailing the results of their meetings and the guidelines formulated.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Issue: Under what method should interim number portability (INP) be provided. How should the costs of INP be recovered?

POSITIONS OF PARTIES

MCI: The method of interim number portability is not an issue in this proceeding. Each carrier should pay for its own costs of currently available number portability measures.

GTE: GTE recommends that INP be provided using remote call forwarding or a direct inward dialing plan. Directory number route indexing will impose unwarranted costs upon GTE, and local exchange routing guide reassignment is not a feasible method of providing either interim or long-term number portability. The costs of INP should be recovered from the new entrant by assessing a per line charge to the new entrant for the service provided, as well as a per transmission "path" charge. This methodology should be utilized even after long-term number portability is deployed, if the new entrants are still utilizing interim number portability.

ATTORNEY GENERAL: The Attorney General recommends that the Commission order that all feasible methods of interim number portability be made available to the new entrants but that the new entrant must pay the total cost of developing those methods which GTE suggests impose unwarranted costs or are infeasible. The Attorney General also notes this is an issue which the Commission should consider to be best handled through good faith negotiations between the parties rather than resolved by the Commission. The Attorney General suggests that the Commission order that the parties detail the methods of interim number portability to be utilized and issue a report to the Commission to be filed on or before April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Darnell and GTE witness Decker.

GTE states that the new entrant should bear the cost of INP. GTE asserts that certain costs borne by GTE to provide interim number portability can be charged to MCI under the Act and the FCC's Number Portability Order. Section 251(e)(2) of the Act states, "The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis determined by the Commission." The FCC, in July of 1996, issued its Telephone Number Portability Order (Docket No. 95-116). The FCC lists several acceptable methods of cost recovery for number portability.

CONCLUSIONS

The Commission concludes that GTE should make available to MCI remote call forwarding and direct inward dialing as interim number portability solutions, until such a time that a permanent number portability method is available. The Commission also concludes that the parties should explore appropriate cost recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefitting users share the burden and negotiate the appropriate cost-recovery mechanism.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Issue: Must GTE negotiate a long-term number portability solution?

POSITIONS OF PARTIES

MCI: GTE 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).

GTE: Long-term number portability, the methods to be utilized, and cost recovery are industry issues and should not be determined between the parties in this arbitration. These issues can best be resolved at the national level.

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 Darnell and GTE witness Decker. An industry-wide solution with national standards is clearly necessary.

CONCLUSIONS

The Commission concludes that GTE and MCI should work with the industry at large to determine a permanent solution and to decide who should pay for implementation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

Issue: Must GTE provide MCI with access to GTE's unused transmission media or 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 GTE. 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.

GTE: Dark fiber is not a network element, therefore GTE should not be required to unbundle dark or dim fiber. Additionally, forcing GTE to unbundle dark fiber leads to inefficiencies and capacity problems.

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. The Attorney General, however, 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. The Attorney General, therefore, recommends that the Commission 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 MCI witness Murphy and GTE witness Gaskin.

MCI witness Murphy acknowledged that the FCC Interconnection Order did not specifically require the ILECs to 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. Witness Murphy testified that without dark fiber, MCI's only choices would be to undertake the timely and expensive construction effort to place its own fiber in the ground or to purchase the use of fiber with electronics from GTE.

GTE witness Gaskin testified that the Act does not require GTE to provide MCI access to GTE's dark fiber. Because the Act defines network element to include facilities used in the provision of a telecommunications service, and dark fiber is not used in GTE's network, it was his opinion that dark fiber does not meet the statutory definition of a network element. Further, he contended there are policy reasons why GTE should not be required to provide access to dark fiber to competitors. For example, he testified that allowing other parties to take advantage of GTE's spare cable placement negates the engineering economics and attendant efficiencies of GTE's planning process and could lead to capacity problems. Finally, Witness Gaskin opined that GTE's position on this issue was actually more procompetitive than MCI's because if dark fiber is leased to one user, its multiple uses are unavailable to other entrants for other uses.

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 telecommunications 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 LEC's "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 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. GTE, therefore, need not provide access to dark fiber to MCI.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19(a)

Issue: Should GTE be required to allow tandem to tandem local switching within the LATA?

POSITIONS OF PARTIES

MCI: This issue was not addressed by MCI in this proceeding.

GTE: GTE will provide inter-tandem switching at such time as (1) the CLP enters into one of the existing intraLATA toll compensation mechanisms (e.g. ITORP), or (2) signaling and automatic message accounting record standards support the recognition of multiple-tandem switching events.

ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and GTE witness Munsell.

On November 20, 1996, GTE filed stipulations reached in a comprehensive settlement resolving this issue between GTE and MCI.

CONCLUSIONS

The Commission considers this issue to have been resolved between MCI and GTE in accordance with stipulations reached in a comprehensive settlement filed by GTE on November 20, 1996.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19(b)

Issue: Should MCI obtain access to AIN services on GTE's service control points (SCPs) and AIN triggers by whatever pathway and means that it desires?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: GTE will offer access to AIN services resident upon its SCPs. This can be accomplished by a CLP connecting its local service switching point to GTE's SCP through GTE's signaling transfer point (STP), via the Signaling System 7 network, and by purchasing capacity on GTE's local switch.

ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and GTE witness Dolecki.

GTE stated that the FCC did not expressly permit direct access to AIN triggers in the switch and commented that unbundling should not be required until standards are developed permitting proper mediation. Further, GTE stated that it is not opposed to providing access once appropriate mediation standards are created. MCI witness Murphy testified that MCI will not seek unmediated access to AIN functionality at this time.

In the FCC Interconnection Order, Rule 51.319(e)(2)(ii), the FCC requires "access to its call-related databases, including, but not limited to . . . Advanced Intelligent Network databases, by means of physical access at the signaling transfer point linked to the unbundled database".

CONCLUSIONS

The Commission concludes that it is appropriate to adopt GTE's position and to allow access to AIN services on GTE's SCPs via GTE's STPs. Further, the Commission concludes that access to GTE's AIN triggers should not be required until a mediated access mechanism has been developed on an industry-wide basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19(c)

Issue: Should GTE unbundle Signaling System 7 SCPs, STPs, and signaling links?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: SCPs cannot be unbundled since they rely on their associated STP pair for message routing and screening.

STPs cannot be unbundled except for the port used for interconnection to a new entrant's or other carrier's network.

Signaling links cannot be unbundled within the GTE network. However, they can be provided on an unbundled basis between a GTE STP and a new entrant's service switching point or STP.

ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and GTE witness Plant.

GTE stated that the STP is the only physical point at which interconnection is technically feasible. By interconnecting at the STP, MCI can gain access to GTE's SCPs and the associated databases. GTE has agreed to provide its Signaling System 7 network on an unbundled basis so long as access is through a port in GTE's STP. MCI has agreed to this point of access. Signaling links also have been unbundled, except that the signaling links between GTE's STP and SCP cannot be unbundled.

In the FCC Interconnection Order, Rule 51.319(e)(1)(iv), the FCC states that "an incumbent LEC is not required to unbundle those signaling links that connect service control points to switching transfer points or to permit a requesting telecommunications carrier to link its own signal transfer points directly to the incumbent LEC's switch or call-related databases".

CONCLUSIONS

The Commission concludes that GTE should not be required to unbundle its Signaling System 7 SCPs from their STPs. However, the Commission encourages the parties to actively participate in an industry-wide forum to promptly address this issue.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19(d)

Issue: How should the Signaling System 7 signaling point of interface (SPOI) be selected?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: The new entrant requesting interconnection to GTE's Signaling System 7 network shall designate all SPOIs within the LATA of the GTE pair to which they will interconnect.
ATTORNEY GENERAL: This issue was not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and GTE witness Plant.

On December 12, 1996, MCI filed revisions to its November 27, 1996, Proposed Order. Such revisions reflected the elimination of this matter as an issue in this proceeding.

CONCLUSIONS

The Commission concludes that the selection of the Signaling System 7 SPOI is not an issue in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19(e)

Issue: Should GTE provide STP ports used for the interconnection of MCI to the GTE Signaling System 7 network if MCI does the same?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: GTE will charge new entrants and any other connecting carriers for GTE STP ports used in an interconnection.

ATTORNEY GENERAL: This issue is not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Plant.

On December 12, 1996, MCI filed revisions to its November 27, 1996, Proposed Order. Such revisions reflected the elimination of this matter as an issue in this proceeding.

CONCLUSIONS

The Commission concludes that the matter of whether or not GTE should provide STP ports used for the interconnection of MCI to the GTE Signaling System 7 network if MCI does the same is not an issue in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19(f)

Issue: Should GTE charge for dips made by a new entrant to GTE's "toll free" database for calls terminating to a GTE customer?

POSITIONS OF PARTIES

MCI: This issue was not addressed by MCI in this proceeding.

GTE: GTE will bill new entrants and any other carriers for queries they initiate to GTE's "toll free" database, regardless of where the call terminates. This is how GTE's "Carrier Selection Service" is offered today. The new entrant must recover its cost through whatever means it deems necessary. (In its Post-Hearing Matrix, GTE indicated that this is an AT&T issue.)

ATTORNEY GENERAL: This issue is not addressed in the Attorney General's Proposed Order.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Plant. MCI did not address this issue in its testimony.

GTE indicated in its post-hearing matrix filed in this docket that this is only an AT&T issue.

CONCLUSIONS

The Commission concludes that "toll free" database dips is not an issue between MCI and GTE in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

Issue: Must GTE provide copies of records regarding rights-of-way?

POSITIONS OF PARTIES

MCI: GTE should provide this information on request. MCI is willing to negotiate appropriate nondisclosure agreements in those instances where access to customers' proprietary information is required.

GTE: GTE should not be required to provide all rights-of-way information to new entrants. When a request is received, GTE will furnish appropriate capacity information to the requesting party.

ATTORNEY GENERAL: TA96 and the FCC 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 Darnell and was discussed by GTE in post-hearing filings.

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 ordered GTE to make rights-of-way, poles, and conduits available to CLPs, then it follows that GTE should also 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 it should require GTE 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 GTE.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

Issue: What costs should be excluded when determining the resale price or discount? What methodology should be used to determine the resale discount?

POSITIONS OF PARTIES

MCI: Costs which are reasonably avoidable when GTE sells its services at wholesale must be excluded.

GTE: Avoided costs should be excluded from the wholesale discount calculation. GTE's methodology and cost study appropriately reflect the costs that are avoided. GTE's methodology is the most appropriate methodology for calculating avoided costs. However, if the Commission determines that the FCC's methodology should be used, or if the Commission decides that an aggregate (one discount rate applied uniformly to all services offered for resale at wholesale rate) is appropriate then the modifications made by GTE should be recognized.

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 Darnell and GTE witness Wellemeyer.

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 GTE 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 GTE's costs that could be avoided, whether or not they are actually avoided, should be reflected in the determination of the wholesale discount. GTE's avoided cost study is based on the premise that the Act specifies that GTE would continue to be a retail provider of services and simply add-on wholesale functions. As GTE explains, their study recognizes the fact that while some retail costs are avoided for certain activities, a similar activity is often required to offer the same service on a wholesale basis for resale. GTE believes the Act contemplates costs that are actually avoided when service is offered through wholesale, rather than retail, distribution channels.

MCI used intrastate North Carolina amounts from GTE's ARMIS Report 43-04 for 1995 in determining which costs are avoided. ARMIS data is filed with the FCC and is publicly available. GTE's avoided cost study analyzes avoided costs separately for each of five major service categories (residential, business, usage, vertical, and advanced). GTE used actual annual results for GTE Telephone Operations' total domestic telephone operations for 1995. The data are reported in a managerial accounting framework reflecting the results of the business as it is managed, rather than according to traditional financial accounting rules. The numbers GTE used were for GTE total domestic operations and not specific to North Carolina. In addition, GTE's numbers are derived internally, and therefore, are not verifiable.

The FCC Interconnection Order specifically identifies costs by 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 GTE'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 GTE's and MCI's positions, and generally agrees with the methodology used by the FCC.

The analysis reflects Uncollectibles - Telecommunications (Account 5301) as all being directly avoided.

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 that 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 calculates 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 11.41%. 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 GTE 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 $17,994,000, indirectly avoided costs of $3,942,000, and total avoided costs for GTE of $21,936,000.

CONCLUSIONS

The Commission concludes that GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Issue: What are the appropriate wholesale rates to be established in North Carolina? (What are appropriate GTE wholesale rates?)

POSITIONS OF PARTIES

MCI: GTE's wholesale discount rate in North Carolina should be 15.54%.

GTE: The appropriate discounts from retail rates are as follows for both GTE and Contel in North Carolina:

-Residence	$0.83
-Business	$1.06
-Usage services	7.1%
-Vertical services	
*Business	5.5%
*Residence	6.6%
*Combined	6.2%
-Advanced services	15.3%

Should the Commission opt for the FCC methodology, the discount should be 10.71% for GTE combined services and 11.41% for Contel of North Carolina combined services.

ATTORNEY GENERAL: The Attorney General does not have the analytical ability to review numbers. 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 Darnell and GTE witness Wellemeyer.

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 $1,735,000 in public telephone revenues. GTE'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 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 $109,838,000.

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 19.97%.

CONCLUSIONS

Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 21, the Commission concludes that GTE's appropriate composite wholesale discount rate is 19.97%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

Issue: What is the appropriate price for each unbundled network element requested?

POSITIONS OF PARTIES

MCI: GTE 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 cost (TELRIC) costing methodology is consistent with the Act and with the total service long-run incremental cost (TSLRIC)-based pricing that MCI has requested of GTE.

GTE: The appropriate prices for unbundled services are identified in Witness Tanimura's testimony. For example, 2-wire loop prices are:

GTE	$30.00/line/mo.
Contel	$40.20/line/mo.

Basic NID prices are:

GTE	$2.20/line/mo.
Contel	$2.20/line/mo.

Option A unbundled switch prices are:

GTE Port	$4.00/mo.
GTE Usage	Resale rates
Contel Port	$4.00/mo.
Contel Usage	Resale Rates

Option B unbundled switch prices are:

GTE Port	$5.70/mo.
GTE Usage	$0.0033/min.
Contel Port	$5.70/mo.
Contel Usage	$0.0042/min.

Vertical services should not be included in the switch usage price, rather they should be purchased out of the resale tariff or from the rate schedules identified in witness Tanimura's testimony.

ATTORNEY GENERAL: The Commission should adopt interim rates until it has had sufficient time to fully investigate the costing models provided 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 GTE witnesses Tanimura, Tardiff, Tucek, and Sibley.

MCI's rates were based on the "Hatfield Model", which is publicly available and which was characterized by those parties as easily examined. GTE's proposed prices for unbundled network elements were based on the Market Determined-Efficient Component Pricing Rule (M-ECPR) and its proprietary costing models.

According to GTE, application of the M-ECPR results in prices equal to TELRIC plus its opportunity cost, as constrained by market forces. Where prices based on GTE's methodology would exceed market prices for particular elements, GTE has priced those elements at market prices. Opportunity cost, as used in this instance, refers to the net return that an unbundled network element will bring GTE if it is not sold at wholesale to a competitor.

GTE asserts that the M-ECPR does not permit it to charge a price for an unbundled element that exceeds that element's stand-alone cost. GTE further asserts that M-ECPR does not afford it the opportunity to recover fully its forward-looking common costs, as would regulated rates absent competitive entry — i.e., stranded costs will arise. GTE defines stranded costs to be the present value of the firm's net revenues under regulation minus the present value of the firm's net revenues under competition. Thus, GTE argues that, to ensure that it receives a reasonable opportunity to recover all of its forward-looking common costs, it is necessary that a competitively neutral, non-bypassable end-user charge be established, which would allow it to recover forward-looking common costs that would otherwise be stranded. According to GTE, the need for an end-user charge will diminish over time as the incumbent LEC recovers the cost of its past investment. GTE also asserted that other Commission actions, such as rate rebalancing, can reduce the need for such a charge.

As stated above, in developing its proposed rates, GTE used its own proprietary costing models, which MCI characterized as unverifiable. GTE affirmed that the cost studies could not be audited fully as they employed proprietary software not available for public scrutiny. Additionally, MCI contended that GTE's cost studies were flawed because they overstated costs in critical areas and contained insufficient documentation to support model inputs and outputs.

MCI 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 GTE for its forward-looking economic costs. Further, MCI contended that new entrants will be unable to remain in the market using unbundled network elements if the price new entrants must pay GTE does not reflect GTE's incremental, economic costs. Similarly, MCI 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.

GTE 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, has varied over time, has low joint and common costs, and has high plant utilization factors, as well as other flaws. GTE contended that costs developed by the Hatfield Model underestimated its 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. GTE 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.

Both MCI and GTE 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 GTE's cost studies as did GTE 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.

As discussed elsewhere herein, the parties have agreed and 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. MCI, based on the Hatfield Model, argued that the NID rate should be set at $0.53 per line-per month. GTE proposed a basic NID rate of $2.01 per line-per month, based on its TELRIC studies, and a contract rate of $2.20 per line-per month.

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 analyze and evaluate the propriety of the cost studies presented by the parties. 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 these proceedings.

The FCC in its Interconnection Order recognized that not every state 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,

---

[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

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 FCC 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.

As presented subsequently, the Commission has, for purposes of this proceeding, set an interim rate, subject to true-up, of $17.05 for a 2-wire analog voice grade loop, including the NID. Such rate exceeds the $16.71 proxy rate ceiling established by the FCC in its Interconnection Order by $0.34. The $17.05 loop rate is the rate proposed by MCI. That rate is based on MCI's application of the Hatfield Model. Such rate is also the interim loop rate recommended for adoption by the Attorney General. The Commission has adopted the $17.05 loop rate on an interim basis because it is within a reasonable range of the FCC's proxy rate ceiling and because no party to the proceeding advocated a rate lower than $17.05. The Commission emphasizes that its action in this regard is not intended and is not to be construed in any way to be an endorsement of the Hatfield Model or MCI's application thereof.

The FCC Interconnection Order does not provide a proxy for the NID. However, as indicated above, NID rates have been proposed by both MCI and GTE. After having carefully considered the positions of the parties and the entire evidence of record, the Commission has determined, and so finds and concludes, that an interim rate of $1.36 per NID-per month, subject to true-up, would not appear to be unreasonable for purposes of this proceeding. Such rate represents a simple average of the $0.53 rate proposed by MCI and the $2.20 rate proposed by GTE.

---

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 an interim basis, than a detailed forward-looking cost study."

The FCC Interconnection Order does not provide proxies for operator services and directory assistance services as unbundled network elements. Moreover, no party to this proceeding has proposed specific rates for such services. Thus, due to the lack of adequate evidentiary information and data, the Commission is unable to establish rates in this regard for purposes of this proceeding. The Commission, therefore, concludes that the arbitrating parties should be directed to further negotiate the rates for operator services and directory assistance services as unbundled network elements.

In summary, based upon the foregoing and the entire evidence of record, the Commission 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)	$ 1.36	per NID-per month
2-wire analog voice grade loop, incl. NID	$ 17.05	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)	
Service control points/databases (requires access through GTE'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	Parties must negotiate	

In order to ensure that no carrier is disadvantaged by the interim rates herein approved, the Commission 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 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 is the appropriate price for call transport and termination?

POSITIONS OF PARTIES

MCI: The compensation mechanism for transport and termination of local traffic between MCI and GTE should use symmetrical rates for transport and termination set in accordance with total element long-run incremental cost principles. The Hatfield Model produces costs calculated in accordance with these principles for tandem switching, local switching, and transport.

GTE: Interconnection rates should be set equivalent to the current interstate switched access rates.

GTE proposes that each party charge rates for interconnection which are based upon their respective costs.

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 MCI witness Goodfriend and GTE witness Munsell.

MCI witness Goodfriend explained the need for interconnection of local networks in order for consumers to benefit from local competition and that the FCC had separated the compensation issue arising from interconnection into transport and termination. She testified that the FCC has ruled that the compensation for transport and termination of local calls should be based on economic costs. She also cited three options included in FCC Interconnection Order for establishing transport and termination rate levels, including the option for a state to adopt the FCC's proxy pricing provisions. However, witness Goodfriend recommended that the Commission should base compensation for transport and termination of local traffic between MCI and GTE using symmetrical rates as produced by the Hatfield Model in accordance with TELRIC pricing principles for tandem switching, local switching, and transport.

GTE witness Munsell testified that symmetrical pricing should be rejected because symmetrical pricing is completely at odds with the requirements of the Act and GTE's costs are not a suitable proxy for MCI's costs. He also disagreed with MCI's use of the Hatfield Model to calculate GTE's costs for transport and termination. As stated above, GTE recommends that interconnection rates should be set equivalent to the current interstate switched access rates.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission 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

MCI: If the Commission determines that the FCC Rules permit "bill and keep" for transport and termination, as well as interconnection, MCI would not object to a requirement of mutual traffic exchange unless and until a carrier proves that traffic is sufficiently out of balance to justify the cost of measurement and billing.

GTE: Each party should charge rates for interconnection which are based upon their respective costs. However, if traffic is relatively balanced, then a "bill and keep" methodology can be utilized.

ATTORNEY GENERAL: The FCC Interconnection Order 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. The Commission should presume that the beginning traffic will be relatively unbalanced so that "bill and keep" will not be an option. The Commission should order the parties to submit their costs for termination of traffic by April 15, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Goodfriend as well as GTE witness Munsell.

MCI witness Goodfriend testified that the FCC Interconnection Order provides for "bill and keep," in some circumstances, as one of three options for establishing transport and termination rate levels. However, it was her opinion that the FCC intends to limit "bill and keep" to apply only to termination and not to transport. Therefore, she testified that the failure of the FCC to include transport in a "bill and keep" approach makes it less beneficial for competition.

GTE witness Munsell testified that the Act does not require or permit the Commission or the FCC to impose "bill and keep" on GTE and MCI. In addition, he testified that the Commission is not required to impose "bill and keep" under the FCC Interconnection Order. Paragraph 1111 of the FCC's Order states that state commissions may impose "bill and keep" if neither carrier has rebutted the presumption of symmetrical rates and if the volume of traffic exchanged is approximately equal. It was his opinion that GTE has rebutted the presumption of symmetrical pricing and that no way presently exists for the Commission to determine whether the volume of traffic exchanged will be equal.

The Commission agrees with GTE 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 GTE and MCI. Since GTE as the ILEC will have the largest customer base, MCI will likely have the majority of the traffic between these two companies to be terminated. Under "bill and keep," MCI would, thereby, be able to keep all revenues and make no payment to GTE for terminating these customers' calls. Given the great likelihood of an imbalance in cost and traffic between GTE and MCI, "bill and keep" does not appear to be an equitable method for cost recovery for transport and termination of calls.

CONCLUSIONS

The Commission concludes that "bill and keep" is not an appropriate alternative at this time for transport and terminating charges given the probable traffic and cost imbalances between GTE and MCI.

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

MCI: Unbundled network elements and related support elements should be priced at TSLRIC.

GTE: The appropriate tariff rates should be utilized for collocation and rights-of-way access. If a tariff is not available, then rates should be set to cover costs plus a reasonable contribution to joint and common costs.

ATTORNEY GENERAL: The Attorney General takes the position that forward-looking incremental costing studies plus a reasonable share of joint and common costs is the appropriate costing methodology for all pricing issues other than those pertaining to resale. The subject support elements are no exception. The Attorney General submitted that the parties should be required to provide their best estimates of these costs with appropriate documentation to the Commission by June 30, 1997.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Goodfriend, Murphy, and Wood and GTE witnesses Pearson and Peterson.

Generally, for the same reasons as stated previously herein, in the discussion of the pricing of unbundled network elements, it appears that the most reasonable and appropriate course of action for the Commission to follow at this time is to adopt interim rates, subject to true-up, based on consideration of the FCC's proxies, pending resolution of the appeal of the FCC Interconnection Order and the establishment of final rates by this Commission.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission 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 concludes that the parties should be called upon to renegotiate these issues. In these negotiations, the Commission further concludes that GTE 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: What is the price for providing exchange access services for the origination and termination of interexchange carrier calls?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding.

GTE: The full range of access charges should continue to be applied to interexchange traffic. TA96 did not reduce the rates that carriers currently pay for originating or terminating traffic. GTE's position applies to all new entrants.

ATTORNEY GENERAL: Access charges are not a subject of TA96 and are not subject to arbitration in this docket.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Tanimura.

The Commission agrees with the position taken by GTE and the Attorney General — i.e., that the prices for access are beyond the scope of the Act and this proceeding.

CONCLUSIONS

The Commission 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

MCI: MCI indicated this was not an issue in its revised post-hearing matrix and did not address such an issue in its Proposed Order.

GTE: New entrants should pay the tariffed rate for operator type calls since there is not any avoided costs to these calls.

ATTORNEY GENERAL: This issue involves variants of operator assisted calls, but it is not clear if these calls are in dispute. Because this matter does not appear to be in dispute, this is an issue which needs no resolution at this time.

DISCUSSION

Testimony concerning this issue was presented by GTE witness Wellemeyer. MCI did not address the issue either in testimony nor in its post-hearing matrix.

CONCLUSIONS

The Commission concludes that this does not appear to be an issue with MCI and only a pricing issue with GTE. To the extent that it has not been resolved between the parties, the Commission concludes that this issue has been addressed and resolved in pricing issues discussed elsewhere in this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

Issue: 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 GTE to provide reasonable and nondiscriminatory general terms and conditions.

GTE: Due to the nature of the changing environment, GTE recommends a contract of only two years. If the new entrant wants a comprehensive insurance policy, the new entrant should pay for it.

ATTORNEY GENERAL: For interconnection disputes that are bound to arise, the parties should be required to submit themselves to mediation, followed by binding arbitration if the Commission deems necessary, by certified mediators appointed by the Commission. Contracts should be for five years with provisions for either side to request major revisions after three, with appropriate notice.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Inkellis and GTE witness Peterson.

The Commission is of the opinion that it need not involve itself in general contractual terms and conditions that are not required by the Act, including whether the agreement should be for two years, five years, or any other period. The parties are, of course, free to negotiate such provisions.

CONCLUSIONS

The Commission declines to prescribe general terms and conditions, including the term of the agreement. The parties may, of course, negotiate contractual provisions that are not required by the Act or by the FCC Interconnection Rules, provided that such provisions are not inconsistent with the Act.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

Issue: Should the cost-recovery mechanism for dialing parity be decided in this proceeding?

POSITIONS OF PARTIES

MCI: Cost recovery for dialing parity must be limited to incremental costs and recovered from all providers in the area served by GTE, including GTE, using a competitively-neutral allocator established by the Commission. The Commission should ensure that only costs incremental and directly related to dialing parity are recovered by allowing dialing parity implementation costs to be subject to investigation and review.

GTE: GTE has implemented toll dialing parity and the recovery mechanism is competitively neutral. This should not be a decision to be made by the arbitrator.

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 April 15, 1997, as to the course of the discussions and probable solutions to this issue.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Darnell.

MCI witness Darnell testified that the Commission should ensure that only costs incremental and directly related to dialing parity are recovered by allowing dialing parity implementation costs to be subject to investigation and review.

The FCC addressed the recovery of local dialing parity implementation costs in its Second Interconnection Order in CC Docket No. 96-98, at Paragraph 92, stating that ". . . in order to ensure that dialing parity is implemented in a pro-competitive manner, national rules are needed for the recovery of dialing parity costs. . . . Because we determine that dialing parity is crucial to the development of local exchange competition, we conclude that we should establish pricing principles

for the recovery of dialing parity costs. Accordingly, we reject the arguments of incumbent LECs and others who oppose national standards for cost recovery of the network upgrades required to achieve dialing parity." Further, in the Second Interconnection Order at Paragraph 95, the FCC stated ". . . we conclude that LECs may recover the incremental costs of dialing parity-specific switch software, any necessary hardware and signaling system upgrades, and consumer education costs that are strictly necessary to implement dialing parity. These costs must be recovered from all providers of telephone exchange service and telephone toll service in the area served by a LEC, including that LEC, using a competitively-neutral allocator established by the state. . . ."

CONCLUSIONS

The Commission concludes that the development of a cost-recovery mechanism for dialing parity is beyond the scope of this proceeding — i.e., "national rules are needed for the recovery of dialing parity costs". 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: Must GTE be prohibited from placing any limitations on interconnection between two carriers collocated on GTE's premises, or on the types of equipment that can be collocated, or on the types of uses of the collocated space?

POSITIONS OF THE PARTIES

MCI: Collocation and all associated services must be priced at TSLRIC. Costs of conversion from existing virtual collocations to physical collocations must be borne by GTE. MCI should be permitted to place in collocated space any equipment that is needed to allow MCI to access unbundled elements efficiently.

GTE: A new entrant should not be allowed to place "any" type of equipment on GTE premises. Rather, the equipment should be limited to equipment necessary for interconnection. A new entrant does not have the right to demand virtual over physical collocation, nor is this requirement mandated by the Act. GTE will allow the conversion of virtual to physical collocation; however, tariffed rates must apply. Although this issue was discussed only in the MCI docket, GTE's position applies to all new entrants.

ATTORNEY GENERAL: The FCC will soon issue a collocation order. The Commission should defer any decision on collocation issues until the FCC's order has been published.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Goodfriend and Murphy and GTE witness Huffman.

Section 251(c)(6) of the Act places on GTE a duty to provide "on rates, terms, and conditions that are nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements," except that virtual collocation can be provided if a state

commission finds that physical collocation is not practical for technical reasons or because of space limitations.

MCI asserts that rates for collocation facilities -- like rates for unbundled network elements -- should be based on forward-looking economic costs, in accordance with TELRIC pricing principles.

MCI also asserts that, at a minimum, it should be permitted to place in collocated space any equipment that is needed to allow it to efficiently access unbundled elements. MCI further asserts that collocation is appropriate in whatever GTE structures have network facilities, subject only to technical feasibility and a requirement that each party bear its own costs to collocate. Whether space is available should be assessed on a case-by-case basis. MCI notes that both NYNEX and Pacific Bell have assessed space availability and adopted a general policy that any CLP seeking to collocate can lease up to 400 square feet of space in a central office. The CLP cannot warehouse the space; within a reasonable time it must place within the space equipment used to provide service. The space may not simply be used for storage. A CLP can request additional space and such requests will be assessed on a case-by-case basis.

MCI does not object in principle to allowing GTE to take reasonable safety and security measures but believes GTE should bear the cost of such measures and should insure that it takes no steps that unreasonably use central office or other space that might otherwise be available for collocation.

GTE asserts that a CLP should not be permitted to collocate on GTE premises any equipment it chooses. While the FCC's interpretation of the "necessary" qualifier as "used or useful" is questionable, GTE observes, the FCC correctly concludes that switching equipment, enhanced services equipment, and customer premise equipment may not be collocated. See FCC Interconnection Order, Paragraphs 579-82. According to GTE, if a CLP were permitted to place any type of equipment it wished on GTE's premises, it would quickly exhaust the space available. It would also impinge on GTE's ability to upgrade its equipment and expand its services, place additional demands on the facility's power supply, and require modifications to maintain the environmental stability required by central office equipment. Thus, under the language of the Act, a CLP should be permitted to install only equipment that must be near GTE network elements in order to make interconnection technically feasible.

GTE also asserts that a CLP should not be permitted to have access to any and all of GTE's buildings and structures, noting that many are very small and house network elements that do not provide routing or rating functions. GTE recognizes, however, that the FCC Interconnection Order requires collocation to be provided at all structures that house LEC network facilities, including "any structures that house LEC network facilities on public rights-of-way, such as vaults containing loop concentrators or similar structures." See FCC Interconnection Order, Paragraphs 573-75. GTE submits that such an expansion of the FCC's earlier collocation requirements is unauthorized under the Act. Pending judicial review, GTE would be willing to provide collocation at such structures to the extent space is available, the interconnection request is technically feasible, security concerns can be adequately addressed, and the collocator bears some of the costs of the collocation arrangement.

GTE further asserts that a CLP should not be permitted to require virtual collocation unless physical collocation is unavailable. GTE believes the Act does not allow the Commission to require

virtual collocation as an option unless the Commission finds that "physical collocation is not practical for technical reasons or because of space limitations." U.S.C.A. Section 251(c)(6). Virtual collocation, according to GTE, involves a taking of ILEC property for the benefit of another.

In addition, GTE asserts that it should be permitted to implement reasonable safety and security measures to protect its systems, such as partitioning areas for collocating parties and installing fencing within partitioned areas for each collocator.

With regard to cross-connection, GTE asserts that a CLP should not be permitted to cross-connect with non-GTE collocators on GTE property. In GTE's view, nothing in the Act suggests that Congress contemplated requiring GTE to allow collocators on its premises to completely bypass GTE's network and cross-connect with each other. GTE recognizes, however, that the FCC has recently required that, at the option of the ILEC, such cross-connects be made available through ILEC-provided or CLP-provided facilities. Should the Commission deem itself bound to follow the FCC Interconnection Order pending judicial review, GTE states that it will permit cross-connects as long as it is at the option of GTE, the connected equipment is used for interconnection with GTE or access to GTE's unbundled network elements, space is available, reasonable security arrangements can be provided, and the CLPs pay all associated costs.

In its Proposed Order, GTE states that many of the issues related to collocation are apparently settled according to GTE's additional filing of a list of issues settled in other jurisdictions, but that whether the issue relating to the type of equipment that may be collocated on GTE's premises has been settled is not clear. GTE asserts that the Commission should find that only equipment necessary for interconnection or access to unbundled elements may be collocated on GTE's premises. Aside from the constitutional implications, the plain language of the Act resolves the issue, according to GTE, since Section 251(c)(6) limits collocation equipment to that required for interconnection or access to unbundled network elements. GTE also notes that the FCC has concluded that this does not require collocation of equipment to provide switching or enhanced services.

GTE and MCI have stipulated in other jurisdictions as follows:

> Physical collocation will be provided within GTE's wire centers or access tandem facilities and in other technically feasible locations on a case-by-case basis.
>
> GTE shall provide virtual collocation where physical collocation is not practical for technical reasons or because of space limitations. GTE shall take collocator demand into account when renovating existing facilities and constructing or leasing new facilities.
>
> GTE shall permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at the GTE premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises provided that both telecommunications carriers are connected to GTE at those premises.

The parties did not agree on the price for the cross-connect.

The foregoing stipulation appears to settle many of the collocation issues, as GTE observes. The FCC has already addressed most of the collocation issues as well. With regard to the types of equipment that may be collocated on GTE's premises, GTE maintains that "necessary" means "required," while the FCC has interpreted the term more broadly. The FCC has declined to impose a requirement to allow collocation of any equipment without restriction, finding that the Act does not require collocation of equipment necessary to provide enhanced services and refraining from imposing a general requirement that switching equipment be collocated since it does not appear that it is used for actual interconnection or access to unbundled network elements. See FCC Interconnection Order, Paragraph 580. The FCC has left it to the states to resolve disputes over the functionality of particular equipment, however, and has reserved the right to reexamine this issue at a later date.

The Commission considers collocation issues to have been settled or addressed elsewhere except for the types of equipment that may be collocated. Pricing issues regarding collocation have been previously addressed herein in the Evidence and Conclusions for Finding of Fact No. 26.

CONCLUSIONS

The Commission concludes that the types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. The Commission further concludes that disputes over the functionality of particular equipment can be resolved on a case-by-case basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

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.

GTE: This issue is not addressed in GTE's matrix. However, in its Proposed Order GTE 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. GTE states that no elaborate and burdensome rules are required.

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 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 GTE 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 4th day of February, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-141, SUB 30

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with GTE South Incorporated) ORDER RULING ON OBJECTIONS, COMMENTS, UNRESOLVED ISSUES, AND COMPOSITE AGREEMENT

BY THE COMMISSION: On February 4, 1997, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by MCI Telecommunications Corporation (MCI) against GTE South Incorporated (GTE). The RAO required MCI and GTE to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within

30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On March 6, 1997, MCI and GTE filed their respective objections to the RAO. Comments on the RAO were filed by the following: Sprint Communications Company (Sprint), Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Carolina and Central), and the Carolina Utility Customers Association (CUCA). On March 21, 1997, MCI and GTE filed their Composite Agreement and List of Disagreed Issues. MCI also filed its comments in support of its version of disputed language on March 21, 1997, while GTE filed its comments on the conformed agreement on March 25, 1997.

WHEREUPON, after careful consideration of the objections, comments, and joint list of unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended as set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

ISSUES RELATED TO COMMENTS AND OBJECTIONS

ISSUE NO. 1: What services provided by GTE should be excluded from resale?

INITIAL COMMISSION DECISION

The Commission concluded that GTE should be required to offer for resale at wholesale rates services priced below cost, promotional offerings of over 90 days, public telephone access services (PTAS) lines to telecommunications carriers, semi-public payphones, and existing contract service arrangements (CSAs). Excluded from the resale requirement were promotional offerings of under 90 days, GTE's own public payphones, inside wiring, voice mail, and market or operation trials.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's decision regarding services priced below cost, promotional offerings of over 90 days, public and semi-public phone lines (including, possibly, customer-owned coin operated telephone (COCOT) phone lines), and existing CSAs.

MCI: MCI objected to the Commission's decision that inside wiring and voice mail were not telecommunications services and thus not subject to resale at wholesale rates. Alternatively, the Commission should decide that these services should be made available at retail rates. MCI argued that these services are important for them to attract customers and facilitate competition.

CAROLINA AND CENTRAL: While the Commission correctly concluded that PTAS lines should be subject to resale, the Commission erred regarding semi-public payphones, because semi-public payphone instruments are not telecommunications services and are not subject to the same resale requirement as the access line itself.

SPRINT: The Commission should have required GTE to resell promotional offerings of less than 90 days.

DISCUSSION

In its original decision, the Commission noted Section 251(c)(4) of the Telecommunications Act of 1996 (TA96 or the Act), imposing a general requirement on the incumbent local exchange company (incumbent LEC or ILEC) to resell at wholesale rates any retail telecommunications service offered by it to subscribers who are not telecommunications carriers, and the thrust of the Federal Communications Commission's (FCC's) First Report and Order in CC Docket Nos. 96-98 and 95-185 issued on August 8, 1996 (the Interconnection Order), which clearly disfavors restrictions on resale. Within the boundaries set by TA96 and the FCC Interconnection Order, the Commission made certain principled distinctions to allow a limited number of services not to be resold.

With respect to payphones, the Commission held that access lines would be subject to resale at wholesale rates but only to telecommunications carriers, not to COCOTs and only for the purpose of resale. The Commission also held that the ILEC's own payphones were not subject to resale because they are not per se a retail service, but did hold that semi-public payphones would be subject to resale. GTE has pointed out that semi-public payphones would be subject to resale. GTE has pointed out that semi-public payphones do not fall under the resale mandate because they are no longer offered to subscribers at retail under tariffs due to the FCC's Payphone Order. The Commission agrees, and accordingly, semi-public payphones should not be required to be offered for resale.

Otherwise, the Commission believes that the reasons articulated in the Order for its decision continue to hold true and should not be modified.

CONCLUSIONS

The Commission affirms its original decision with respect to this issue, with the exception that semi-public payphones shall not be required to be resold.

ISSUE NO. 2: What terms and conditions should be applied to resale of GTE services?

INITIAL COMMISSION DECISION

The Commission concluded that cross-class selling of wholesale residential services should be prohibited; that resale of grandfathered services should be restricted to grandfathered customers and the resale of Lifeline/Link-Up should be restricted to eligible customers; that operator and directory assistance, nonrecurring charges and private line services tariffed under the special access tariff, and COCOT and coinless lines are subject to resale; and that current use and user restrictions in ILEC tariffs should carry forward into resold services, with the exception of such prohibitions or restrictions that have been or will be specifically imposed.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's decision that operator and directory assistance, nonrecurring charge, and private line services tariffed under the special access tariff should be subject to resale. GTE also objected to the finding that COCOT and coinless lines are subject to resale.

DISCUSSION

In its original decision, the Commission found no basis to exclude operator and directory assistance, nonrecurring charges and private line services tariffed under the special access tariff, and COCOT and coinless lines from resale. GTE has, generally speaking, reiterated the same arguments it used before. The Commission specifically noted that the resale of PTAS lines is limited to telecommunications carriers and then only for the purpose of resale.

CONCLUSIONS

The Commission affirms its original decision regarding this issue.

ISSUE NO. 3(a): What are the appropriate service standards to be provided by GTE to new entrants?

INITIAL COMMISSION DECISION

The Commission declined to enact specific performance standards and instructed the parties to negotiate mutually agreeable terms.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission's decision and argued that specific performance standards are necessary to ensure parity.

DISCUSSION

The Commission's view is that it is neither appropriate nor practical to enact specific performance standards. The Commission views the parties as possessing superior expertise in this case.

The Commission continues to believe that it would be a mistake to impose performance standards on the ILECs for the reasons stated in the RAO and that this constitutes a resolution of the issues within the meaning of TA96.

The Commission notes, however, that ILECs are expected to provide service to competitors that is at least equal to the service they provide themselves.

CONCLUSIONS

The Commission affirms its original decision regarding this issue.

ISSUE NOS. 3(b) AND 3(c): Should GTE be required to provide "as-is" transfers to the new entrant? Should GTE be required to provide customer information without a letter of authorization (LOA) from the customer to GTE?

INITIAL COMMISSION DECISION

These were closely related issues and were considered together. The Commission decided that "as-is" transfers should be allowed and that ILECs and competing local providers (CLPs) should enter into blanket LOAs authorizing the CLP to receive relevant customer information--defined as a customer's list of scheduled services on or about the time of transfer--or to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with the FCC Rules in 47 CFR Part 64, Subpart K.

COMMENTS/OBJECTIONS

GTE: GTE objected generally to the Commission's decision for the reasons it previously set out in its brief.

CAROLINA AND CENTRAL: Carolina and Central argued that the "as-is" transfer and blanket LOA requirement should go both ways--i.e., from CLP to ILEC as well as from ILEC to CLP. Since the process of accumulating and transferring relevant information may prove cumbersome until electronic interfaces are developed, each company should be allowed to recoup the costs incurred. Such costs and prices should be addressed in the generic cost proceeding proposed for determining avoided costs and unbundled network element prices.

DISCUSSION

The Commission's original decision on these issues recognized the need for such mechanisms as "as-is" transfers and blanket LOAs to effectuate meaningful competition, while at the same time recognizing the need to mitigate potential problems.

Carolina and Central have raised some valid points regarding symmetry between ILECs and CLPs and the determination of costs.

CONCLUSIONS

The Commission affirms its original decision on these issues, subject to the following:

1. That ILECs are authorized to utilize "as-is" transfers and blanket LOAs with respect to the transfer of customers from CLPs to ILECs in the same manner as has been authorized in these issues for the transfer of customers from ILECs to CLPs.

2. That the issue of prices and cost relative to these processes be considered within the context of a future generic cost proceeding concerning avoided costs and unbundled network element prices.

ISSUE NO. 4: Should GTE be required to provide real-time and interactive access via electronic interfaces for unbundled network elements as requested by CLPs to perform the following:

- **Pre-ordering,**
- **Ordering,**
- **Provisioning,**
- **Maintenance/repair, and**
- **Billing?**

INITIAL COMMISSION DECISION

The Commission concluded that GTE 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. Additionally, the Commission found that the electronic interfaces should be promptly developed and provided based upon uniform, industry-wide standards. Further, the Commission encouraged the parties to negotiate the terms and conditions of how the implementation costs incurred in the development of such interfaces can be recovered, such that all benefitting users share the burden.

COMMENTS/OBJECTIONS

MCI: MCI stated that Finding of Fact No. 4 of the RAO fails to meet the requirements of Section 251 of TA96, including regulations prescribed by the FCC. According to MCI, GTE is not in compliance with the FCC's Interconnection Order because it failed to provide the electronic interfaces by January 1, 1997. The RAO instructs GTE to provide the requested electronic interfaces "promptly." The term "promptly" is nebulous and the RAO prescribes no specific alternative time limit within which GTE must meet this obligation. MCI believes that the Commission should set a date certain for GTE to comply with the FCC interconnection Order and provide the electronic interfaces to MCI. MCI submits that a reasonable date is May 1, 1997. If GTE does not meet the deadline established by the Commission, GTE should be compelled to specify the impediments it faces; outline its plans for developing the required electronic bonding; identify the date by which deployment of such systems will be possible; and detail the interim systems it plans to implement in the absence of electronic bonding. GTE should also be compelled to seek an extension of the deadline which should be granted only for good cause.

CUCA: CUCA urged the Commission to establish a relatively near-term date by which GTE must provide MCI with real-time, interactive interfaces to the unbundled network elements necessary for the proper performance of pre-ordering, ordering, provisioning, maintenance/repair, and billing functions. CUCA stated that the Commission should adopt the initial proposal advanced by the Attorney General— i.e., the Commission should require that a firm plan to implement automated interfacing with commitments to deadlines which are mutually satisfactory must be in place by April 15, 1997, that the interfaces should be developed and in place promptly thereafter, and that if the arbitrating parties are unable to reach agreement, the Commission should order compliance at that time.

DISCUSSION

The Commission understood that the FCC Interconnection Order stated that nondiscriminatory access to the operations support systems functions should be provided no later than January 1, 1997. The Commission's view was that the requested electronic interfaces will indeed have to be provided and that they preferably should be uniform, industry-developed interfaces. Rather than establishing a specific date other than the FCC's provision, the Commission recognized that the electronic interfaces would likely not be developed by January 1, 1997, and simply found that the interfaces should be provided promptly through the development of uniform, industry-wide standards.

CONCLUSIONS

The Commission hereby affirms its original decision on this issue, but will require the parties to file a report not later than August 31, 1997, setting forth the status of their progress toward the accomplishment of electronic bonding through the development of uniform, industry-wide standards.

ISSUE NO 5: Must GTE route directory assistance (DA) and operator services (OS) directly to MCI's platform?

INITIAL COMMISSION DECISION

The Commission declined to require GTE to provide customized routing to MCI on the grounds that it is not technically feasible at this time and encouraged the parties to work to develop a long-term, industry-wide solution. The Commission also encouraged the parties to further negotiate concerning the recovery of development costs, such that all benefitting users share the burden.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission's failure to order customized routing, stating that the decision fails to meet the requirement of Section 251 of the Act and regulations prescribed by the FCC. MCI pointed out that the FCC stated that the term "technically feasible" refers solely to technical or operational concerns, rather than economic, space, or site considerations. MCI further stated that the FCC Interconnection Order requires customized routing in each GTE switch unless GTE establishes by clear and convincing evidence that customized routing is not "technically feasible" in a particular switch. The Commission's analysis "that a sufficient number of available LCCs may not be available to serve all the carriers who may wish to obtain customized routing from GTE" does not comport with the FCC's Interconnection Order because space considerations are not an element of "technical feasibility," as defined by the FCC.

MCI urged the Commission to consider the logic employed by other BellSouth states, including Tennessee, Georgia, Florida, and Kentucky, and the FCC, which have held that customized routing is technically feasible and have ordered ILECs to provide customized routing.

CUCA: CUCA contended that, according to Paragraphs 251(c)(2) and 251(c)(3) of the Act, GTE has the obligation to provide access to services such as customized routing so long as the provision of those services is technically feasible. Citing the FCC's Interconnection Rules, CUCA

argued that the burden of proving that customized routing is technically infeasible lies with GTE. Although GTE claimed that some of its North Carolina switches lack sufficient line class codes (LCCs) to accommodate a number of CLPs provisioned in the same manner as GTE, that fact, standing alone, should not determine the "technical infeasibility" issue. The record, CUCA commented, is replete with claims by MCI that it will not need nearly as many LCCs as are customarily used by GTE. Moreover, the record suggests that, in the near term, many of the switches utilized by GTE are likely to accommodate many more LCCs than are currently available. Finally, the record does not establish that a large number of potential market entrants will even request customized routing, suggesting that GTE has overstated the likely demand for LCCs. As a result, CUCA contended, providing customized routing using LCCs is not technically infeasible. Finally, CUCA contended that the Commission's implicit rejection of the advanced intelligent network (AIN) alternative suggested by MCI is equally without merit.

SPRINT: Sprint argued that the Commission erred in declining to require customized routing. Sprint cited Section 251(c)(2) of the Act, which clearly provides that the local exchange company (LEC) has the obligation and duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within the carrier's network. Sprint commented that it does not believe that the Commission should wait on a long-term solution and that the short-term solution to customized routing is, to the extent sufficient capacity exists, technically feasible through LCCs.

DISCUSSION

The Commission understands the importance of customized routing and was aware when it issued the recommended arbitration order that customized routing can be provided through the use of LCCs in some cases. The Commission questioned, however, whether this is technically feasible "in any practical sense" because of capacity constraints and lack of uniformity among switches even if they are upgraded. Recognizing that this is not the long-term solution the industry is working on, however, the Commission declined to order the use of LCCs as an interim solution. The Commission was also aware that Bell Atlantic has agreed to provide customized routing through the use of AIN.

The Commission continues to believe that it would be unreasonable to require customized routing until a long-term, industry-wide solution is developed. This belief rests in large part on the expectation that progress is being made toward that end and that customized routing will be generally available in the near future.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that its original decision on this issue should be affirmed. The Commission further concludes that the parties should be required to file a report not later than August 31, 1997, setting forth the status of their progress toward developing a long-term, industry-wide method of providing customized routing.

ISSUE NO. 6: When a GTE service is resold, is it technically feasible for GTE to brand the services (i.e., OS/DA) with the new entrant's brand? When GTE employees interact with a new entrant's customers with respect to a service provided by GTE on behalf of the new entrant, what are GTE's branding obligations?

INITIAL COMMISSION DECISION

The Commission concluded that GTE should not be required to unbrand services provided to its customers but should be required to rebrand resold OS/DA when customized routing is available. The Commission further concluded that the branding issue with regards to other interaction between GTE and its employees and MCI customers is resolved because of agreements in other jurisdictions.

COMMENTS/OBJECTIONS

MCI: MCI objected to the failure to require GTE to brand services or information. MCI states that Section 251 of the Interconnection Order provides that failure by an incumbent LEC to comply with branding or rebranding requests constitutes a restriction on resale unless the incumbent LEC can prove that it lacks the capability to comply with the request. MCI argued that GTE has not rebutted the presumption that it lacks the capability to brand MCI's services.

SPRINT: Sprint argued that the Commission erred in declining to require GTE to unbrand services provided to its customers. Sprint cited Section 251(c)(4)(B) of the Act, which prohibits GTE from imposing unreasonable or discriminatory conditions or limitations on resale; Section 51.513 of the FCC Rules, which provide that where operator, call completion, or directory assistance service is part of the service or service package an ILEC offers for resale, failure by an ILEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale; and Section 251(c)(2)(D), which imposes on GTE a duty to provide for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

DISCUSSION

The Commission's reason for not requiring GTE to unbrand OS/DA is explained on page 23 of the RAO. Branding is not technically feasible until the issue of customized routing is first resolved. With the resolution of customized routing, GTE will be required to rebrand OS/DA services. No new arguments have been presented.

CONCLUSIONS

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

ISSUE NO. 7: What billing system and what format should be used to render bills to MCI for services purchased from GTE?

INITIAL COMMISSION DECISION

The Commission concluded that GTE should be allowed to continue billing through the Customer Billing Services System (CBSS) to render bills to MCI for services purchased from GTE until an industry-wide standard is developed through an industry forum.

The Commission further concluded that in regard to the matter of who should be required to pay for the costs of implementation of such billing services as requested by MCI, the Commission is not prepared to make a decision at this time. The Commission encouraged the parties to further negotiate the terms and conditions of how the implementation costs incurred in the development of such billing services can be recovered such that all benefitting users share the burden.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission's failure to require GTE to use a Carrier Access Billing Systems (CABS) billing format. MCI argued that CBSS does not involve a standardized billing format and makes bills virtually inauditable. The industry Ordering and Billing Forum has established a carrier access billing data format which provides a uniform, nationwide format for the provision of billing information for access services. This format provides an appropriate level of detail for carrier-to-carrier billing, allows a carrier to obtain bills in the same format from all LECs, and ensures that the bills can be audited on a mechanized basis. The use of CABS-formatted billing in the unbundling and resale environment is necessary to provide MCI with billing information in a usable format.

MCI further argued that in the absence of a CABS format, a competing local provider will be forced to build multiple interfaces and audit systems. The cost of building the interfaces and audit systems is a significant barrier to competition and contravenes the purpose of the Act. Further, MCI pointed out that state commissions in Tennessee, Florida, and Kentucky have ordered GTE to provide CABS-formatted billing.

DISCUSSION

The Commission believes that the best solution is for GTE to continue working to provide a billing system in a format agreeable to both parties. However, until a mutually acceptable billing system is developed, a reasonable approach would appear to be to allow MCI additional time within which to pay GTE for the CBSS-formatted bills. The additional time requested by MCI in the Conformed Agreement, Article VII, Section 4.7 appears to be a reasonable amount of time.

CONCLUSIONS

Based on the foregoing, and the entire evidence of record, the Commission concludes that its original decision be affirmed with the modification that MCI be allowed additional time within which to pay CBSS-formatted bills. The Commission further concludes that the MCI language proposed

in Article VIII, Section 4.7 which would allow MCI to pay such non-CABS bills within 60 days from the bill date, or 40 days from receipt of the bill, whichever is later, should be adopted.

ISSUE NO. 8: Are the following items considered to be network elements, capabilities, or functions? If so, is it technically feasible for GTE 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**

INITIAL COMMISSION DECISION

The Commission found 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 (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.

Further, the Commission made 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 concluded that GTE should not be required, at this time, to unbundle the local loop. However, the Commission found that GTE may provide the loop distribution subelement in a bona fide request process where individual requests are analyzed on an individual case basis— i.e., to the extent GTE wants to unbundle the loop into subelements, it is allowed to do so.

(2) The Commission also found that GTE should not be required to give MCI access to GTE's AIN triggers until a mediated access mechanism has been developed on an industry-wide basis. Further, the Commission encouraged GTE to actively participate in an industry-wide forum to promptly address this issue.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's finding that all switching capability must be provided on an unbundled basis including the requirement that vertical services be provided as part of the local switching network element.

GTE comments that the concept of network elements under the Act is rooted in discrete physical parts of the local exchange network and is limited further by the requirement that it be "used in the provision of a telecommunications service". GTE further comments that "network element" refers solely to those pieces of equipment (and their "features, functions, and capabilities") that the carrier uses for call delivery--that is, the equipment that is used to transport telephone calls from one point to another. Thus, GTE asserts that the only "local switching" element that may be required to be unbundled is the port. It is GTE's opinion that vertical services fall outside the Act's mandate as they are not "network elements" used to provide "telecommunications service".

GTE further explains that requiring access to all features and functionalities of the local switching element at all times ignores significant technical considerations and that satisfaction of this requirement would necessitate substantial re-engineering of each switch which currently is not technically feasible for all types of switches. Finally, GTE adds that unbundling of tariffed elements is unnecessary and beyond the Act's requirements, because such unbundling is not necessary to provide the CLPs with the ability to offer any service since the CLPs may simply order out of the tariff.

DISCUSSION

FCC Rule 51.319(c)(1)(i)(C) provides for access to local switching capability on an unbundled basis including ". . . all features, functions, and capabilities of the switch, which include, but are not limited to: (*1*) the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks, as well as the same basic capabilities made available to the incumbent LEC's customers, such as a telephone number, white page listing, and dial tone; and (*2*) all other features that the switch is capable of providing, including but not limited to custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch."

FCC Rule 51.319(c)(2)(iii) provides for access to tandem switching capability on an unbundled basis including "... the functions that are centralized in tandem switches (as distinguished from separate end-office switches), including but not limited to call recording, the routing of calls to operator services, and signaling conversion features;".

Based on the FCC Rules in Section 51.319, the Commission took the view that it was appropriate to require that local switching capability and tandem switching capability including vertical services be provided on an unbundled basis.

CONCLUSIONS

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

<u>ISSUE NO. 9</u>: Must GTE be prohibited from placing any limitations on MCI's ability to combine unbundled network elements with one another, or with resold services, or with MCI's or a third party's facilities, to provide telecommunications services to consumers in any manner MCI chooses?

INITIAL COMMISSION DECISION

The Commission concluded that MCI should be allowed to combine unbundled network elements in any manner it chooses. The Commission found merit, however, in GTE's argument that MCI should not be allowed to purchase unbundled network elements and recombine them as resold services without paying the wholesale rate. GTE, therefore, was allowed to 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, and use and user restrictions in retail tariffs.

COMMENTS/OBJECTIONS

MCI: MCI argued that permitting GTE to submit a supplemental, unilateral filing fails to meet the standards set forth in subsection (d) of Section 252 of the Act. Section 252(d) of the Act requires the Commission to make nondiscriminatory determinations of the just and reasonable rate for network elements. MCI contended that not allowing MCI to participate in the determination of the pricing of rebundled network elements is discriminatory. There is no ambiguity in the Act regarding GTE's obligation to make unbundled network elements available to MCI so as to allow MCI to recombine them to provide a telecommunications service. Similarly, there is no ambiguity regarding the price for the unbundled network elements, which must be based upon cost plus a reasonable profit. MCI stated that numerous other states -- including California, Hawaii, Iowa, Indiana, Ohio, Texas, Oklahoma, Virginia, Illinois, Connecticut, Colorado, Nebraska, and Oregon -- have rejected limitations regarding the combination of elements.

GTE: GTE objected to the finding which requires GTE to allow MCI to combine unbundled network elements in any manner it chooses. GTE further submitted that, if its unbundled switching is combined with its unbundled local loop, then it is essentially providing a resold local service which should be treated the same as resale with respect to collection of access and subscriber line charges, and other use and user restrictions, saying that basic services available for resale are functionally replicated when an unbundled loop is combined with unbundled switching. GTE stated that combination of the loop and switch provide all the capabilities included in local exchange service, including the ability to make and receive calls, and should be priced as resold local exchange service at the appropriate tariff rate less the wholesale discount.

CAROLINA AND CENTRAL: The companies supported the Commission's finding as it allows MCI to technically combine unbundled network elements in any manner it chooses in compliance with Section 251(c)(3) of the Act and Section 51.315 of the FCC Rules. The companies

stated that by allowing GTE to provide additional information on unbundled network element combinations which constitute resold services, the Commission left unresolved their pricing policy for such combinations. The companies stated they believe that carriers should be allowed to combine unbundled network elements and urged the Commission to ensure that the policy is consistently developed and applied on a statewide, industry-wide basis. For example, the companies contended that they should not be required to price combined network elements which constitute resold services at the sum total of the individual network element prices if GTE is allowed to treat these combined network elements as resold services for pricing purposes. Carolina and Central further commented that the pricing policy and use and user restrictions for combining network elements should be consistently developed and applied on a statewide, industry-wide basis to ensure nondiscriminatory rates and access to network elements as required by Sections 252(d)(1) and 251(c)(3), respectively, of the Act.

CUCA: CUCA contended that treating the recombination issue as a matter of pricing rather than a limitation on the ability of CLPs to combine unbundled network elements is a distinction totally without substance. According to CUCA, the effect of the Commission's decision is to deprive new entrants of the cost benefits of using one of the three entry strategies explicitly authorized by statute. By preventing a CLP from entering the market using combined unbundled network elements when the cost is less than operating as a reseller, CUCA contended, the implicit result of the decision in the RAO is to interfere with the CLP's ability to combine unbundled network elements in any way it deems appropriate. To GTE's argument that failing to adopt its position will eviscerate the resale pricing provisions of the Act, CUCA responded that acceptance of GTE's position will eviscerate the unbundled network pricing provisions of the same statute.

DISCUSSION

In the RAO, the Commission found merit in GTE's position on this issue but perceived a need for additional information before attempting to implement a plan to price combinations of elements at wholesale rates. Bearing in mind the legal, technical, and policy implications of our decision, we sought workable criteria for identifying combinations of unbundled elements that constitute resold services. The additional information submitted by GTE is essentially the decision of the Louisiana Public Service Commission (LPSC) in an AT&T/BellSouth arbitration proceeding, which said in part:

> AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contains the functions, features and attributes of a retail offering that is the subject of a properly filed and approved BellSouth tariff. Services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing "services identical to a BellSouth retail offering." LPSC Docket U-22145, January 15, 1997. GTE suggested that the Commission consider the LPSC's findings in this proceeding.

Because of the complexity of this issue, the Commission is now of the opinion even the most detailed findings will leave open questions that will likely have to be addressed on a case-by-case basis. In reaching our final decision, we have been guided by the principle of encouraging innovation rather than arbitrage and aided by recent decisions of the Tennessee, Georgia, and Louisiana Commissions.

CONCLUSIONS

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

ISSUE NO. 10: Must GTE make rights-of-way, poles, ducts, and conduits available to MCI on terms and conditions equal to that it provides itself?

INITIAL COMMISSION DECISION

The Commission concluded that GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits on terms and conditions equal to that it provides itself. The Commission further concluded that GTE cannot reserve any spare capacity unless needed for reasons of safety, reliability, and generally applicable engineering purposes. MCI will only be granted the *bone fide* capacity it needs and not be allowed to warehouse GTE's capacity to the detriment of GTE or any other CLP. The Commission also directed the parties to meet and formulate guidelines to be followed in handling requests by MCI for access to GTE's rights-of-way, poles, ducts, and conduits. The Commission ordered the parties to file a report with the Commission by April 1, 1997, detailing the results of their meetings and the guidelines formulated.

COMMENTS/OBJECTIONS

GTE: GTE has two major objections to the Commission RAO: (1) To require GTE to provide access to GTE's rights-of-way, poles, ducts, and conduits at parity with GTE constitutes an unconstitutional taking; and (2) GTE should be permitted to reserve space on its facilities without restriction.

GTE objects to the Commission's decision that it must provide access to its rights-of-way, poles, ducts, and conduits on terms and conditions equal to that GTE provides itself. GTE argues that the Commission is misinterpreting Section 251(b)(4) of the Act which requires ILECs to afford access on a nondiscriminatory basis. GTE reads the Act narrowly to mean that GTE must treat all requesting carriers in a nondiscriminatory manner, but the Act does not require that GTE treat the requesting carriers at parity with itself. GTE maintains that the Commission's decision in the RAO

requiring GTE to provide equal access to its rights-of-way, poles, ducts, and conduits constitutes an unconstitutional taking of its property.

GTE also objects to the finding and conclusion made by the Commission that GTE cannot reserve any spare capacity unless needed for reasons of safety, reliability, and generally applicable engineering purposes. GTE construes Section 224(f)(1) as requiring only that an owner of poles, ducts, or conduit (i.e., the ILEC) treat all companies seeking access equally and that the ILEC not be allowed to place more onerous terms and conditions for access on a competitor than are imposed on a noncompeting company. GTE argues that nothing in Section 224(f)(1)'s nondiscrimination requirement is intended to curtail an ILEC from reserving capacity in its own facilities as an ILEC has an ownership interest in its rights-of-way, poles, ducts, and conduits. In short, GTE argues that the fact of ownership distinguishes GTE from CLPs with regard to reservation of space. GTE takes the position that any directive by the Commission that GTE must offer access to its facilities constitutes an unconstitutional taking of its property rights.

DISCUSSION

GTE raises no new issues in its objections from those it previously propounded in the arbitration proceeding. Once again, GTE is objecting to having to make its rights-of-way, poles, ducts, and conduits available on terms and conditions equal to that it provides itself. It is GTE's position that as owner of its facilities, it has a constitutional right to reserve space for itself as it so chooses. It views as an unconstitutional taking of its property any directive from the Commission that it be required to make available its facilities upon the same terms and conditions equal to that it provides itself. According to GTE's restrictive reading of the Act, the Act only requires that a CLP should be granted access at parity with the other CLPs.

When carried to its logical conclusion, GTE's interpretation of Section 251 of the Act would render this provision a nullity. If GTE is allowed to reserve whatever space it deems necessary in its rights-of-way, poles, ducts, and conduits, then the Act has basically conferred upon the CLPs no additional rights than they had prior to the enactment of Section 251. Under such interpretation, GTE could deem to reserve all of its capacity in its rights-of-way, poles, ducts, and conduits irrespective of the fact that such capacity was not needed for reasons of safety, reliability, or engineering purposes. As GTE would not be offering any CLP with space on GTE's rights-of-way, poles, ducts, and conduits, then GTE would argue that it would not be violating the act as it was treating all CLPs equally; that is, at parity with each other. Such narrow reading of Section 251 is at odds with the plain meaning of this section and is contrary to the purposes for which the Act was enacted, i.e. to promote competition for American telecommunications consumers.

Section 251(b)(4) of TA96 provides that incumbent local telephone providers have the duty to afford access to the rights-of-way, poles, ducts, and conduits 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, clearly supports the decision made by the Commission in the RAO that GTE must make its rights-of-way, poles, ducts, and conduits available on terms and conditions equal to that GTE provides itself.

CONCLUSIONS

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

ISSUE NO. 11: Must GTE provide MCI with access to GTE's unused transmission media or dark fiber?

INITIAL COMMISSION DECISION

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

COMMENTS/OBJECTIONS

MCI: MCI states that the FCC did not specifically require that incumbent LECs make available unbundled optical fiber or "dark fiber," because it did not have a sufficient record on which to decide this issue. MCI submits that the FCC did not, however, prohibit the states from making the determination and points out that four other states have found dark fiber to be a network element. MCI believes there is a sufficient record before the Commission to establish a similar finding.

DISCUSSION

MCI opines that the record is sufficient to support a finding and conclusion that dark fiber is a network element within the meaning of the Act. However, MCI does not cite evidence where the record reveals that dark fiber is a facility or equipment used in the provision of a telecommunications service, thereby meeting the definition of network element under the plain language of the Act. The Act defines "network element" as follows:

> "(29) NETWORK ELEMENT. – The term 'network element' means a facility or equipment used in the provision of a telecommunications service. Such term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."

As stated in the RAO, unused transmission media or dark fiber is cable that has no electronics connected to it and is not functioning as part of the telephone network. Consequently, the Commission is unconvinced that dark fiber qualifies as a network element. Finally, as noted in the RAO, the FCC did not address and require the unbundling of the incumbent LECs' dark fiber but did state it would continue to review and revise its rules in this area as necessary.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission affirms its original decision on this issue.

ISSUE NO. 12: Must appropriate wholesale rates for GTE services subject to resale equal GTE's retail rates less all direct and indirect costs related to retail functions? Should GTE's wholesale prices exclude any new costs GTE claims to incur because of selling at wholesale?

INITIAL COMMISSION DECISION

The Commission concluded that GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's reliance on the FCC's "proxy" logic to establish the wholesale discount rate. GTE argues that by using proxy pricing methods, the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which are shown in great detail in GTE's avoided cost studies. GTE stated that the Commission embraced the "proxy" analysis of the stayed provisions of the FCC's First Report and Order and argued that the Commission's ordered wholesale discount rate will cause GTE to suffer precisely the irreparable harm that the Eighth Circuit so clearly intended to prevent.

DISCUSSION

The Commission view was that the FCC Interconnection Order provided a reasonable basic methodology upon which to base the Commission's avoided cost analysis with some exceptions. The Commission's avoided cost analysis is based on a review of the entire record of evidence in the proceeding including TA96 and the FCC Interconnection Order. Section 252(d)(3) of the Act states 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. The FCC Interconnection Order provided a basic methodology to determine avoided costs which the FCC believes complies with the Act. The Commission did not simply adopt the FCC's "proxy" logic; the Commission prepared its own avoided cost analysis which it believes complies with the Act and follows the same basic methodology as the FCC Interconnection Order with some exceptions.

GTE asserts that the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which are shown in great detail in GTE's cost studies. GTE's avoided cost studies reflect GTE's estimation of avoided costs, not actual avoided costs.

The Commission continues to believe that the Commission's avoided cost analysis prepared to calculate GTE's avoided costs is based on a thorough review of all of the evidence of record and complies with the Act. The Commission also believes that GTE's avoided cost studies do not represent GTE's actual avoided costs, but GTE's estimation of its avoided costs.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 13: What are the appropriate wholesale rates for GTE to be established in North Carolina? (What are appropriate GTE wholesale rates?)

INITIAL COMMISSION DECISION

The Commission concluded that GTE's appropriate composite wholesale discount rate is 19.97%.

COMMENTS/OBJECTIONS

CAROLINA AND CENTRAL: Carolina and Central objected to the Commission's decision concerning the wholesale discount rate, viewing the Commission's wholesale discount rate as an interim rate. Carolina and Central recommended that the Commission establish a permanent wholesale discount rate on the basis of each companies' actual avoided costs.

DISCUSSION

The Commission in no way viewed the ordered wholesale discount rate as interim. The Commission did follow the basic methodology of the FCC Interconnection Order. However, the Commission did not order an interim wholesale discount rate. The Commission prepared its own avoided cost analysis based on the entire record and established a permanent wholesale discount rate which meets the requirements of the Act.

The Commission continues to believe that the RAO did not establish an interim wholesale discount rate and that the wholesale discount rate does not have to be calculated based on GTE's estimation of its avoided costs.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 14: What are the appropriate prices for unbundled network elements, transport and termination, support elements, and collect and third-party intraLATA calls?

INITIAL COMMISSION DECISION

Except as indicated below, the Commission established interim rates, subject to true-up, for unbundled network elements and transport and termination based on consideration of the FCC's proxy rate guidelines or "default proxies," i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's total element long-run incremental cost-based (TELRIC-based) pricing methodology.

The FCC Interconnection Order did not provide a proxy for the network interface device (NID) as an unbundled network element. The rate established for the NID as an unbundled network element by this Commission represented a simple average of the NID rate proposed by MCI and that proposed by GTE. The proposed NID rates of the arbitrating parties were based on their respective cost studies.

Regarding the prices for support elements, the Commission based those rates on consideration of FCC proxy rate provisions, i.e., interstate tariffed rates, where such rates exist, pending resolution of the appeal of the FCC Interconnection Order and establishment of final rates by this Commission. Where rates could not be so established, the Commission concluded that the arbitrating parties should be called upon to renegotiate these issues. Further, regarding issues of national concern, such as permanent number portability and AIN, the arbitrating parties were encouraged to pursue resolution of any dispute of such a nature on a national level, through the appropriate industry forum or at the FCC.

With respect to rates for collect and third-party intraLATA calls, the Commission concluded that such rates should be priced consistent with the provisions established herein with respect to the wholesale discount and unbundled network elements.

COMMENTS/OBJECTIONS

MCI: MCI objected to the manner in which the Commission established rates for unbundled network elements. MCI alleged that Finding of Fact No. 23 failed to meet the requirements of Section 251 of TA96, including regulations prescribed by the FCC, and that such finding failed to meet the standards set forth in subsection (d) of Section 252 of TA96. Specifically, MCI alleged that this Finding of Fact established interim rates for unbundled network elements which are not based on cost. Section 252(d) requires that rates for network elements be based on the cost of providing the interconnection or network element.

MCI also objected to the true-up requirement of Finding of Fact No. 23. MCI alleged that this requirement created uncertainty because the interim rates are subject to change and as such will chill the entry of competing local exchange carriers into the market. MCI thus asserted that the true-up provision is inconsistent with the purpose of TA96.

MCI objected to Finding of Fact No. 26, which relates to interim rates established for certain interconnection support elements, for essentially the same reasons that it objected to the Commission's decision regarding the pricing of unbundled network elements.

GTE: GTE objected to the use of proxy rates to establish prices for unbundled network elements, interconnection, and transport and termination. GTE asserted that, by using proxy pricing methods, the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which according to GTE are shown in great detail in its cost studies. GTE argued that its proposed rates are "...the only rates presented in these arbitration proceedings which conform to the requirements of the Act and the Constitutions of the United States and North Carolina." GTE stated that the rates established by the Commission failed to allow it to recover its forward-looking costs of providing each element or service plus a reasonable allocation of joint and common, historical, subsidy, and other costs.

GTE, after having construed the RAOs to have established symmetrical rates for transport and termination, stated that such action is at odds with the requirements of the Act. GTE noted that Section 252(d)(2) of the Act states that reciprocal compensation shall not be considered just and reasonable unless "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities..."

Thereafter, GTE asserted that the Commission had disregarded this language and determined that one set of rates shall apply. In conclusion in this regard, GTE stated that the Commission should establish asymmetrical rates based upon the costs of each particular carrier.

GTE also objected to the Commission's having adopted an interim loop rate of $17.05 because, according to GTE, such loop rate was the lowest rate advocated by any party to the proceeding. Further, GTE also objected to the rate established for the NID because, as noted by the Commission in its RAOs, such interim rate represented a simple average of the rate proposed by GTE and that proposed by AT&T and MCI. Simply stated, GTE objected to the Commission's interim pricing of all of the foregoing rates because they were not based on GTE's costs and cost studies.

GTE stated that, while it does not favor interim prices, if the Commission needed more time to consider GTE's cost studies and pricing proposal, it would consent to interim pricing, provided the prices are set at the levels recommended by GTE. GTE asserted that the only way interim pricing can avoid an unconstitutional taking of GTE's property, and the attendant irreparable harm of lost market share and erosion of goodwill, is if the interim prices are those requested by GTE.

Finally, GTE argued that the Commission erred in refusing to adopt an end-user charge which is required under GTE's costing approach in order to allow GTE to capture all of its true network costs, including stranded costs and a fair rate of return on its historic investments.

GTE urged the Commission to reject its earlier recommended findings regarding pricing and adopt rates which reflect GTE's actual costs as required by the Act.

CUCA: CUCA commented that the true-up mechanism[1] "...is a potentially troublesome development which may impair the near-term development of effectively-competitive local exchange markets." CUCA asserted that the true-up mechanism will cause new entrants to hesitate to enter North Carolina local exchange markets utilizing a strategy based upon the purchase of unbundled network elements for fear that the cost of such a strategy cannot be currently ascertained. CUCA further contended that the use of a true-up is probably unlawful. Additionally, CUCA commented that the Commission can avoid the danger of carriers being harmed in the absence of a true-up provision by simply conducting the proceeding necessary to permit the adoption of appropriate prices for unbundled network elements and similar items expeditiously. In concluding its comments in this regard, CUCA stated that "[t]he potential benefits to certain affected parties from the availability of the 'true-up' mechanism simply do not outweigh the adverse impact of this device on the competitive process.' Thereafter, CUCA asserted that the Commission should remove the true-up provision contained in the RAO from any final order entered in this proceeding.

CAROLINA AND CENTRAL: These companies encouraged the Commission to expeditiously convene a generic cost proceeding to investigate the various costing methodologies to be proposed by interested parties and to determine the appropriate cost methodology to be used in developing permanent rates for unbundled network elements. Although the unbundled network element pricing sections of the FCC Rules set forth in its First Report and Order in CC Docket No.

---

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

96-98 have been stayed by the Eighth Federal Circuit Court of Appeals, the Act requires the permanent price of unbundled network elements to be based on the cost of providing the element. The Companies believe the RAO to be in compliance with the Act (and the FCC regulations) so long as the Commission moves quickly to determine the appropriate permanent rates and requires a true-up of the interim proxy rates at such time as the permanent rates are adopted.

DISCUSSION

GTE's and MCI's assertion that the rates established for unbundled network elements were not based on cost appears to be without merit. As previously indicated, such rates were based on consideration of either MCI's cost study, GTE's cost studies, or the FCC's default proxies. As clearly evidenced by its Interconnection Order, the FCC's default proxies were based on cost. Therefore, it is not unreasonable to conclude that this Commission's proxy-based interim rates were in fact cost-based, since they were based on cost studies submitted by MCI or GTE and the FCC's proxies, which were themselves based on cost.

Regarding GTE's having construed the RAO to have established symmetrical rates for transport and termination, the Order does not so provide. The evidence of record in these proceedings is insufficient to allow the Commission to reach an informed decision in that regard.

With respect to GTE's assertion that the Commission erred in refusing to adopt an end-user charge, which is required under GTE's costing approach, since the Commission did not adopt GTE's costing approach in establishing interim rates subject to true-up, it does not appear to be unreasonable for the Commission not to have adopted an end-user charge as advocated by GTE.

GTE's appears to have concluded that the Commission adopted an interim rate of $17.05 for a 2-wire analog voice grade loop, in lieu of the $16.71 proxy rate ceiling established by the FCC for such an element in its Interconnection Order solely because no party to the proceeding advocated a rate lower than $17.05. That, of course, as clearly evidenced by the Commission's RAO is not the case. While the foregoing reason was a part of the rationale on which the Commission based its decision, the Commission's decision in this regard, as explained in the RAO, was also based on consideration of other factors, including the fact that the subject rate of $17.05 was within a reasonable range of the FCC's proxy rate ceiling of $16.71 and the fact that the $17.05 rate was the interim loop rate proposed by the Attorney General, as well as by MCI. The Commission was also well aware of the fact that the subject rate was an interim rate subject to true-up provisions as provided by the Commission in the RAO.

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

In support of its position that the true-up mechanism is "probably unlawful", CUCA in its comments stated that "[n]othing in either 47 U.S.C. §252(d) or the now-stayed FCC rules providing for the use of proxy unbundled network element prices in any way suggests the appropriateness of

such a 'true-up'." Further, CUCA stated that "[t]he absence of any statutory or regulatory provision for such a 'true-up' suggests that the Commission has no power to impose one." Contrary to CUCA's view, it would appear that the Commission clearly has such statutory authority, since the FCC in its Interconnection Order in addressing interim transport and termination rate levels stated that "[s]tates must adopt 'true-up' mechanisms to ensure that no carrier is disadvantaged by an interim rate that differs from the final rate established pursuant to arbitration."[1]

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

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission affirms its original decision on this issue.

ISSUE NO. 15: Must GTE be prohibited from placing any limitations on interconnection between two carriers collocated on GTE's premises, or on the types of equipment that can be collocated, or on the types of uses of the collocated equipment?

INITIAL COMMISSION DECISION

The Commission concluded that the types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. The Commission further concluded that disputes over the functionality of particular equipment can be resolved on a case-by-case basis.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission's failure to require GTE to allow collocation of remote digital line units (RDLU) and digital loop carriers. RDLUs are devices which convert analog signals into digital streams. Recently available RDLUs have some switching capability but are similar in size and appearance to RDLUs which do not have switching capability. MCI contends that the primary function of RDLUs is to provide interconnection or access to unbundled network elements and that the addition of limited switching capability should not allow GTE to prevent their collocation.

CUCA: CUCA filed comments generally supporting MCI's position.

---

[1]See Paragraph 1066 of the FCC Interconnection Order.

DISCUSSION

Section 251(c)(6) of the Act requires that ILEC's provide "on rates, terms, and conditions that are nondiscriminatory" for physical collocation of equipment necessary for interconnection or access to unbundled network elements. In 46 C.F.R. 51.323(c) the FCC stated that an ILEC is not required "to permit collocation of switching equipment or equipment used to provide enhanced service." The Commission's initial decision is clearly tailored to meet the requirements of the Act and establishes a procedure for dealing with disputes of this nature.

CONCLUSIONS

The Commission concludes that its initial decision in this matter should be affirmed.

ISSUE NO. 16: What actions should the Commission take to supervise the implementation of its decisions?

INITIAL COMMISSION DECISION

The Commission concluded that it had already made provisions for the supervision of the implementation of its decisions. The Commission concluded that it would follow its previously approved 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.

COMMENTS/OBJECTIONS

MCI: MCI objected to the Commission's failure to provide a procedure for the parties if they fail to reach a comprehensive Composite Agreement. MCI requested that the Commission adopt the following:

> "If the parties are unable to reach a comprehensive agreement in the specified time frame, each party should submit its own version of a proposed agreement, and the Commission will choose and approve the agreement that best comports with its decision."
>
> "In the event that a comprehensive Composite Agreement is not reached by the deadline, the Commission does not bind itself to accept, in its entirety, the proposed agreement submitted by either party. The Commission will retain the flexibility (a) to accept the entire proposed agreement submitted by either party, or (b) to accept, on an issue-by-issue basis, parts of the proposed agreements offered by each party."

DISCUSSION

The Commission's view was that previous Commission Orders had been issued setting forth a reasonable implementation process. In its Order issued on October 31, 1996, in Docket No. P-141, Sub 29, relating to MCI's petition for clarification, the Commission concluded and found the following:

> "If the parties still have outstanding differences at the time the composite agreement is submitted, they should submit the composite agreement as to the agreed terms and a joint list of unresolved issues stating each party's position, with appropriate citation, along with recommendations as to how the Commission should proceed, whether through further arbitration, mediation, continued negotiations, or otherwise."

The Commission believed that this language provided the parties with sufficient guidance as to how any unresolved issues should be handled.

On March 21, 1997, MCI and GTE submitted their Composite Agreement as to the agreed terms, in accordance with the RAO, and a list of their unresolved issues. On March 21, 1997, and March 25, 1997, MCI and GTE, respectively, filed comments on the unresolved issues providing their respective positions on each issue and proposed contractual language, along with recommendations as to how the Commission should proceed. The Commission considers that such filing indicates that the Commission has already provided a procedure to be followed if the parties fail to reach a comprehensive Composite Agreement.

CONCLUSIONS

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

UNRESOLVED ISSUES

ISSUE NO. 1: REVENUE PROTECTION
Contract Location: Article III, Sections 13.1, 13.1.1, 13.1.2, and 13.1.3
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 4-7
GTE's Comments On The Conformed Agreement, Pages 7 and 8

DISCUSSION

MCI submits that revenue protection is synonymous with fraud protection. MCI states that in the resale marketplace it will have no control over GTE's network. MCI states that it will conduct fraud investigations and will have to rely on GTE to resolve the targeted concern. MCI argues that through its proposed language it is merely requesting the "same standards of care" and states that GTE is not required to insure against revenue losses. MCI's proposal provides for the responsibility for uncollectible and unbillable revenues to be on the party causing the error that results in the uncollectible and unbillable revenues.

GTE objects to MCI's proposed language. GTE states that MCI's language in Section 13.1 requires GTE to ". . . provide partitioned access to fraud prevention, detection and control functionality within pertinent Operations Support Systems ("OSS") which include but are not limited to Line Information Data Base Fraud monitoring systems, High Toll Notifiers, SS7 suspect traffic alerts, AMA suspect traffic alerts, etc." GTE argues that its current systems do not permit "partitioned access" and states that at the very least MCI should agree that this feature only needs to be provided when available. Furthermore, in GTE's opinion, MCI should commit to pay the cost of development or share the costs along with other CLPs demanding this feature. Accordingly, GTE

states that its language which allows access to fraud prevention, detection, and control functionality within pertinent OSS ". . . to those systems which GTE provides to itself," more accurately reflects what GTE can provide to MCI. Despite GTE's assertions that its current systems do not permit what MCI requests, MCI maintains that it is not asking for new or modified systems.

Additionally, GTE also argues that MCI's proposed language in Sections 13.1.1, 13.1.2, and 13.1.3 would make GTE responsible for all uncollectible and unbillable revenues resulting from various events. GTE states that MCI's language is unacceptable because it is inconsistent with the manner in which GTE and other carriers now treat unbillable or uncollectible revenues resulting from fraud, malicious software alteration, and switching errors. GTE believes that MCI's language places no incentive on MCI for the reduction of unbillable or uncollectible errors, states no clear remedy, and leaves open the possibility that MCI would make a claim against GTE for all revenue lost due to fraud. Furthermore, GTE's rates do not reflect this risk. GTE states that its proposal provides MCI with the same remedy now available to interexchange carriers in the access environment, MCI would receive a credit for the monthly recurring charge or other charges for the underlying service or network element, on a pro rata basis for the period of time during which the fraud or other error occurred.

A sample of the respective parties' proposals in this regard is as follows:
MCI's proposal:

> 13.1.1 Uncollectible or unbillable revenues resulting from, but not confined to provisioning, maintenance, or signal network routing errors shall be the responsibility of the party causing such error.

GTE's proposal:

> 13.1.1 If MCIm has uncollectible or unbillable revenues resulting from, but not confined to, provisioning, maintenance, or signal network routing errors which are the responsibility of GTE, GTE shall issue MCIm a credit for the monthly recurring charge or other charges for the underlying local service or Network Element on a pro-rata basis for the period of time during which the error occurred.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding, and thus, concludes that this issue is not subject to resolution. The Commission declines to enact specific standards governing liability by GTE for errors which may result in unbillable or uncollectible revenues. Furthermore, the Commission refers the parties to the RAO issued for AT&T/GTE in Docket No. P-140, Sub 51, wherein at the Evidence and Conclusions for Finding of Fact No. 4, the Commission stated that it ". . . 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."

ISSUE NO. 2: INDEMNIFICATION
Contact Location: Article III, Section 20.1 et seq.
MCI's Comments In Support Of Its Version Of Disputed Language, Page 7
GTE Comments On The Conformed Agreement, Page 9

DISCUSSION

The language proposed by MCI and GTE in Section 20.1 is substantially similar, except that MCI's language would impose liability for "negligence. . . in the performance of the agreement" whereas GTE's language is more narrowly drawn by reference to Section 20.1.1 limiting claims to "injuries or damage to any person or property. GTE has also proposed Sections 20.1.2 through 20.1.5 regarding indemnification with respect to specific wrongs.

The Commission declined to prescribe general terms and conditions, including liability and indemnity in Finding of Fact No. 31 and the Evidence and Conclusions for Finding of Fact No. 31, leaving the parties free to negotiate contractual terms that are not required by the Act or by the FCC's Rules. While a provision of this nature is not inappropriate, the terms of the provision are not issues of fact or law suitable for arbitration. Furthermore, to the extent there are factual questions, there is an insufficient evidentiary basis for a decision.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution through arbitration.

ISSUE NO. 3: LIMITATION OF LIABILITY
Contract Location: Article III, Sections 22.1, 22.2, and 22.3
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 9-11
GTE's Comments On The Conformed Agreement, Pages 12-15

DISCUSSION

GTE's proposal sets forth three propositions that MCI opposes. First, GTE's Section 22.1 excludes consequential damages, including lost revenue, from any claim for damages under this contract or in tort. GTE argues that there is no way to know what consequential damages might occur when even a single telephone call is not completed. GTE states that it cannot control lost revenues or other consequential damages suffered by MCI since the potential lost revenue to MCI from any breach by GTE depends entirely upon the terms that MCI sets with its customers. GTE believes that its approach is supported by longstanding precedent that favors limitation of liability when damages are speculative, as MCI's would be. GTE states that the applicable precedent in North Carolina holds that "[t]o recover damages for breach of a contract the plaintiff must show that the damages were the natural and probable consequence of the breach, and that they can be calculated with reasonable certainty." Pipkin v. Thomas & Hill, Inc., 33 N.C. App. 710, 719, 236 S.E. 2d 725, 731 (1977) (citing Pike v. Wachovia Bank & Trust Co., 274 N.C. 1, 161 S.E. 2d 453 (1968)). MCI's lost revenues from a breach by GTE of the Conformed Agreement are inherently speculative, and cannot thus be considered "direct damages" as MCI's proposed language would require. Rather, they are more appropriately considered consequential damages, and thus may be reasonably excluded from damages awarded in the event of breach. Further, GTE objects to the idea that damages limitations

would be voided by "repeated breaches" as MCI's proposed language would provide. MCI fails to define what "repeated breaches" means and GTE finds this unacceptable considering that a particular service is likely to be provided on thousands or millions of instances during the contract term.

Second, GTE's Section 22.2 limits the applicability of the general liability provisions of GTE's retail tariffs. GTE's retail liability provisions are intended to apply only to GTE's customers, MCI's customers should not be allowed to take advantage of such provisions. No other local or interexchange carrier purchasing services from GTE is considered to be covered by such provisions.

Third, GTE's Section 22.3 limits GTE's liability for work errors, i.e., mistakes that appear in various listings and databases and for incorrect referrals, except where such mistakes and incorrect referrals arise out of the willful misconduct of GTE or its employees or agents. GTE argues that it would be commercially unreasonable to expect GTE to provide service without some protection from liability, especially where any individual error would be difficult to calculate and apply fairly.

MCI argues that the nature of the telecommunications marketplace mandates the use of MCI's limitation on liability provisions in the Agreement. A once-monopoly provider–GTE, is supplying a competitor–MCI, with essential interconnection, network elements, and resold services. Thus, GTE has every incentive to see that MCI takes as few of its customers as possible. One way this can be accomplished is for GTE to repeatedly breach the material obligations of the Agreement, thereby impairing MCI's ability to provide high quality service to its customers. In such case, MCI will not be made whole by direct damages, the harm to MCI will be in the form of lost revenues and goodwill. Direct damages cannot be measured, because the normal measure of contract damages, which is the cost to replace the faulty services or elements, does not exist when GTE is the sole provider of such items. Under GTE's proposal which excludes liability for consequential damages, GTE could actively engage in grossly negligent conduct that breaches the Agreement, yet be completely shielded from any liability for the resulting harm to MCI's revenues and goodwill. It is MCI's opinion that GTE's proposal that the only conduct for which it will accept responsibility is the willful misconduct of GTE or its employees or agents with regard to mistakes in directory listings, 911 databases, or similar databases, and incorrect referrals of end users to MCI, is clearly unreasonable and, thus, should be rejected.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding, and thus, concludes that this issue is not subject to resolution. The Commission declines to enact specific standards governing liability by GTE for errors which may result in lost revenues and/or goodwill. Furthermore, the Commission refers the parties to the RAO issued for AT&T/GTE in Docket No. P-140, Sub 51, wherein at the Evidence and Conclusions for Finding of Fact No. 4, the Commission stated that it ". . . 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."

ISSUE NO. 4: INTELLECTUAL PROPERTY
Contract Location: Article III, Section 23.1
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 11-13
GTE's Comments On The Conformed Agreement, Page 15

DISCUSSION

MCI's proposed Section 23.1 is stated as follows:

> "23. Intellectual Property
>
> 23.1 The Party providing a service pursuant to this Agreement will defend the Party receiving such service or data provided as a result of such service against claims of infringement arising solely from the use by the receiving Party of such service and will indemnify the receiving Party for any damages awarded based solely on such claims in accordance with Section 20 of this Article."

MCI's proposed Section 23.1 provides for reciprocal indemnification and defense against intellectual-property, infringement claims. GTE objects to MCI's proposal which would require GTE as a party providing service to defend MCI against claims of infringement arising solely from the use by MCI as the receiving party of such service and to indemnify MCI for any damages awarded based solely on such claims. GTE argues that this Section must be deleted as it is inconsistent with its proposed indemnification language in Section 20.1.5. Section 20.1.5 was just previously addressed in Issue No. 2. GTE argues that it would be unjust and unreasonable to make GTE bear the cost of MCI's improper use of a third-party's intellectual property. GTE states that the use of such property is a matter between MCI and the vendor.

MCI states that its proposal for reciprocal indemnification and defense against intellectual-property, infringement claims is a necessary corollary to the obligations regarding third party use of licenses as set forth in Section 23.2 which is addressed next in Issue No. 5. Without indemnification, MCI argues that the obligations regarding third party use of licenses are rendered meaningless. MCI states that the whole purpose of the Agreement and the Act under which it will be adopted is to allow MCI to use GTE's services. Accordingly, MCI argues that it should not be subject to liability for so doing. Furthermore, MCI states that only GTE can adequately defend its own infringement claims. It is MCI's opinion that GTE would not want to share proprietary information that would be necessary for MCI to defend the claims regarding GTE's network.

The Commission has generally declined to prescribe general contractual terms and conditions, including questions such as indemnity and the duty to defend, in arbitration proceedings, thereby leaving the parties free to negotiate such provisions. While it is certainly not inappropriate to include such a provision in the Agreement, the specific terms of any such provision do not involve issues of fact or law suitable for arbitration by the Commission.

CONCLUSIONS

The Commission declines to decide this issue since it involves a matter (indemnification and defense against intellectual-property, infringement claims) which is best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 5: INTELLECTUAL PROPERTY
Contract Location: Article III, Section 23.2
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 11-13
GTE's Comments On The Conformed Agreement, Page 15

DISCUSSION

MCI's proposed Section 23.2 is as follows:

> "Any intellectual property which originated from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for a limited license to use patents or copyrights to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any service solely as provided under this Agreement, no license in patent, copyright, trademark or trade secret, or other proprietary or intellectual property right now or hereafter owned, controlled or licensable by a Party, is granted to the other Party or shall be implied or arise by estoppel. It is the responsibility of each Party to ensure at no additional cost to the other Party that it has obtained any necessary licenses in relation to intellectual property of third parties used in its network that may be required to enable the other Party to use any facilities or equipment (including software), to receive any service, or to perform its respective obligations under this Agreement."

GTE objects to the above underlined language, which would require GTE to obtain any necessary licenses in relation to intellectual property of third parties used in GTE's network that may be required to enable MCI to use GTE's facilities or equipment including software or to receive any service. GTE's position is that MCI should seek its own licenses. GTE states that it is reasonable and nondiscriminatory for MCI to be responsible for securing such additional licenses and if MCI's use of GTE's network results in claims by third parties, then MCI should defend such claims. GTE argues that licensing is a reasonable cost of doing business, that MCI should be required to bear the cost of seeking such licenses; to hold otherwise would require GTE to subsidize MCI's cost of doing business. Further, GTE states that its intellectual property licenses predate the 1996 amendments to the Act and that GTE should not bear the cost of renegotiation at MCI's behest.

MCI states that GTE has developed its network using a combination of proprietary and third-party technologies which are transparent to MCI or any other carrier and, thus, it is incumbent on GTE to ensure that providing access and use of its network to MCI for a fee does not violate the intellectual property rights of third parties. Therefore, MCI argues that it is appropriate that GTE bear the burden of ensuring that it has obtained all the necessary licenses from third parties who have contributed technology to its network. MCI believes that the rates established by the Commission are intended to cover both the service provided and any technology and rights for the use of that service.

Additionally, MCI makes three further arguments in this regard. First, to the extent any third-party license rights are volume-based, the effect of competition will not increase the traffic on GTE's network and, thus, to the extent GTE's licenses are now sufficient then MCI's interconnection should not trigger any need for GTE to procure additional volume-based license rights. Second, to the extent license rights might be restricted by their terms to use by GTE only, GTE should already

have secured the rights for third parties to use such technology, because third parties already utilize GTE's network. Third, since the technology will continue to be used by GTE for the benefit of MCI, as mandated by federal law and regulation, GTE should not be expected to incur any material cost to ensure that all applicable third-party licenses are in place.

The Commission has generally declined to prescribe general contractual terms and conditions, including questions such as indemnity, in arbitration proceedings, thereby leaving the parties free to negotiate such provisions. While it is certainly not inappropriate to include such a provision in the Agreement, the specific terms of any such provision do not involve issues of fact or law suitable for arbitration by the Commission.

CONCLUSIONS

The Commission declines to decide this issue since it involves a matter (indemnification against intellectual-property, infringement claims) which is best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 6: REMEDIES - SLAMMING
Contract Location: Article III, Section 24.2
MCI's Comments In Support Of Its Version Of Disputed Language, Page 13
GTE Comments On Conformed Agreement, Page 16

DISCUSSION

MCI is proposing this provision to deem failure to switch a subscriber requesting transfer to be slamming, thereby subjecting the ILEC to a monetary remedy. GTE proposes to delete this proposed provision, citing the Commission decision in Finding of Fact No. 3(a) of the RAO rejecting imposed service standards and concomitant penalties for failure to order or provision within specific intervals.

While a provision of this nature is not inappropriate, the terms of such provisions are not issues of fact or law suitable for arbitration. Furthermore, to the extent there are factual questions, there is an insufficient evidentiary basis for a decision.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution through arbitration.

ISSUE NO. 7: NONDISCRIMINATORY TREATMENT
Contract Location: Article III, Section 28
MCI's Comments In Support Of Its Version Of Disputed Language, Page 15
GTE's Comments On The Conformed Agreement, Page 16

DISCUSSION

MCI proposes language for the "more favored" provision that is general in nature and would provide that "...in the event GTE provides any of the services provided hereunder to any other entity...MCIm may substitute the prices, terms and conditions, in whole or in part, offered to that

other entity in place of the relevant prices, terms and conditions in this Agreement...." GTE proposes to eliminate the section altogether.

MCI submits that its proposed nondiscriminatory treatment language implements Section 252(I) of the Act which requires that an incumbent LEC must make available "any interconnection, service or network element provided under an agreement approved under this section ... to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement." MCI acknowledges that the FCC's rule interpreting this provision was stayed by the Eighth Federal Circuit Court of Appeals which labeled it the "pick and choose" rule, but argues that the stay was premised on the notion that the FCC was deciding an issue which Congress intended to leave to the discretion of the states. GTE does not address MCI's assertion of the intent of Congress but argues that the enforcement of a "more favored" or "pick and choose" rule effectively eliminates bargaining in contract negotiation.

The Commission has had occasion to interpret the so called "more favored nation" clause in the cases of the petition of Sprint Communications Company, L.P., for arbitration of interconnection with BellSouth Telecommunications, Inc. and GTE. The Commission's decision in those cases was that BellSouth and GTE should be required to make available to Sprint any individual interconnection, network element, or service offered on more favorable terms to any other carrier in a contract, but that Sprint should be required to accept the rate associated with the interconnection element, or service, in that contract. MCI's proposed language, "in whole or in part," goes beyond the intent of the Commission's language in those cases and, in the opinion of the Commission, goes beyond the intent of Congress.

CONCLUSIONS

The Commission concludes that it is appropriate to adopt MCI's proposed language in Section 28 with modification such that the following language in Section 28 is stricken:

> ...MCIm may substitute the prices, terms, and conditions, in whole or in part, offered to that other entity in place of the relevant prices, terms and conditions in this Agreement, with effect from the date GTE first made such tariff effective or entered into such arrangement and for the remainder of the term of this Agreement....

and replaced with the following:

> ...MCIm may substitute for any individual interconnection, network element or service provided hereunder, an individual interconnection, network element or service offered on more favorable terms and conditions to any other carrier in a contract, but MCIm is required to accept the rate associated with the interconnection, network element, or service in that contract with effect from the date GTE first made such tariff effective or entered into such arrangement and for the remainder of the term of this Agreement....

ISSUE NO. 8: AUDITS AND EXAMINATIONS
Contract Location: Article III, Section 39 et seq.
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 16-20
GTE's Comments On The Conformed Agreement, Pages 18 and 19

DISCUSSION

GTE objects to MCI's proposed audit and examination provisions that would allow MCI to conduct a general audit of GTE's services four times per year or "examinations" at any time. GTE states that it has agreed, at various places in the Agreement, to give MCI certain limited audit rights relating to usage audits and security procedure audits and that it has agreed to certain reporting requirements. For example, in Article VIII, Section 6.1.3.7, GTE proposes that MCI may conduct an audit of GTE's documents, systems, records, and procedures that relate to the recording and transmission of the usage data to MCI, no more than four times per year and no more that one audit per each consecutive three-month period. GTE argues that MCI's proposed audit and examination provisions are not required by the RAO. GTE notes that in the RAO the Commission stated that it ". . .did not believe it appropriate or practical for it to become involved . . . in the minutiae of performance standards." GTE states that its proposed language would replace MCI's overly broad procedure with general guidance for the audits GTE finds acceptable and that it's proposal would not otherwise change any specific audit to which it has already agreed. Further, GTE states that if it were to agree to MCI's proposal then it might be compelled to accept similar demands from every other CLP, thereby multiplying the number of audits and examinations it must endure.

In order to conform other Articles to the Agreement with its proposed language in Article III, Section 39, GTE is also proposing changes in four other sections of the Agreement. First, in Article IV, Section 3.2, GTE would delete the language allowing audits of usage reports to be conducted on 20 days notice and insert language that such audits be conducted in accordance with Article III, Section 39 which would require 30 days notice. Second, in Article VIII, Section 6.1.3.7, GTE would expand the language to reflect that the agreement to usage data audits four times per year would be restricted in that there could be no more than one audit per each consecutive three-month period. Third, in Article VIII, Section 6.1.7.6, GTE would exclude the language that allows a periodic review of control procedures to be included as part of an annual audit of GTE by MCI or as part of the normal production interface management function, and instead, would include language stating that such review may be conducted informally or pursuant to the audit procedures in Article III, Section 39. Fourth, in Article XIII, Section 1.7, GTE would add language requiring the security and access audit to be in accordance with the requirements of Article III, Section 39.

MCI argues that its proposed Article III, Section 39 language establishes audit and examination procedures that are required in order to ensure that GTE is providing the purchased services and elements pursuant to the rates, terms, and conditions of the Agreement. Under MCI's proposal an audit "shall mean a comprehensive review of services performed under this Agreement" and an examination "shall mean an inquiry into a specific element of or process related to services performed under this Agreement." MCI's proposal provides for audits to be performed up to four times per 12-month period and examinations to be performed as MCI deems necessary. MCI's language also addresses the procedures to be used for making audit adjustments, states the conditions under which the right to audits can be waived, and permits audits to take place for up to two years after the termination of the Agreement. MCI proposes that GTE pay MCI's audit expenses if an

audit results in an adjustment of charges by an annualized amount which is greater than 1% of the aggregate charges for all services purchased under the Agreement. MCI argues that GTE's proposal does not address many of the details that are required to have a complete and workable audit provision.

Further, MCI objects to GTE's modifications of other Articles of the Agreement to conform them to GTE's proposed language in Article III, Section 39. MCI states that in each case these provisions were separately negotiated and at one time were agreed to by the negotiators for MCI and GTE. MCI argues that the Commission should not establish a precedent by accepting substitute language for one disagreed-upon provision that voids numerous agreed upon sections on which GTE seeks to renege.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding, and thus, concludes that this issue is not subject to resolution. However, the Commission finds that MCI may agree to GTE's proposed language, or that otherwise, the parties should negotiate other mutually agreeable terms.

ISSUE NO. 9: DISPUTE RESOLUTION
Contract Location: Article III, Sections 41.1 and 41.2
MCI's Comments In Support Of Its Version Of Disputed Language, Page 20
GTE Comments On The Conformed Agreement, Page 19

DISCUSSION

Section 41.1 provides for a dispute resolution procedure before the Commission concerning "any dispute arising out of or relating to this agreement that the parties themselves cannot resolve through good faith negotiations." The principal disagreement here relates to the length of time the parties must have negotiated and the degree of recourse to other relief in other forums. GTE disagreed with this last provision stating that it would encourage forum-shopping and hasty litigation, thereby emasculating the dispute resolution process. Section 41.2 provides for a dispute resolution procedure before a commercial arbitrator. Although not evident from the text, GTE represented that, in deference to MCI, GTE is willing to give priority to dispute resolution "under the auspices of the Commission, should the Commission accept jurisdiction." The only disagreement as to the wording of Section 41.2 relates to the amount of time that the parties must have negotiated prior to taking the dispute to the commercial arbitrator.

The Commission believes that it is unclear as to the continuing jurisdiction that it should exercise with respect to arbitrated agreements. Section 252(b)(4)(c) states that "[t]he state commission shall resolve each issue. . .by imposing appropriate conditions as required to implement Subsection (c) upon the parties to the agreement. . . ." Section 252(c)(3) states that "a state commission. . .shall provide a schedule for implementation of the terms and conditions by the parties to the agreement." Neither of these provisions states or even necessarily implies a continuing, open-ended supervisory authority over the implementation of the agreement.

In addition, it should be noted that the Commission lacks the power to award damages and that circumstances may arise with respect to an interconnection arbitration where the Commission does not otherwise regulate one of the parties--as, for example, a cellular company.

In its Order Excluding Intervenors in Docket Nos. P-100, Sub 133, and P-140, Sub 50, issued on August 19, 1996, the Commission noted that "the essence of an arbitration is the resolution of a dispute between the contesting parties." In this context, a dispute between the parties is in essence commercial dispute.

Fortunately, alternatives do exist that can provide the specialized relief that is needed. GTE and AT&T, for example, have agreed to an extensive alternative dispute resolution procedure in Docket No. P-140, Sub 51, which gives clear priority to the resolution of disputes in forums other than this Commission.

The Commission believes that the parties should be instructed to provide for an alternative dispute resolution process similar or identical to that concluded between GTE and AT&T in Docket No. P-140, Sub 51.

CONCLUSIONS

The Commission concludes that the parties should be required to negotiate an alternative dispute resolution process substantially similar or identical to that concluded between GTE and AT&T in Docket No. P-140, Sub 51.

ISSUE NO. 10: TANDEM SWITCHING
Contract Location: Article IV, Section 3.4.1.2
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 22 and 23
GTE's Comments On The Conformed Agreement, Pages 21 and 22

DISCUSSION

In the event that reciprocal compensation commences, MCI's proposal in this subsection requires GTE to pay MCI the tandem switching rate in addition to the end office rate for all calls terminated through MCI's switch except for those calls to the NXXs assigned to MCI's switch when MCI's switch has a direct trunk to GTE's end office. (The NXX Code is the three-digit code which appears as the first three digits of a seven-digit telephone number.) GTE agrees with the proposal except the part relating to the charging of the end office rate only where MCI's switch has a direct trunk to GTE's end office. If such language is included then GTE would pay the end office rate and the tandem switching rate whenever MCI's switch was connected to GTE's tandem switch, even though the MCI switch might simply route the call to an end user and would not, in such a case, perform any tandem switching functions. GTE argues that this is prohibited by the Act, which only allows "costs associated with the transport and termination on each carrier's network facilities" of the other party's calls. (TA96, Section 252(d)(2)(A)(i)). GTE argues that if MCI has not deployed a given facility, it cannot impose a charge for such facilities on GTE. Furthermore, GTE states that MCI never arbitrated this issue and, thus, it should be rejected. Additionally, GTE asserts that MCI's reliance on FCC Rule 51.711(a)(3) as support for its proposal is inappropriate due to the

circumstance that the Eighth Federal Circuit Court of Appeals has stayed the application of 47 C.F.R. Rules 51.701 to 51.717, inclusive, pending judicial review.

MCI asserts that the FCC has specifically addressed tandem switching functionality in Rule 51.711(a)(3) which states:

> "Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than an incumbent LEC is the incumbent LEC's tandem interconnection rate."

Consistent with this ruling, MCI argues that it is entitled to compensation at the tandem interconnection rate for termination of traffic traveling an equivalent distance from the interconnection point. MCI states that while new entrants may not initially have enough traffic to require tandem switching to terminate to an end office for which ILECs would terminate via a tandem, a new entrant's cost per call should be higher than the ILEC's due to lower network utilization. Accordingly, MCI proposes that it should receive the symmetrical tandem switching rate.

CONCLUSIONS

The Commission declines to rule on this issue due to the lack of adequate evidentiary information and concludes that this issue is beyond the scope of this arbitration.

ISSUE NO. 11: TRUNK ORDERING
Contract Location: Article IV, Section 4.4.5
MCI's Comments In Support Of Its Version Of Disputed Language, Page 23
GTE Comments On Conformed Agreement, Page 26

DISCUSSION

MCI proposed language that would require GTE to provision trunk groups by the "Resold Due Date," evidently meaning the date requested by MCI when it orders such trunk groups. GTE is willing to provide a Firm Order Confirmation within five days of receiving MCI's request. MCI says that leaving provisioning in GTE's control will impair its ability to provide service to its customers. GTE replies that, given the number of CLPs, it cannot predict or comply with precise intervals. GTE also argued that this request amounted to an unacceptable performance standard, inconsistent with the Commission's decision in Finding of Fact No. 3(a) and Evidence and Conclusions for Finding of Fact No. 3(a) of the RAO.

The Commission agrees that MCI's request amounts to imposition of a service standard and should not be imposed by arbitration.

CONCLUSIONS

The Commission concludes that this issue not subject to resolution provided that MCI may elect to accept the language proposed by GTE or the parties may negotiate other mutually agreeable terms.

ISSUE NO. 12: CENTRANET REQUIREMENTS
Contract Location: Article V , Section 3.2.1.5
MCI's Comments In Support Of Its Version of Disputed Language, Page 24
GTE Comments On The Conformed Agreement, Page 27

DISCUSSION

This provision concerns aggregation of CentraNet local exchange and intraLATA traffic usage of MCI customers by MCI in order to qualify for volume discounts based on such aggregated usage. MCI, which favors aggregation, cites Paragraph 953 of the FCC Interconnection Order which concluded that it is presumptively unreasonable for ILECs to require individual reseller end-users to comply with ILEC high-volume discount minimum usage requirements so long as the reseller in aggregate, under the relevant tariffs, meets the minimal level of demand.

GTE argued that there is insufficient record to resolve this issue and that the Commission's decision in Finding of Fact No. 2 and the Evidence and Conclusion for Finding of Fact No. 2 allow the carrying forward of use and user restrictions into resale. One such restriction is to forbid retail customers from aggregating. GTE is willing, however, to allow aggregation of MCI customers on dedicated access facilities.

The Commission believes that MCI's proposed language should not be adopted. First, the language proposed by MCI is unclear. It is not apparent whether the aggregation proposed is in the local category or in the intraLATA traffic category or both together. Second, with respect to MCI's citation of Paragraph 953 of the FCC Interconnection Order, the Commission notes that Paragraph 953 speaks only in terms of presumptive unreasonability relating to certain aggregation restrictions. The Commission believes that, after examination of this question, it should find that it is reasonable not to require the proposed aggregation since, among other things, MCI would already be receiving the wholesale discount. However, the Commission does not believe that the parties should be prevented, if they so desire, from arriving at mutually agreeable terms allowing such aggregation.

CONCLUSIONS

The Commission concludes that MCI may elect to accept the language proposed by GTE, or the parties may negotiate other mutually agreeable terms.

ISSUE NO. 13: DISCOUNT PLANS AND SERVICES
Contract Location: Article V, Section 3.2.9
MCI's Comments In Support Of Its Version of Disputed Language, Page 25
GTE Comments On The Confirmed Agreement, Page 28

DISCUSSION

This provision would specifically require GTE to resell at a wholesale discount all discount plans and services (e.g., GTE Smart Call service). MCI argued that this is clearly in accord with the Commission's Finding of Fact No. 1 and the Evidence and Conclusions for Finding of Fact No. 1 of the RAO where it is noted that GTE is not to be allowed to prohibit or restrict resale "except as set forth below." Discount plans were not included as an exception. MCI analogized such plans to

discount plans and promotions exceeding 90 days, which must be resold. MCI noted that GTE had agreed to this provision in past contracts.

The Commission is persuaded by GTE's argument that the definition of "discount plans and services" is uncertain and the RAO did not specifically address those services. However, with certain exceptions, the Commission mandated the resale of all retail services at wholesale rates, including so-called "below cost" services. Thus, to the extent that a service is a retail service not exempt from resale, it must be resold with the wholesale discount.

CONCLUSIONS

The Commission concludes that MCI's proposed language should not be utilized.

<u>ISSUE NO. 14</u>: CERTIFICATION INFORMATION
Contract Location: Article V, Section 3.4.2
MCI's Comments In Support Of Its Version of Disputed Language, Page 26
GTE Comments On The Conformed Agreement, Page 28

DISCUSSION

This provision requires GTE to provide MCI with such information as GTE has to allow MCI to certify subscribers as exempt from charges, including taxes, or eligible for reduced charges, such as handicapped persons, without billing MCI for such services.

MCI argues that this provision is necessary to comply with the RAO's resale requirements. Failure to include this provision would delay and complicate services to end-users.

GTE argues that, once MCI has won a customer, it bears the responsibility of determining that customer's status. While GTE is willing to cooperate with MCI concerning such status as part of the customer service record it transfers to MCI, it neither warrants its accuracy nor is it willing to provide "additional open-ended information." GTE also objected to the provision regarding not billing MCI and said this issue was never arbitrated.

The Commission believes that this matter is not subject to arbitration.

CONCLUSIONS

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

<u>ISSUE NOS. 15 AND 16</u>: INTERFACE REQUIREMENTS - SWITCH MODIFICATIONS
Contract Location: Article VI, Section 7.2.2.2, Section 7.2.2.3
MCI's Comments In Support Of Its Version Of The Disputed Language, Page 27
GTE's Comments On The Conformed Agreement, Page 31

DISCUSSION

MCI and GTE have agreed on a procedure allowing MCI to request modifications of GTE's switches. Initially, MCI will pay the full cost of any modification which it requests. The parties do not agree on whether GTE or third parties should be allowed to use such modifications. The parties also disagree on whether and in what amount GTE, or third parties using such modifications, should reimburse MCI for the development and implementation costs.

MCI proposes that it should retain exclusive rights to any modifications for which it has paid unless MCI agrees to allow GTE or third parties to use such modifications. MCI further proposes that every additional user of a modification, other than GTE, should compensate MCI and other users so that MCI and each third party will have paid a pro rata share. If GTE wishes to use a modification requested and paid for by MCI, MCI proposes that GTE reimburse MCI for the full development and implementation cost, less any amounts received from third parties.

GTE's proposed changes would recognize the possibility that vendors or developers of modifications may retain intellectual property rights in those modifications which GTE is unable to transfer to MCI without the consent of the vendors or developers. With that caveat, GTE agrees that MCI will have exclusive rights to modifications which it pays for. If GTE makes use of a modification requested and paid for by MCI, GTE proposes that it should pay a pro rata share like that paid by third parties. GTE also argues that MCI did not raise this issue of payment during the arbitration proceeding and should not be allowed to raise it now.

CONCLUSIONS

The Commission concludes that GTE's proposed change to Section 7.2.2.2, which recognizes the possibility that intellectual property rights might be retained by vendors or developers of modifications, be adopted. GTE should not be expected to contract to sell or convey rights which it does not hold.

The Commission questions whether MCI should be allowed to retain *exclusive* rights to modifications if others are willing to pay MCI for the use of such modifications. Such a provision appears to conflict with Section 252 of the Act which requires that all capabilities of a switch be available for resale.

The Commission concludes that Section 7.2.2.3 be deleted as proposed by GTE and that Section 7.2.2.2 be changed to read:

> 7.2.2.2 Subject to any rights retained by the vendor or other third parties, MCIm shall retain exclusive rights to the use of any development or modification to a GTE switch where MCIm has paid GTE for development of such modification; provided, however, ~~upon MCI's agreement,~~ such right of MCIm shall become non-exclusive, and use of such modification shall not be withheld, upon reimbursement of MCIm as follows. If GTE, or any person purchasing unbundled Network Elements from GTE, desires to use a facility, function, feature, or capability that has been added to a local switch using a modification for which MCIm has paid, the development costs, then

GTE or such other person shall pay to MCIm a proportionate share of the development costs MCIm paid to GTE as described below. [remainder unaltered]

ISSUE NOS. 17-21: CUSTOMIZED ROUTING REQUIREMENTS
Contract Location: Article VI, Sections 7.2.3.16.5, .6, .7, .8, and .9
MCI's Comments In Support Of Its Version Of The Disputed Language, Pages 29-31
GTE's Comments On The Conformed Agreement, Pages 30 and 31

DISCUSSION

MCI states that the functions that MCI proposes having the ability to use in this provision are some of the most basic routing functions that the switch performs. Unlike customized routing to a special OS/DA platform, as MCI requested in the arbitration and as the Commission declined to require, routing to interLATA and intraLATA calls specific to presubscribed interexchange carrier (PIC) is one of the most basic uses of customized routing. The functions requested by MCI in this provision would not enable MCI to use GTE's unbundled switching element in a new, innovative way, but would, rather, permit MCI to utilize common switch functions used by incumbent LECs today. Without these capabilities, MCI will not be able to use GTE's unbundled switching element to provide simple services, like access to a choice of interexchange carriers or the ability to call toll free 800/888 numbers.

MCI further stated that in Section 51.319(c)(1)(i)(C)(2) of the FCC Interconnection Order, the FCC defined the local switching capability network element to include "any technically feasible customized routing functions provided by the switch." The Commission did not reject the use of customized routing as set forth in these provisions but rather ordered that GTE did not have to route to "MCI's operators, directory assistance operators, or repair centers." The functions set forth in these provisions should be noncontroversial because they are basic switch functions that no ILEC can contend are technically infeasible and because they are necessary to the provision of basic services using GTE's unbundled switching element. MCI believes that Section 7.2.3.16.9 which states that "any other customized routing that may be supported by the GTE switch, as soon as it becomes technically feasible," comports with the Commission's RAO, Finding of Fact No. 5. For this reason, and for the reasons advanced above regarding 7.2.3.16.5 - 7.2.3.16.8, above, MCI urges inclusion of these sections.

GTE is requesting that Sections 7.2.3.16.5 through 7.2.3.16.9 be deleted because they impose additional customized routing obligations on GTE that are not required by the Order. Article VI, Sections 7.2.3.16.1 though 7.2.3.16.4, provide for customized routing of 0-, 411, 611 and 555-1212 types of calls at such time as customized routing is technically feasible. Article VI, Sections 7.2.3.16.5 through 7.2.3.16.9, however, would additionally obligate GTE to provide customized routing for a variety of other calls, including "any other customized routing that may be supported by the GTE switch." GTE stated it is under no obligation to perform any of these types of customized routing, or indeed any type at all, under the Order, nor has there been any evidence presented at arbitration regarding these other types of customized routing.

In its RAO in this docket, the Commission declined to require GTE to provide customized routing at this time but urged all parties to work toward a standard industry-wide technical solution as soon as possible. Further, this issue as addressed by the Commission in the RAO did not include

the types of calls referred to in Sections 7.2.3.16.5 through 7.2.3.16.9 (interLATA calls specific to PIC, intraLATA calls specific to PIC, 800/888 calls, prior to database query, call forwarding of any type supported on the switch, to a line or a trunk, any other customized routing that may be supported by the GTE switch).

CONCLUSIONS

The Commission concludes that Sections 7.2.3.16.5 through 7.2.3.16.9 in Article VI of the Conformed Agreement exceed the scope of this arbitration proceeding. To the extent the parties can negotiate mutually agreeable language, they should be encouraged to do so.

ISSUE NO. 22: BRANDING OF DIRECTORY ASSISTANCE
Contract Location: Article VI, Section 13.2
MCI's Comments In Support Of Its Version Of The Disputed Language, Page 31
GTE's Comments On The Conformed Agreement, Pages 34, 37-39

DISCUSSION

Section 13 of Article VI addresses Directory Assistance Listing Information. Subsection 13.1 which has been agreed upon by both parties provides for GTE to include in its directory assistance database all directory assistance listing information, which consists of name and address for all MCI customers, including those with nonpublished and unlisted numbers, at no charge to MCI.

Subsection 13.2 addresses provision of published DA listing information to MCI by GTE. GTE proposes to add language in subsection 13.2 (after "GTE shall provide to MCI, at MCI's request") as follows:

> **solely for purposes of MCI providing MCI-branded directory assistance services to its local customers, within thirty (30) days after the Effective Date,**

MCI states that the limitation in this section proposed for inclusion by GTE has no basis in the Commission's Order and unnecessarily limits MCI's use of DA listing information in a way that GTE is not limited. MCI has offered to GTE what it considers to be reasonable limitations on MCI's use of GTE's DA (that the information will not be used for marketing or for sale to third parties) but GTE has not agreed to such limitations. GTE's limitation would prevent MCI from offering an MCI-branded directory assistance service to any customers other than customers of MCI even though GTE faces no such restrictions on its use of its DA listing information. MCI believes that GTE's proposed limitation is inappropriate and should not be included in the final agreement.

GTE states that GTE and MCI disagree as to the extent that MCI can use the directory assistance database for services other than directory assistance, and proposes to limit MCI's use of directory assistance service to providing only directory assistance services.

In the RAO in this docket, the issue of whether GTE must provide MCI access to GTE's directory assistance database was considered by the Commission to have been resolved by MCI and GTE. This particular issue was not addressed in any other section of the RAO.

CONCLUSIONS

The Commission concludes that this issue exceeds the scope of the initial arbitration proceeding.

<u>ISSUE NO. 23</u>: 911/E911 INFORMATION EXCHANGE
Contract Location: Article VII, Section 3.5.1
MCI's Comments In Support Of Its Version Of The Disputed Language, Page 32
GTE's Comments On The Conformed Agreement, Pages 34-37

DISCUSSION

Article VII, Section 3.5 of the Conformed Agreement addresses compensation for maintenance of the 911/E911 database. GTE proposes to add the following subsection to Section 3.5.

> **3.5.1 Additionally, GTE shall charge to MCIm the cost of such additional elements and services as may be necessary for MCIm to provide 911/E911 service including, but not limited to, the following: interface with the ALI/DMS database; copies of the MSAG; PSALI software, and maps of selective router boundaries.**

MCI states that the disagreement regarding Article VII, Section 3.5 involves compensation for certain services related to providing 911 services. Such services include GTE's provision of MSAG, various maps, data lists, and lists of telephone numbers. MCI is willing to compensate GTE for these different services. There must, however, be bounds on what GTE charges for these services and, if GTE institutes a new procedure or new equipment or software that benefits others besides MCI, then MCI should not bear the entire cost of such a modification. GTE presented to MCI a lengthy list of items for which GTE believes it should be compensated, but GTE provided MCI no idea of what any of these items might cost. MCI stated that it cannot agree to compensate GTE for these items until GTE provides MCI with cost data for these items. Further, MCI states that until it has had an opportunity to review GTE's proposed costs, GTE' s proposed Section 3.5.1 should not be added.

GTE states that it agrees with the language at Section 3.5. However, providing 911 service will require a variety of services, access, and information. Accordingly, GTE is entitled to cost recovery for such services and facilities. GTE identified these services and facilities to MCI but is still in the process of completing a pricing proposal, and MCI declined to include these elements in the Conformed Agreement until such time as a pricing proposal was available. GTE requests that its proposed language at Section 3.5.1, listing these elements, be inserted into the Conformed Agreement. Although it would be unfair to impose costs upon MCI that it has not agreed to, any costs not set forth in the Conformed Agreement or otherwise agreed upon by the parties are subject to the agreed-upon "To Be Determined" process set forth in Section 1.8 of Appendix C. MCI's interests in receiving a fair price until final prices are set will be protected, and GTE's right to receive reimbursement for services provided will be assured.

Even though costs of providing services and implementation of those costs were not addressed specifically for 911/E911 in the RAO, the Commission declined to address cost implementation in this proceeding for other issues.

CONCLUSIONS

The Commission concludes that this issue is outside the scope of this arbitration proceeding.

ISSUE NOS. 24-26: DIRECTORY ASSISTANCE AND LISTINGS (DA AND DL) SERVICE REQUESTS - YELLOW PAGES

Contract Location: Article VII, Sections 6.1.2.1, 6.1.2.2, and 6.1.2.3
MCI's Comments In Support Of Its Version Of Disputed Language, Page 33
GTE's Comments On The Conformed Agreement, Pages 35 and 36

DISCUSSION

Section 6.1.2.1 reads as follows: "Migrate With No Changes: Retain all white and yellow page listings for the subscriber in both DA and DL. Transfer ownership and billing for white **and yellow** page listings to MCIm." Section 6.1.2.2 reads as follows: "Migrate With Additions: Retain all white and yellow page listings for the subscriber in both DA and DL. Incorporate the specified additional listings order. Transfer ownership and billing for white **and yellow** page listings to MCIm." Section 6.1.2.3 reads as follows: "Migrate With Deletions: Retain all white and yellow page listings for the subscriber in both DA and DL. Delete the specified listings from the listing order. Transfer ownership and billing for white **and yellow** page listings to MCIm." GTE proposes to delete the bold language (**and yellow**) from these three sections.

These sections require GTE to transfer responsibility and ownership of yellow page listings to MCI. GTE states that during arbitration, both white page and yellow page listings were subject to stipulation by the parties, generally requiring GTE to provide listings for MCI subscribers. GTE also referenced page 26 of the RAO (Evidence and Conclusions for Finding of Fact No. 9) in which the Commission concluded that the issue of access to GTE's directory assistance database had been resolved. The Order does not impose any obligations on GTE with respect to white or yellow page listings, and GTE also argues that the Act does not address ownership of listings. Therefore, GTE asserts that ownership of listings is not subject to regulation by the Commission.

MCI contends that the purpose of the stipulation regarding white page and yellow page listings was to establish parameters for the subject addressed in the particular stipulation and that these sections merely provide more details for what the stipulation is intended to do. MCI further states that each yellow page listing is included in the white page listing, and it is only logical that if MCI is to be at parity with GTE in the provision of telecommunications services, it must receive not only the white page listings but also the yellow page listings. In addition, once customers transfer their services from GTE to MCI, those customers and their listings are no longer GTE's, and it is fundamental in recognizing that directory listings for such customers are now MCI's.

CONCLUSIONS

The Commission concludes that this issue, ownership of white and/or yellow page listings, is not subject to resolution.

ISSUE NO. 27: DIRECTORY ASSISTANCE AND LISTINGS - ELECTRONIC QUERIES
Contract Location: Article VII, Section 6.1.6
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 34 and 35
GTE's Comments On The Conformed Agreement, Pages 36 and 37

DISCUSSION

GTE proposes to delete this section. Under MCI's proposal GTE would be required to provide MCI with the ability to query GTE's directory listing system electronically and view all listings in real-time. GTE notes that it is certainly required to provide electronic access to its operations support systems (OSS), but states that the Order has not required GTE to provide electronic access to the directory listings used by GTE to publish white and yellow page listings, nor did MCI ever raise this issue in the arbitration. GTE states that the FCC's Second Report and Order at Paragraph 134 requires GTE to provide "nondiscriminatory access" to directory listings, but it does not specify that such access must necessarily be electronic, real-time access. GTE is willing and has obligated itself to provide access to directory assistance data and subscriber listings via other electronic methods, such as data transfer and magnetic tape. In fact, Article VII, Section 6.4 includes 10 pages of MCI requested specifications to which GTE has agreed as to the format and transfer of such data. Furthermore, GTE comments that it cannot agree at this time to provide such access until it first addresses its obligations to provide electronic access to the OSS functions—pre-ordering, ordering, provisioning, maintenance/repair, and billing.

MCI argues that it needs direct electronic access to GTE's directory listings, not just electronic access to directory assistance. MCI states that the ability to view this information is critical to MCI's performing directory listing related functions and to ensure that no relevant listing information has been changed when a customer transfers from GTE to MCI service. Furthermore, MCI argues that directory listings constitute an unbundled network element and are an integral part of GTE's OSS functions and that there could be no contention that it is technically infeasible to provide such access. Thus, MCI asserts that under TA96, electronic, real-time access to the directory listing is required. To achieve parity with GTE, MCI contends that it must have the same degree of access to directory listings as does GTE.

Section 251(b)(3) of TA96 states the following:

> "DIALING PARITY.—The duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."

In the FCC's Second Report and Order, the FCC addressed what is necessary to implement nondiscriminatory access to directory listings. In Paragraph 141 of the Second Report and Order the FCC states the following:

"We conclude that section 251(b)(3) requires LECs to share subscriber listing information with their competitors, in "readily accessible" tape or electronic formats, and that such data be provided in a timely fashion upon request. The purpose of requiring "readily accessible" formats is to ensure that no LEC, either inadvertently or intentionally, provides subscriber listings in formats that would require the receiving carrier to expend significant resources to enter the information into its systems. . . . we require the LEC providing the listing to share listings in a format that is consistent with what that LEC provides in its own directory."

CONCLUSIONS

The Commission concludes that it is appropriate to adopt the position of GTE that the provision of "nondiscriminatory access" to directory listings, does not require that such access necessarily be electronic, real-time access. The Commission considers that GTE's agreement to provide access to directory listings via other electronic methods, such as data transfer and magnetic tape is appropriate when provided "in readily accessible tape or electronic formats, and that such data be provided in a timely fashion".

ISSUE NO. 28: DIRECTORY ASSISTANCE DATA
Contract Location: Article VII, Section 6.3.1
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 35 and 36
GTE's Comments On The Conformed Agreement, Pages 37-39

DISCUSSION

This section refers to the residential, business, and government subscriber records used by GTE to create and maintain databases for the provision of live or automated operator assisted Directory Assistance.

MCI proposes to add the following language:

MCIm may combine this element with any other Network Element for the provision of any Telecommunications Service as long as the combination is technically feasible.

GTE proposes to delete MCI's added language in the above Subsection and insert the following in its place:

MCIm may only use this Network Element, whether individually or in combination with other Network Elements, for the provision of directory assistance services.

MCI states its right to combine in any manner technically feasible unbundled network elements, including directory assistance databases, to provide telecommunications services (as opposed to use for marketing purposes, which MCI does not propose) is consistent with both the Arbitrator's Decision and the Telecommunications Act. MCI offered the telecommunications service of "Directory Assistance - Call Completion" whereby a customer who calls for directory assistance

can be connected to the telephone number requested without having to "hang up the phone" and without having to dial the number requested, as an example of how this might be used. MCI indicated it may want to offer this same service and there may be other telecommunications services that MCI creates that will be dependent on the information related to directory assistance databases. MCI urges the Commission to reject GTE's suggested changes to the Interconnection Agreement and to approve the language proposed by MCI.

GTE proposes to limit MCI's use of directory assistance service to providing only directory assistance services even if MCI combines this element with other network elements. MCI's proposed language would allow MCI to purchase the records contained in GTE's directory assistance database and then "combine this element with any other Network Element for the provision of any Telecommunications Service." This issue was not addressed by the Commission and was never raised by MCI in arbitration. MCI's language should be stricken from the Conformed Agreement.

CONCLUSIONS

The Commission concluded, in the RAO in this docket, that MCI should be allowed to combine unbundled network elements in any manner it chooses. (In the Objections and Comments section of this Order, the Commission has concluded that this decision be modified to provide that the purchase and combination of unbundled network elements by MCI to produce a service offering that is included in GTE's retail tariffs on the date of the Interconnection Agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions.) In addition, in the RAO, the Commission considered the issue of whether GTE must provide MCI access to GTE's directory assistance database to have been resolved between MCI and GTE.

The Commission concludes that this issue is outside the scope of the initial arbitration proceeding.

<u>ISSUE NO. 29</u>: RESERVATION OF TELEPHONE NOS. AND NXX CODES
Contract Location: Article VIII, Section 2.1.4.2
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 36-38
GTE's Comments On The Conformed Agreement, Pages 39 and 40

DISCUSSION

The proposed language by MCI in this section would require GTE to reserve up to 100 telephone numbers, subject to resource availability, for up to 45 days for MCI's exclusive use. GTE states that it is in no way obligated to reserve numbers on a favored basis for MCI. Furthermore, GTE does not currently reserve numbers for its own use and MCI can obtain numbers from the North American Numbering Plan (NANP) Administrator just like any other carrier. Additionally, GTE states that MCI did not arbitrate this issue, nor was it addressed in the RAO. Under GTE's proposal MCI would be allowed to reserve telephone numbers only under the same rates, terms, and conditions as GTE's retail subscribers, unless otherwise specifically provided by the Agreement.

MCI asserts that GTE admitted during negotiations on this issue that it reserves entire blocks of NXXs (10,000 telephone numbers), or large blocks of numbers for services like Centrex. MCI

argues that to maintain parity with GTE it must be able to reserve numbers for services it wishes to provide. By creating artificial number shortages, GTE can limit the number of customers MCI can serve. MCI states that it wishes to reserve blocks of numbers for its services just as GTE does today. Furthermore, MCI states that GTE's proposal to charge inflated retail rates for the reservation of numbers would deny MCI parity, contrary to the Act.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding, and thus, concludes that this issue is not subject to resolution. However, the Commission directs the parties to continue to negotiate other mutually agreeable terms on the matter.

ISSUE NO. 30: RESERVATION OF TELEPHONE NOS. AND NXX CODES
Contract Location: Article VIII, Section 2.1.4.3
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 36-38
GTE's Comments On The Conformed Agreement, Pages 39 and 40

DISCUSSION

GTE proposes to delete this section. Under MCI's proposal GTE would be required to install MCI's NXXs in GTE's switches according to local calling areas as defined by MCI and perform appropriate network routing functions for interswitch arrangements. GTE argues that it is not required to install MCI's NXXs in GTE's switches by the Act or the FCC Interconnection Order, nor has MCI established a record in this arbitration as to why such installation should be allowed. GTE states that it will not agree to install MCI's NXXs in its switch under the circumstances set forth by MCI. Furthermore, if GTE is required to install numbers based on MCI-defined local calling areas, GTE states that it will be required to make costly programming changes to adapt its switches to the second local area, but MCI's proposal does not mention anything about cost recovery.

MCI states that while there is no allegation that this request is technically infeasible, then MCI has a right to its request. Moreover, MCI asserts that it has a right to define its own local calling areas. It is MCI's position that if the Commission accepts GTE's view on this issue it would contravene MCI's right to define its own calling scope, and infringe on the development of new and/or improved services — the desired product of effective competition.

CONCLUSIONS

The Commission concludes that it is appropriate to dismiss this issue as a matter beyond the scope of this proceeding, and thus, concludes that this issue is not subject to resolution. However, the Commission directs the parties to continue to negotiate other mutually agreeable terms on the matter.

ISSUE NO. 31: TIME FRAME FOR CBSS BILLING
Contract Location: Article VIII, Section 4.7
MCI's Comments In Support Of Its Version Of The Disputed Language, Page 38
GTE's Comments On The Conformed Agreement, Pages 40 and 41

DISCUSSION

MCI stated it had agreed to pay CABS-formatted bills (the generally-acknowledged industry standard and the format that BellSouth has agreed to provide) within 30 days from the bill date, or 20 days from receipt of the bill, whichever is later. Until CABS-formatted billing is available, GTE will provide non-CABS (likely CBSS) bills. MCI's proposed language would allow MCI to pay such non-CABS bills within 60 days from the bill date, or 40 days from receipt of the bill, whichever is later. MCI states that this additional time is required because CBSS and other non-CABS bills cannot be audited and processed on a mechanized basis, but must be reviewed and approved for payment manually. In the situation where MCI is receiving and paying hundreds of bills per month, this process cannot reasonably be completed by the "bill payment date" specified in GTE's proposal and will require the additional time specified.

GTE stated that it cannot agree to MCI's language in this section which, in any case, contradicts the Order's requirements. The payment periods proposed by MCI would require adjustment of GTE's current billing cycles. Given that GTE will apply the same billing cycles to MCI as it will to all other carriers, this additional expense is unwarranted, as long as MCI is receiving non-discriminatory treatment. As such, GTE's proposed language would use the CBSS Bill Payment Date. Furthermore, because the Order endorses GTE's continued use of its billing systems, and such use necessarily includes the payment intervals now used by the system, the Order would appear to require the use of GTE's language in this report.

In the RAO, the Commission concluded that GTE should be allowed to continue billing through the Customer Billing Services System (CBSS) to render bills to MCI for services purchased from GTE until an industry-wide standard is developed through an industry forum.

CONCLUSIONS

The Commission concludes that MCI's proposed language is reasonable, and, until a mutually agreeable billing system is developed by GTE, MCI's wording is adopted to allow the extra days for payment of the bills.

ISSUE NO. 32: ROOT CAUSE ANALYSIS
Contract Location: Article VIII, Section 7.1.11
MCI's Comments In Support Of Its Version of Disputed Language, Page 32
GTE Comments On The Conformed Agreement, Page 40

DISCUSSION

This provision mandates that, if GTE fails to provide service at parity, MCI may request and GTE must perform a root cause analysis. GTE must then correct the cause at its own expense.

MCI argues that this provision is essential to ensure equal quality of service. GTE argued that this provision imposes an additional remedy and violates the Commission's decision to decline to impose performance standards.

CONCLUSIONS

The Commission concludes that the proposed language imposes a performance standard which the Commission should decline to require.

ISSUE NO. 33: QUALITY MEASUREMENTS
Contract Location: Article VIII, Section 8.1.2.1
MCI's Comments In Support Of Its Version Of Disputed Language, Page 37
GTE Comments On Conformed Language, Page 41

DISCUSSION

This provision states that GTE's ordering, provisioning, and maintenance functions must meet Commission rules governing service specifications for services provided at interim rates, unless otherwise specified by the Commission.

While MCI acknowledged that the Commission forbore to establish specific performance standards, MCI argued that this provision concerning meeting relevant Commission rules is reasonable, minimal, and verifiable and will assist MCI in determining whether GTE is meeting its service obligations.

GTE argued that it intends to meet Commission standards, as required, and that this provision would be redundant. This is a new provision and apparently reflects a Commission decision in Washington State.

The Commission agrees with GTE that this provision would serve no useful purpose.

CONCLUSIONS

The Commission concludes that MCI's proposed language should not appear in the agreement.

ISSUE NO. 34: RIGHT OF ACCESS
Contract Location: Article X, Section 1
MCI's Comments In Support Of Its Version Of Disputed Language, Page 40
GTE's Comments On The Conformed Agreement, Page 42

DISCUSSION

MCI requests rights equal to GTE in determining the space it will occupy on poles or in conduit or rights-of-way. GTE's position is that it should be able to select the space to be occupied by MCI and others so long as it does so in a nondiscriminatory manner. MCI argues that, since GTE can select its own spaces, MCI must have the same right. GTE contends that MCI did not raise this issue during the arbitration proceedings and should not be allowed to do so now.

The Commission believes that GTE's approach is the only workable one. Allowing MCI and, presumably, any other party, to select its own space could easily result in conflict and chaos. The

Commission can more easily deal with complaints that GTE is being discriminatory than with the competing claims of various parties to pole locations and the like.

CONCLUSIONS

The Commission concludes that the position advocated by GTE be adopted, such that GTE would be able to select the space on poles or in conduit and rights-of-way to be occupied by MCI and others so long as it does so in a nondiscriminatory manner.

ISSUE NO. 35: RIGHTS-OF-WAY - DEFINITIONS, CONTROLLED ENVIRONMENTAL VAULTS
Contract Location: Article X, Section 2.9
MCI's Comments In Support Of Its Version Of Disputed Language, Page 41
GTE's Comments On The Conformed Agreement, Page 43

DISCUSSION

This section reads as follows: " 'Manholes' and 'handholes' mean subsurface enclosures which personnel may use for the purpose of installing, operating, and maintaining communications facilities, including, but not limited to, cable vaults, **controlled environmental vaults,** manholes, and handholes." GTE proposes to delete the bolded language in this section.

MCI submits that if its cable runs through controlled environmental vaults, it will need access to those cables which GTE, by refusing to include MCI's proposed language, is saying it will not allow. GTE has access to its own cables running through controlled environmental vaults, and precluding MCI from similar access would clearly not be "nondiscriminatory access".

GTE contends that controlled environmental vaults should not be subject to this type of access because they are contained, sealed environments designed for the sole purpose of providing an environmentally controlled environment for sensitive equipment. If they are subject to repeated opening and closing, the carefully maintained environmental controls used in such vaults may be compromised, potentially harming GTE's investment in the equipment in the vault. Furthermore, GTE states that it is highly unlikely that a conduit run would be obstructed by these vaults, however in such an event, work-arounds would be the preferred solution. MCI never arbitrated access to controlled environmental vaults, and GTE believes that since it is not addressed in the RAO, MCI cannot now insist on receiving such access.

The Act does not specifically indicate that controlled environmental vaults are included in the definition of rights-of-way, poles, ducts, and conduits.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution.

ISSUE NO. 36: NONDISCRIMINATORY ACCESS AND MAINTENANCE SPARES
Contract Location: Article X, Section 3.3
MCI's Comments In Support Of Its Version Of Disputed Language, Page 41
GTE's Comments On The Conformed Agreement, Pages 42 and 43

DISCUSSION

This section reads as follows: "**To facilitate nondiscrimination in MCIm's selection of space,** GTE must provide information to MCIm about the network guidelines and engineering protocols used by GTE in determining the placement of facilities on poles and in ducts and conduits." GTE proposes to delete the bold language in this section.

In their comments, both MCI and GTE refer to the RAO which requires GTE to provide "nondiscriminatory access to its rights-of-way, poles, ducts, and conduits available to MCI on terms and conditions equal to that it provides itself."

The Commission is of the opinion that this language will not affect the "nondiscriminatory access" directed in the RAO whether the language is included or excluded from the section.

CONCLUSIONS

The Commission concludes that this issue is not subject to resolution.

ISSUE NO. 37: ATTACHMENT AND OCCUPANCY FEES
Contract Location: Article X, Section 15.1
MCI's Comments In Support Of Its Version Of Disputed Language, Pages 42 and 43
GTE's Comments On The Conformed Agreement, Page 44

DISCUSSION

GTE proposes to add the following language to the beginning of Subsection 15.1: "The Parties agree that a charge equal to five (5) times the amount of the then current Attachment of Occupancy Fee shall be paid by MCIm to GTE for each Unauthorized Attachment to a GTE pole for the period of time for which the Attachment is authorized. Such payment shall be deemed liquidated damages and not a penalty."

GTE states that this is a standard term in its poles, ducts, conduits, and rights-of-way contracts, and GTE would discriminate in favor of MCI if MCI were not subject to such a penalty. GTE argues that it must receive compensation for damages from unauthorized attachments as it must often build around them and may suffer damage to its physical plant if they are placed without proper make-ready work.

MCI argues that this would impose unreasonably high fees for unauthorized attachments in the guise of a liquidated damages provision. MCI further states that it does not intend to build its network by stealing attachments from anyone, and if it mistakenly attaches where it should not, there should be no penalty. MCI believes that GTE is adequately protected by other language in the

section which provides for MCI to pay retroactive attachment fees and any costs incurred by GTE as a result of the unauthorized attachment.

The Commission is of the opinion that the current language in Section 15.1 is adequate to protect and compensate GTE for any unauthorized attachments by MCI.

CONCLUSIONS

The Commission concludes that the proposed additional language by GTE should be rejected.

ISSUE NO. 38: BONDING REQUIREMENT AND ROW INDEMNIFICATION
Contract Location: Article X, Sections 17.4 and 18
MCI's Comments In Support Of Its Version Of Disputed Language, Page 43
GTE's Comments On The Conformed Agreement, Pages 44 and 45

DISCUSSION

GTE proposes that MCI be required to furnish payment bond in the amount of $10,000. GTE contends that the requirement is commercially reasonable and must be applied to MCI if it is to apply to any entity seeking access. MCI argues that a bond is not necessary. Neither party cites any portion of the record.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

ISSUE NO. 39: COST ALLOCATIONS FOR RETIRED CABLE REMOVAL
Contract Location: Article X, Section 19.7
MCI's Comments In Support Of Its Version Of Disputed Language, Page 45
GTE's Comments On The Conformed Agreement, Page 46

DISCUSSION

This section reads as follows: "GTE shall remove any retired cable from conduit systems or poles to allow for the efficient use of conduit space and pole space in order to make such poles and conduits available. **The entity that owns or controls the retired cable shall bear the costs of such removal.**" GTE proposes to replace the bolded language with: "MCIm shall bear the costs of removal of retired cable."

GTE argues that it will make space available, however, the cost of removing retired cable must be paid by the carrier requesting such space. Removal of retired cable from conduit is a normal part of make-ready work. Forcing GTE to absorb this cost when it is required to prepare facilities for MCI would be unfair in the extreme--each carrier bears its own cost of removing retired cable when it wants to use space, even GTE. Therefore, requiring MCI to bear this cost as well is a necessary part of "nondiscriminatory access".

MCI states that its proposal, the entity owning or controlling the retired cable shall bear the costs of removal, places the burden on the appropriate party.

CONCLUSIONS

The Commission concludes that the provisions proposed by both GTE and MCI be rejected. The Commission further concludes that associated costs of retired cable removal should be assigned in a manner such that all benefiting users share the cost burden. The cost assigned to each benefiting user should be in proportion to the benefit(s) received: i.e., the proportional cost assigned to a benefiting user expressed as a percentage of total cost should be equal to proportional benefit(s) expressed as a percentage of total benefit(s).

ISSUE NO. 40: RIGHT TO ACCESS AND ELECTRICAL POWER
Contract Location: Article X, Section 19.9
MCI's Comments In Support Of Its Version Of Disputed Language, Page 46
GTE's Comments On The Conformed Agreement, Page 46

DISCUSSION

This section reads as follows: "Where GTE has any ownership or other rights to ROW to buildings or building complexes, or within buildings or building complexes, GTE shall offer to MCIm: (a) The right to use any available space owned or controlled by GTE in the building or building complex to install MCIm equipment and facilities; (b) Ingress and egress to such space; and (c) The right to use electrical power at parity with GTE's rights to such power." GTE proposes to completely replace the above language with the following: "Access to GTE facilities owned or controlled by GTE within buildings or building complexes shall be consistent with GTE's obligations to provide access as may be set forth in Articles IV or IX of this Agreement, as applicable."

GTE argues that this section seeks to expand impermissibly the definition of rights-of-way to include ingress and egress (where such might not necessarily be part of a right-of-way) and to include the right to use electrical power at parity with GTE. GTE states that the electrical power issue is beyond the scope of access to rights-of-way, was never arbitrated by MCI, and is not addressed in the RAO.

MCI argues that the section clarifies that its access to rights-of-way (ROW) is not limited solely to situations involving outside plant like poles, conduits, ducts, and the more traditional ROW. MCI states that it must have access at parity to GTE's, to buildings and within buildings. Furthermore, MCI believes that this situation may not be adequately covered in other parts of the Interconnection Agreement, and to the extent GTE has ownership rights, or other legal rights to pass over, on, under, through, or otherwise, over third-party owned property, MCI must have the same rights of access. Regarding the right to use electrical power at parity with GTE, MCI may have equipment that requires electrical power. MCI needs to be able to obtain power on the same terms and conditions as GTE, and this proposed provision comes closer to the Commission's decision that GTE must provide nondiscriminatory access to its rights-of-way, poles, ducts, and conduits.

The Commission is of the opinion that MCI's proposed language in Section 19.9 should be rejected because it seeks to expand the meaning of rights-of-way to include all possible pathways to

the end user customer. In addition, part (c) of Section 19.9 concerning the right to use electrical power at parity with GTE is clearly beyond the scope of this proceeding.

CONCLUSIONS

The Commission concludes that MCI's proposed language in Section 19.9 should be rejected and that GTE's proposed language should be adopted.

ISSUE NO. 41: INP COST RECOVERY
Contract Location: Article XI, Section 2.1
MCI's Comments In Support Of Its Version Of The Disputed Language, Page 47
GTE's Comments On The Conformed Agreement, Page 47

DISCUSSION

The Commission's Order stated that the parties should "...negotiate the appropriate cost-recovery mechanism" so that all parties would "share the burden..." of developing interim number portability (INP). GTE and MCI have not been able to agree on a mechanism. In the absence of a sharing procedure, MCI proposes a "bill and keep" arrangement with each party bearing its own costs. GTE proposes to charge its tariffed rates which distributes, even if it does not properly apportion, the cost of providing INP. Neither party cited any evidence in the record to support their respective positions.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

ISSUE NO. 42: METHODS OF INP (FLEX DID)
Contract Location: Article XI, Section 2.5
MCI's Comments In Support Of Its Version Of Disputed Language, Page 48
GTE's Comments On The Conformed Agreement, Page 48

DISCUSSION

MCI wants GTE to provide INP using flexible direct inward dialing (DID) and route indexing. GTE contends that the Order specifies DID but not *flex* DID and does not mention route indexing. It was the intention of the Commission that flex DID should be provided.

CONCLUSIONS

The Commission concludes that GTE should be required to provide flex DID.

ISSUE NO. 43: INP COST RECOVERY
Contract Location: Appendix C, Section 1.7.2
MCI's Comments In Support Of Its Version Of Disputed Language, Page 50
GTE's Comments On The Conformed Agreement, Page 48

DISCUSSION

This situation is similar to that in Issue No. 41, discussed previously. The Commission's Order stated that the parties should "...negotiate the appropriate cost-recovery mechanism" so that all parties would "share the burden..." of developing INP. GTE and MCI have not been able to agree on a mechanism. In the absence of a sharing procedure, MCI proposes a "bill and keep" arrangement with each party bearing its own costs. GTE proposes to charge its tariffed rates which distributes, even if it does not properly apportion, the cost of providing INP. Neither party cited any evidence in the record to support their respective positions.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters which are best resolved through arms-length negotiations by the affected parties and because the record does not provide a basis for a decision.

ISSUE NO. 44: "TO BE DETERMINED" (TBD) RATES
Contract Location: Appendix C, Section 1.8
MCI's Comments In Support Of Its Version Of The Disputed Language, Pages 51 and 52
GTE's Comments On The Conformed Agreement, Pages 48 and 49

DISCUSSION

Both parties proposed language for a provision concerning TBD rates. However, the disputed language concerns what situations cause a price to be covered by the TBD provision. At the heart of this dispute is GTE's proposed language that:

> [i]n the situations...(iii) a provision requires either party to provide an item, service or technical upgrade but does not explicitly mention cost recovery, and there are no corresponding prices already set forth in Appendix C...such price shall be considered "To Be Determined" (TBD).

MCI states that the arbitration and contract determine prices for all items where costs are incurred and cost recovery is appropriate. According to MCI, GTE's proposed language goes beyond the intentions of the parties in drafting the specific articles of the agreement and beyond the scope of the arbitration; would allow GTE to charge for items that are meant to be provided at no charge; and permit GTE to charge prices that were never arbitrated, were not approved, and are outside of the scope of the agreement.

GTE states that the Conformed Agreement would require prices in two situations that may not fall within MCI's proposed language for this provision. First, according to GTE, the parties agree that the Conformed Agreement contains numerous technical references which GTE may not meet as

of the effective date of the Conformed Agreement. However, GTE understands that MCI would pay for the costs of necessary upgrades to meet such standards, if specifically requested by MCI. Second, the Conformed Agreement contains numerous sections that require GTE to provide a service, but do not specify cost recovery. GTE understands that it will not provide such services for free, but that some measure of cost recovery will be allowed. GTE believes such unspecified costs may not be covered by MCI's proposed language for the TBD rates provision.

While MCI contends that it was the intent of the parties to draft specific articles which determine prices for all items where costs are incurred and cost recovery is appropriate, GTE already points out situations where GTE believes the agreement does not specify necessary cost recovery. If MCI's proposed language is adopted, GTE may be barred from recovering costs in situations where the parties unintentionally failed to specify cost recovery or were simply unable to reasonably anticipate all situations where cost recovery could become an issue. If GTE's proposed language is adopted and such situations arise, prices could be determined in accordance with the TBD provision or the dispute resolution provision.

CONCLUSIONS

The Commission concludes that GTE's proposed language for Appendix C, Section 1.8, is appropriate to include in the Composite Agreement.

ISSUE NO. 45: NONRECURRING CHARGES
Contract Location: Appendix C, Pricing Attachment I, No. 10 Nonrecurring Charges
MCI's Comments In Support Of Its Version Of The Disputed Language, Page 52
GTE's Comments On The Conformed Agreement, Pages 49 and 50

DISCUSSION

MCI believes that any inclusion of rates in this section of the agreement is entirely inappropriate. No such rates were submitted to the Commission by GTE at any time before, during, or after the arbitration. MCI states that there is neither an evidentiary nor a simple factual basis upon which to adopt any of the nonrecurring charges that may be proposed by GTE. MCI believes that this matter may be most appropriately addressed in the permanent cost proceedings ordered by the Commission.

GTE believes that the prices for nonrecurring charges should be included as TBD prices. In support of this position, GTE states that its position on this issue is consistent with the RAO's approach to pricing of unbundled network elements, as well as the parties' general agreements regarding pricing. The Order essentially adopted the FCC proxy prices as interim rates, pending establishment of permanent rates by the Commission. However, the FCC did not establish any proxy rates for nonrecurring charges. Nevertheless, GTE states it will undoubtedly incur these costs, has been awarded such costs in other arbitrations, and should not be denied the opportunity of recovering such costs because of the Commission's blanket approach to interim pricing. Furthermore, GTE believes that Section 1.8 of Appendix C, which establishes a procedure for determination of rates not explicitly set forth in the pricing schedules, could be applied to nonrecurring charges for network elements in accordance with a long-standing agreement between the parties as to the operation of TBD pricing. Additionally, GTE submits that MCI will not be prejudiced by the TBD process

because all prices determined by the TBD process are subject to MCI's agreement. Finally, GTE comments that the interim prices will be in effect for such a short period of time that any harm to MCI would be minimal, and, most likely, subject to the true-up required by the Commission with respect to the prices for unbundled network elements.

CONCLUSIONS

The Commission concludes that nonrecurring charges should be included in the pricing schedule of the Composite Agreement as TBD rates, consistent with GTE's proposal. Further, when nonrecurring charges are determined by the parties, such rates shall be interim rates subject to true-up as required by the RAO with respect to the prices for unbundled network elements.

ISSUE NOS. 46-57: INTRALATA, INTRASTATE, AND INTERLATA SWITCHED ACCESS CHARGES

Contract Location: Appendix E, Sections 2.3.1.1, 2.3.2.1, 2.3.3.1, 2.3.4.1, 2.3.4.3, 2.3.5.1, 2.3.6.1, 2.3.7.1, 2.4.1.1, 2.4.2.1, 2.5.1.1, and 2.5.2.1
MCI's Comments In Support Of Its Version Of The Disputed Language, Pages 52-56
GTE's Comments On The Conformed Agreement, Pages 23-26

DISCUSSION

Appendix E to the Conformed Agreement sets forth compensation which MCI shall pay GTE for call termination in cases where MCI purchases GTE's unbundled local switching. In such cases, the parties disagree over whether MCI is required to pay GTE the residual interconnection charges (RIC) and common carrier line (CCL) charges, which are switched access charge rate elements, any time MCI originates or terminates a toll call using the unbundled local switching.

MCI disagrees with GTE's proposed language which would permit GTE to recover RIC and CCL charges where MCI uses GTE's unbundled local switching to originate or terminate toll calls. According to MCI, such charges are equivalent to an additional charge for unbundled local switching. Further, MCI maintains GTE's proposal in this regard is entirely inappropriate and inconsistent with the FCC Interconnection Order, particularly where GTE is not the company terminating the call. While MCI provided no reference to the FCC Order, FCC Rule 51.515, now stayed, sets forth application of access charges. Under FCC Rule 51.515, incumbent LECs may assess carriers that purchase unbundled network elements certain access charges, only until the earliest of, but not after: June 30, 1997; the later of the effective date of a final FCC decision in CC Docket No. 96-45 (Federal-State Joint Board on Universal Service) or the effective date of a final FCC decision regarding access reform; or for Bell operating companies, the date a state authorizes interLATA service.

GTE submits that under its interpretation of the RAO in this docket, the Commission elected not to make any specific decision applicable to this issue. Therefore, GTE believes it is reasonable that status quo applies, and thus, GTE is entitled to continue to receive all intrastate and interstate access charges it would receive in the absence of the sale of unbundled local switching.

Further, GTE also submits that the RIC and CCL charges provide a vehicle for recovering the cost of public policy choices made by the Commission, including affordable local service rates.

GTE explains that the RIC is an intrastate switched access rate element currently assessed on a per minute of use basis for both originating and terminating traffic of IXCs and toll providers. The CCL charges are also assessed in this manner and they recover the cost of the local loop not recovered through local rates or the subscriber line charge, according to GTE. If it were unable to recover access charges, GTE contends it would be less able to continue to provide local service at regulated rates. GTE also argues that MCI makes no contribution to the public policy choices of the Commission, including affordable local service, when MCI purchases unbundled local switching at a rate which does not include contribution toward maintenance of public policy costs equal to the RIC or CCL charges. Therefore, if GTE cannot assess these charges, then MCI would receive a windfall and enjoy a significant competitive advantage in the access markets. Moreover, MCI's long distance affiliate would be able to completely avoid access charges to the extent it could terminate calls over MCI's local network using GTE's unbundled local switching. Accordingly, GTE requests that its proposed language be adopted by the Commission.

CONCLUSIONS

The Commission concludes that it is premature to address this issue until more is known about access reform and universal service.

ISSUE NO. 58: REFUSAL OF SERVICE
Contract Location: Article VIII, Section 2.1.3.2

DISCUSSION

GTE and MCI have mutually agreed to include the following language in their final Agreement:

> "2.1.3.2 GTE shall not refuse service to MCIm for any potential MCIm subscriber on the basis of that subscriber's past payment history with GTE unless the customer is currently under a temporary disconnect status by GTE for nonpayment or delinquency. Such temporary disconnect status cannot exceed ten (10) business days unless required by state law. MCIm shall establish the credit scoring criteria for applicants for MCIm services."

CONCLUSIONS

This provision imposes a limitation or restriction on resale which has not been previously addressed or authorized by the Commission in any of the RAOs issued to date. Nor has this type restriction been previously proposed by any party or considered by the Commission in any of the other contested arbitration proceedings conducted by the Commission or in any of the negotiated arbitration agreements approved by the Commission. The issues raised by this resale restriction were not addressed by the parties during the arbitration hearing in this docket. That being the case, the Commission, on its own motion, finds good cause to require the parties to delete the above-quoted language from their final Agreement.

ISSUE NO. 59: LOCAL SERVICE RESALE
Contract Location: Appendix C, Section 1.1

DISCUSSION

Section 1.1 of Appendix C regarding local service resale refers to the wholesale rate discount approved by the Commission in the RAO as being "**interim**" in nature and provides that the interim wholesale rate discount shall remain in effect until the Commission determines a permanent wholesale discount in accordance with the Act.

CONCLUSIONS

The Commission has specifically held in the AT&T/BellSouth and MCI/BellSouth arbitration proceedings in Docket Nos. P-140, Sub 50 and P-141, Sub 29, respectively, that the wholesale discount rates approved in those proceedings are **not interim** rates. To the contrary, the Commission stated that it prepared its own avoided cost analyses and established **permanent** wholesale discount rates which meet the requirements of the Act. That being the case, the Commission required the parties to remove the term "interim" from their final Agreements with reference to prices for resold local services. In addition, Carolina and Central have raised this same issue in the comments which they filed in this docket on March 6, 1997, in response to the RAO. Consistent with the Commission's decision regarding the Carolina/Central comments, the Commission finds good cause to require MCI and GTE to delete the term "interim" from Section 1.1 of Appendix C regarding local service resale and revise that section to read as follows:

> 1.1 Local Service Resale. The prices charged to MCIm for Local Service shall be calculated using the avoided cost discount applicable in North Carolina, determined on the basis of the retail rate charged to subscribers for the telecommunications service requested. The wholesale discount shall be 19.97% off the applicable retail rate for all GTE services subject to resale.

ISSUE NO. 60: EXECUTION OF INTERCONNECTION AGREEMENT
GTE's Comments On The Conformed Agreement, Page 2

DISCUSSION

GTE contends that, if the Commission approves the Interconnection Agreement, the Commission should not order GTE to execute it. Section 252(e)(1) of TA96 only requires that an agreement adopted by arbitration be submitted for approval. There is no execution requirement.

MCI did not address this issue.

The Commission views the execution of the Interconnection Agreement as integral to its approval and inseparable from it. Black's Law Dictionary (Revised Fourth Edition) defines "execute" as "[t]o complete; to make; to perform; to do; to follow out." Although GTE may disagree with many of the results of the arbitration, it is nevertheless obliged to carry them out and to so signify by appending its signature to the Interconnection Agreement. This is, of course, without prejudice to GTE's rights to appeal concerning any or all of its provisions.

CONCLUSIONS

The Commission concludes that GTE should execute the interconnection agreement.

IT IS, THEREFORE, ORDERED as follows:

1. That the Composite Agreement submitted by GTE and MCI is hereby approved, subject to the modifications required by this Order.

2. That GTE and MCI shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

3. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of July, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Duncan dissents with respect to Issue No. 1 in the Comments/Objections section of this Order regarding the issue of resale of contract service arrangements (CSAs). Rather than affirming the original decision on CSA resale as set forth in the Recommended Arbitration Order in this proceeding, Commissioner Duncan would adopt the decision reached by the Commission in the BellSouth/AT&T and BellSouth/MCI arbitration proceedings in Docket Nos. P-140, Sub 50 and P-141, Sub 29 that CSAs entered into before April 15, 1997, are subject to resale at no discount, while CSAs entered into after that date are subject to resale with the discount.

DOCKET NO. P-141, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with Carolina Telephone and Telegraph Company and Central Telephone Company) RECOMMENDED ARBITRATION ORDER

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on January 28, 1997, at 1:00 p.m.

BEFORE: Chair Jo Anne Sanford, Presiding; and Commissioners Ralph A. Hunt and Judy Hunt

APPEARANCES:

For MCI Telecommunications Corporation:

Ralph McDonald, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27601-1351

For Carolina Telephone and Telegraph Company and Central Telephone Company:

Dwight W. Allen, General Counsel, and Robert C. Voigt, Senior Attorney, Carolina Telephone and Telegraph Company and Central Telephone Company, 14111 Capital Boulevard, Wake Forest, North Carolina 27587

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 comes before the Commission pursuant to Section 252(b) of the Telecommunications Act of 1996 (TA96 or the Act) and North Carolina General Statutes 62-110(fl). This proceeding was initiated by a petition filed by MCI Telecommunications Corporation (MCI) on October 11, 1996, in Docket No. P-141, Sub 31, which requested that the Commission arbitrate certain terms and conditions with respect to interconnection between the petitioning party and Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, CT&T/Central).

By Order entered in Docket No. P-100, Sub 133, on August 19, 1996, the Commission adopted certain procedures governing arbitration proceedings and excluded intervenors other than the Attorney General from participating. On October 24, 1996, the Commission scheduled a hearing in this docket for January 17, 1997. On January 24, 1997, CT&T/Central made a joint report on behalf of itself and MCI concerning the progress of negotiations. CT&T/Central reported that substantial progress had been made in resolving most of the issues and requested that the case be continued until January 28, 1997.

On January 24, 1997, the Commission issued an Order rescheduling the hearing to begin on Tuesday, January 28, 1997, at 1:30 p.m. On the date of the hearing, MCI and CT&T/Central filed a "Stipulation on Certain Designated Issues with Reservation of Rights to Challenge." That stipulation provided that the parties agreed that for 17 issues in this arbitration, the parties would accept decisions of the Commission set forth in the Recommended Arbitration Order (RAO) in Docket No. P-141, Sub 29, subject to a final Order of the Commission or of a reviewing agency or court, and that for two issues, the parties would accept decisions of this Commission set forth in the RAO in Docket No. P-140, Sub 50, subject to a final Order of the Commission or a reviewing agency

or court. The stipulation also reported that the parties had reached agreement on two further issues. This leaves only eight issues for the Commission to decide in this arbitration.

At the evidentiary hearing, which began as scheduled on January 28, 1997, MCI offered the testimony of the following witnesses: Richard Cabe, Greg Darnell, Ronald Martinez, Don Price, and Jerry Murphy. CT&T/Central offered the testimony of the following witnesses: William E. Cheek, Charles S. Parrott, Randy G. Farrar, and James D. Dunbar, Jr.

Numerous other motions and pleadings have been filed in this docket 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 is for the Commission to resolve the issues set forth in the petitions and responses. TA96, Section 252(f)(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 TA96, 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. TA96, 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 (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 (incumbent LEC or 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 yet 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 Court of Appeals issued a stay of the FCC's pricing provisions and its "pick and choose" rule pending outcome of the appeals.

Based upon a careful consideration of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. CT&T/Central is not required to resell voice mail, inside wire, or inside wire maintenance plans.

2. CT&T/Central must file with the Commission all interconnection agreements with CLPs to which it is a party. CT&T/Central 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.

3. A policy for recombining and pricing unbundled network elements should be adopted on a uniform, statewide basis. The policy for recombining and pricing unbundled network elements

adopted by the Commission in Docket No. P-141, Sub 29, relating to MCI and BellSouth Telecommunications, Inc. (BellSouth) arbitration and Docket No. P-140, Sub 50, relating to AT&T Communications of the Southern States, Inc. (AT&T) and BellSouth arbitration should be adopted for MCI/CT&T/Central in this docket.

4. The Commission declines to enact a requirement that would allow CT&T/Central to select the point of interconnection for terminating traffic to MCI.

5. 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.

6. 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.

7. The types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. Disputes over the functionality of particular equipment should be resolved on a case-by-case basis.

8. The Commission declines to adopt a specific performance standard with respect to the timeliness of responses to requests for additional services. The parties are instructed to negotiate mutually agreeable terms provided that MCI may elect to accept the language proposed by CT&T/Central.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

ISSUE: Should CT&T/Central be required to resell voice mail and inside wire maintenance at wholesale rates?

POSITIONS OF PARTIES

MCI: TA96 and the FCC Rules require CT&T/Central to offer all retail telecommunications services including voice mail and inside wire maintenance for resale. Each of these is a telecommunications service offered to subscribers on a retail basis. There is no basis under TA96 or the FCC Rules for CT&T/Central to refuse to offer any of these services for resale.

CT&T/CENTRAL: Retail telecommunications services should be available to telecommunications carriers at wholesale rates consistent with TA96 and the FCC Interconnection Order. CT&T/Central does not believe that voice mail and inside wire maintenance are telecommunications services as defined by TA96.

ATTORNEY GENERAL: Voice mail and maintenance plans for inside wiring are not telecommunications services as defined by TA96 and need not be offered for resale. TA96 was not intended to compel ILECs to provide competitive services for resale. Inside wiring and inside wire maintenance are available on the open market from nontelecommunications providers and are not tariffed or regulated. As to voice mail, it is classified as an enhanced service and should not be considered a telecommunications service.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Darnell and by CT&T/Central witnesses Cheek and Parrott. Additionally, argumentation on this matter was presented at the hearing by CT&T/Central's General Counsel Allen.

The Commission agrees with CT&T/Central and the Attorney General's views that these services are not telecommunications services and need not be offered for resale. The Commission has consistently so held in previous arbitration dockets.

CONCLUSIONS

The Commission concludes that CT&T/Central should not be required to resell voice mail, inside wire, and inside wire maintenance plans.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: Should CT&T/Central produce all interconnection agreements to which CT&T/Central are parties, including those agreements with other ILECs that were executed prior to the effective date of the Act?

POSITIONS OF PARTIES

MCI: Production of copies of all interconnection agreements is required by Section 252(a)(1) of TA96, 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.

CT&T/CENTRAL: CT&T/Central will comply with the filing requirements of the Act and the Commission. Section 51.303 of the FCC's Rules requires CT&T/Central to renegotiate agreements with Class A carriers and file such agreements with the Commission by June 30, 1997. These renegotiated agreements will be made available for public inspection, however, CT&T/Central is not required to provide the superseded agreements which pre-date the Act.

ATTORNEY GENERAL: The Commission has arbitrated this issue for MCI in Docket No. P-141, Sub 29, relating to MCI and BellSouth arbitration and Docket No. P-141, Sub 30, relating to MCI and GTE South Incorporated (GTE) arbitration and concluded that, as a matter of law, interconnection agreements between ILECs and all others must be filed and publicly available.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and CT&T/Central witness Cheek. Additionally, argumentation on this matter was presented at the hearing by MCI's attorney McDonald and CT&T/Central's General Counsel Allen.

Section 252(a)(1) of the Act requires that agreements for interconnections, services, or network elements that were negotiated prior to the passage of the Act be submitted to State Commissions for approval. 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.

CONCLUSIONS

CT&T/Central must file with the Commission all interconnection agreements with CLPs to which it is a party. CT&T/Central 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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: Should the Commission adopt a policy for recombining and pricing unbundled network elements on a uniform, statewide basis?

POSITIONS OF PARTIES

MCI: This is not an issue in this proceeding. CT&T/Central has agreed that there can be no limitation on combining unbundled network elements.

CT&T/CENTRAL: CT&T/Central will accept the Commission's final order in Docket No. P-141, Sub 29. The pricing policy for combining network elements should be consistently developed and applied on a statewide, industry-wide basis to ensure nondiscriminatory rates as required by Section 252(d)(1) of the Act. The use and user restrictions for combining network elements should be consistently developed and applied on a statewide, industry-wide basis to ensure nondiscriminatory access to network elements as required by Section 251(c)(3) of the Act.

ATTORNEY GENERAL: Pricing unbundled elements is an issue of arbitrage. Arbitrage does not encourage the innovation and new services that competition is supposed to bring to end users. If a competing local provider (CLP) buys all seven of the current unbundled elements and reassembles them into services identical to CT&T/Central's, the recombined unbundled elements are essentially resale and should be priced as wholesale services.

DISCUSSION

Testimony regarding this issue was presented by CT&T/Central witness Cheek.

MCI contended that the issue of limitations on combining unbundled network elements was resolved by the parties prior to the issuance of the RAO in Docket No. P-141, Sub. 29, on December 23, 1996. The Commission's Order in Docket No. P-141, Sub 29 does not negate the parties' previous resolution of the issue and their decision not to submit the issue to the Commission for arbitration.

CT&T/Central stated that CT&T/Central has not agreed to price the recombination of unbundled network elements that constitute a resold service any differently than the comparable resold telecommunications service. Although CT&T/Central supported the recombination of unbundled network elements in testimony submitted in this docket, that testimony also made abundantly clear that the Commission should not impose inconsistent policy decisions in different parts of the State.

CT&T/Central further stated that the Stipulation reached by the parties in this docket, which resolved many of the issues submitted for arbitration, was occasioned, to a large extent, by the policy issues which the Commission resolved in Docket No. P-141, Sub 29, and similar Dockets. In some cases the positions advocated by MCI were adopted, and in some cases they were not. If the Commission gives MCI pricing treatment in this case different from that in the BellSouth proceeding, this would presumably permit MCI to engage in unrestricted recombinations in areas served by CT&T/Central and avoid paying resale rates, but not in the areas served by BellSouth. Similarly, BellSouth might choose to operate as a CLP in areas served by CT&T/Central by recombining unbundled network elements to avoid resale rates, but CT&T/Central would not be allowed to operate in BellSouth's territory on a similar basis. Such a result would lead to regulatory distortions in the competitive marketplace, and would violate the clear, nondiscrimination guidelines outlined in the Act.

CONCLUSIONS

The Commission concludes, for the reasons outlined above by CT&T/Central, that a policy for recombining and pricing unbundled network elements should be adopted on a uniform, statewide basis. The Commission further concludes that the policy adopted by the Commission in Docket No. P-141, Sub 29 (MCI/BellSouth), and Docket No. P-140, Sub 50 (AT&T/BellSouth), should be adopted for MCI/CT&T/Central in this docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: How should the point of interconnection for exchanging traffic be determined?

POSITIONS OF PARTIES

MCI: MCI as the new entrant is entitled to select its point of interconnection with CT&T/Central's network. However, CT&T/Central is not entitled to select its point of interconnection for terminating traffic to MCI because MCI is not an ILEC.

CT&T/CENTRAL: CT&T/Central will allow MCI to interconnect with CT&T/Central at any technically feasible point. CT&T/Central will allow MCI to connect CT&T/Central provided services and unbundled elements to MCI's facilities at an MCI collocation point and to any other party, as

provided in Section 51.305 of the FCC Rules. CT&T/Central should be allowed to select its point of interconnection for terminating traffic to MCI.

ATTORNEY GENERAL: TA96 was intended in part to bring the benefits of competition to local telephone service markets. One of the benefits of competition is increased efficiency in providing service. To permit new entrants to pick the points of interconnection they believe are most efficient for them, but then also to permit new entrants to designate the points of interconnection for their competitors may chill the introduction of efficient network configuration for ILECs interconnecting to the CLP's network. TA96 imposes a duty on ILECs to permit interconnection at a point designated by new entrants, and is silent on the reciprocal arrangement. The Act, however, does not prohibit such reciprocity and, indeed, the intention behind TA96 suggests that reciprocity could introduce further efficiencies into telephone networks. Both ILECs and CLPs should be allowed to designate points of interconnection on each other's networks and be allowed to interconnect at those points if technically feasible, absent compelling reason to the contrary.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and CT&T/Central witness Cheek. Additionally, argumentation on this matter was presented at the hearing by MCI's attorney McDonald and CT&T/Central's General Counsel Allen.

MCI contends that it should be allowed to unilaterally select the point of interconnection for terminating calls originating on both CT&T/Central's network and MCI's network. MCI states that TA96, Section 251(c)(2) obliges CT&T/Central, as an ILEC ". . . to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . (B) at any technically feasible point within the carrier's network. . . ." Further, MCI states that the Act does not impose a reciprocal obligation on MCI to allow CT&T/Central to pick the point of interconnection with MCI's network. In the FCC Interconnection Order, Paragraph 220 states: "Finally, as discussed below, we reject Bell Atlantic's suggestion that we impose reciprocal terms and conditions on incumbent LECs and requesting carriers pursuant to section 251(c)(2). Section 251(c)(2) does not impose on non-incumbent LECs the duty to provide interconnection. . . ."

CT&T/Central argues that the company originating traffic may select the point of interconnection for terminating traffic—i.e., CT&T/Central and MCI have equal rights to designate the point of interconnection with the other carrier's network. CT&T/Central states that if either company is given the exclusive right to select the point of interconnection, that company can select a location making extensive use of its own network in terminating calls for a connecting company. Such arrangement could result in the company originating calls paying a higher charge for use of the terminating company's facilities than the originating company would sustain if the traffic was carried over its own facilities to a different point in the terminating company's network, resulting in a reduction in network efficiency and higher costs for consumers.

CONCLUSIONS

The Commission declines to adopt a position on whether CT&T/Central should be allowed to select the point of interconnection for terminating traffic to MCI. Instead, the Commission

encourages the parties to negotiate mutually agreeable terms and conditions with respect to network interconnection.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: What is the appropriate price for each unbundled network element requested?

POSITIONS OF PARTIES

MCI: CT&T/Central should be ordered to price all unbundled network elements in accordance with the forward-looking cost methodology prescribed in the FCC Interconnection Rules. This total element long-run incremental cost (TELRIC) costing methodology is consistent with the Act and with the total service long-run incremental cost-based (TSLRIC-based) pricing that MCI has requested of CT&T/Central.

CT&T/CENTRAL: CT&T/Central will accept the Commission's final Order in Docket No. P-141, Sub 29, i.e., the MCI/BellSouth arbitration proceeding, relating to interim proxy rates for unbundled network elements. However, due to technical limitations with billing on a usage basis, they will use an interim flat-rate surrogate which will incorporate the Commission's interim usage rates to bill unbundled switching only. Once this limitation is overcome, CT&T/Central will bill unbundled switching on a usage basis. The interim flat-rate surrogate cannot be retroactively trued-up.

ATTORNEY GENERAL: Switching cost must be based on forward-looking incremental costing studies that include a fair and reasonable portion of joint and common costs. Since CT&T/Central cannot measure minutes of use for unbundled switching services, the reasonable solution to the problem is for the parties to arrive at an estimated monthly minutes of use and apply the proxy rates to the estimate with provision for a true-up if there is evidence that the estimated minutes of use are incorrect.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Cabe and Wood and CT&T/Central witness Farrar. Additionally, argumentation on this matter was presented at the hearing by MCI's attorney McDonald and CT&T/Central's General Counsel Allen.

As indicated above, MCI takes the position that the Commission should price all unbundled network elements in accordance with the forward-looking TELRIC methodology incorporated in the Hatfield Model, which MCI proposed. Essentially, MCI argued that, in order to meet the requirements of Section 252(d)(2) of the Act, prices must be set based on their forward-looking economic cost, and not on embedded cost.

MCI pointed out that the FCC has adopted TELRIC for its forward-looking costing methodology. MCI stated that the TELRIC methodology is nothing more than a total service long-run incremental cost (TSLRIC) methodology in which the item to be costed is an "element" rather than a "service". MCI argued that, while the Commission is not currently required to apply the FCC's TELRIC methodology due to the stay of the pricing provisions of the FCC Rules, the

Commission should continue to use a TSLRIC/TELRIC standard for its cost and price determinations under the Act.

MCI submitted that, while CT&T/Central proposed an interim flat-rate surrogate for unbundled switching, they failed to submit an actual rate. Accordingly, MCI asserted that the Commission has no proposal before it to consider in this regard.

MCI argued that it provided a cost study that complies with TSLRIC/TELRIC pricing principles. According to MCI, the Hatfield Model, which was presented by its witness Wood, is an open model which 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 required to be unbundled. MCI asserted that the Hatfield Model is consistent not only with the costing provisions of the FCC Interconnection Order but also with sound economic costing principles generally. Further, MCI asserted that the degree of openness of the Hatfield Model, which is unprecedented in telecommunications cost studies, enables independent scrutiny and evaluation of the assumptions and methodology, and enables a reviewer to test the reliability of the final product.

As stated above, CT&T/Central indicated that they will accept the Commission's final Order in Docket No. P-141, Sub 29, i.e., the MCI/BellSouth arbitration proceeding, relating to interim proxy rates for unbundled network elements. However, due to technical limitations, the Companies do not currently have the capability of billing charges for local switching on a usage basis. However, CT&T/Central proposed to bill an interim flat-rate surrogate that is reflective of the Commission's proxy usage rates for unbundled local switching. When the technical limitations associated with billing local switching are eliminated, CT&T/Central will bill for unbundled local switching on a usage basis. CT&T/Central have agreed to provide usage pricing for unbundled local switching by January 1998. CT&T/Central argued that there is precedent for its proposal in this regard and that MCI will benefit far more from the availability of unbundled switching than it could conceivably be harmed by use of a proxy flat-rate for unbundled local switching.

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 these proceedings does not contain all of the information needed in order for the Commission to fully analyze and evaluate the propriety of the cost studies presented. For that matter, CT&T/Central did not submit a cost study in regard to unbundled network elements. 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 these proceedings.

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.

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 believes 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 interim rates based on consideration of the FCC's proxies, the Commission is very much 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 the Commission's review of the Interconnection Order, of which the Commission takes judicial notice, and in consideration of the entire evidence of record, the Commission 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.

The FCC Interconnection Order does not provide a proxy for the NID. The interim NID rate approved by the Commission in Docket No. P-141, Sub 29, i.e., the MCI/BellSouth arbitration proceeding, was $0.52 per NID-per month. As stated above CT&T/Central have indicated that they will accept the rates established by the Commission in its final Order in the aforesaid docket for purposes of this proceeding. The unbundled NID rate of $0.52 was the rate proposed by MCI in Docket No. P-141, Sub 29. MCI, in a late filed exhibit filed on April 3, 1997, in the instant docket, proposed a NID rate of $0.57. The Commission therefore believes, and so concludes, that it is entirely reasonable and appropriate for it to adopt an interim unbundled NID rate of $0.57, subject to true-up, for purposes of this proceeding.

The FCC Interconnection Order does not provide proxies for operator services and directory assistance services as unbundled network elements. Moreover, no party to this proceeding has proposed specific rates for such services. Thus, due to the lack of adequate evidentiary information and data, the Commission concludes that it is unable to establish rates in this regard for purposes of this proceeding.

---

[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."

CONCLUSIONS

In summary, the Commission concludes that, for purposes of this proceeding, establishing interim rates, based on consideration of the FCC's proxies, for unbundled network elements, pending resolution of the appeal of the FCC Interconnection Order and pending establishment of final rates by this Commission is a reasonable and appropriate course of action for the Commission to follow at this time.

Regarding CT&T/Central's inability, due to technical limitations, to bill charges for local switching on a usage basis, the Commission concludes that the Companies should be allowed to use an interim flat-rate surrogate incorporating the Commission's interim usage rates to bill unbundled switching only. Further, it is concluded that such flat-rate surrogate should be trued-up with respect to price once final rates have been established by the Commission and with respect to usage to the extent practicably possible.

The following table summarizes the interim rates that the Commission concludes should be adopted for purposes of this proceeding:

SCHEDULE OF INTERIM RATES
FOR UNBUNDLED NETWORK ELEMENTS AND SERVICES

Description	Unit Cost/Definition	
Network interface device (NID)	$ 0.57	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

To ensure that no carrier is disadvantaged by the interim rates, such rates are subject to true-up provisions at such time as the Commission establishes final rates based on appropriate cost studies.

Accordingly, the Commission 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. 6

Issue: What is the appropriate price for call transport and termination?

POSITIONS OF PARTIES

MCI: The compensation mechanism for transport and termination of local traffic between MCI and CT&T/Central should use symmetrical rates for transport and termination set in accordance with TELRIC principles. The Hatfield Model produces costs calculated in accordance with these principles for tandem switching, local switching, and transport.

CT&T/CENTRAL: (Note: As stated previously herein, CT&T/Central have indicated that they will accept the Commission's final Order in Docket No. P-141, Sub 29, i.e., the MCI/BellSouth arbitration proceeding, relating to interim proxy rates for unbundled network elements, subject to CT&T/Central's interim use of a flat-rate surrogate to bill unbundled local switching as previously discussed.)

Regarding application of the subject rates, where both CT&T/Central and MCI provide the same call termination functionality, the same compensation rates should be applicable, as stated in Section 51.701 of the FCC Rules. However, where MCI interconnects at CT&T/Central's tandem and does not provide the equivalent tandem switching and transport functions, CT&T/Central should not be required to pay MCI the tandem switching and transport rate elements. In this situation, only end office switching should apply.

ATTORNEY GENERAL: TA96 was intended to bring the benefits of competition to the telecommunications marketplace. To impute costs into rates for physical operations that do not occur does not capture in rates any efficiencies that may be available on a network that has fewer switches. Reciprocity in Subpart H of the FCC Rules was not intended to calculate costs into rates for services that are not incurred. Indeed, were the Rules to do so, they would directly contravene language of TA96.

DISCUSSION

Testimony regarding this issue was presented by MCI witnesses Murphy and Cabe and CT&T/Central witness Cheek. Additionally, argumentation on this matter was presented at the hearing by MCI's attorney McDonald and CT&T/Central's General Counsel Allen.

Both MCI and CT&T/Central advocated the use of symmetrical rates for transport and termination services. However, MCI argued that such rates should be set in accordance with the Hatfield Model's TELRIC principles, and CT&T/Central takes the position that it will accept the Commission's final Order in Docket No. P-141, Sub 29, i.e., the MCI/BellSouth arbitration proceeding, relating to interim proxy rates for unbundled network elements, including the rates for call transport and termination.

Regarding the issue pertaining to reciprocal rates for transport where MCI does not employ tandem switching, MCI argued that its local network has a substantially different architecture than that of CT&T/Central. MCI stated that CT&T/Central's network is characterized by a large number of switches within a hierarchical system, with relatively short subscriber loops. By contrast, MCI's local network employs state-of-the-art technology that does not require the deployment of as many switches.

According to MCI, under CT&T/Central's approach, MCI would not receive compensation for tandem transport unless MCI mirrored CT&T/Central's network architecture rather than deploying the most efficient architecture available. MCI would have the Commission find that its architecture creates an "equivalent facility" to tandem switching as provided in 47 C.F.R. Sections 51.701, 51.703(a), and 51.711.

C.F.R. Section 51.711(a)(3) states:

> "(3) Where the switch of a carrier other than an incumbent LEC serves a geographic area comparable to the area served by the incumbent LEC's tandem switch, the appropriate rate for the carrier other than incumbent LEC is the incumbent LEC's tandem interconnection rate."

MCI submitted that, although the Eighth Federal Circuit Court of Appeals has stayed the application of 47 C.F.R. Sections 51.701 - 51.717, it is not unreasonable for the Commission to adopt, nor is the Commission legally prohibited from adopting, the definitions embodied in 47 C.F.R. Sections 51.701 - 51.717 pending resolution of the subject appeal.

CT&T/Central argued that, because MCI is providing only a single end office switch, there can be no "transport" as that term is defined by the FCC. According to CT&T/Central, Section 51.701(c) of the FCC's Rules requires equal compensation only when MCI provides the equivalent facility to that provided by CT&T/Central. CT&T/Central alleged that MCI attempted to avoid the obvious conclusion that equal compensation should apply only for equal services or facilities by arguing that its network is engineered differently from CT&T/Central's and that its switching equipment is of a state-of-the-art nature that results in a more efficient network. CT&T/Central stated that MCI's argument is irrelevant and that MCI is unable to state unequivocally that it is providing a tandem switching function. Consequently, CT&T/Central concluded that the Commission should not be deceived into allowing symmetrical compensation for network functions that MCI clearly does not provide and for which MCI incurs no cost. CT&T/Central further argued that adoption of their position would not create a competitive disadvantage for MCI.

The issues regarding pricing and CT&T/Central's interim use of a flat-rate surrogate to bill unbundled local switching has been addressed heretofore herein and need not be repeated here.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission concludes that it should adopt interim rates for transport and termination based on consideration of the FCC's proxies, pending resolution of the appeal of the FCC Interconnection Order and pending establishment of final rates by this Commission. The Commission further concludes that such rates

should be subject to true-up provisions as previously discussed. Regarding the issue pertaining to symmetrical or reciprocal rates for transport where MCI does not employ tandem switching, the Commission concludes that it is unable to rule on that issue due to the lack of adequate evidentiary information.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Issue: Must CT&T/Central permit MCI to physically collocate digital loop carriers and remote digital line units on CT&T/Central's network?

POSITIONS OF PARTIES

MCI: CT&T/Central must allow collocation of digital loop carriers and remote switching units on its network.

CT&T/CENTRAL: CT&T/Central will allow the collocation of facilities which are required by MCI to interconnect to CT&T/Central's facilities. CT&T/Central is not required to provide for collocation of switching equipment unless the equipment is needed for interconnection purposes. This position is fully supported by the FCC Rules in Section 51.323(c), which states that, "Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services."

ATTORNEY GENERAL: TA96 makes it a duty of the ILECs to provide collocation of equipment necessary for either interconnection or access to unbundled elements. The Act is silent on collocation of switching equipment. The FCC Rules provide that collocation is mandatory for "any type of equipment used for interconnection or access to unbundled network elements." 47 C.F.R. Rule 51.323(b). The Rule gives some examples of such equipment and specifically provides, "Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services." 47 C.F.R. Rule 51.323(c). In view of the Act's silence on this point and the FCC Rule's explicit statement that collocation does not require collocation of switching equipment, the Commission should not at this time require CT&T/Central to allow collocation of equipment which MCI could use to perform switching and/or enhanced services.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and CT&T/Central witness Cheek. Additionally, argumentation on this matter was presented at the hearing by MCI's attorney McDonald and CT&T/Central's General Counsel Allen.

MCI asserts that CT&T/Central must allow collocation of digital loop carriers and remote digital line units (RDLUs).

In regard to digital loop carriers, MCI was initially of the opinion that CT&T/Central had refused to allow the collocation of digital loop carriers. CT&T/Central stated that was incorrect, because it had filed a tariff on October 25, 1996 with the FCC, wherein CT&T/Central specifically allows collocation of certain types of equipment, including but not limited to: optical line terminating multiplexers, central office multiplexers, digital cross connect panels, optical cross connect panels,

and digital loop carriers. Additionally, the tariff states: "Should the Interconnector require the placement of integrated equipment (i.e., transmission and switching functionality), the Telephone Company will allow such placement upon certification by the Interconnector that, except for the purpose of providing multiplexing and/or signal aggregation functionality between the Telephone Company's network or unbundled network elements and the Interconnector's transmission facilities, the switching functionality will not be used and the device will be used only to terminate or aggregate basic transmission facilities."

In regard to RDLUs, MCI argues that CT&T/Central should allow MCI to collocate RDLUs with remote switching capability and should not require MCI to disable such switching capability. An RDLU is basically, a device that converts analog signals into a digital stream; the RDLU concentrates signals from unbundled network facilities for transmission to MCI's own switch. Most state of the art RDLUs have some limited switching capability built-in. MCI acknowledges, and CT&T/Central relies upon, the fact that the FCC Rule 51.323(c), states: "Nothing in this section requires an incumbent LEC to permit collocation of switching equipment or equipment used to provide enhanced services." However, MCI argues that it does not believe that this regulation refers to RDLUs with switching capability, since the limited switching function resident in an RDLU would not provide the capability for MCI to use it as an independent host switch. MCI asserts that the RDLUs will be used for interconnection or access to unbundled network elements under TA96, Section 251(c)(6). MCI argues that the denial of its ability to use the functionality resident in modern equipment and to force MCI to transport calls to and from the host switch when doing so is unnecessary and anticompetitive.

CT&T/Central states that it will allow the collocation of RDLUs when MCI certifies (with allowance for the specified exceptions) that the equipment will be used only to terminate or aggregate basic transmission facilities, and that the switching function will not be used. CT&T/Central believes that its position is fully consistent with and supported by FCC Rule 51.323(b) which requires the ILEC to permit the collocation of any type of equipment used for interconnection or access to unbundled network elements, and FCC Rule 51.323(c) which, specifically, does not require the ILEC to permit collocation of switching equipment or equipment used to provide enhanced services. CT&T/Central argues that while ILECs should be required to facilitate fair competition, they should not be required to confer a competitive advantage upon their competitors by being forced to provide collocation of switching equipment or equipment used to provide enhanced services. Additionally, CT&T/Central noted that in the MCI/GTE South Incorporated arbitration proceeding in Docket No. P-141, Sub 30, in the RAO issued February 4, 1997, the Commission concluded the following:

> "The Commission concludes that the types of equipment that may be collocated should be limited to those that are used for actual interconnection or access to unbundled network elements. The Commission further concludes that disputes over the functionality of particular equipment can be resolved on a case-by-case basis."

CONCLUSIONS

The Commission concludes that it should limit the types of equipment that may be collocated to those that are used for actual interconnection or access to unbundled network elements. Additionally, the Commission concludes that any further disputes over the functionality of particular equipment can be resolved on a case-by-case basis.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: What is the appropriate time within which CT&T/Central must respond to bona fide requests for additional unbundled network elements?

POSITIONS OF PARTIES

MCI: The Commission should establish the Bona Fide Request Process proposed by MCI for additional unbundled elements.

CT&T/Central: 120 days is required for initial unbundled network element requests because of the re-engineering requirements. Subsequent requests would require only 30 days.

ATTORNEY GENERAL: CT&T/Central are subsidiaries of Sprint Corporation which has negotiated many of these arbitration issues with MCI on a national basis. CT&T/Central have presented no evidence indicating that their networks are significantly different from the networks of other Sprint ILECs. 120 days to re-engineer the network, particularly in light of the national response that CT&T/Central's holding company has marshaled in response to MCI's arbitration requests seems long. By the same token, 30 days seems too short. The Attorney General suggests that a time between 30 days and 120 days be approved for the initial request and suggests that 75 days may be most appropriate. Subsequent requests should take 30 days.

DISCUSSION

Testimony regarding this issue was presented by MCI witness Murphy and CT&T/Central witness Cheek. Additionally, argumentation on this matter was presented at the hearing by MCI's attorney McDonald and CT&T/Central's General Counsel Allen.

Both MCI and CT&T/Central have offered draft procedures for dealing with bona fide requests for unbundled network elements. The principal distinction between the two procedures is the amount of time allowed for complying with the first request for an element. MCI proposes a process intended to either establish agreement or initiate a Commission proceeding within 30 days of a request for a new unbundled element. CT&T/Central maintains that more time (120 days) will be needed to process the first request for an unbundled element and that subsequent requests can be handled within 30 days.

This issue is one of performance standards and specific terms and conditions, which is an area in which the Commission has stated in previous arbitration decisions that it believes it is neither appropriate nor practical to become involved at this stage. These are matters for the parties, who possess superior knowledge of the processes involved, to negotiate. Neither party offered any evidence of the time actually required to process a request. The Attorney General recommends splitting the difference with respect to first requests.

CONCLUSIONS

The Commission declines to adopt a specific performance standard with respect to the timeliness of responses to requests for additional services. The parties are instructed to negotiate

mutually agreeable terms, provided that MCI may elect to accept the language proposed by CT&T/Central.

IT IS, THEREFORE, ORDERED as follows:

1. That CT&T/Central 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 form 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 1st day of May, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-141, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of MCI Telecommunications Corporation for Arbitration of Interconnection With Carolina Telephone and Telegraph Company and Central Telephone Company	))))	ORDER RULING ON OBJECTIONS AND COMPOSITE AGREEMENT

BY THE COMMISSION: On May 1, 1997, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by MCI Telecommunications Corporation (MCI) against Carolina Telephone and Telegraph Company (CT&T) and Central Telephone Company (Central). The RAO required MCI and CT&T/Central to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On June 2, 1997, MCI filed certain objections to the RAO. No other objections or comments were filed. On June 16, 1997, MCI and CT&T/Central filed their Composite Agreement for consideration by the Commission.

WHEREUPON, after carefully considering MCI's filing of June 2, 1997, as discussed more fully below, as well as the Composite Agreement filed on June 16, 1997, the Commission concludes that the RAO should be affirmed and that the Composite Agreement should be approved, subject to the modification(s) required by this Order.

MCI'S OBJECTIONS TO THE RAO

ISSUE NO. 1: Should the Commission adopt a policy for recombining and pricing unbundled network elements on a uniform, statewide basis?

INITIAL COMMISSION DECISION

The Commission concluded, for the reasons outlined by CT&T/Central, that a policy for recombining and pricing unbundled network elements should be adopted on a uniform, statewide basis. The Commission further concluded that the policy adopted in Docket No. P-141, Sub 29 (Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with BellSouth Telecommunications, Inc.), and Docket No. P-140, Sub 50 (Petition of AT&T Communications of the Southern States, Inc. for Arbitration of Interconnection with BellSouth Telecommunications, Inc.) should be adopted for MCI and CT&T/Central in this docket.

COMMENTS/OBJECTIONS

MCI objected to the Commission's having adopted the same policy in this proceeding for recombining and pricing unbundled network elements as was adopted in Docket Nos. P-141, Sub 29 and P-140, Sub 50, because it restricts, through pricing, MCI's right to combine network elements as it sees fit. Consequently, according to MCI, this policy contravenes Section 251(c)(3) of the Telecommunications Act of 1996 (TA 96) which provides that new entrants who purchase unbundled network elements to provide a telecommunications service shall be allowed to combine, without restriction, such elements in order to provide such telecommunications service. MCI pointed out that CT&T/Central, in its prefiled testimony and in its Pre-Hearing Matrix, stated that MCI should be allowed to use unbundled elements in combination. MCI commented that CT&T/Central did not propose that MCI's right to combine unbundled network elements be restricted in any way, whether by pricing such unbundled network elements as resold services or otherwise. MCI further commented that TA96 does not authorize the Commission to arbitrate issues not submitted by the parties. Additionally, MCI noted that this Commission's Orders of October 15, 1996, in Dockets Nos. P-141, Sub 29, and P-140, Sub 50, provided that the Commission would not arbitrate any issue for which there was no supporting testimony in the record.

DISCUSSION

In its original decision, the Commission noted the arguments of CT&T/Central in this regard, including the fact that the Stipulation reached by the parties in this docket, which resolved many of the issues submitted for arbitration, was occasioned, to a large extent, by the policy issues which the Commission resolved in Docket No. P-141, Sub 29 and similar dockets. The Commission also noted that, while CT&T/Central had filed testimony supporting the recombination of unbundled network elements, CT&T/Central had also submitted testimony requesting that the Commission not impose inconsistent policy decisions in different parts of the State regarding this issue. Clearly, if the Commission were to adopt MCI's position with respect to the pricing of recombined network elements in this case, which would be a departure from past arbitration proceedings, such action would presumably permit MCI to engage in unrestricted recombinations in areas served by CT&T/Central and avoid paying resale rates, but not in the areas served by BellSouth. Similarly, BellSouth might choose to operate as a competing local provider in areas served by CT&T/Central by recombining unbundled network elements to avoid resale rates, but CT&T/Central would not be allowed to operate in BellSouth's territory on a similar basis. Such a result would create an "unlevel playing field" in the competitive marketplace and would violate the clear nondiscrimination guidelines outlined in TA96. The propriety of the Commission's decision on this issue in the MCI/BellSouth arbitration proceeding is fully explained in the Commission's Recommended Arbitration Order in that docket and need not be repeated here.

CONCLUSIONS

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

<u>ISSUE NO. 2</u>: What is the appropriate price for call transport and termination?

INITIAL COMMISSION DECISION

In its original decision on this issue, the Commission determined that it should adopt interim rates for transport and termination based on consideration of the FCC's proxy rate guidelines, pending resolution of the appeal of the FCC Interconnection Order and pending establishment of final rates by this Commission. The Commission further found that the interim rates should be subject to true-up provisions. The Commission also found that, due to the lack of adequate evidentiary information, it was unable to rule on the issue of the appropriateness of symmetrical or reciprocal rates for transport where MCI does not employ tandem switching.

COMMENTS/OBJECTIONS

MCI's comments, essentially, were limited to its exception to the Commission's not having established reciprocal compensation arrangements for the transport and termination of telecommunications. According to MCI, Section 251(b)(5) of TA96 imposes, on local exchange carriers, the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

MCI, in its comments, again explained that its local network has a substantially different architecture than that of CT&T/Central. According to MCI, CT&T/Central's networks are characterized by a large number of switches within a hierarchical system, with relatively short subscriber loops, whereas MCI's local network employs state-of-the-art technology that does not require the deployment of as many switches.

MCI stated that under the Commission's RAO it will not receive compensation for tandem transport unless MCI mirrors CT&T/Central's network architecture rather than deploying the most efficient architecture available. MCI asserted that such a result was neither reciprocal nor sound policy. In conclusion, MCI restated the position it has taken throughout this proceeding, i.e., that the compensation mechanism for transport and termination of local traffic between MCI and CT&T/Central should use symmetrical rates for transport and termination set in accordance with the Hatfield Model's total element long run incremental cost principles.

DISCUSSION

After having carefully reconsidered the entire evidence of record relating to the matter here at issue as well as after having carefully considered MCI's filing of June 2, 1997, the Commission, due to inadequate evidentiary information, remains unable to rule on the issue of the appropriateness of symmetrical or reciprocal rates for transport where MCI does not employ tandem switching.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 3: What is the appropriate dispute resolution procedure between the parties?

INITIAL COMMISSION DECISION

There has been no initial Commission decision on this issue.

COMMENTS/OBJECTIONS

The parties have not commented or objected on this issue and appear to have agreed to it. Section 23 of the Composite Agreement states that the parties agree that the Commission has continuing jurisdiction "to implement and enforce all terms and conditions of this Agreement." It provides that "any dispute arising out of or relating to this agreement which the parties cannot resolve" may be submitted to the Commission for resolution. The parties desire "expedited resolution" by the Commission no later than sixty days from submission of the dispute.

DISCUSSION

Although the parties have agreed to this provision, the Commission on its own motion wishes to address this issue.

The Commission believes that it is unclear as to the continuing jurisdiction that it should exercise with respect to arbitrated agreements. Section 252(b)(4)(c) states that "[t]he state commission shall resolve each issue. . .by imposing appropriate conditions as required to implement Subsection (c) upon the parties to the agreement. . . ." Section 252(c)(3) states that "a state commission. . . shall provide a schedule for implementation of the terms and conditions by the parties to the agreement." Neither of these provisions states or even necessarily implies a continuing, open-ended supervisory authority over the implementation of the agreement.

In its Order Excluding Intervenors in Docket Nos. P-100, Sub 133, and P-140, Sub 50, issued on August 19, 1996, the Commission noted that "the essence of an arbitration is the resolution of a dispute between the contesting parties." In this context, a dispute between the parties is in essence a commercial dispute.

Fortunately, alternatives do exist that can provide the specialized relief that is needed. GTE and AT&T, for example, have agreed to an extensive alternative dispute resolution procedure in Docket No. P-140, Sub 51, which gives clear priority to the resolution of disputes in forums other than this Commission.

The Commission believes that the parties should be instructed to provide for an alternative dispute resolution process similar or identical to that concluded between GTE and AT&T in Docket No. P-140, Sub 51.

CONCLUSIONS

The Commission concludes that the parties should be instructed to provide for an alternative dispute resolution process substantially similar or identical to that concluded by GTE and AT&T in Docket No. P-140, Sub 51.

IT IS, THEREFORE, ORDERED as follows:

1. That MCI's objections to the RAO shall be, and hereby are, overruled.

2. That the Composite Agreement submitted by MCI and CT&T/Central on June 16, 1997, shall be, and hereby is, approved, subject to the modification(s) required by this Order.

3. That MCI and CT&T/Central shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

4. That the Commission will entertain no further comments or objections with respect to matters previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of July, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-294, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Sprint Communications Company, L.P.,	)	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, January 13, 1997, at 1:00 p.m.

BEFORE: Commissioner Laurence A. Cobb, Presiding; and Commissioners Charles H. Hughes and Jo Anne Sanford

APPEARANCES:

For Sprint Communications Company, L.P.:

Nancy Bentson Essex, Poyner & Spruill, Post Office Box 10096, Raleigh, North Carolina 27605

Benjamin W. Fincher, Sprint Communications Company, 3100 Cumberland Circle, Atlanta, Georgia 30339

For BellSouth Telecommunications, Inc.:

A. S. Povall, Jr., General Counsel, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28230

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 is pending before the North Carolina Utilities Commission (Commission) pursuant to Section 252(b) of the Telecommunications Act of 1996 (TA96 or the Act) and G.S. 62-110(f1). This proceeding was initiated by a petition filed by Sprint Communications Company, L.P. (Sprint), on September 20, 1996, requesting that the Commission arbitrate certain terms and conditions with respect to interconnection between Sprint and BellSouth Telecommunications, Inc. (BellSouth).

By Order entered in Docket No. P-100, Sub 133, on August 19, 1996, the Commission adopted specific procedures governing arbitration proceedings and excluded intervenors other than the Attorney General from participating. By Order dated October 18, 1996, the Commission consolidated this docket with an arbitration between Sprint and GTE South Incorporated (GTE) in Docket No. P-294, Sub 9, and scheduled both proceedings for hearing beginning Monday, January 13, 1997, at 1:00 p.m. in Commission Hearing Room 2115.

By Procedural Order of January 10, 1997, the Commission approved a request of the parties to waive all cross examination in this proceeding. Numerous other motions and pleadings have been filed in these consolidated dockets and various Orders have been issued by the Commission addressing those motions and pleadings. All of the 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 is for the Commission to resolve the issues set forth in the petition and response. 47 U.S.C. 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 of 47 U.S.C. 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. 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 telephone exchange company must sell to 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 cost studies for unbundled elements or wholesale services. The Interconnection Order was temporarily stayed by

Order of the Eighth Federal Circuit Court of Appeals on September 27, 1996, and was permanently stayed by that Court's Order of October 15, 1996, until such time as the Court reaches a decision on a substantive appeal of the Interconnection Order. On November 8, 1996, the United States Supreme Court denied motions to overturn the stay.

At the hearings which began as scheduled on January 13, 1997, Sprint offered the testimony of William E. Cheek, Assistant Vice President of Marketing Management for Sprint/United Management Company, an affiliate of Sprint Communications Company. BellSouth offered the testimony of William Victor Atherton, Jr., Manager - Infrastructure Planning, Gloria Calhoun, Manager - Strategic Management Unit, Robert C. Scheye, Senior Director - Strategic Management, and Alphonso J. Varner, Senior Director - Regulatory Policy and Planning.

Based upon a careful consideration of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1. Sprint and BellSouth should negotiate an agreement concerning access to relevant customer account information in accordance with the conclusions and requirements set forth in the Evidence and Conclusions for Finding of Fact No. 1.

2. BellSouth should develop a process for management of misdirected service calls which can refer and transfer misdirected calls from BellSouth to Sprint. The Commission declines to require BellSouth to forego current N11 dialing arrangements (611, 811, etc.) at this time.

3. The Commission declines to enact a specific number of interconnection points or to require meet-point interconnection.

4. The Commission declines to enact specific terms and conditions for trunking requirements.

5. BellSouth should make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract but Sprint should be required to accept the rate associated with the interconnection, network element, or service in that contract.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Issue: What authorization is required for provision of customer account information to Sprint?

POSITIONS OF PARTIES

SPRINT: Once Sprint has obtained a customer, BellSouth should provide, in pre-ordering and ordering phases of processing the Sprint order, the BellSouth regulated local features, products, services, elements, and combinations that were previously provisioned by BellSouth for all affected Sprint local customers. This applies to all types of local service orders and all elements. Sprint

requires that BellSouth provide any customer status which qualifies the customer for special service (e.g., directory assistance (DA) exempt, Lifeline, etc.)

BELLSOUTH: Electronic access to BellSouth's customer service record database is inappropriate until sufficient safeguards can be developed to protect customer proprietary network information (CPNI). Sprint should have this information only when it has secured the appropriate consent of the customer. BellSouth stated that it has not at this time technically developed a way to provide Sprint on-line electronic access to newly converted Sprint customer service records without also giving Sprint access to all other customer service records in its database. BellSouth and Sprint have already agreed to electronic interfaces for the functions of pre-ordering, ordering, provisioning, maintenance, and billing data.

ATTORNEY GENERAL: The Attorney General recommended that the use of "as is" transfers and blanket Letters of Authorization (LOAs) be authorized which would cover both relevant account information or "as is" transferral of service. Relevant account information would be limited to a list of scheduled services on or about the time of transfer. Competing local providers (CLPs) should be required to obtain and, in the event of a dispute, be prepared to produce the written or third-party verified authorization of the end user in a manner consistent with the FCC anti-slamming rules.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and BellSouth witness Calhoun.

The issues of "as-is" transfers and letters of authorization are interrelated. The CLP argues that it needs access to account information in order to provision service efficiently. The CLP also proposes blanket LOAs to allow it to have service efficiently changed over at the request of the end user.

An "as-is" transfer is, as the name implies, a transfer of the same customer services from one communications carrier to another.

A blanket LOA is essentially an agreement between the CLP and the incumbent local exchange company (ILEC) that the CLP will only seek a service transfer upon the authorization of the end user, but it is not necessary to actually send to the ILEC a written document with the end user's signature requesting such service. A similar process is used with service changes by interexchange carriers (IXCs). The FCC Interconnection Order, Paragraph 421, suggests that entrants are disadvantaged if customer switchovers are not "rapid and transparent."

The ILECs resist the blanket LOA. The ILECs maintain that they should receive authorization from the end user before disclosing account information or transferring service.

The Commission believes that the use of "as-is" transfers and blanket LOAs is reasonable and necessary in order to effectuate the policy enunciated in the FCC Interconnection Order, Paragraph 421, that ILECs are to switch over customers to CLPs for local service in the same interval as LECs currently switch end users between IXCs. The Commission furthermore agrees with the FCC that new entrants will be disadvantaged if customer switch-overs are not "rapid and transparent."

At the same time, the Commission is concerned about the potential for "slamming" and other abuses of the LOA process. Accordingly, the Commission believes that ILECs and CLPs should enter into blanket LOAs authorizing both relevant account information access or transferral of service. "Relevant account information" in this context refers to a customer list of scheduled services on or about the time of transfer. However, the CLP must obtain, and in the event of dispute, must be prepared to produce the written or third-party verified authorization by the end user for such information or transferral. Such authorization or third-party verification should be consistent with the FCC anti-slamming rules set out in 47 CFR Part 64, Subpart K. The Commission believes these requirements will satisfy Section 222 concerns about customer authorization for release of customer proprietary network information (CPNI) as well as reduce the likelihood of CLP "fishing expeditions" to obtain marketing information about customers before rather than after the customers have authorized account access or service transfer. In any event, a carrier receiving CPNI is not to use such information for its own marketing efforts. See Section 222(b) of the Act.

The Commission furthermore concludes that, to the extent that on-line access to relevant customer service records would also give a CLP access to nonrelevant service records, the ILEC should diligently work toward modifying the system so as to restrict such access. For its part, the CLP should be admonished as to its obligation not to seek or misuse such nonrelevant service records. This current technical limitation is insufficient reason to deny CLPs access to a necessary function for their parity with ILECs.

The Commission further notes that Section 258 of the Act prohibits changes to subscriber carrier selections "except in accordance with such verification procedures" as the FCC prescribes. States are not precluded from enforcing verification procedures of their own respective intrastate service. The FCC is undertaking a rulemaking in CC Docket 96-115 to determine appropriate verification procedures. The Commission believes that the state and federal rules on this matter should be consistent. Therefore, to the extent that the FCC may in the future prescribe a different verification process for local service changes, the federal rules should at that time supplant the practices endorsed here, subject to reconsideration of the applicability of such rules in North Carolina by the Commission should they be unsatisfactory.

CONCLUSIONS

The Commission declines to endorse the specific procedure proposed by either party but requires the parties to negotiate an agreement consistent with the discussion above and the paragraphs below:

1. ILECs and CLPs should enter into blanket LOAs authorizing the CLP to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with FCC Rules in 47 CFR Part 64, Subpart K.

2. The above verification procedures should be superseded by such rules as are issued by the FCC pursuant to Section 258 of the Act, subject, after promulgation of such rules, to reconsideration by motion of the Commission or by an interested party.

3. That, to the extent that on-line access to relevant customer records would also give a CLP access to nonrelevant service records, the ILECs should diligently work toward technical means to restrict such access to nonrelevant service records. CLPs shall not seek or use such nonrelevant service records for any purpose.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: How should misdirected calls be handled by BellSouth?

POSITIONS OF PARTIES

SPRINT: BellSouth should work with Sprint to develop a process for management of misdirected service calls to be used to refer and transfer calls from customers to Sprint. In the interim, BellSouth should volunteer the identity and contact number of any CLP where the CLP's customer has reached BellSouth in error. N11 dialing to BellSouth repair centers should be discontinued, or N11 call routing to the appropriate carrier should be available.

BELLSOUTH: BellSouth's service representatives will attempt to determine the local service provider and give the customer the correct dialing instructions.

ATTORNEY GENERAL: The Attorney General recommended that the Commission find it appropriate for BellSouth to develop a process for management of misdirected service calls which will be used to refer and transfer misdirected calls from BellSouth to Sprint. While that process is being developed, BellSouth is required to tell a misdirected caller the identity and contact number of their competing local carrier.

DISCUSSION

Testimony regarding this issue was presented by BellSouth witness Scheye and Sprint witness Cheek. BellSouth also referenced a transcript of a proceeding before the Louisiana Commission.

This is basically two separate but related issues having to do with a situation where an end user has chosen a CLP for provision of his local service but mistakenly accesses the incumbent telephone company by dialing one of the established N11 codes such as 611 (repair) or 811 (business office.). The first issue is how the incumbent LEC should handle the misdirected calls resulting from the CLP's customer reaching the ILEC instead of the CLP. The second issue is whether the incumbent LEC should be allowed to "keep" the N11 numbers for its customers if the CLP cannot have the same N11 numbers for its customers to access the CLP.

BellSouth stated that it has agreed to handle misdirected calls by having its service representative attempt to determine the local service provider and give the customer the correct dialing instructions. BellSouth will provide Sprint with a copy of the script that the BellSouth service representatives will use, therefore, any concerns Sprint may have about improper marketing activities can be alleviated. BellSouth stated that it has no intention of using these opportunities to "win-back" Sprint customers.

BellSouth expressed concerns that Sprint's solution, which calls for BellSouth to discontinue N11 dialing for access to its repair centers or to give Sprint's customers the same N11 dialing access for Sprint's repair centers, does not address the problems and may actually worsen the situation. BellSouth contended that it would appear to be simpler or less confusing if the reseller had a unique number, even if it is seven digits. Modifying the means by which a BellSouth customer reaches repair (by dialing 611) would appear to be a change without a purpose. BellSouth stated that it is currently investigating the possibility of migrating to some type of automated arrangement for handling such calls. If it is determined through an appropriate trial that an automated arrangement is viable, then BellSouth will implement such an arrangement provided that all CLPs, including Sprint, share in the cost of providing such an arrangement.

Sprint states that there will be instances where a Sprint customer, by mistake, will call BellSouth for various service-related inquiries. According to Sprint, it is only by avoiding customer contact with BellSouth that Sprint can guard against any competitive bias that would inevitably find its way into the customer contact. Sprint believes that an automated process should be developed so that BellSouth can transfer misdirected calls to Sprint. Sprint believes that if BellSouth's proposal to attempt to determine the customer's local service provider and give proper dialing instruction is adopted, BellSouth should volunteer Sprint's contact number to the customer. In addition, Sprint is concerned with the possibility of BellSouth engaging in marketing practices when handling any misdirected calls by Sprint customers. Sprint also believes that an automated arrangement for handling misdirected calls should be developed. In the absence of an automated system, Sprint stated that BellSouth should refer any misdirected Sprint customer calls to Sprint and offer the customer the appropriate Sprint contact number.

CONCLUSIONS

Misdirected calls: The Commission concludes that BellSouth should develop a process for management of misdirected service calls which can refer and transfer misdirected calls from BellSouth to Sprint. While that process is being developed, BellSouth should be required, if the information is available to them, to tell a misdirected caller the identity and contact number of the competing local provider. The Commission further directs BellSouth not take advantage of any misdirected calls of Sprint customers by engaging in BellSouth marketing practices.

N11 dialing: The Commission declines to require BellSouth to forego current N11 dialing arrangements (611, 811, etc.) at this time. The Commission encourages the parties to work to develop a long-term, industry-wide solution for provision of selective routing.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: How many points of interconnection are appropriate and where should they be located?

POSITIONS OF PARTIES

SPRINT: Sprint may designate at least one point of interconnection (POI) on BellSouth's network within a calling area for the purpose of routing local traffic. Sprint's POI may be at any technically feasible point within BellSouth's network, including, but not limited to, tandem switches, end office switches, or other wire centers. Collocation is not a requirement for establishing a POI. POIs can

be established via meet-point, collocation, or other mutually agreed to methods, subject only to the limitation of technical feasibility.

BELLSOUTH: If there are multiple tandems in a local calling area, CLPs must establish POIs at each tandem to obtain complete coverage of the calling area. This is identical to the configuration used by IXCs, many of whom will also need local interconnection. BellSouth will not utilize mid-span or mid-air meets as POIs. POIs must comport with minimum standards of network reliability and security.

ATTORNEY GENERAL: The Attorney General believes that Sprint should be able to interconnect with BellSouth at a single point within each calling area in the most efficient way it can, that is, without compulsory trunking. However, the Attorney General submits that the Commission give BellSouth thirty days from the date of this Order to produce proof that, in fact, problems will occur if Sprint is not compelled to place traffic for separate tandems on different trunks. With regard to the location of POIs, the Attorney General states that the heart of this dispute is about who will pay to accommodate mid-span or mid-air interconnection. While TA96 compels interconnection at technically feasible positions, the Attorney General believes that paying the cost of that interconnection falls on the new entrant. Therefore, mid-air or mid-span interconnection should be allowed if Sprint pays the cost of that connection.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and BellSouth witness Atherton. BellSouth also referenced a transcript of a proceeding before the Louisiana Commission.

Sprint believes that it should be allowed to designate at least one POI in each LATA of BellSouth's calling area at any technically feasible point and that it need not interconnect at each tandem or end office to terminate calls to the entire local calling or toll calling area of BellSouth. Sprint contends that it desires the most efficient network possible and if more than one POI is required, then BellSouth can create a barrier to entry by requiring multiple, unnecessary POIs. BellSouth agrees that POIs can be established at any point technically feasible but maintains that certain critical restrictions must apply. BellSouth requires CLPs to interconnect at each tandem within the local calling area stating that each of the access tandems has a finite set of end offices that home on that tandem per the Local Exchange Routing Guide (LERG); therefore, in order for an interconnector to terminate traffic to one of those end offices, the traffic must be delivered to that access tandem.

In addition, Sprint believes that collocation is not a requirement and that POIs can also be established at a meet-point or other mutually agreeable method, as long as it is technically feasible as provided for by FCC Rule 51.321. Sprint proposes that BellSouth be responsible for up to 50% of the construction of meet-point facilities up to its Company's boundary. However, BellSouth maintains that mid-air or mid-span meets compromise the ability to retain control of the Company's network by requiring BellSouth to implement and maintain a vast array of equipment types and configurations in order to interconnect with all new entrants resulting in increased cost and decreased network efficiencies.

CONCLUSIONS

The Commission declines to enact a specific number of interconnection points or to require meet-point interconnection. Instead, the Commission encourages the parties to negotiate mutually agreeable terms and conditions with respect to network interconnection.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Should jurisdictionally mixed traffic be allowed on each trunk or trunk groups? If so, what should be the terms and conditions?

POSITIONS OF PARTIES

SPRINT: Trunking should be available to any switching center designated by either carrier. Traffic should not be required to be separated across trunk groups without good technical reason. Both parties should accept percentage-of-use factors and be granted reasonable audit rights.

BELLSOUTH: BellSouth does not agree to combine local, intraLATA toll, interLATA access, wireless, and other traffic on the same trunk group. Due to the differing requirements for recording and usage data for the many different traffic types, it is essential that there be some level of disaggregation of traffic types allowed to be commingled on a single trunk group.

ATTORNEY GENERAL: 47 C.F.R. Rule 51.305(f) requires that two-way trunking be provided upon request if technically feasible. The Attorney General believes that two-way trunking should be part of any efficient interconnection agreement and welcomes any movement toward cooperation between the arbitrating parties to that end. Therefore, the Attorney General requests the parties to work toward mutually agreeable one- and two-way trunking arrangements and report to the Commission by July 1, 1997, about the progress of that work.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and BellSouth witness Scheye. BellSouth also referenced a transcript of a proceeding before the Louisiana Commission.

Sprint believes it should not be required to separate local, intraLATA toll, interLATA access, and other traffic across trunk groups. Sprint argues that the ability to mix different types of traffic will enable Sprint to install a more efficient and less costly network and that BellSouth desires to raise Sprint's costs by imposing multiple, less efficient trunk groups. BellSouth feels it is inappropriate to commingle traffic that is priced differently and cannot be adequately differentiated stating that the issue involves the ability to measure and bill correctly and the technical configuration beyond that trunking. Additionally, BellSouth points out that two separate reciprocal trunk groups should be established to carry local and intraLATA calls while separate two-way trunk groups will carry the interLATA and other access type calls. The Attorney General cites Rule 51.305(f) as requiring an ILEC, if technically feasible, to provide two-way trunking upon request; however, BellSouth states its concern with Rule 51.305(f) relates to billing. BellSouth maintains that it is not feasible or practical to account for traffic terminating on BellSouth's network. Sprint notes that while BellSouth may lack the ability to measure the jurisdiction of all terminating traffic over a combined service trunk

group, it has been common practice for neighboring ILECs to bill based on measurements from the sending Company using either percent, usage-factor billing or sending-company measurement. Sprint contends that both parties should accept percentage of use factors or Sprint's measurement of traffic delivered to the ILEC and the ILEC's measurement of traffic delivered to Sprint.

Additionally, BellSouth discussed its concern pertaining to the CLP's level of experience to properly size the number of trunks needed to prevent network blockage. Sprint's solution is that the CLP should have the option of putting one-way traffic over two-way trunks until a level of experience is reached with traffic volume, then the CLP could convert to two-way traffic.

CONCLUSIONS

Based on the record, it appears that if the parties continue to negotiate this issue the matter can be resolved without the Commission having to enact specific trunking requirements. The Commission believes this issue would best be resolved in this manner. Therefore, the Commission declines to enact specific trunking requirements and encourages the parties to work towards mutual agreement for the most efficient trunking arrangements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Should BellSouth make available to Sprint any price, term, and/or condition offered by BellSouth to any other carrier on a most favored nations ("MFN") basis?

POSITIONS OF PARTIES

SPRINT: BellSouth is required to make available to Sprint, without unreasonable delay, any more favorable terms for individual services, network elements, and interconnection which BellSouth offers to others. BellSouth is required to immediately notify Sprint of the existence of such better prices and/or terms and make the same available to Sprint effective on the date the better price and/or term became available to the other carrier.

BELLSOUTH: Sprint has the option of adopting the entire rates, terms, and conditions of another agreement or Sprint can adopt the rates, terms, and conditions associated with an entire category of service. BellSouth does not agree with severing the relationship between individual rates, terms, and conditions for a given service or arrangement.

ATTORNEY GENERAL: Both sides appear to ignore the plain wording of the statute, which clearly contemplates that individual and discrete parts of a contract involving interconnection, service, or network elements are accessible to the most favored nations clause. Sprint should receive most favored nation status for any single interconnection, network element, or service in a contract, but it must accept the rate associated with the element in the contract it seeks to adopt.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and BellSouth witness Varner.

Sprint contends that nondiscriminatory treatment in the MFN context is essential to the creation of a truly competitive market for local telephone service and that the MFN right applies to all unbundled elements, resold services, rates, and conditions. Sprint acknowledges five reasonable restrictions (bundling of rates and conditions) in the MFN context related to volume discounts, term discounts, significant differences in operational support interfaces, technical sequential feasibility, and geographic deaveraging. Beyond these exceptions, however, Sprint maintains that Section 252(i) permits it to pick and choose rates, terms, and conditions which are more favorable to its competitors. Section 252(i) of TA96 provides that:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

BellSouth argues that this language does not allow a requesting carrier to pick and choose individual rates, terms, and conditions for a given service or from a given agreement. According to BellSouth, Sprint should be allowed only to select all of the provisions of an entire category of an agreement, e.g., the entire resale portion.

The Commission agrees with the Attorney General that both parties have distorted the plain meaning of Section 252(i) of the statute. The FCC concluded in its Interconnection Order that this provision "supports requesting carriers' ability to choose among individual provisions contained in publicly filed interconnection agreements." Paragraph 1310. The FCC further concluded that ILECs "must permit third parties to obtain access under section 252(i) to any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252(i)." Paragraph 1314. The FCC's Rule 51.809, known as the "pick and choose" rule, requires ILECs to make available "any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act upon the same *rates*, terms, and conditions as those provided in the agreement." (Emphasis added.) By adding "rates" to terms and conditions, this rule arguably goes beyond the requirements of TA96 and has been stayed by the Eighth Federal Circuit Court of Appeals. BellSouth's position, however, goes beyond the plain language of the statute in the other direction. Furthermore, the Commission notes that the recently filed Composite Agreement between BellSouth and AT&T does not require AT&T to elect an entire agreement or even an entire category of service.

Whether "terms and conditions" includes "rates" will ultimately be determined by the pending appeal. In the meantime, the Commission believes the Attorney General has offered a reasonable resolution of the issue.

CONCLUSIONS

The Commission concludes that BellSouth should be required to make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract, but that Sprint should be required to accept the rate associated with the interconnection, network element, or service in that contract.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth and Sprint 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 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 and saved in WordPerfect format.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-294, SUB 8

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Sprint Communications Company, L.P., For Arbitration of Interconnection with BellSouth Telecommunications, Inc.	)))))	ORDER RULING ON OBJECTIONS, COMMENTS, UNRESOLVED ISSUES, AND COMPOSITE AGREEMENT

BY THE COMMISSION: On April 7, 1997, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by Sprint Communications Company, L.P. (Sprint) against BellSouth Telecommunications, Inc. (BellSouth). The RAO required Sprint and BellSouth to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On May 7, 1997, BellSouth filed objections to the RAO. On May 19, 1997, BellSouth filed a motion for clarification. On May 21, 1997, Sprint filed objections to the RAO. On May 22, 1997, BellSouth and Sprint filed their Composite Agreement. On that same date, BellSouth filed a status report regarding post-RAO negotiations and Sprint filed a statement of position and comments regarding the Composite Agreement. On June 9, 1997, Sprint filed a response to BellSouth's motion for clarification.

WHEREUPON, after careful consideration of the objections, comments, and unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended as set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

ISSUES RELATED TO COMMENTS/OBJECTIONS

ISSUE NO. 1: What authorization is required for provision of customer account information to Sprint?

INITIAL COMMISSION DECISION

The Commission declined to endorse the specific procedure proposed by either party but required the parties to negotiate an agreement consistent with the previous discussion and listed in the following paragraphs:

1. Incumbent local exchange companies (incumbent LECs or ILECs) and competing local providers (CLPs) should enter into blanket letters of authorization (LOAs) authorizing the CLP to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written

or third-party verified authorization from the customer in a manner consistent with Federal Communications Commission (FCC) Rules in 47 CFR Part 64, Subpart K.

2. The above verification procedures should be superseded by such rules as are issued by the FCC pursuant to Section 258 of the Telecommunications Act of 1996 (TA96 or the Act), subject, after promulgation of such rules, to reconsideration by motion of the Commission or by an interested party.

3. That, to the extent that on-line access to relevant customer records would also give a CLP access to nonrelevant service records, the ILECs should diligently work toward technical means to restrict such access to nonrelevant service records. CLPs shall not seek or use such nonrelevant service records for any purpose.

COMMENTS/OBJECTIONS

SPRINT: Sprint objected to the requirement of a signed customer LOA or FCC-approved verification to view account information as a hindrance to competition.

DISCUSSION

The Commission's original decision on this issue recognized the need for such mechanisms as "as-is" transfers and blanket LOAs to effectuate meaningful competition, while at the same time recognizing the need to mitigate potential problems.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 2: Should BellSouth make available to Sprint any price, term, and/or condition offered by BellSouth to any other carrier on a most favored nation ("MFN") basis?

INITIAL COMMISSION DECISION

The Commission decided that BellSouth should be required to make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract, but Sprint should be required to accept the rate associated with the interconnection, network element, or service in that contract.

COMMENTS/OBJECTIONS

BELLSOUTH: BellSouth objected to the Commission's decision on this issue. According to BellSouth, the Commission adopted Sprint's "pick and choose" interpretation of Section 252(i) of the Act instead of striking a balance between the positions of the parties on this issue. This interpretation, BellSouth contended, is contrary to the stay issued by the Eighth Federal Circuit Court of Appeals and, if not modified, will seriously threaten the stability of future interconnection agreements between BellSouth and CLPs in North Carolina.

BellSouth urged the Commission to require Sprint to adopt either entire agreements that BellSouth has executed with other CLPs or entire categories of those agreements, i.e., interconnection, purchase of unbundled elements, or resale. In support of its position, BellSouth cited a January 15, 1997, decision by the Louisiana Public Service Commission rejecting Sprint's interpretation until a final judgment is entered reversing the stay and affirming the FCC's "pick and choose" rule, as well as a January 7, 1997, decision by the Georgia Public Service Commission reaching the same conclusion.

BellSouth noted that, in its Composite Agreement with AT&T Communications of the Southern States, Inc. (AT&T), BellSouth allowed AT&T the option of obtaining "Services and Elements" offered to other CLPs and substituting "such more favorable rates, terms, and conditions for the relevant provisions of the Agreement." The term "Services and Elements," BellSouth explained, is defined in Attachment 11 to the Agreement as "collectively Local Services, Network Elements, Combinations, Ancillary Functions, and Additional Features." Thus, according to BellSouth, AT&T is not allowed to select an individual Local Service offering at one rate from one agreement and another offering at another rate from another agreement and have these offerings provided under terms and conditions from a third agreement. BellSouth stated that it would not object to a Commission Order directing the parties to incorporate in their composite agreement the language in the BellSouth/AT&T Composite Agreement.

DISCUSSION

The Commission agrees with BellSouth that its decision is closer to Sprint's position than it is to BellSouth's. Contrary to BellSouth's suggestion, however, it is not the Commission's intent to allow Sprint to sever the rate from the terms and conditions of an interconnection, service, or element.

The Commission is aware that the MFN provision of the Act, Section 252(i), speaks only of "terms and conditions" and not "rates," while what the Eighth Circuit called the "pick and choose" rule states in pertinent part:

> "(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same *rates*, terms, and conditions as those approved in the agreement." Section 51.809 (emphasis added).

Nevertheless, the Commission does not believe that the Act supports the position that agreements should not be unbundled beyond the level of categories as defined by BellSouth. The Commission agrees with the FCC's conclusion that in Section 252(i) Congress drew a distinction between "any interconnection, service, or network element[s] provided under an agreement" and agreements as a whole, and with the FCC's further finding that unbundled availability of individual interconnection, service, or network element arrangements is mandated by Sections 252(a)(1) and 251(c)(3). FCC's First Report and Order in CC Docket No. 96-98 and 95-185 issued on August 8, 1996 (the Interconnection Order), Paragraphs 1310 and 1314.

Furthermore, the Commission is not persuaded that its interpretation will undermine the negotiating process and destabilize this Agreement. The rates to be charged under the Agreement are being set by arbitration rather than negotiation, and no more attractive rates are likely to appear in other agreements to which BellSouth is a party.

Finally, the Commission notes that there are instances, acknowledged by Sprint, where BellSouth will not be required to extend MFN treatment. These relate to volume discounts, term discounts, significant differences in operational support interfaces, technical sequential feasibility, and geographic deaveraging.

CONCLUSIONS

The Commission concludes that its original decision on this issue should be affirmed.

UNRESOLVED ISSUES

ISSUE NO. 1: MOST FAVORED NATION PROVISION
Contract Location: General Terms and Conditions, Section 5
Sprint's Statement Of Position And Comments, Pages 2 and 3
BellSouth's Post-RAO Negotiations Report, Page 3

DISCUSSION

Sprint proposes that the following language be included in the Agreement:

> If as a result of any proceeding or filing before any Court, State Commission, or the Federal Communications Commission, voluntary agreement or arbitration proceeding pursuant to the Act or pursuant to any applicable state law, BellSouth becomes obligated to provide *any individual Service(s) and/or Element(s),* whether or not presently covered by this Agreement, to a third party at rates or on terms and conditions more favorable to such third party than the applicable provisions of this Agreement, Sprint shall have the option to substitute such more favorable rates, terms, and conditions for the relevant provisions of this Agreement which shall apply to the same States as such other party, and such substituted rates, terms or conditions shall be deemed to have been effective under this Agreement as of the effective date thereof. BellSouth shall provide to Sprint any BellSouth agreement between BellSouth and any third party within fifteen (15) days of the filing of such agreement with any State Commission. (Italics added.)

According to Sprint, the proposed language accurately reflects the Commission's interpretation of Section 252(i) of the Act in the RAO. According to BellSouth, who objected to the decision on this issue in the RAO, it reflects the FCC's "pick and choose" rule stayed by the Eighth Federal Circuit Court of Appeals and, if not modified, will threaten the stability of future negotiations between BellSouth and other CLPs. BellSouth asserts that the italicized language should be *Services and Elements*, which is defined in Attachment 11 as "collectively Local Service, Network Elements, Combinations, Ancillary Functions, and Additional Features" and which means categories rather than individual services and elements.

The MFN provision was previously discussed under Issue No. 2 concerning comments and objections relating to the RAO, where the Commission concluded that its original decision should be affirmed. Sprint's proposed language reflects this decision.

CONCLUSIONS

The Commission concludes that Sprint's proposed language should be approved.

ISSUE NO. 2: DISPUTE RESOLUTION
Contract Location: General Terms and Conditions, Section 15 and Attachment 1
Sprint's Statement Of Position And Comments, Pages 3-5
BellSouth's Post-RAO Negotiations Report, Pages 4 and 5

DISCUSSION

Sprint proposes that disputes under the agreement are to be resolved in accordance with the procedures set forth in Attachment 1 (Alternative Dispute Resolution) except as to (1) disputes arising pursuant to Attachment 6 (Connectivity Billing), (See Attachment 1, Section 2.1); (2) disputes or matters for which TA96 specifies a particular remedy or procedure, (See Attachment 1, Section 2.1); or (3) disputes concerning matters subject to state or federal commission jurisdiction, (See Attachment 1, Sections 2.1.2, - .1, and - .2). Billing provisions contained in Attachment 6 are to be resolved in accordance with the Billing Disputes Section of Attachment 6. Either party, however, may seek and obtain equitable remedies. A request by a party to a court or a regulatory authority for interim measures or equitable relief is in lieu of the obligation to comply with Attachment 1.

Sprint argued that it is appropriate to preserve two forms of dispute resolution: traditional commission and court remedies and alternate dispute resolution. In particular, disputes affecting service to customers should be brought before the Commission. Contractual matters, on the other hand, would fall under the alternate dispute resolution mechanism. Sprint does not seek to present a particular dispute in both forums.

BellSouth pointed out that the issue had not been submitted for arbitration and there is no supporting testimony for this issue, and it is beyond the scope of the proceeding. BellSouth's substantive position is that Sprint should simply agree to a single dispute resolution process--either through the Commission or alternative dispute resolution. BellSouth is prepared to agree with the alternative dispute resolution process found in Section 15 of the General Terms and Conditions of the AT&T/BellSouth Interconnection Agreement. Indeed, Sprint seemed at first amenable to this but later changed its position. BellSouth's proposed language states that disputes would initially be referred to a director level representative. If not resolved within 30 days, either party could petition the Commission for resolution.

The Commission believes that Sprint has moved in the right direction by providing for an alternative dispute resolution process and that this is much preferable to a procedure where all disputes may end up with the Commission. The Commission also believes that BellSouth is correct that allowing parties multiple options "is tantamount to no dispute resolution provision at all." The Commission believes that the language proposed by either Sprint or BellSouth should not be adopted but that, instead, the parties should be instructed to include an alternative dispute resolution process

substantially similar to or identical with that adopted by BellSouth and AT&T in the Interconnection Agreement adopted in Docket No. P-140, Sub 50.

CONCLUSIONS

The Commission concludes that the parties should be instructed to include in their interconnection agreement an alternative dispute resolution process substantially similar or identical to that adopted by BellSouth and AT&T in the Interconnection Agreement adopted in Docket No. P-140, Sub 50.

ISSUE NO. 3: FIRM ORDER CONFIRMATION
Contract Location: General Terms and Conditions, Part 1, Section 28.6.3
Sprint's Statement Of Position And Comments, Pages 5 and 6
BellSouth's Post-RAO Negotiations Report, Page 6

DISCUSSION

The Companies are in agreement as to the establishment of the Local Carrier Service Center (LCSC) via an Electronic Data Interchange (EDI) interface as the single point of contact for order entry until such time as interactive direct order entry is available. (The agreement calls for this interactive direct order entry no later than March 31, 1997.) However, Sprint would like for BellSouth to enter the Service Order promptly on receipt and provide Firm Order Confirmation (FOC) within **four (4) hours** of receipt of a correct Local Service Request (LSR). Furthermore, Sprint requests that for services requiring a manual FOC, BellSouth will provide the FOC within **24 hours** of receipt of the LSR. BellSouth, on the other hand, agrees to provide FOC within **24 hours** of receipt of a correct LSR with no distinction between receiving an electronic versus a manual FOC. In addition, BellSouth agrees to make its best effort to reduce the FOC time interval during the term of this agreement.

Sprint believes that, in an electronic environment, that 24 hours for completion of FOCs is excessive and that this will not allow Sprint to provide its end users with the same experience that BellSouth provides it own customers. Sprint adds that it believes that BellSouth is establishing this excessive time limit so that it will not receive complaints for lack of timely processing of FOCs.

BellSouth states that this issue was not submitted by Sprint for arbitration and that it is in the process of deploying the newly developed ordering interfaces now for new entrants. However, it maintains that it cannot presently commit to a four (4) hour FOC.

This issue involves matters which are closely related to performance standards. The Commission has declined to enact specific performance standards in arbitration proceedings previously before the Commission and, instead, instructed the parties to negotiate mutually-agreeable terms. The Commission view was that it was neither appropriate nor practical for it to enact specific performance standards since the parties were viewed as possessing superior expertise in that area.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters which are best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 4: CUSTOMER DATA RECORDS
Contract Location: Attachment 7, Section 2.4
Sprint's Statement Of Position And Comments, Page 6
BellSouth's Post-RAO Negotiations Report, Page 7

DISCUSSION

Sprint is proposing to include language which states that BellSouth shall transmit Customer Data Records (CDRs) to Sprint within forty-eight (48) hours of recording. CDRs are those recordings that occur at the end office switch for all of the customers served by that switch. In addition, Sprint's proposed language states that if more than .01% of the calls are more than two days old, BellSouth shall pay to Sprint an amount equivalent to the interest on the value of the calls greater than two days old. Sprint asserts that there is an understanding in the telecommunications industry that the older the message being billed, the greater the likelihood for consumer dissatisfaction and increased uncollectibles. Sprint also believes that BellSouth's proposed five-day interval is excessive and, in all likelihood, not at parity with the internal processes BellSouth currently utilizes.

BellSouth proposes to delete this section from the Composite Agreement. BellSouth asserts that this is not an issue that was submitted by Sprint for arbitration, therefore, the issue is not supported by testimony in the record. However, in reply to Sprint's assertions, BellSouth states that it has to collect all of the CDRs, sort the CDRs, process the CDRs, and send these CDRs to the appropriate local exchange company for billing. BellSouth claims that this process is similar to the Centralized Message Distribution System (CMDS) used by local exchange companies to exchange alternatively billed messages. The nationwide industry standard for the exchange of CMDS-type records is 95% of usage delivered within six days, according to BellSouth. Therefore, BellSouth believes that the 48-hour time period proposed by Sprint is not reasonable. Finally, BellSouth states that its agreements with AT&T and MCI Telecommunications Corporation (MCI) do not contain any similar provision.

This issue involves matters which are closely related to performance standards. The Commission has declined to enact specific performance standards in arbitration proceedings previously before the Commission and, instead, instructed the parties to negotiate mutually-agreeable terms. The Commission view was that it was neither appropriate nor practical for it to enact specific performance standards, since the parties were viewed as possessing superior expertise in that area.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters which are best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 5: USAGE DATA
Contract Location: Attachment 7, Section 3.1
Sprint's Statement Of Position And Comments, Pages 7 and 8
BellSouth's Post-RAO Negotiations Report, Pages 8 and 9

DISCUSSION

Sprint's proposed language states that BellSouth will record all billable usage for Sprint end users using BellSouth-provided Elements or Local Services. Recorded Usage Data includes, but is not limited to, the following categories of information. Sprint's proposed language is as follows:

- •Use of Feature Activations for Call Return, Repeat Dialing, and Usage Sensitive Three Way Calling
- •Rated Calls (i.e. MTS portion of intraLATA calls) to Information Providers Reached Via BellSouth Facilities
- •Calls to Directory Assistance Where BellSouth Provides Such Service to a Sprint Customer
- •Calls Completed Via BellSouth-Provided Operator Services Originating from a Sprint Customer or Billed to Sprint, Where BellSouth Provides Such Service to Sprint's Local Service Customer
- •For BellSouth-Provided Centrex Service, Station Level Detail
- •Records Shall include Complete Call Detail and Complete Timing Information for the type of service involved
- •Pay per use features When Sprint purchases from BellSouth the switching Unbundled Network Elements, BellSouth shall provide to Sprint all available jurisdictional recorded usage data relating to calls originated by or terminated to Sprint customers, including but not limited to, the information listed below:
    - a. All available Call Attempts data
    - b. Completed Calls
    - c. Minutes, seconds and tenths of seconds
    - d. Jurisdiction

Sprint's rationale for this language is that it believes that as the purchaser of the unbundled switching network element, Sprint is entitled to all features, functions, and capabilities of the switching element which includes but is not limited to the records associated with call attempts and completed calls. This is consistent with Section 7.1.1 in Attachment 1 of the BellSouth/Sprint Agreement, as well as Paragraph 412 of the FCC's Interconnection Order.

BellSouth's proposed language states that BellSouth will record usage for Sprint customers in the same manner that it uses to record usage for BellSouth's end users, based on the particular class of service and the type of exchange line service involved. Recorded usage data includes, but is not limited to the following categories of information.
BellSouth's proposed language is as follows:

- •Completed Calls (billable local and intraLATA toll carried by BellSouth)
- •Use of feature activations for Call Return, Repeat Dialing, and Usage Sensitive Three Way Calling

•Rated Calls to Information Service Providers reached via BellSouth Facilities
•Calls completed via BellSouth provided Operator Services where BellSouth provides such service to Sprint's local service customer
•For BellSouth provided Centrex Service, Station Level Detail
•Records shall include complete call detail and complete timing information for the type of service involved
•Pay Per Use features
•For flat rate local exchange lines, BellSouth will deliver billable extended area local call details.
•For measured or message exchange line service, BellSouth will deliver all billable local call details.

BellSouth's rationale and substantive position is that this issue was not submitted by Sprint for arbitration. There is no supporting testimony for the issue, and, therefore, the issue is beyond the scope of this proceeding. At this time in the proceeding, Sprint should not be allowed to bring new issues before the Commission for its consideration.

BellSouth stated that BellSouth's and Sprint's language for Section 3.1 of Attachment 7 differs only with respect to the provision of usage data to Sprint when Sprint purchases unbundled switching from BellSouth. Sprint claims that such data is necessary for Sprint to bill switched access services to interexchange carriers. The issue of which company is entitled to switched access in this situation was not submitted by Sprint for arbitration.

CONCLUSIONS

The Commission concludes that this issue does not represent an issue subject to arbitration.

ISSUE NO. 6: DEFINITION OF "UNBILLABLE MESSAGES"
Contract Location: Attachment 7, Section 6.4.2
Sprint's Statement Of Position And Comments, Page 8
BellSouth's Post-RAO Negotiations Report, Page 10

DISCUSSION

BellSouth's proposed language is as follows: "The term 'unbillable' refers to a message or service that cannot be billed to the correct Sprint customer." Sprint's proposed language is as follows: "The term 'unbillable' refers to a message or service that cannot be billed to the correct Sprint customer **or to messages or service to which the call date subtracted from the customer's next bill date is greater than 90 days.**" The bolded language is in addition to the proposed BellSouth language.

In its comments, BellSouth argues that this issue was not submitted by Sprint for arbitration, that there is no supporting testimony for this issue, and that this issue is beyond the scope of this proceeding. Nevertheless, BellSouth's position is that the transmittal of the daily usage data to Sprint is a new process developed by BellSouth for the new local exchange market. BellSouth cannot know at present if all situations with respect to the receipt of transmittal of messages have been anticipated. Such performance standards should be negotiated between the parties in the context of Section 12

of the Interconnection Agreement. This section of the contract simply defines what BellSouth deems to be an unbillable message and is not intended to set forth penalties for any type of messages sent to Sprint past a certain period.

Sprint states that BellSouth is in control of sending the messages. If BellSouth causes a delay in sending messages to Sprint, and this problem results in bills that cannot be collected due to the age of the messages, the messages should be deemed "unbillable". Messages billed to end users that are greater than 90 days old result in consumer dissatisfaction and will likely end up as uncollectible. The 90-day period stretches the limits of what a typical consumer is willing to tolerate.

This issue involves matters which are closely related to performance standards. The Commission has declined to enact specific performance standards in arbitration proceedings previously before the Commission and instead instructed the parties to negotiate mutually-agreeable terms. The Commission's view was that it was neither appropriate nor practical for it to enact specific performance standards since the parties were viewed as possessing superior expertise in that area.

CONCLUSIONS

The Commission declines to decide this issue since it involves matters which are best resolved through arms-length negotiations by the affected parties.

ISSUE NO. 7: INTERIM PRICING
Contract Location: Part IV, Section 42, Page 59

DISCUSSION

Section 42 regarding interim pricing refers to the "interim prices for resold Local Services."

CONCLUSIONS

The Commission has specifically held in the AT&T/BellSouth and MCI Telecommunications Corporation (MCI)/BellSouth arbitration proceedings in Docket Nos. P-140, Sub 50, and P-141, Sub 29, respectively, that the wholesale discount rates approved in those proceedings for resold local services are **not interim** rates. To the contrary, the Commission stated that it prepared its own avoided cost analyses and established **permanent** wholesale discount rates which meet the requirements of the Act. That being the case, the Commission required the parties to remove the term "interim" from their final Agreements with reference to prices for resold local services. Therefore, the Commission, on its own motion, finds good cause to require Sprint and BellSouth to delete the phrase "Except for the interim prices for resold Local Services," from Section 42 entitled "Interim Pricing."

ISSUE NO. 8: RESALE OF SEMI-PUBLIC COIN SERVICE
Contract Location: Part I, Sections 25.12.5 and 25.12.6, Pages 36 and 37

DISCUSSION

Sections 25.12.5 and 25.12.6 of the proposed agreement provide that BellSouth shall offer for resale certain specified features with its semi-public coin telephone service.

CONCLUSIONS

With respect to the resale of semi-public payphone service as provided for in Part 1, Sections 25.12.5 and 25.12.6 of the proposed agreement, the Commission notes that, pursuant to the FCC's Payphone Order, semi-public payphones are no longer offered to subscribers under tariff and thus should not be required to be offered for resale. BellSouth may, however, offer such semi-public payphone services for resale if it chooses to do so.

IT IS, THEREFORE, ORDERED as follows:

1. That the Composite Agreement submitted by BellSouth and Sprint is hereby approved, subject to the modifications required by this Order.

2. That BellSouth and Sprint shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

3. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-294, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition of Sprint Communications Company, L.P.,) RECOMMENDED
for Arbitration of Interconnection with GTE South) ARBITRATION ORDER
Incorporated)

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, January 13, 1997, at 1:00 p.m.

BEFORE: Commissioner Laurence A. Cobb, Presiding; Commissioners Charles H. Hughes and Jo Anne Sanford

APPEARANCES:

For Sprint Communications Company, L. P.:

Nancy Bentson Essex, Poyner & Spruill, Post Office Box 10096, Raleigh, North Carolina 27605

Benjamin W. Fincher, Sprint Communications Company, 3100 Cumberland Circle, Atlanta, Georgia 30339

For GTE South Incorporated:

Robert W. Kaylor, Attorney at Law, 225 Hillsborough Street, Suite 480, Raleigh, North Carolina 27609

Morris L. Sinor, Associate General Counsel, GTE South Incorporated, 4100 North Roxboro Street, Durham, North Carolina 27702

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 comes before the North Carolina Utilities Commission (Commission) pursuant to Section 252(b) of the Telecommunications Act of 1996 (TA96 or the Act) and G.S. 62-110(f1). The proceeding was initiated by petition filed by Sprint Communications Company, L.P. (Sprint), on September 26, 1996, requesting that the Commission arbitrate certain terms and conditions with respect to interconnection between Sprint and GTE South Incorporated (GTE).

By Order entered in Docket No. P-100, Sub 133, on August 19, 1996, the Commission adopted specific procedures governing arbitration proceedings and excluded intervenors other than the Attorney General from participating in the hearing. By Order of October 18, 1996, the Commission consolidated this case with Sprint's petition for arbitration with BellSouth Telecommunications, Inc. (BellSouth), in Docket No. P-294, Sub-8, and set the matter for hearing on January 13, 1997. By Procedural Order of January 10, 1997, the Commission approved an agreement of the parties to this docket to waive cross examination of witnesses at the hearing. Numerous other motions and pleadings have been filed in these consolidated dockets and various Orders have been issued by the Commission addressing those motions and pleadings. All of the 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 is for the Commission to resolve the issues set forth in the petitions and responses. 47 U.S.C. 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. Section 252(d) for interconnection 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. Section 252(c).

Pursuant to Section 252 of TA96, the FCC issued a First Report and Order in CC Docket Nos. 96-98 and 95-195 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 telephone exchange company 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 yet have appropriate cost studies for unbundled elements or wholesale services. The Interconnection Order was temporarily stayed by Order of the Eighth Federal Circuit Court of Appeals on September 27, 1996, and portions were ultimately stayed by that Court's Order of October 15, 1996, until such time as the Court reaches a decision on a substantive appeal of the Interconnection Order. On November 8, 1996, the United States Supreme Court denied motions to overturn the stay.

At the hearing, Sprint presented the testimony of the following witnesses: William E. Cheek and David Stahly.

GTE presented the testimony of the following witnesses: Albert E. Wood, Jr., Douglas N. Morris, William Munsell, Mike Drew, Richard Theiss, Julia Ann Lawrence, Meade Seaman, Douglas E. Wellemeyer, David Sibley, Bert I. Steele, and Dennis Trimble.

Based upon a careful consideration of the entire record in this proceeding, the Commission makes the following

FINDINGS OF FACT

1(a). GTE is obligated to resell at wholesale rates all retail telecommunications services that it provides to subscribers who are not telecommunications carriers, subject to the conditions set out in Evidence and Conclusions for Finding of Fact No. 1(a).

1(b). GTE is required to offer for resale at wholesale rates services to the disabled, including special features of that service such as free directory assistance service calls, if that service is provided by GTE.

1(c). GTE is required to have corresponding wholesale rates for retail services that must be offered for resale.

2. Resale restrictions are permitted in accordance with those set forth in the Evidence and Conclusions for Finding of Fact No. 2.

3. Sprint and GTE should negotiate an agreement concerning access to relevant customer account information in accordance with the conclusions and requirements set forth in the Evidence and Conclusions for Finding of Fact No. 3.

4. The issue of whether the dialing parity requirement in the statute mandates that GTE move from N11 dialing patterns to business offices and service centers, when such dialing is not also available to Sprint and other competing local providers (CLPs), has been resolved between GTE and Sprint and is no longer in need of arbitration.

5. The Commission declines to enact specific standards governing liability by GTE for network fraud which may result in unbillable or uncollectible revenues.

6. Sprint should be permitted to combine unbundled network elements in any manner it chooses. However, the purchase and combination of unbundled network elements by Sprint to produce a service offering that is included in GTE's retail tariffs on the date of the interconnection agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, use and user restrictions in retail tariffs, and joint marketing restrictions. This presumption may be overcome by a showing that Sprint is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled elements to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

7. GTE must make available to Sprint remote call forwarding (RCF) and direct inward dialing (DID) as interim number portability solutions, until such time as a permanent number portability method is available. The parties must explore appropriate cost-recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefitting users share the burden and negotiate the appropriate cost-recovery mechanism.

8. GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

9. Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 8, the composite wholesale discount rate which is appropriate for GTE is 19.97%.

10(a). It is premature to address the geographical deaveraging issue until such time as the appeal on this issue has been resolved and more is known about the effect of deaveraging on universal service.

10(b). 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's 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.

11. 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.

12. GTE should make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract, but Sprint should be required to accept the rate associated with the interconnection, network element, or service in that contract.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1(a)

Issue: What services provided by GTE should be required to be made available for resale at wholesale prices?

POSITION OF PARTIES

SPRINT: All telecommunications services offered at retail to end-users of GTE must be available for resale by Sprint. This includes, but is not limited to, volume discounted products, grandfathered products, individual customer based products, operator services, directory assistance, vertical services, and promotions of more than 90 days.

GTE: GTE stated that it will offer for resale all of the services it currently offers on a retail basis except for below-cost services, promotional services, future Advanced Intelligent Network (AIN)-based services, payphone lines, and semi-public payphone lines. In addition, GTE stated that it will offer the following for resale but not at wholesale rates: any services already priced at wholesale (such as special access and private line services tariffed under the special access tariff and COCOT coin and coinless lines), operator services (OS) and directory assistance (DA) services, and nonrecurring charge services. Finally, GTE characterized voice mail and inside wire as not being telecommunications services and therefore ineligible for resale, and argued that only new contract service arrangements (CSAs) should be offered for resale.

ATTORNEY GENERAL: Neither short-term promotions nor access services, which are not offered to retail customers, should be offered for resale. Payphone service to payphone location owners, semi-public payphone services to semi-public payphone location owners, and residential services to residential customers should be resold, as should nonrecurring charges, operator services, and directory assistance. Individual case basis (ICB) services should not be resold.

DISCUSSION

Testimony regarding this issue was provided by Sprint witness Cheek and GTE witnesses Wellemeyer and Seaman.

Section 251(c)(4) of TA96 requires the incumbent local exchange company (ILEC) to offer for resale at wholesale rates any telecommunications service 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. See FCC Interconnection Order, Paragraph 939.

CONCLUSIONS

The Commission concludes that GTE should be required to resell at wholesale rates all retail telecommunications services that it provides to subscribers who are not telecommunications carriers, including those which GTE has listed above, subject to the conditions set out below:

1. Promotional offerings: Such offerings are not subject to resale if the promotion is 90 days or less. However, GTE should not utilize promotions in such a way to evade its wholesale rate obligation, as for example, sequential promotions of 90 days or less.

2. Public and semi-public pay telephone lines: The ILECs own public payphones are not subject to resale, but semi-public payphones will be. Also, public telephone access service (PTAS) lines will be subject to resale, but only to telecommunications carriers, not customer-owned coin-operated telephone providers (COCOTs) and only for the purpose of resale.

3. Existing CSAs (i.e., ICBs): These are subject to resale, but the ILEC is not precluded from requesting an exemption for a specific CSA for good cause shown.

4. Inside wiring and voice mail: These are not telecommunications services under the Act and are not subject to resale.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1(b)

Issue: Should GTE be required to offer for resale at wholesale rates services to the disabled, including special features of that service such as free directory assistance service calls, if that service is provided by GTE?

POSITIONS OF PARTIES

SPRINT: Yes. GTE must either make each of its retail service offerings available for resale without unreasonable or discriminatory conditions of limitations, or remove from general wholesale prices as an avoided cost "social program" costs that GTE no longer funds.

GTE: GTE should not be required to discount retail rates for mandated social programs that provide for discounts or special rates. These are the responsibility of the CLP (the retail provider of service). Further, it is the CLP's responsibility to verify and document their own customers' status.

CLPs may buy residential services and provide discounts to qualifying end-users and participate in subsidy pools with all other service providers.

ATTORNEY GENERAL: The Attorney General noted that GTE's retail tariffs include special rates for disabled persons, including free directory assistance calls for the visually impaired. However, to adopt GTE's position would be to deprive end-users of these services from having competitive choices. Such service is a retail service and must be offered at wholesale discounts.

DISCUSSION

Although there appears to have been no testimony presented on this issue, it is possible to resolve this issue as a matter of policy and law. As pointed out by the Attorney General, these services are retail services and are presumptively subject to resale. Furthermore, it is important that this class of customer have competitive choices.

CONCLUSIONS

The Commission concludes that GTE should be required to offer these services at wholesale rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1(c)

Issue: Should each and every retail rate have a corresponding wholesale rate?

POSITIONS OF PARTIES

SPRINT: Yes. Every retail service rate, including promotions of over 90 days, discount plans, and option plans, must have a corresponding wholesale rate. Nonrecurring charges associated with resold accounts shall also have an appropriate wholesale discount. New services should have a wholesale rate established at the same time the new service becomes available.

GTE: GTE will make available retail services on a wholesale basis at a wholesale rate structure that mirrors the retail rate structure except for below-cost services, nonrecurring charges, ICB services, access services, and OS/DA where no discount applies.

ATTORNEY GENERAL: The Attorney General simply noted that the Commission has previously concluded that allegedly below-cost services, such as residential services and services to the disabled, as well as nonrecurring charges and directory assistance/operation service, must be offered for resale with a wholesale discount.

DISCUSSION

Testimony regarding this issue was presented by GTE witnesses Wellemeyer and Seaman and Sprint witness Stahly.

This issue essentially corresponds to the issue addressed in the Evidence and Conclusions for Finding of Fact No. 1(a). From the discussion of that issue, it follows that GTE must make available retail services on a wholesale basis at a wholesale rate structure mirroring the retail rate structure, including below-cost services, nonrecurring charges, ICB services, access services, and OS/DA where no discount applies.

CONCLUSIONS

The Commission concludes that GTE should be required to have corresponding wholesale rates for retail services that must be offered for resale.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: What resale restrictions should be permitted?

POSITIONS OF PARTIES

SPRINT: GTE must make each of its retail service offerings available to Sprint for resale without unreasonable or discriminatory conditions or limitations.

GTE: Sprint should be prohibited from "cross-class selling." The Act requires ILECs not to impose "unreasonable or nondiscriminatory conditions or limitations." GTE thinks reasonable conditions or limitations on resale are appropriate. GTE's conditions and limitations for below-cost residential service and promotional offers are reasonable. GTE's nonrecurring charges, OS, DA, and ICB services have no avoided costs therefore no discount applies. As for access services, GTE already offers such services on a wholesale basis.

ATTORNEY GENERAL: Current tariffed restrictions should carry forward, assuming they are reasonable. Restrictions on cross-class resale are reasonable. GTE's position on directory assistance, operator services, and nonrecurring charges is unreasonable and unsupported by the Act. The Attorney General has already stated that ICBs should not be offered for resale.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and GTE witness Wellemeyer.

This issue has several component parts. First, the ILEC argues that the CLP should be prohibited from "cross-class selling." This is reasonable and is supported by TA96 and the FCC Interconnection Order. See, especially, Paragraphs 962-964, 968. However, the ILEC's conditions and limitations for below-cost residential service, promotional offers, nonrecurring charges, operator services, directory assistance, access services, and ICB services are unreasonable and have already been substantively addressed in the Evidence and Conclusions for Finding of Fact No. 1(a).

CONCLUSIONS

The Commission concludes:

1. That cross-class selling should be prohibited; e.g., purchasing wholesale residential services and reselling to a business customer.

2. That resale of grandfathered services should only be allowed to grandfathered customers and Lifeline/Link-Up services only to eligible end-users.

3. That resale of below-cost residential service, promotional offers of over 90 days, nonrecurring charges, operator services, directory assistance, and ICB must be allowed without unreasonable or discriminatory conditions and limitations.

4. That use and user restrictions that are currently in ILEC tariffs should carry forward into resold services with the exception of such prohibitions or restrictions which have been or will be specifically imposed.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: What authorization is required for provision of customer account information to Sprint?

POSITIONS OF PARTIES

SPRINT: GTE should provide confirmation of the installation/change activity to Sprint via an initial Firm Order Confirmation (FOC) and positive completion of order activity. Sprint requires an "as is" process when customers are migrating from GTE to Sprint at the same location. On migration-type orders, the FOC should contain all services/features currently being provided by GTE and those services/features being migrated to Sprint. On new installation/change orders, the FOC should verify all services/features ordered by Sprint. A positive completion delineating all the services installed and those not installed should be sent to Sprint upon actual completion within 24 hours of order completion. This will ensure proper billing to end-user customers for services provided. Once Sprint has obtained a customer, GTE should provide in preordering and ordering phases of processing the Sprint order, the GTE regulated features, products, services, elements, and combinations that were previously provisioned by GTE for all affected Sprint local customers. This applies to all types of local service orders and all elements. Sprint requires GTE to provide any customer status for a special service (e.g., DA, exempt, Lifeline, etc.). A customer's service record may be disclosed for the purpose of enabling Sprint, as a new local provider, to provide service. GTE should not refuse to execute a change "as is" service order for a customer switching to Sprint for local service.

GTE: GTE's customer information is proprietary under the Act and should not be disclosed without end-user's written authorization. Sprint's marketing person should ask the customer for the vertical features subscribed to, and can confirm availability from Service Address Guide (SAG) and Product and Service Guide. GTE believes converting accounts "as is" would encourage slamming because the "as is" process would discourage communication with the end- users.

ATTORNEY GENERAL: The Attorney General recommended that the use of "as is" transfers and blanket LOAs be authorized which would cover both relevant account information or "as is" transferral of service. Relevant account information would be limited to a list of scheduled services on or about the time of transfer. CLPs should be required to obtain and, in the event of a dispute,

be prepared to produce the written or third-party verified authorization of the end-user in a manner consistent with the FCC anti-slamming rules.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and GTE witness Drew.

The issues of "as is" transfers and letters of authorization are interrelated. The CLP argues that it needs access to account information in order to provision service efficiently. The CLP also proposes blanket LOAs to allow it to have service efficiently changed over at the request of the end-user.

An "as is" transfer is, as the name implies, a transfer of the same customer services from one communications carrier to another.

A blanket LOA is essentially an agreement between the CLP and the ILEC that the CLP will only seek a service transfer upon the authorization of the end-user, but is it not necessary to actually send to the ILEC a written document with the end-user's signature requesting such service. A similar process is used with service changes by interexchange carriers (IXCs). The FCC Interconnection Order, Paragraph 421, suggests that entrants are disadvantaged if customer switchovers are not "rapid and transparent."

The ILECs resist the blanket LOA. The ILECs maintain that they should receive authorization from the end-user before disclosing account information or transferring service.

The Commission believes that the use of "as is" transfers and blanket LOAs is reasonable and necessary in order to effectuate the policy enunciated in the FCC Interconnection Order, Paragraph 421, that ILECs are to switch over customers to CLPs for local service in the same interval as LECs currently switch end-users between IXCs. The Commission furthermore agrees with the FCC that new entrants will be disadvantaged if customer switch-overs are not "rapid and transparent."

At the same time, the Commission is concerned about the potential for "slamming" and other abuses of the LOA process. Accordingly, the Commission believes that ILECs and CLPs should enter into blanket LOAs authorizing both relevant account information access or transferral of service. "Relevant account information" in this context refers to a customer list of scheduled services on or about the time of transfer. However, the CLP must obtain, and in the event of dispute, must be prepared to produce the written or third-party verified authorization by the end-user for such information or transferral. Such authorization or third-party verification should be consistent with the FCC anti-slamming rules set out in 47 CFR Part 64, Subpart K. The Commission believes these requirements will satisfy Section 222 concerns about customer authorization for release of customer proprietary network information (CPNI) as well as reduce the likelihood of CLP "fishing expeditions" to obtain marketing information about customers before rather than after the customers have authorized account access or service transfer. In any event, a carrier receiving CPNI is not to use such information for its own marketing efforts. See Section 222(b) of the Act.

The Commission furthermore concludes that, to the extent that on-line access to relevant customer service records would also give a CLP access to nonrelevant service records, the ILEC should diligently work toward modifying the system so as to restrict such access. For its part, the CLP should be admonished as to its obligation not to seek or misuse such nonrelevant service records. This current technical limitation is insufficient reason to deny CLPs access to a necessary function for their parity with ILECs.

The Commission further notes that Section 258 of the Act prohibits changes to subscriber carrier selections "except in accordance with such verification procedures" as the FCC prescribes. States are not precluded from enforcing verification procedures of their own respective intrastate service. The FCC is undertaking a rulemaking in CC Docket 96-115 to determine appropriate verification procedures. The Commission believes that the state and federal rules on this matter should be consistent. Therefore, to the extent that the FCC may in the future prescribe a different verification process for local service changes, the federal rules should at that time supplant the practices endorsed here, subject to reconsideration of the applicability of such rules in North Carolina by the Commission should they be unsatisfactory. .

CONCLUSIONS

The Commission declines to endorse the specific procedure proposed by either party but requires the parties to negotiate an agreement consistent with the previous discussion and listed in the following paragraphs:

1. ILECs and CLPs should enter into blanket LOAs authorizing the CLP to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with FCC Rules in 47 CFR Part 64, Subpart K.

2. The above verification procedures should be superseded by such rules as are issued by the FCC pursuant to Section 258 of the Act, subject, after promulgation of such rules, to reconsideration by motion of the Commission or by an interested party.

3. That, to the extent that on-line access to relevant customer records would also give a CLP access to nonrelevant service records, the ILECs should diligently work toward technical means to restrict such access to nonrelevant service records. CLPs shall not seek or use such nonrelevant service records for any purpose.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Does the dialing parity requirement in the statute mandate that GTE move from N11 dialing patterns to business offices and service centers, when such dialing is not also available to Sprint and other CLPs?

POSITIONS OF PARTIES

SPRINT: GTE should discontinue use of 611 and 811 dialing patterns when Sprint resale customers cannot access Sprint offices through these dialing patterns. Any end-user should be able to access

Sprint for services using the same dialing protocol the end-user would use to access the same service on GTE's network (e.g., intraLATA toll, operator assisted, directory assistance, and 911). GTE should either migrate from N11 dialing to its business office and repair centers to seven digit numbers or 800 numbers so that Sprint customers have dialing parity to similar centers, or GTE should make N11 dialing available so that Sprint customers are directed to Sprint.

GTE: GTE does not think the Act requires GTE to forego current N11 dialing arrangements. The Commission has previously ruled on the utilization of N11 dialing arrangements and GTE will continue to comply with those rules. CLPs will list their contact numbers in the appropriate telephone directory(s).

ATTORNEY GENERAL: The Attorney General believes that GTE should develop a process for transferring calls that Sprint users make to N11 numbers which will refer those calls to Sprint. While that process is being developed, GTE must a tell a Sprint caller to N11 who their carrier is and give them a contact number to dial Sprint's business office or repair center.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek.

By letter dated March 5, 1997, GTE stated that GTE and Sprint have agreed that this issue should not be subject to arbitration in North Carolina. A concurring letter from Sprint was received on March 7, 1997.

CONCLUSIONS

This issue has been mutually resolved and is no longer in need of arbitration.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Should GTE be liable for network fraud caused by GTE's negligence?

POSITIONS OF PARTIES

SPRINT: GTE should be responsible when it is negligent in protecting its network from any fraud that results from unauthorized access to the GTE network.

GTE: GTE should not be liable for damages incurred as a result of an intentional act of a third party, such as fraudulently gaining unauthorized access to the GTE network. Such risks should rest with Sprint, since the fraud is associated with Sprint's end-users. GTE will cooperate with Sprint to investigate, minimize, and take corrective action in cases of fraud.

ATTORNEY GENERAL: The Commission notes that the relationships between the ILECs and their existing access customers involve the same or similar problems of fraud which result in unbillable or uncollectible competitor revenues. The opportunity for fraud is inherent within the network and both ILECs and CLPs share responsibility for creating the problem. Therefore, the Commission concludes that both ILECs and CLPs should reach a mutually agreeable way to share the costs of

unbillable or uncollectible accounts with liberal forgiveness policies for end-users who find themselves the victim of fraud. The parties should report back to the Commission by July 1, 1997, as to how these sharing mechanisms should work and how end-users should be protected from the effects of fraud.

DISCUSSION

Testimony regarding this issue was presented by GTE witness Seaman.

This issue involves the same or similar problems of fraud which result in unbillable or uncollectible competitor revenues. GTE has agreed to cooperate with Sprint to investigate, minimize, and take corrective action in cases of fraud. The Commission does not believe that it is appropriate or practical for it to get involved in adopting provisions governing liability for errors. The Commission believes that the 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 standards governing liability by GTE for network fraud which may result in unbillable or uncollectible revenues. Instead, the affected parties should negotiate reasonable terms and conditions regarding liability for network fraud which may result in unbillable or uncollectible revenues.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: Should Sprint be permitted to request a combination of network elements which would enable it to replicate any services GTE offers for resale?

POSITIONS OF PARTIES

SPRINT: There should be no restrictions on Sprint's ability to combine network elements. When combinations are ordered where the elements are currently interconnected and functional, those elements will remain interconnected and functional without any unnecessary interruption in service.

GTE: Such a recombination of GTE's unbundled elements would eliminate the distinction in the Act between resale and unbundled elements. It would allow Sprint to avoid access charges.

ATTORNEY GENERAL: The issue is arbitrage. If a new entrant buys all seven of the current unbundled elements and reassembles them into services identical to GTE's, then such reassembled elements are essentially resale and should be priced as wholesale services.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and GTE witnesses Seaman, Wellemeyer, and Trimble.

TA96 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. Order No. 96-325, Paragraphs 328, 329. The FCC further concluded that it would be administratively impossible to impose a requirement that CLPs must own and use their own facilities in combination with unbundled network elements, for the purpose of providing local services, in order to obtain access to unbundled network elements.

GTE is not urging the Commission to prohibit the recombination of unbundled network elements per se. GTE takes the position, however, that Sprint should not be permitted to request a combination of network elements that would enable it to replicate retail services GTE offers for resale, saying that such a proposal would render meaningless the Act's distinction between costing methodologies for unbundled elements and wholesale services. Specifically, Sprint should not be permitted to purchase unbundled loop and unbundled port services in combination at unbundled service rates for the purpose of avoiding a higher resale rate. In GTE's view, the FCC did not intend this type of arbitrage when it stated that requesting carriers should be able to combine unbundled elements in any way they wish.

Sprint states that whether a CLP decides to purchase resold services or unbundled network elements in their entirety or in combination with its own facilities will be the product of a set of complex issues and decisions relative to market entry. It is Sprint's opinion that GTE is simply attempting to place unreasonable restrictions on the types of market entry that may occur. Sprint further states that GTE's interpretation of the Act is not supported by the FCC's Interconnection Order.

The Commission has carefully considered the legal, technical, and policy implications of recombining unbundled network elements in a way that constitutes resold services and finds considerable merit in GTE's position on this issue. We believe GTE's definition of such a combination of network elements is too broad, however, while the Attorney General's definition is too restrictive. We, therefore, seek an appropriate middle ground. In this regard, we are guided to a large extent by recent decisions of the Tennessee, Georgia, and Louisiana Commissions.

The Tennessee Regulatory Authority has ruled that AT&T and MCI may purchase unbundled network elements, capabilities, and/or functions but 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]

---

[1]Nos. 96-01152 and 96-01271 (consol.) at 26-27 (Tennessee Regulatory Authority November 25, 1996).

The Georgia Commission has found that, under the Act and the FCC Rules, AT&T clearly may purchase unbundled elements and recombine them in any manner they choose but 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 access charge requirements. The 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 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 Commission ruled, "identical" means that AT&T is not using their own switching or other functionality or capability together with the unbundled elements to produce the service; operator services is not considered a functionality or capability for this purpose.[1] The same result was reached in a proceeding involving MCI.[2]

The Louisiana Commission has concluded that AT&T will be deemed to be "recombining unbundled elements to create services identical to BellSouth's retail offerings" when the service offered by AT&T contains the functions, features, and attributes of a retail offering that is the subject of a properly filed and approved BellSouth tariff. Services offered by AT&T shall not be considered "identical" when AT&T utilizes its own switching or other substantive capability in combination with unbundled elements in order to produce a service offering. For example, AT&T's provisioning of purely ancillary functions or capabilities, such as operator services, Caller ID, Call Waiting, etc., in combination with unbundled elements shall not constitute a "substantive functionality or capability" for purposes of determining whether AT&T is providing "services identical to a BellSouth retail offering.[3]"

Although the Commission is in general agreement with the foregoing decisions, given the complexity of implementing a plan to price combined elements at wholesale rates, we believe that they leave open a number of questions. We, nevertheless, are of the opinion that even with the most detailed findings most of these questions will likely have to be addressed on a case-by-case basis.

CONCLUSIONS

The Commission concludes that Sprint should be permitted to combine unbundled network elements in any manner it chooses. However, the purchase and combination of unbundled network elements by Sprint to produce a service offering that is included in GTE's retail tariffs on the date of the interconnection agreement will be presumed to constitute a resold service for purposes of pricing, collection of access and subscriber line charges, and use and user restrictions in retail tariffs. This presumption may be overcome by a showing that Sprint is using its own substantive functionalities and capabilities, e.g., loop, switch, transport, or signaling links, in addition to the unbundled elements

[1] No. 6801-U at 51-52, 93 (Georgia Public Service Commission, December 3, 1996).

[2] No. 6865-U at 28-30 (Georgia Public Service Commission, December 17, 1996).

[3] Exhibit B to BellSouth's Objections to Recommended Arbitration Orders in Docket Nos. P-140, Sub 50, and P-141, Sub 29.

to produce the service. Ancillary services such as operator services and vertical services are not considered substantive functionalities or capabilities for purposes of this provision.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Issue: What method should be used to price interim number portability, and what specific rates, if any, should be set for GTE?

POSITIONS OF PARTIES

SPRINT: Interim number portability should be priced according to FCC pricing principles to ensure that costs are allocated on a competitively-neutral basis. Sprint and GTE should establish reasonable cost recovery for Remote Call Forwarding (RCF) and Direct Inward Dial (DID). Existing retail call forwarding rates are not considered reasonable for this purpose. Sprint proposes that interim number portability be priced at TELRIC. Should a lower interim number portability price be offered by GTE to others or ordered by a regulatory body, Sprint should be able to adopt the lower price.

GTE: GTE should recover its total costs for providing interim number portability. New entrants can allocate or recover their costs as they choose. GTE's costs for interim number portability should be determined based upon the network in place today, and allowing for capital, transport and termination, and opportunity and investment costs.

ATTORNEY GENERAL: TA96, Section 251(e)(2), provides in pertinent part that the "cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively-neutral basis determined by the Commission." The Attorney General recommends that the Commission conclude that the parties should explore appropriate cost-recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefitting users share the burden and negotiate the appropriate cost-recovery mechanism. Parties should be required to report back by May 1, 1997, what those cost-recovery mechanisms will be.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Stahly and GTE witnesses Theiss, Sibley, and Trimble.

Sprint is requesting and GTE has agreed to provide Sprint with interim number portability through remote call forwarding and direct inward dial. The parties, however, differ substantially on the method to be used in pricing interim number portability. Sprint proposed that RCF and DID be priced to Sprint at roughly a 55% discount rate. On the other hand, GTE takes issue with the FCC's interpretation of Section 251(e)(2) of the Act which holds that the cost of establishing interim number portability be borne by all telecommunications carriers on a competitively-neutral basis. GTE advocates that such costs should be solely assessed to the CLPs or that the Commission should impose an end-user charge on all customers to support local number portability. GTE argues that the new entrant should bear the cost of interim number portability and has proposed rates for unbundled elements including a rate of $3.50 for "service provider number portability." (Attachment 3B, page 4 of 11 to Trimble's testimony.) Witness Trimble's studies, however, do not appear to be

based upon North Carolina specific information, nor do they comply with the provisions of Section 251(e)(2) of the Act that the cost of establishing telecommunications numbering administrations arrangements and number portability shall be borne by all telecommunications carriers on a competitively-neutral basis.

The FCC issued its Number Portability Order in July of 1996 (Docket No. 95-116). Paragraph 110 of the Order states that "currently RCF and DID are the only methods technically feasible" for interim number portability and thus requires local exchange carriers "to offer number portability through RCF and DID and other comparable methods." Section 251(b)(2) of the Act requires all telecommunication carriers "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." As far as who bears the cost, the Act provides that the costs for interim number portability should be priced according to FCC pricing principles to ensure that costs are allocated on a competitively-neutral basis. The FCC Telephone Number Portability Order lists several acceptable methods of cost recovery for number portability.

CONCLUSIONS

The Commission concludes that GTE should make available to Sprint remote call forwarding and direct inward dial as interim number portability solutions until such time as a permanent number portability solution is available. The Commission also concludes that the parties should explore appropriate cost-recovery methods for recovering the costs of implementation and development of the interim number portability solutions such that all benefitting users share the burden and negotiate an appropriate cost-recovery mechanism.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: What are the excludable costs related to services subject to resale?

POSITIONS OF PARTIES

SPRINT: Resale pricing should be based on avoided costs which include advertising expenses, call completion costs, number service costs, product management costs, sales expenses, and uncollectible expenses.

GTE: Advertising expenses, call completion costs, and directory assistance costs in their entirety will not be avoided by GTE in a wholesale environment. Product management expenses are not avoided since product planning, product development, and product roll-out activities are required regardless of whether products are offered at retail or wholesale. GTE's Avoided Cost Study provides the appropriate avoided sales expense based on GTE's specific cost data. GTE's Avoided Cost Study provides the percentage of uncollectible expense which is avoided based on the analysis of uncollectible activity.

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 regrading this issue was presented by Sprint witness Stahly and GTE witnesses Seaman and Wellemeyer.

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.

Sprint believes that the FCC Interconnection Order requires that GTE should be viewed as operating in a pure wholesale environment where it has no retail operations. Sprint interprets the FCC Interconnection Order to specify that GTE's costs that could be avoided, whether or not they are actually avoided, should be reflected in the determination of the wholesale discount. GTE's avoided cost study is based on the premise that the Act specifies that GTE would continue to be a retail provider of services and simply add-on wholesale functions. As GTE explains, their study recognizes the fact that while some retail costs are avoided for certain activities, a similar activity is often required to offer the same service on a wholesale basis for resale. GTE believes the Act contemplates costs that are actually avoided when service is offered through wholesale, rather than retail, distribution channels.

Sprint did not sponsor or provide an actual proposed avoided cost study. In direct testimony, Sprint advocated the methodology of the FCC Interconnection Order. However, Sprint recommended in its Proposed Order that the Commission find that GTE's wholesale discount rate should be 19.97% based on the Commission's RAO in Docket No. P-140, Sub 51 (arbitration of AT&T and GTE). Sprint argues in its post-hearing Brief that the Commission has recognized that under the Act, Sprint has the option of accepting the rates established in any earlier proceedings (specifically Docket No. P-140, Sub 51). Sprint states that it intends to seek Commission approval of all interconnection terms and conditions as may be approved by the Commission between AT&T and GTE. GTE's avoided cost study analyzes avoided costs separately for each of five major service categories (residential, business, usage, vertical, and advanced). GTE used annual results for GTE Telephone Operations' total domestic telephone operations for 1995. The data are reported in a managerial accounting framework reflecting the results of the business as it is managed, rather than according to traditional financial accounting rules. The numbers GTE used were for GTE's total domestic operations and not specific to North Carolina. In addition, GTE's numbers are derived internally, and therefore, are not verifiable. GTE's avoided cost study reflects GTE's estimate of avoided costs, not its actual avoided costs.

The FCC Interconnection Order specifically identifies costs by 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 GTE's 1995 combined North Carolina financial data as reflected in its 1995 ARMIS Report 43-03. ARMIS Report 43-03 is filed with the

FCC and is publicly available. The avoided cost analysis performed by the Commission incorporates parts of GTE's and Sprint's positions, and generally agrees with the avoided cost methodology used by the FCC. The Commission's avoided cost analysis reflects the Commission's determination of the costs that will be avoided by GTE based on a thorough review of all of the evidence presented in this arbitration proceeding.

The analysis reflects Uncollectibles - Telecommunications (Account 5301) as all being directly avoided.

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 that 10% of the costs in Accounts 6611, 6612, 6613, and 6623 are not avoided by selling services at wholesale. The Commission believes that the 90% avoided cost factor represents a reasonable estimate of costs in these accounts that will be avoided.

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 Sprint 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 11.41%. 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.

Sprint and GTE 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 $17,994,000, indirectly avoided costs of $3,942,000, and total avoided costs for GTE of $21,936,000.

CONCLUSIONS

The Commission concludes that GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: What is the proper methodology for determining the prices for GTE resold services?

POSITIONS OF PARTIES

SPRINT: This issue is not addressed in Sprint's matrix.

GTE: Wholesale prices should be based on avoided costs. Prices for resold services should equal retail rates minus net avoided costs, plus opportunity costs. Net avoided costs equal avoided retail costs plus the costs of providing wholesale services.

ATTORNEY GENERAL: The Attorney General does not have the analytical ability to review numbers. However, GTE's methodology appears to be below the discount decided by this Commission and other state commissions. The Attorney General refers 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 GTE witness Wellemeyer.

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 $1,735,000 in public telephone revenues. GTE'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 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 $109,838,000.

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 19.97%.

CONCLUSIONS

Based on the avoided cost analysis discussed in the Evidence and Conclusions for Finding of Fact No. 8, the Commission concludes that GTE's appropriate composite wholesale discount rate is 19.97%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10(a)

Issue: Should GTE geographically deaverage its unbundled network elements?

POSITIONS OF PARTIES

SPRINT: Yes. GTE should deaverage its unbundled loops, switching and transport into at least three geographic zones, based on cost differences. As required by the FCC Interconnection Order, GTE must geographically deaverage its cost-based unbundled elements. However, geographic

deaveraging must be accomplished in a manner such as zone density by office and not on specific routes or capacity dedicated to individual carriers. Deaveraging should reflect cost differences due to transmission facility size on GTE facilities, and on such facilities the price to each interconnecting carrier shall be equal per unit of traffic thus sharing the economies of scale equally with each interconnecting carrier, (e.g., a LEC could establish loop prices reflecting underlying cost differences, but the price per loop to a customer location should not vary by volume purchased by an individual carrier).

GTE: No. GTE does not support deaveraging of unbundled elements until a uniform and consistent set of pricing policies can be applied to the pricing of all of GTE's services; retail, wholesale, and unbundling.

ATTORNEY GENERAL: Geographical deaveraging of rates in North Carolina could have profound and adverse effects on both universal service and socioeconomic development. Indeed TA96 makes preserving universal service a cornerstone of changes in the telecommunications industry. Until more is known about the extent and the effects of geographical deaveraging upon universal service, the Commission should conclude that it is premature to allow such deaveraging.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Stahly and GTE witness Seaman.

In Paragraph 764 of the FCC Interconnection Order, the FCC cited Section 252(d)(1)(a)(i) of the Act which provides that rates for interconnection and unbundled elements be "based on the cost...of providing interconnection or network elements." After citing this section of the Act, the FCC stated that deaveraged rates more closely reflect the actual costs of providing interconnection and unbundled elements and thus concluded that rates for interconnection and unbundled elements must be geographically deaveraged. Further, the FCC Interconnection Order, Rule 51.507(f), now stayed, requires that "state commissions shall establish different rates for elements in at least three defined geographic areas within the state to reflect geographic cost differences."

As noted above, Sprint takes the position that GTE should be required to deaverage its loops, switching, and transport into at least three geographic zones based on cost differences. Further, Sprint recommends that all carriers should be charged the same deaveraged price for use of a given GTE facility and prices should not vary between carriers depending upon volume purchased. GTE argues that it should not be required to geographically deaverage cost-based unbundled elements because negotiation is the most appropriate and effective way to attain terms and conditions that will best produce a competitive marketplace. In its Proposed Order, GTE recommends that the Commission recognize that its rates reflect historical value of service and other social objectives (e.g., universal service). Therefore, GTE would have the Commission find that it is premature to require GTE to geographically deaverage its rates until certain other dockets, both at the FCC and before this Commission, are completed. The Attorney General also expressed concern about the effect of geographical deaveraging on both universal service and socioeconomic development, and concludes it is premature to allow geographical deaveraging until more is known about the extent and the effects of such deaveraging upon universal service.

CONCLUSIONS

The Commission concludes that it is premature to address the geographical deaveraging issue until such time as the appeal of this issue has been resolved and more is known about the effect of deaveraging on universal service.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10(b)

Issue: What input and loading assumptions should be used in establishing the cost of interconnection and unbundled network elements, and what prices should be the resulting prices?

POSITIONS OF PARTIES

SPRINT: All unbundled network elements including their functionality shall be priced at TELRIC plus a reasonable allocation of forward-looking joint and common costs.

GTE: The Act recognizes that pricing must cover all of the ILEC's costs including a reasonable share of joint and common costs. GTE's joint and common costs as contained in its cost studies properly identify reasonable joint and common costs. The parties disagree about how to measure TELRIC, and also about the amount GTE is entitled to recover for its reasonable joint and common costs.

GTE's proposal is consistent with the Act and recognizes a reasonable share of joint and common costs. The rates derived from GTE's proposal are presented in GTE witness Trimble's testimony.

ATTORNEY GENERAL: The Commission should adopt interim rates based on consideration of the FCC proxies, subject to true-up, until the Commission has had sufficient time to either fully investigate the costing models provided it by the parties to the record or carefully do its own cost study and present it in a rulemaking open to all interested parties.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Stahly and GTE witnesses Sibley, Steele, and Trimble.

Sprint's recommended rates for unbundled network elements are the same interim rates established by the Commission's recent decision in the AT&T and GTE arbitration in Docket No. P-140, Sub 51. In the AT&T and GTE arbitration, the Commission found that it was reasonable to establish interim rates, subject to true-up provisions, based on consideration of the FCC proxy rates for unbundled network elements. GTE's recommended rates were based on a pricing approach termed the Market-Determined Efficient Component-Pricing Rule (M-ECPR) and its proprietary costing models and inputs.

According to GTE, the M-ECPR price for an unbundled network element is equal to the sum of its TELRIC plus its opportunity cost, as constrained by market forces. To impose this market-based pricing constraint, in some cases GTE recommended that the price of an unbundled network element should equal the market price or tariff rate of an existing and functionally equivalent GTE

service offering. Opportunity cost refers to the net return that an unbundled element will bring to GTE if it is not sold to a competitor. GTE asserted that the M-ECPR does not permit it to charge a price for an unbundled element that exceeds that element's stand-alone cost.

GTE also maintained that a shortcoming of the M-ECPR approach was that it would not allow it to recover fully its forward-looking common costs, as would regulated rates absent competitive entry--i.e., stranded costs would arise even if GTE's recommended prices were adopted by the Commission. GTE defined stranded costs to be the present value of GTE's net revenues under regulation minus the present value of GTE's net revenues under competition. Thus, GTE argues that to ensure it receives a reasonable opportunity to recover all of its forward-looking common costs, it is necessary for a competitively-neutral and nonbypassable end-user charge to be established in this arbitration to avoid stranded costs. GTE stated that the need for such a surcharge will diminish over time as it recovers the cost of its past investment. Further, other Commission actions, such as rate rebalancing, can reduce the need for such a surcharge.

Although Sprint did not submit cost studies, Sprint recommended that permanent prices for unbundled network elements must be developed using the TELRIC-based pricing methodology established by the FCC. More specifically, Sprint took the position that such prices should be based on the TELRIC of an element plus a reasonable allocation of common costs. Sprint believed the FCC had clearly defined several characteristics of an appropriately developed TELRIC cost of service study. Further, Sprint recommended that the contribution to forward-looking common costs be set as a uniform percentage markup equal to 15% above the TELRIC of the element. According to Sprint, a uniform percentage markup is the appropriate method to use for allocating common costs because it prevents discriminatory pricing for unbundled elements by treating noncompetitive markets as if they were competitive.

Sprint also argued that GTE's costing and pricing methodologies were based on assumptions that are inconsistent with the Act and the FCC's Interconnection Order. Therefore, Sprint recommended that GTE's cost studies and recommended prices should be rejected. As previously discussed, GTE's M-ECPR-based price for an unbundled element is equal to the sum of the TELRIC of an element plus its opportunity cost, subject to the constraint of market forces. Sprint took particular exception to the inclusion of opportunity cost by GTE in its recommended prices. Sprint argued that the FCC rejected the inclusion of opportunity cost in element prices. Further, Sprint criticized GTE's proposal in this regard because Sprint believed the consideration of opportunity cost would allow GTE to price unbundled elements at existing retail rates without regard whatsoever to the incremental cost of an element. As an example, Sprint cited where GTE recommends that loop prices be set based on its existing interstate rate for 2-wire special access service. According to Sprint, by charging a tariff rate, it makes no difference what the incremental cost is since the TELRIC has no effect on the recommended rate, e.g., if the TELRIC were lower than a tariff rate, the opportunity cost could simply be increased to get the element price equal to a proposed tariff rate. Sprint also contended that GTE's proposal to implement an end-user surcharge ignored GTE's entry into the interLATA long distance market. Sprint believed GTE should be expected to offset revenues lost due to local exchange competition through participation in the interLATA long distance market.

Since Sprint believed that GTE's cost studies and recommended prices were inappropriate and that GTE had failed to meet its burden of proof regarding its cost studies, Sprint recommended that interim prices should be set until permanent rates can be developed under the TELRIC-based pricing

methodology. Under Section 252(i) of the Act, Sprint maintains that GTE is required to offer Sprint or any other telecommunications provider the same terms and conditions for any interconnection, service or network element that it offers AT&T. Accordingly, in order to quickly establish interim rates, Sprint recommends that it is entitled to the same interim rates for unbundled network elements as established by the Commission in the AT&T and GTE arbitration.

As previously discussed, the Attorney General recommended that the Commission establish interim rates based on consideration of the FCC's proxy rates subject to true-up as a reasonable and appropriate course of action to follow in this proceeding.

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 analyze and evaluate the propriety of the cost studies presented in this proceeding. 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 these proceedings.

The FCC in its Interconnection Order recognized that not every state 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 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.

---

[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 an interim basis, than a detailed forward-looking cost study."

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 FCC Interconnection Order, of which the Commission takes judicial notice, and in consideration of the entire evidence of record, the Commission believes and so 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.

As presented subsequently, the Commission has, for purposes of this proceeding, set an interim rate, subject to true-up, of $17.05 for a 2-wire analog voice grade loop, including the NID. Such rate exceeds the $16.71 proxy rate ceiling established by the FCC in its Interconnection Order by $0.34. The $17.05 loop rate is the rate proposed by Sprint. The Commission has adopted the $17.05 loop rate on an interim basis because it is within a reasonable range of the FCC's proxy rate ceiling and such rate is consistent with the Commission's decisions concerning GTE's cost of providing its unbundled loops in the previous arbitrations involving GTE. Further, accounting and billing for true-up purposes will be less complex and more efficient for GTE by virtue of the Commission establishing a consistent cost-based rate for GTE's unbundled loop.

The FCC Interconnection Order does not provide a proxy rate for the NID. Sprint proposed a NID rate of $1.36, while GTE proposed a NID rate of $2.20. The Commission has adopted the $1.36 NID rate, on an interim basis, in order to be consistent with the Commission's decisions concerning GTE's cost of providing its NID in the previous arbitrations involving GTE. Again, accounting and billing for true-up purposes will be less complex and more efficient for GTE by virtue of the Commission establishing a consistent cost-based rate for GTE's NID.

The FCC Interconnection Order also does not provide proxies for operator services and directory assistance services as unbundled network elements. Moreover, no party to this proceeding has proposed specific rates for such services. Thus, due to the lack of adequate evidentiary information and data, the Commission is unable to establish rates in this regard for purposes of this proceeding. The Commission, therefore, concludes that the arbitrating parties should be directed to further negotiate the rates for operator services and directory assistance services as unbundled network elements.

In summary, based upon the foregoing and the entire evidence of record, the Commission 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)	$ 1.36	per NID-per month
2-wire analog voice grade loop, incl. NID	$ 17.05	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)	
Service control points/databases (requires access through GTE'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	Parties must negotiate	

In order to ensure that no carrier is disadvantaged by the interim rates herein approved, the Commission 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 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. 11

Issue: What rates are appropriate for transport and termination of local traffic?

POSITIONS OF PARTIES

SPRINT: While Sprint agrees with GTE's use of TELRIC as the appropriate cost methodology, Sprint does not agree with GTE's input and loading assumptions. GTE's rates for transport and termination of local traffic should be established on the basis of: (1) the forward-looking economic costs of such offerings using a cost study pursuant to 47 C.F.R. Rule Sections 51.505 and 51.555; or (2) default proxies, as provided in 47 C.F.R. Rule Section 51.707; or (3) a bill and keep arrangement, as provided in 47 C.F.R. Rule Section 51.713.

TELEPHONE - INTERCONNECTION AGREEMENTS

Under the terms of 47 C.F.R. Rule Section 51.715, in a state in which the state commission has neither established transport and termination rates based on forward-looking economic cost studies nor established transport and termination rates consistent with the default price ranges described in 47 C.F.R. Rule Section 51.707, GTE shall set interim transport and termination rates within the proxy ranges for switching and transport as described in 47 C.F.R. Rule Section 51.707(b) (2). In connection with Sprint facilities-based services and services built with cost-based unbundled elements, Sprint is entitled to both originating and terminating access charges associated with calls terminating to ported numbers assigned to Sprint subscribers. GTE retains access charges when Sprint service is provided by a rebranded wholesale GTE service.

GTE: Rates should be based on each entity's own costs. GTE proposes use of its interstate access rates.

ATTORNEY GENERAL: The Commission should adopt the following FCC proxy rates, subject to true-up, as an interim solution:

End office switching	$.004 per minute
Tandem switching	$.0015 per minute
Transport:	
Dedicated	Interstate Tariffed Rates
Common	Interstate Tariffed Rates

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Stahly and GTE witnesses Munsell and Trimble.

In its Proposed Order, Sprint recommended that the Commission adopt interim rates, subject to true-up provisions, for transport and termination services based on consideration of the FCC Interconnection Order and the establishment of final rates by the Commission.

According to GTE, although required by the FCC, symmetrical pricing is completely at odds with the requirements of the Act. GTE contends that symmetrical pricing between Sprint and GTE will not allow GTE to recover its costs, since it is expected that Sprint's unit costs will be lower than that of GTE. Thus, GTE argues that each party should charge rates for interconnection which are based on their respective costs. GTE also asserts that the Act does not require or permit the FCC or the Commission to impose "bill and keep" on GTE. Paragraph 1111 of the FCC Interconnection Order states that state commissions may impose "bill and keep" if neither carrier has rebutted the presumption of symmetrical rates and if the volume of traffic exchanged is approximately equal. In GTE's opinion, it had sufficiently rebutted the presumption of symmetrical pricing and GTE states that no way presently exists for the Commission to determine whether the volume of traffic exchanged is relatively equal. Therefore, GTE takes the position that rates should be based on each entity's own costs and recommended use of GTE's interstate access rates.

CONCLUSIONS

Based upon the foregoing and the entire evidence of record, the Commission 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	$.004 per minute
Tandem switching	$.0015 per minute
Transport:	
Dedicated	Interstate Tariffed Rates
Common	Interstate Tariffed Rates

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: Should GTE make available to Sprint any price, term, and/or condition offered by GTE to any other carrier, on a most favored nations ("MFN") basis?

POSITIONS OF PARTIES

SPRINT: GTE is required to make available to Sprint, without unreasonable delay, any more favorable terms for individual services, network elements, and interconnection which GTE offers to others. GTE is required to immediately notify Sprint of the existence of such better prices and/or terms and make the same available to Sprint effective on the date the better price and/or term becomes available to the other carrier.

GTE: Each agreement negotiated is a process of give and take. A party desiring to obtain the terms of another agreement must abide by the entire agreement. Otherwise, the Act's provisions encouraging negotiations would be meaningless. The "pick and choose issue" has been resolved through the Eighth Circuit Stay and should not be an issue in this proceeding.

ATTORNEY GENERAL: Both sides appear to ignore the plain wording of the statute, which clearly contemplates that individual and discrete parts of a contract involving interconnection, service, or network elements are accessible to the most favored nations clause. Sprint should receive most favored nations status for any single interconnection, network element, or service in a contract, but it must accept the rate associated with the element in the contract it seeks to adopt.

DISCUSSION

Testimony regarding this issue was presented by Sprint witness Cheek and GTE witness Seaman.

Sprint contends that nondiscriminatory treatment in the MFN context is essential to the creation of a truly competitive market for local telephone service and that the MFN right applies to

all unbundled elements, resold services, rates, and conditions. Sprint acknowledges five reasonable restrictions (bundling of rates and conditions) in the MFN context related to volume discounts, term discounts, significant differences in operational support interfaces, technical sequential feasibility, and geographic deaveraging. Beyond these exceptions, however, Sprint maintains that Section 252(I) permits it to pick and
choose rates, terms, and conditions which are more favorable to its competitors. Section 252(I) of TA96 provides that:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

GTE argues that this language does not allow a requesting carrier to pick and choose individual rates, terms, and conditions for a given service or from a given agreement. According to GTE, Sprint should be allowed only to select all of the provisions of an entire category of an agreement, e.g., the entire resale portion.

The Commission agrees with the Attorney General that both parties have distorted the plain meaning of Section 252(I) of the statute. The FCC concluded in its Interconnection Order that this provision "supports requesting carriers' ability to choose among individual provisions contained in publicly filed interconnection agreements." Paragraph 1310. The FCC further concluded that ILECs "must permit third parties to obtain access under section 252(I) to any individual interconnection, service, or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252(I)." Paragraph 1314. FCC Rule 51.809, known as the "pick and choose" rule, requires ILECs to make available "any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act upon the same *rates*, terms, and conditions as those provided in the agreement." (Emphasis added.) By adding "rates" to terms and conditions, this rule arguably goes beyond the requirements of TA96 and has been stayed by the Eighth Federal Circuit Court of Appeals. GTE's position, however, goes beyond the plain language of the statute in the other direction. Furthermore, the Commission notes that the recently filed composite agreement between GTE and AT&T does not require AT&T to elect an entire agreement or even an entire category of service.

Whether "terms and conditions" include "rates" will ultimately be determined by the pending appeal. In the meantime, the Commission believes the Attorney General has offered a reasonable resolution of the issue.

CONCLUSIONS

The Commission concludes that GTE should be required to make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract but that Sprint should be required to accept the rate associated with the interconnection, network element, or service in that contract.

IT IS, THEREFORE, ORDERED as follows:

1. That GTE and Sprint 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 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 and saved in WordPerfect format.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-294, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition of Sprint Communications Company, L.P., For Arbitration of Interconnection with GTE South Incorporated	)))))	ORDER RULING ON OBJECTIONS, COMMENTS, UNRESOLVED ISSUES, AND COMPOSITE AGREEMENT

BY THE COMMISSION: On April 7, 1997, the Commission entered a Recommended Arbitration Order (RAO) in this docket setting forth certain findings of fact, conclusions, and decisions with respect to the arbitration proceeding initiated by Sprint Communications Company, L.P. (Sprint) against GTE South Incorporated (GTE). The RAO required Sprint and GTE to jointly prepare and file a Composite Agreement in conformity with the conclusions of said Order within 45 days. The RAO further provided that the parties to the arbitration proceeding could, within 30 days, file objections to said Order and that any other interested person not a party to this proceeding could, within 30 days, file comments concerning said Order.

On May 7, 1997, GTE filed objections and comments with respect to the RAO. Sprint filed objections to the RAO on May 21, 1997. On May 22, 1997, GTE and Sprint filed their Composite Agreement. On that same date, Sprint filed a statement of position and comments and GTE filed comments regarding the Composite Agreement.

WHEREUPON, after careful consideration of the objections, comments, and unresolved issues, the Commission concludes that the RAO should be affirmed, clarified, or amended as set forth below and that the Composite Agreement should be approved, subject to the modifications set forth below.

ISSUES RELATED TO COMMENTS/OBJECTIONS

ISSUE NO. 1(a): What services provided by GTE should be excluded from resale?

INITIAL COMMISSION DECISION

The Commission concluded that GTE should be required to resell at wholesale rates all retail telecommunications services that it provides to subscribers who are not telecommunications carriers, subject to certain conditions set out in the RAO.

1. Promotional offerings are not subject to resale if they are for less than 90 days.

2. Public and semi-public pay telephone lines. While the incumbent local exchange company's (incumbent LEC's or ILEC's) own payphones are not subject to resale, semi-public payphones will be. Public telephone access service (PTAS) lines will be subject to resale but only to telecommunications carriers, not customer-owned, coin-operated telephone providers (COCOTs) and only for the purpose of resale.

3. Existing contract service arrangements (CSAs) (i.e., individual case basis services). These are subject to resale but the ILEC may request an exemption for a specific CSA for good cause shown.

4. Inside wiring and voice mail. These are not subject to resale.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's decision regarding services priced below cost, promotional offerings of over 90 days, public and semi-public payphones, and existing CSAs, contending that these services should not be subject to resale.

DISCUSSION

In its original decision, the Commission noted Section 251(c)(4) of the Telecommunications Act of 1996 (the Act or TA96), imposing a general requirement on the ILEC to resell at wholesale rates any retail telecommunications services offered by it to subscribers who are not telecommunications carriers. The thrust of the Federal Communications Commission's (FCC's) First Report and Order in CC Docket No. 96-98 and 95-185 issued on August 8, 1996 (Interconnection Order) clearly disfavors restrictions on resale. Within the boundaries set by TA96 and the FCC Interconnection Order, the Commission made certain principled distinctions to allow a limited number of services not to be resold.

The Commission believes that GTE's objections regarding exceptions to the resale requirement to be without merit except as to semi-public payphones. Semi-public payphones should not be required to be resold because they are no longer offered to subscribers at retail under tariffs due to the FCC's Payphone Order.

CONCLUSIONS

The Commission affirms its original decision, with the exception that semi-public payphones shall not be required to be resold. GTE may, however, offer such semi-public payphone services for resale if it chooses to do so.

<u>ISSUE NO. 1(b)</u>: Should GTE be required to offer for resale at wholesale rates services to the disabled, including special features of that service such as free directory assistance, service calls, if that service is provided by GTE?

INITIAL COMMISSION DECISION

The Commission ruled that GTE should be required to offer services to the disabled at wholesale rates, noting the Attorney General's point that these services are retail services and are presumptively subject to resale. Furthermore, it is important for this class of customers to have competitive choices.

COMMENTS/OBJECTIONS

GTE: GTE objected to being required to discount the retail rates of mandated social programs that provide for discounts for special rates.

DISCUSSION

The Commission considers the original decision on this issue to have been the correct decision and in accord with TA96 and the FCC Interconnection Order. GTE has advanced no compelling argument for altering this decision.

CONCLUSIONS

The Commission affirms its original decision regarding this issue.

<u>ISSUE NO. 1(c)</u>: Should each and every retail rate have a corresponding wholesale rate?

INITIAL COMMISSION DECISION

The Commission concluded that GTE should be required to have corresponding wholesale rates for retail services that must be offered for resale.

COMMENTS/OBJECTIONS

GTE: GTE reiterated its view that it is willing to make available retail services on a wholesale basis at a wholesale rate structure that mirrors the retail rate structure except for below-cost services, nonrecurring charges, individual case basis (ICB) services, access services, and operator service/directory assistance (OS/DA) where no discount applies. GTE's position was that it should not be required to offer at wholesale rates those services that have no avoided retail cost, and there are no such avoided costs associated with those services.

DISCUSSION

The Commission found that this issue essentially corresponded to Issue No. 1(a). From the discussion of that issue, it follows that GTE must make available retail services on a wholesale basis at a wholesale rate structure mirroring the retail rate structure, including the services enumerated in GTE's objections.

CONCLUSIONS

The Commission affirms its original decision on this issue.

<u>ISSUE NO. 2</u>: What resale restrictions should be permitted?

INITIAL COMMISSION DECISION

The Commission concluded:

1. That cross-class selling should be prohibited; e.g., purchasing wholesale residential services and reselling to a business customer.

2. That resale of grandfathered services should only be allowed to grandfathered customers and Lifeline/Link-Up services only to eligible end-users.

3. That resale of below-cost residential service, promotional offers of over 90 days, nonrecurring charges, operator services, directory assistance, and ICB must be allowed without unreasonable or discriminatory conditions and limitations.

4. That use and user restrictions that are currently in ILEC tariffs should carry forward into resold services with the exception of such prohibitions or restrictions which have been or will be specifically imposed.

COMMENTS/OBJECTIONS

SPRINT: Sprint sought clarification that the only cross-class selling being prohibited was residential to business customers.

GTE: GTE objected to the requirement that below-cost residential service, promotional offers of over 90 days, nonrecurring charges, operator services, directory assistance, and ICB must be allowed without unreasonable or discriminatory conditions and limitations.

DISCUSSION

GTE's objections are a rehash to its objections concerning Issues 1(a), 1(b), and 1(c), and should be rejected for the same reasons.

Regarding Sprint's request for clarification concerning cross-class selling, the Commission notes that Paragraph 962 of the FCC Interconnection Order specifically authorized restrictions on residential to business cross-class resale. Paragraphs 963 and 964 also discussed Lifeline resale. Paragraph 964 stated that "all other cross-class restrictions should be presumed unreasonable," without, however, listing what such "other cross-class restrictions" might be. The Commission, therefore, concludes that cross-class restrictions other than those recapitulated above from the RAO are presumptively unreasonable.

CONCLUSIONS

The Commission affirms its original decision regarding this issue and notes that cross-class resale restrictions other than those listed above are presumptively unreasonable.

ISSUE NO. 3: What authorization is required for provision of customer account information to Sprint?

INITIAL COMMISSION DECISION

The Commission declined to endorse the specific procedure proposed by either party but required the parties to negotiate an agreement consistent with the previous discussion and listed in the following paragraphs:

1. ILECs and competing local providers (CLPs) should enter into blanket letters of authorization (LOAs) authorizing the CLP to receive relevant customer account information and to transfer the customer's service, provided that the CLP has obtained prior written or third-party verified authorization from the customer in a manner consistent with FCC Rules in 47 CFR Part 64, Subpart K.

2. The above verification procedures should be superseded by such rules as are issued by the FCC pursuant to Section 258 of the Act, subject, after promulgation of such rules, to reconsideration by motion of the Commission or by an interested party.

3. That, to the extent that on-line access to relevant customer records would also give a CLP access to nonrelevant service records, the ILECs should diligently work toward technical means to restrict such access to nonrelevant service records. CLPs shall not seek or use such nonrelevant service records for any purpose.

COMMENTS/OBJECTIONS

SPRINT: Sprint objected to the requirement of a signed customer LOA or FCC-approved verification to view account information as a hindrance to competition.

GTE: GTE argued that the Commission should require prior, written authorization from each customer whose personal records Sprint wants to access and whose service Sprint wants to transfer.

DISCUSSION

The Commission's original decision on this issue recognized the need for such mechanisms as "as-is" transfers and blanket LOAs to effectuate meaningful competition, while at the same time recognizing the need to mitigate potential problems.

CONCLUSIONS

The Commission affirms its original decision on this issue.

<u>ISSUE NO. 4</u>: What are the excludable costs related to services subject to resale? What is the proper methodology for determining the prices for GTE resold services?

INITIAL COMMISSION DECISION

The Commission concluded that GTE's total avoided costs for purposes of calculating a wholesale discount rate in this proceeding are $21,936,000. The Commission also concluded that,

based on the total avoided costs determined of $21,936,000, GTE's appropriate composite wholesale discount rate is 19.97%.

COMMENTS/OBJECTIONS

GTE: GTE objected to the Commission's reliance on the FCC's "proxy" logic to establish the wholesale discount rate. GTE argues that by using proxy pricing methods, the RAO failed to meet the Act's requirement to establish rates based on GTE's actual costs, which are shown in great detail in GTE's avoided cost studies. GTE stated that the Commission embraced the "proxy" analysis of the stayed provisions of the FCC's First Report and Order and argued that the Commission's adoption of a wholesale discount rate rooted in the FCC's "proxy" logic will cause GTE to suffer precisely the irreparable harm that the Eighth Circuit so clearly intended to prevent.

DISCUSSION

The Commission view was that the FCC Interconnection Order provided a reasonable basic methodology upon which to base the Commission's avoided cost analysis with some exceptions. The Commission's avoided cost analysis is based on a review of the entire record of evidence in the proceeding including TA96 and the FCC Interconnection Order. Section 252(d)(3) of the Act states 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. The FCC Interconnection Order provided a basic methodology to determine avoided costs which the FCC believes complies with the Act. The Commission did not simply adopt the FCC's "proxy" logic; the Commission prepared its own avoided cost analysis which it believes complies with the Act and follows the same basic methodology as the FCC Interconnection Order with some exceptions.

GTE asserts that the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which are shown in great detail in GTE's cost studies. GTE's avoided cost studies reflect GTE's estimation of avoided costs, not actual avoided costs. GTE even states that its avoided cost study is based on an analysis of its work centers to reliably estimate the costs it will incur when it becomes a wholesaler of local services.

The Commission continues to believe that the Commission's avoided cost analysis prepared to calculate GTE's avoided costs is based on a thorough review of all of the evidence of record and complies with the Act. The Commission also believes that GTE's avoided cost studies do not represent GTE's actual avoided costs but GTE's estimation of its avoided costs.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 5: What are the appropriate prices for unbundled network elements, call transport and termination, and interconnection?

INITIAL COMMISSION DECISION

The Commission established interim rates, subject to true-up, for unbundled network elements, call transport and termination, and interconnection based on consideration of the FCC's proxy rate guidelines or "default proxies", i.e., proxy rate ceilings, proxy rate ranges, and other proxy rate provisions, that state regulatory agencies could utilize on an interim basis in lieu of using a forward-looking, economic cost study complying with the FCC's total element long-run incremental cost-based (TELRIC-based) pricing methodology, except as indicated below.

The FCC Interconnection Order did not provide a proxy rate for the network interface device (NID) as an unbundled network element. In previous arbitration proceedings involving GTE and AT&T Communications of the Southern States, Inc. (AT&T), as well as GTE and MCI Telecommunications Corporation (MCI), the Commission established an interim NID rate of $1.36, subject to true-up, based on a simple average of the NID rate proposed by both AT&T and MCI and the NID rate proposed by GTE. The proposed NID rates of GTE, AT&T, and MCI in those previous arbitration proceedings were based on each of those parties' cost studies. In this proceeding, the Commission adopted the same interim NID rate of $1.36, subject to true-up, in order to be consistent with the Commission's decisions concerning GTE's cost of providing its NID in the previous arbitrations involving GTE.

The FCC Interconnection Order also did not provide proxy rates for operator services and directory assistance services as unbundled network elements. Moreover, no party to this proceeding proposed specific rates for such services. Due to the lack of adequate evidentiary information and data, the Commission was unable to establish rates in this regard for purposes of this proceeding. The Commission, therefore, directed the parties to further negotiate the rates for operator services and directory assistance services as unbundled network elements.

While the FCC Interconnection Order provided a $16.71 proxy rate ceiling for an unbundled loop in North Carolina, in this proceeding the Commission adopted an interim loop rate of $17.05, subject to true-up. In the previous arbitration proceedings involving GTE and AT&T, as well as GTE and MCI, the Commission established an interim loop rate of $17.05. In this proceeding, the Commission adopted the same interim loop rate of $17.05 in order to be consistent with the Commission's decisions concerning GTE's cost of providing its loop in the previous arbitrations involving GTE.

COMMENTS/OBJECTIONS

GTE: GTE objected to the use of proxy rates to establish prices for unbundled network elements, interconnection, and transport and termination. GTE asserted that, by using proxy pricing methods, the Commission failed to meet its obligation under the Act to establish rates based on GTE's actual costs, which according to GTE are shown in great detail in its cost studies. GTE argued that its proposed rates are "... the only rates presented in these arbitration proceedings which conform to the requirements of the Act and the Constitutions of the United States and North Carolina." GTE stated that the rates established by the Commission failed to allow it to recover its forward-looking costs of providing each element or service plus a reasonable allocation of joint and common, historical, subsidy, and other costs.

GTE, after having construed the RAO to have established symmetrical rates for transport and termination, stated that such action is at odds with the requirements of the Act. GTE noted that Section 252(d)(2) of the Act states that reciprocal compensation shall not be considered just and reasonable unless "such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities . . . ." Thereafter, GTE asserted that the Commission had disregarded this language and determined that one set of rates shall apply. In conclusion, GTE stated that the Commission should establish asymmetrical rates based upon the costs of each particular carrier.

GTE also objected to the Commission's having adopted an interim loop rate of $17.05 and an interim NID rate of $1.36 because, according to GTE, it is unlawful for the RAO to rely on evidence in a separate proceeding in order to determine GTE's costs. Moreover, GTE disagreed with the Commission's decisions in the previous arbitrations regarding the cost of its loop and NID.

GTE stated that, while it does not favor interim prices, if the Commission needed more time to consider GTE's cost studies and pricing proposal, it would consent to interim pricing, provided the prices are set at the levels recommended by GTE. GTE asserted that the only way interim pricing can avoid an unconstitutional taking of GTE's property, and the attendant irreparable harm of lost market share and erosion of goodwill, is if the interim prices are those requested by GTE.

Finally, GTE argued that the Commission erred in refusing to adopt an end-user charge, which is required under GTE's costing approach in order to allow GTE to capture all of its true network costs, including stranded costs and a fair rate of return on its historic investments.

GTE urged the Commission to reject its earlier recommended findings regarding pricing and adopt rates which reflect GTE's actual costs as required by the Act.

DISCUSSION

GTE's assertion that the interim rates established for unbundled network elements, call transport and termination, and interconnection were not based on cost appears to be without merit. As previously discussed herein, the interim rates established by the Commission were based on consideration of either the FCC's proxies and/or, in the case of the NID and the loop, Commission decisions concerning GTE's cost of providing its unbundled NID and loop in previous arbitrations involving GTE. As clearly evidenced by its Interconnection Order, the FCC's default proxies were based on cost. Further, the interim NID rate of $1.36 established in this proceeding is consistent with the Commission's decision concerning GTE's cost of providing its NID based on the cost studies of GTE, AT&T, and MCI in previous arbitration proceedings. The interim loop rate of $17.05 established in this proceeding was based on consideration of the FCC's proxy loop rate as well as the Commission's decision concerning GTE's cost of providing its loop after reviewing cost studies submitted in previous arbitrations involving GTE. Therefore, it is not unreasonable to conclude that the Commission's proxy-based interim rates are in fact cost-based.

Regarding GTE's having construed the RAO to have established symmetrical rates for transport and termination, such Order does not so provide. The evidence of record in this proceeding is insufficient to allow the Commission to reach an informed decision in that regard.

With respect to GTE's assertion that the Commission erred in refusing to adopt an end-user charge, which is required under GTE's costing approach, since the Commission did not adopt GTE's costing approach in establishing interim rates subject to true-up, it does not appear to be unreasonable for the Commission not to have adopted an end-user charge as advocated by GTE.

CONCLUSIONS

The Commission affirms its original decision on this issue.

ISSUE NO. 6: Should GTE make available to Sprint any price, term, and/or condition offered by GTE to any other carrier on a most favored nation ("MFN") basis?

INITIAL COMMISSION DECISION

The Commission decided that GTE should be required to make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract, but Sprint should be required to accept the rate associated with the interconnection, network element, or service in that contract.

COMMENTS/OBJECTIONS

GTE: GTE objects to this finding and cites the Eighth Circuit's Order staying FCC Rule 51.809, where the court said that allowing new entrants to "pick and choose" lowest-priced elements from different agreements would arguably undermine the congressional preference for negotiated agreements because they would never be final. GTE notes that commercial contract negotiations are a process of conceding positions on some elements in order to gain something on other elements. Accordingly, GTE asserts that permitting another party to pick and choose parts of the elements it desires without compromising on other elements would frustrate the negotiations and the integrity of the results of the original contract.

DISCUSSION

The Commission's decision is closer to Sprint's position than it is to GTE's. GTE's suggestion that it would allow Sprint to sever the rate from the terms and conditions of an interconnection, service, or element is incorrect. If the decision can be read that way, it should be clarified.

The Eighth Circuit's Order correctly notes that the MFN provision, Section 252(1), speaks only of "terms and conditions" and not "rates," while what it calls the "pick and choose" rule states in pertinent part:

> "(a) An incumbent LEC shall make available without unreasonable delay to any requesting telecommunications carrier any individual interconnection, service, or network element arrangement contained in any agreement to which it is a party that is approved by a state commission pursuant to section 252 of the Act, upon the same *rates*, terms, and conditions as those approved in the agreement." Section 51.809 (emphasis added).

This rule rests on the FCC's analysis of the Act and its view that Section 252(1) is the primary tool for preventing the discrimination that is prohibited in Section 251(c), i.e., discrimination with respect to rates, terms, and conditions for interconnection, unbundled network elements, collocation, and resale. The FCC concluded that in Section 252(1) Congress drew a distinction between "any interconnection, service, or network element[s] provided under an agreement" and agreements as a whole. (Interconnection Order, Paragraph 1310.) The FCC further found that unbundled availability of individual interconnection, service, or network element arrangements is mandated by Sections 252(a)(1) and 251(c)(3). (Interconnection Order, Paragraph 1314.) GTE's position that agreements should not be unbundled is, therefore, not supported by the Act.

Even if FCC Rule 51.809 has been stayed, the Commission is not prevented from interpreting Section 252(1) of the Act on its own. The argument that the Commission's interpretation would undermine the negotiating process and destabilize this agreement is not particularly persuasive, inasmuch as the rates to be charged under the agreement are being set by arbitration, and no more attractive rates are likely to appear in any other agreements.

Finally, the Commission notes that there are instances, acknowledged by Sprint, where GTE will not be required to extend MFN treatment. These relate to volume discounts, term discounts, significant differences in operational support interfaces, technical sequential feasibility, and geographic deaveraging.

CONCLUSIONS

The Commission affirms its original decision on this issue.

UNRESOLVED ISSUES

ISSUE NO. 1: MOST FAVORED NATIONS PROVISION
Contract Location: Article III, Section 27
Sprint's Statement Of Position, Page 2
GTE's Comments On Interconnection Agreement, Pages 2-6

DISCUSSION

GTE's objections regarding this issue are the same as previously stated in its comments and objections to the Commission's decision in the RAO concerning the most favored nations provision. GTE does not believe it is appropriate to include in the contract any "pick and choose" language. Its argument is based on the Eighth Circuit's Stay Order.

Sprint intends to elect the AT&T/GTE Interconnection Agreement upon its approval. It is Sprint's view that Finding of Fact No. 12 of the RAO permits Sprint this option. Sprint, however, has suggested language to clarify that not only may Sprint elect individual interconnections, network elements, or services, but Sprint may also elect other agreements in their entirety.

Sprint's proposed language is as follows:

> GTE shall make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract, provided that Sprint shall be required to accept the rate associated with the interconnection, network element, or service in that contract. Pursuant to this section, Sprint shall also have the right in its sole option and discretion to adopt in its entirety an approved interconnection agreement between GTE and any other carrier.

The Commission decided in the RAO that GTE should be required to make available to Sprint any individual interconnection, network element, or service offered on more favorable terms and conditions to any other carrier in a contract, but that Sprint should be required to accept the rate associated with the interconnection, network element, or service in that contract. Sprint's language tracts the language in the Commission's RAO. As the Commission has ruled that GTE must make available to Sprint individual interconnections on the most favorable terms offered to other parties subject only to Sprint's acceptance of the rate associated with that interconnection, then it only follows that Sprint should be permitted to adopt an entire interconnection agreement.

The "Most Favored Nations" issue has been discussed in detail in Issue No. 6 of the Comments/Objections Section of this Order and will not be repeated here.

CONCLUSIONS

The Commission concludes that Sprint's proposed language is in accord with the Commission's findings in the RAO and is appropriately included in the Composite Agreement.

ISSUE NO. 2: NONRECURRING CHARGES
Contract Location: Appendix F and Exhibit A to Appendix H
Sprint's Statement Of Position And Comments, Page 3
GTE's Comments On Proposed Interconnection Agreement, Pages 2 and 6

DISCUSSION

Sprint acknowledges that GTE is allowed to charge Sprint nonrecurring charges (NRCs) for wholesale services as long as the wholesale discount rate is applied to the NRCs. Sprint states that it has not had an opportunity to verify that the NRCs listed on Appendix F are in fact the retail rate provided in GTE's tariff.

With respect to NRCs for unbundled network elements included in Appendix F, Sprint is concerned that the Commission may not have intended for GTE to collect such charges from Sprint. Further, Sprint states that it has no information to determine whether the NRCs included in the composite contract are forward-looking or cost-based as required by the Act. Sprint requests that the Commission clarify whether it intended for GTE to be permitted to charge NRCs for unbundled network elements. If such charges are consistent with the Commission's intent in its Order, Sprint requests that the Commission set interim, cost-based NRCs that will be subject to true-up, similar to the other interim rates set in these proceedings.

GTE submits that the NRCs for unbundled network elements listed on Appendix F are correct and are consistent with GTE's testimony. According to GTE, these NRCs and other charges are

subject to further rate proceedings and may be adjusted to reflect the final rates determined by the Commission through a true-up process. Therefore, GTE states that Sprint will not be prejudiced if the rates are temporarily incorrect.

The Commission's RAO established the wholesale discount rate and found that GTE should be required to have corresponding wholesale rates for retail services that must be offered for resale. On page 9 of the RAO, the Commission specifically concluded that resale of NRCs must be allowed without unreasonable or discriminatory conditions and limitations.

The RAO also established recurring charges for several unbundled network elements, but did not address NRCs for unbundled network elements because this issue was not clear. However, the Commission did not intend for GTE not to be allowed to recover NRCs for unbundled network elements.

CONCLUSIONS

The Commission concludes that the permanent NRCs for wholesale services subject to resale should be as set forth in GTE's retail local service tariffs, less the permanent wholesale discount rate of 19.97%. With respect to the NRCs for unbundled network elements, the Commission directs the parties to further negotiate such rates if the rates on Appendix F are unacceptable to Sprint. If the parties are unable to agree on NRCs for unbundled network elements, such rates should be covered by the provision for "To Be Determined" (TBD) prices as contained in Article III, Section 42 of the Composite Agreement. All NRCs for unbundled network elements should be interim, subject to true-up, as required by the RAO with respect to prices for unbundled network elements.

ISSUE NO. 3: EXECUTION OF INTERCONNECTION AGREEMENT
Contract Location: At End Of Article X And Of The Appendices
GTE's Comments On Proposed Interconnection Agreement, Pages 3 and 7

DISCUSSION

GTE contends that, if the Commission approves the Interconnection Agreement, the Commission should not order GTE to execute it. Section 252(e)(1) of TA96 only requires that an agreement adopted by arbitration be submitted for approval. There is no execution requirement.

Sprint did not address this issue.

The Commission views the execution of the Interconnection Agreement as integral to its approval and inseparable from it. Black's Law Dictionary (Revised Fourth Edition) defines "execute" as "[t]o complete; to make; to perform; to do; to follow out." Although GTE may disagree with many of the results of the arbitration, it is nevertheless obliged to carry them out and to so signify by appending its signature to the Interconnection Agreement. This is, of course, without prejudice to GTE's rights to appeal concerning any or all of its provisions.

CONCLUSIONS

The Commission concludes that GTE must execute the Interconnection Agreement.

ISSUE NO. 4: SCOPE AND INTENT OF AGREEMENT
Contract Location: Article I, Page I-1

DISCUSSION

Article I entitled "Scope And Intent Of Agreement" contains a provision proposed by GTE which provides as follows:

> The terms and conditions set forth in this GTE/Sprint Agreement are contingent on adoption by the relevant governmental authorities of the pricing and costing principles (e.g. historic costs, undepreciated reserve deficiency) advocated and presented by GTE in any arbitration proceedings related to this Agreement, and establishment of a universal service system that is competitively neutral.

CONCLUSIONS

The Commission has not previously approved a provision such as the one proposed by GTE in any interconnection agreement, arbitrated or negotiated. Because this provision creates an unacceptable contingency to the effectiveness of a final agreement, the Commission finds good cause to require that it be deleted.

ISSUE NO. 5: RESALE OF SEMI-PUBLIC PAY TELEPHONE LINES
Contract Location: Article V, Section 5.8

DISCUSSION

Section 5.8 of the proposed agreement provides that GTE shall offer its semi-public coin telephone service for resale.

CONCLUSIONS

With respect to the resale of semi-public payphone service as provided for in Article V, Section 5.8 of the proposed agreement, the Commission notes that, pursuant to the FCC's Payphone Order, semi-public payphones are no longer offered to subscribers under tariff and thus should not be required to be offered for resale. GTE may, however, offer such semi-public payphone services for resale if it chooses to do so.

IT IS, THEREFORE, ORDERED as follows:

1. That the Composite Agreement submitted by GTE and Sprint is hereby approved, subject to the modifications required by this Order.

2. That GTE and Sprint shall revise the Composite Agreement in conformity with the provisions of this Order and shall file the revised Composite Agreement for review and approval by the Commission not later than 15 days from the date of this Order.

3. That the Commission will entertain no further comments, objections, or unresolved issues with respect to issues previously addressed in this arbitration proceeding.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-141, SUB 30
DOCKET NO. P-141, SUB 31
DOCKET NO. P-140, SUB 51
DOCKET NO. P-294, SUB 8
DOCKET NO. P-294, SUB 9

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. P-141, SUB 30
In the Matter of
Petition of MCI Telecommunications Corporation For Arbitration of Interconnection with GTE South Incorporated

DOCKET NO. P-141, SUB 31
In the Matter of
Petition of MCI Telecommunications Corporation for Arbitration of Interconnection with Carolina Telephone and Telegraph Company and Central Telephone Company

DOCKET NO. P-140, SUB 51
In the Matter of
Petition of AT&T Communications of the Southern States, Inc., for Arbitration of Interconnection with GTE South Incorporated

DOCKET NO. P-294, SUB 8
In the Matter of
Petition of Sprint Communications Company, L.P., for Arbitration of Interconnection with BellSouth Telecommunications, Inc.

DOCKET NO. P-294, SUB 9
In the Matter of
Petition of Sprint Communications Company, L.P., For Arbitration of Interconnection with GTE South Incorporated

ORDER DEFERRING RULINGS

BY THE COMMISSION: On August 1, 1997, GTE South Incorporated (GTE) filed certain comments in Docket Nos. P-141, Sub 30 and P-294, Sub 9, regarding the decision entered by the United States Court of Appeals for the Eighth Circuit on July 18, 1997, in Iowa Utilities Board v. FCC, No. 96-3321, 1997 WL 403401 (8th Cir. July 18, 1997). In essence, GTE is requesting the Commission, in both of the referenced dockets, to reject the pending interconnection agreements with MCI Telecommunications Corporation (MCI) and Sprint Communications Company, L.P. (Sprint) and order the affected parties to modify the agreements to comply with the Eighth Circuit's opinion. GTE also has an interconnection agreement with AT&T Communications of the Southern States, Inc. (AT&T) pending approval in Docket No. P-140, Sub 51. Sprint has a fully-executed interconnection agreement with BellSouth Telecommunications, Inc. (BellSouth) in Docket No. P-294, Sub 8, and MCI has a fully-executed agreement with Carolina Telephone and Telegraph Company and Central Telephone Company in Docket No. P-141, Sub 31. Pursuant to Section 252(e)(4) of the Act, the BellSouth/Sprint and MCI/Carolina/Central contracts are deemed approved due to the fact that they have been filed with the Commission for more than 30 days. The GTE/Sprint interconnection agreement in Docket No. P-294, Sub 9, is also a fully-executed agreement which is deemed approved under the Act.

On August 7, 1997, the Commission entered an Order in these dockets requesting responses to GTE's comments regarding the Eighth Circuit's opinion from all parties to the interconnection cases which are still pending before the Commission. The parties were requested to address the procedural and substantive matters specifically raised by GTE in its recent pleadings and to make specific recommendations as to how the Commission should proceed in these matters in view of the Eighth Circuit's opinion. The parties were also requested to specifically address whether the Commission should, at least on an interim basis, approve all of the interconnection agreements which are currently pending in these dockets. In addition, the parties were requested and encouraged to meet to determine whether they could agree or come to consensus on any of the matters at issue and to then report in writing to the Commission the results of their meetings and discussions.

Initial comments were filed by the Carolina Utility Customers Association, Inc. (CUCA), AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), Sprint Communications Company, L.P. (Sprint), Carolina Telephone and Telegraph Company (Carolina), Central Telephone Company (Central), and BellSouth Telecommunications, Inc. (BellSouth). Reply comments were filed by the Attorney General, AT&T, MCI, Time Warner Communications of North Carolina, L.P. (Time Warner), GTE, Sprint, Carolina, and Central.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission finds good cause to defer any action at this time on the requests made by various parties that we revisit, reject, and/or reform certain of the issues decided in the pending arbitration proceedings. In so ruling, we note that multiple petitions for rehearing and reconsideration have already been filed with the Eighth Circuit. The Commission will, by further Order or Orders, enter a decision and determine the appropriate actions to be taken.

Accordingly, the Commission finds good cause to defer a ruling at this time on the requests of GTE and other parties for relief. In addition, the Commission finds good cause to defer a ruling

on MCI's request to give final approval to and require GTE to execute the GTE/MCI interconnection agreement which was filed in Docket No. P-141, Sub 30, on August 1, 1997. In so ruling, the Commission notes that GTE and MCI have an approved interim negotiated interconnection agreement on file with the Commission. Furthermore, the Commission declines at this time to require AT&T and GTE to execute and file a final interconnection agreement in Docket No. P-140, Sub 51, which conforms to the provisions of the Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement entered by the Commission on July 3, 1997. AT&T and GTE have not to date pressed this matter by filing a final agreement and those parties are certainly free to file a negotiated interconnection agreement for approval by the Commission.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 16th day of September, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-16, SUB 181

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of The Concord Telephone Company	)	ORDER AUTHORIZING
for Approval of a Price Regulation Plan Pursuant to	)	PRICE REGULATION
N.C. Gen Stat. § 62-133.5(a)	)	

HEARD: Monday, March 3, 1997, in Cabarrus County Governmental Center, Second Floor, 65 Church Street, Concord, North Carolina

Monday, April 14, 1997, in Commission Hearing Room, Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Jo Anne Sanford, Presiding, and Commissioners Charles H. Hughes, Allyson K. Duncan, Ralph A. Hunt, Judy Hunt, and William R. Pittman

APPEARANCES:

FOR THE CONCORD TELEPHONE COMPANY:

Jerry W. Amos, Attorney at Law, Amos & Jeffries, LLP; P.O. Box 787, Greensboro, North Carolina 27402

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.:

Kenneth P. McNeely, Attorney at Law, 1200 Peachtree Street, N.E., Room 4044, Atlanta, Georgia 30309

FOR TIME WARNER AND THE NORTH CAROLINA PAYPHONE ASSOCIATION:

Elizabeth Crabill, Attorney at Law, Brooks, Pierce, McLendon, Humphrey & Leonard, P.O. Box 1800, Raleigh, North Carolina 27602

FOR THE USING AND CONSUMING PUBLIC:

Antoinette R. Wike, Chief Counsel and James D. Little, Staff Attorney, Public Staff, P.O. Box 29520, Raleigh, North Carolina 27626-0520

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

BY THE COMMISSION: G.S. §62-133.5(a) provides that "[a]ny local exchange company, subject to the provisions of G.S. § 62-110(f1), that is subject to rate of return regulation pursuant to G.S. §62-133 . . . 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 earnings regulation." Although local exchange companies with 200,000 access lines or less are exempted from the provisions of G.S. § 62-110(f1), they may nevertheless elect to have their rates, terms and conditions of services determined pursuant to a form of price regulation under G.S. § 62-133.5(a) if they agree to subject themselves to local competition under the provisions of G.S. § 62-110(f1). G.S. §62-110(f2) provides that "[u]pon the filing of an application by a local exchange company with 200,000 access lines or less for regulation under the provisions of G.S. 62-133.5(a), the Commission shall apply the provisions of that section to such local exchange company but only upon the condition that the provisions of subsection (f1) of this section are to be applicable to the franchised area and local exchange and exchange access services offered by such a local exchange company."

Under the form of price regulation authorized by G.S. § 62-133.5(a), "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."

The statute requires notice and a hearing, allows different forms of price regulation as between different local exchange companies, and requires the Commission to decide price regulation cases within ninety (90) days subject to an extension by the Commission for an additional ninety (90) days, or a total of one hundred and eighty (180) days from the filing of the Application. The statute also 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."

The Concord Telephone Company ("CTC") filed its price regulation plan on November 1, 1996, and amended it on January 24, 1997. (The plan as amended is referred to herein as the "Original Plan.") In the petition accompanying the filing of its Original Plan, CTC alleged that the Original Plan was substantially the same as price regulation plans previously approved by the Commission for the State's largest LECs[1] except that two provisions had been changed to reflect differences between the larger LECs and CTC as a small local LEC. More specifically, CTC alleged

---

1 *See* Carolina Telephone and Telegraph Company and Central Telephone Company, Docket No. P-7, Sub 825 and Docket No. P-10, Sub 479 (May 2, 1996); GTE South Incorporated, Docket No. P-19, Sub 277 (May 2, 1996); BellSouth Telecommunications, Inc., Docket P-55, Sub 1013 (May 2, 1996).

that the Original Plan provided for a productivity offset of 1% (as compared to 2% for the larger LECs) and a residential price freeze of one year (as compared to three years for the larger LECs).

CTC described the major features of the Original Plan as (a) a revenue reduction of approximately $700,000, (b) a rebalancing of its rates, (c) an expanded local calling scope , (d) a simplification of its rate structure, and (e) the elimination of separate charges for touch tone calling.

By Order dated November 22, 1996, the Commission scheduled the matter for hearing in Raleigh on March 3, 1997, required the prefiling of testimony by CTC, the Public Staff and other intervenors, and suspended the proposed price regulation plan for a period of 180 days pending investigation and hearing. The Order also required CTC to file a proposed public notice for approval.

On January 22, 1997, the Public Staff filed a Motion for Additional Hearing and Approval of Notices. The Public Staff stated that, because the CTC plan included significant changes in rates and rate structure, a hearing should be held in Concord for the purpose of receiving the testimony of CTC's customers prior to the filing of testimony by the Public Staff and prior to the Raleigh hearing. The Public Staff stated that it and CTC had agreed to request that the March 3, 1997, hearing be held in Concord rather than in Raleigh and that a second hearing be scheduled for Raleigh for April 7, 1997. The Public Staff also proposed an extension of the dates for the filing of testimony and exhibits. The Public Staff also represented that CTC had agreed to a thirty-day extension of the statutory deadline for a Commission decision and that the Public Staff and CTC had agreed on a proposed notice to be sent to CTC's customers and a notice to be published in newspapers having general circulation in Concord's service area.

On January 24, 1997, the Commission issued an Order providing (1) that the hearing previously scheduled for Raleigh for March 3, 1997 be rescheduled for Concord on the same date for the purpose of receiving the testimony of public witnesses, (2) that a second hearing be scheduled for Raleigh for April 14, 1997 for the purpose of receiving the testimony and exhibits of CTC, the Public Staff and other intervenors, (3) that the notices be provided in the manner requested by the Public Staff in its January 22, 1997 Motion and (4) that the statutory deadline for Commission decision be extended to May 30, 1997.

At the March 3, 1997 hearing in Concord, the following public witnesses appeared: Betty Preuitt, Millie Hall, Roland Davey, Bob Vangorden, Mike Taylor, Lester Moose, Scott Connell, Marianne Dalier, Jim Monroe, Tom Dayvault and Tom Ramseur. All of the witnesses appearing at the Concord hearing supported the Original Plan.

On March 25, 1997, CTC entered into a Stipulation and Agreement with the Public Staff in which those parties agreed to a revised price regulation plan for CTC (the "Stipulated Plan" or "Plan"). (The Public Staff and CTC are hereafter referred to as the "Stipulating Parties"). The Stipulated Plan was filed with the Commission on March 25, 1997.

The Stipulated Plan modified the Original Plan in several respects. These modifications include the following:

- Under the Original Plan, rates for Residence Basic Local Exchange Service were capped for one year. In the Stipulated Plan, they were capped for three years.

- The Original Plan provided for a one percent (1%) productivity offset. The Stipulated Plan provides for a two percent (2%) productivity offset.

- In the Original Plan, CTC reserved its rights as a "rural telephone company" under Section 251(f)(1) of the Telecommunications Act of 1996. In the Stipulated Plan, CTC agreed that if it should receive a bona fide request for interconnection, services or network elements, it will not claim an exemption under Section 251(f)(1).

- The definition of Long Run Incremental Costs (LRIC) was amended in the Stipulated Plan to delete language that would have permitted CTC to use a LRIC study of another company in the event it had not conducted its own study.

- The Original Plan was amended in the Stipulated Plan to make it clear that the rebalanced tariffs would become effective on the effective date of the Plan.

- The Original Plan was amended to remove two of the exceptions that CTC had proposed to limit the requirement that prices for any individual rate element for any service offered by the Company shall equal or exceed its LRIC.

- A provision was added in the Stipulated Plan to provide for an imputation requirement consistent with the imputation requirement approved by the Commission in other price regulation plans.

- In addition to changing the one year price cap for Residence Basic Local Exchange Service to three years, the Stipulated Plan provides that the initial prices, in the aggregate, for Toll Switched Access Services shall be the maximum that the Company will charge under the Plan.

- The Original Plan was amended in the Stipulated Plan to provide that the TS-1 financial surveillance reports will not be filed on a proprietary basis.

- There were several other changes, however, these changes were in the nature of clarifications and did not change the intent of the Original Plan.

At the April 14, 1997 evidentiary hearing in Raleigh, CTC offered the testimony of the following witnesses: Barry R. Rubens, Senior Vice President of Finance and External Affairs of CT Communications, Inc., and its five subsidiaries, including CTC and Nicholas L. Kottyan, Senior Vice President of CTC. Mr. Rubens explained the modifications to the Original Plan to which CTC agreed in its stipulation with the Public Staff. No other party offered any testimony.

At the conclusion of the evidentiary hearing, the Commission scheduled the filing of briefs and proposed orders for a date twenty-one days following the mailing of the transcript of the evidentiary hearing. A joint proposed order was filed by CTC and the Public Staff. Briefs and/or proposed orders were also filed by AT&T and the Attorney General.

Based on the foregoing, the evidence adduced at the hearings, and the entire record in this matter, the Commission makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The applicant, CTC, is a "local exchange company" as that term is defined in G.S. § 62-3(16a). It has agreed to become subject to the provisions of G.S. § 62-110(f)(1) upon the effective date of the Plan under the provisions of G.S. § 62-133.5(a), and it is subject to rate of return regulation pursuant to G.S. § 62-133. Thus, this matter is properly before this Commission for consideration, and CTC meets all of the requirements for price regulation under G.S. § 62-133.5(a).

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.

6. The Company has agreed to waive the exemption for certain rural telephone companies provided by Section 251(f)(1) of the Telecommunication Act of 1996 ("TA96") upon the effective date of the Plan. The Commission finds that, under the circumstances of this case, the termination of this exemption upon the effective date of the Plan is not unduly economically burdensome, is technically feasible, and is consistent with TA96 Section 254 (other than subsections (b)(7) and (c)(1)(D) thereof).

7. Based on the Commission's April 15, 1997 Order in previous Commission-approved Price Regulation Plans, the Company is required to file its Annual Report (ARMIS 43-02 and 43-08) including the following North Carolina schedules instead of the complete Form M filed in previous years:

Schedule	Title
B-1	Balance Sheet Accounts
B-5-1	Analysis of Accumulated Depreciation
B-7	Bases of Charges for Depreciation
B-12	Net Deferred Income Taxes
I-1	Income Statement Accounts
S-5	Statistical Data

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 is not contested by the parties.

TELEPHONE - RATES

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 2

- AFFORDABILITY -

The Commission concludes that basic local exchange service under the proposed rates under the Commission-approved Price Regulation Plan is affordable for the following reasons. The proposed basic local service rates are less than the rates recently found to be affordable by the Commission for the three largest incumbent LECs within the state, including the LEC with whom CTC has a community of interest. They compare favorably with prices for other goods and services in the Company's service area. Although some basic local exchange rates will increase as a result of the Company's Plan, the value of the services available under those rates will also increase due to an expanded calling area. The Plan addresses the affordability of telephone service for low-income customers by maintaining existing Link-up Carolina and Lifeline programs for qualifying residential subscribers who are recipients of Aid to Families with Dependent Children or Supplemental Security Income. The initial rebalanced rates for residential basic local service are capped for a period of three years. Furthermore, the rebalanced rates produce a net reduction in revenues of approximately $700,000 annually.

CTC witness Rubens testified that the rebalanced residential basic local rates under the Stipulated Plan for all exchanges except the Harrisburg Exchange are approximately 26% less than the average of the rates charged for a comparable calling area by the four LECs for whom the Commission has previously approved a price regulation plan. The rebalanced residential basic local rates under Stipulated Plan for the Harrisburg Exchange (which includes Charlotte in its local calling area) are approximately 10% less than the average of the rates charged by the other four LECs.

Witness Rubens also testified that although rates may go up for some individual customers, CTC has attempted to see that all of its customers receive benefits under the Plan. Under the Plan, both CTC's local exchange calling areas and its extended area under its Metro Calling Plan are expanded. At present, the number of CTC local calling area access lines available to customers in these various exchanges ranges from a low of 20,958 to a high of 81,097. Under the Commission-approved Price Regulation Plan, each exchange will have the same number (approximately 94,200 as of May 31, 1996) of CTC local calling area access lines available to it. CTC also proposes to expand the number of access lines currently included in its Metro Calling Plan.

No party offered any testimony to show that the rebalanced rates under the Stipulated Plan are not affordable. The Attorney General, however, attempted to show
through cross-examination that rates for a hypothetical residential customer could substantially increase under the Stipulated Plan over a five-year period. Although witness Rubens admitted that rates could increase for such a hypothetical customer, he pointed out that overall the rates for residential customers will decrease under the Stipulated Plan and that the decreased rates are capped for a three-year period. By the end of that three-year period, competition should be sufficient to keep rates affordable.

The Attorney General also attempted to show that CTC's rates are lower than the rates of the other LECs for whom the Commission has approved price regulation plans because of differences in the balance sheets and income statements of CTC and the other LECs. Witness Rubens testified that in his opinion, a customer determines which of competing products or services to purchase based on

price and not on the balance sheets of the respective sellers of those products or services. Furthermore, the Commission concludes that while a LEC's balance sheet and income statement are of significant importance to rate of return regulation, they are less so under price regulation. The key issues under price regulation are affordability, service quality, lack of prejudice among customer classes and the public interest.

Finally, the Attorney General urged the Commission in its Brief to require CTC to provide cost data to support the requested rate rebalancing. The Attorney General asserts that there is insufficient evidence in the record in this case for the Commission to be able to conclude that the rate rebalancing of the Plan will assure the protection of the affordability of basic local exchange service. Under the rate rebalancing, basic residential rates would increase from a weighted average of $7.75 per month to a weighted average of $10.50 per month (excluding the Harrisburg exchange). For the Harrisburg exchange, basic residential rates would increase from $9.05 to $12.00 per month. As CTC witness Rubens testified, CTC did not utilize costs in this proceeding to determine affordability (Tr. Vol. II, page 79). The Commission notes that G.S. § 62-133.5 does not mandate that rate rebalancing be supported by cost data in order for the Commission to find that the Plan will assure the protection of the affordability of basic local exchange service.

For the reasons set forth above, the Commission concludes that the rebalanced rates under the Commission-approved Price Regulation Plan are affordable within the meaning of G.S. § 62-133.5.

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 CTC 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 under G.S. § 62-42 to compel efficient service. 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.

CTC witness Kottyan testified that each month CTC surveys 50 businesses and 150 residential customers. The surveys are conducted over the telephone by an independent third party. Customers are asked to rank CTC's service in several categories "excellent," "good," "fair" and "poor." During the first seven months of 1996, the percentage of surveyed customers who ranked CTC's overall service either excellent or good ranges from a low of 96% to a high of 97.4% and the percentage of surveyed customers who ranked CTC's overall service "excellent" range from 47.5% to 53%. Witness Kottyan also testified that approval of the Stipulated Plan will not in any way reduce the quality of CTC's service. He testified:

> "Our company has a long and proud heritage of providing customers with high quality service at affordable rates. In my opinion, service quality will greatly influence consumer choice when competitive

> options become available. At Concord Telephone, we plan to maintain our high service standards as a competitive advantage."

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 -

In its May 2, 1996 order in Docket No. P-19, Sub 277 authorizing price regulation for GTE South Incorporated, the Commission concluded that the General Assembly, in drafting G.S. §62-133.5(a)(iii), intended to embody within that statute the same principles embodied in G.S. §62-140 and the case law developed under G.S. §62-140.

In its May 2, 1996 order in Docket No. P-19, Sub 277, the Commission also concluded that "[t]he test has always been unreasonable preference, unreasonable advantage, unreasonable prejudice, unreasonable disadvantage, and unreasonable discrimination . . . ." A similar conclusion was reached by the Commission in Docket No. P-55, Sub 1013 authorizing price regulation for BellSouth:

> "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)." Applying this standard, it is clear that the Plan will not unreasonably prejudice any class of telephone customers, including telecommunications companies."

No party offered any evidence to show that the Stipulated Plan is prejudicial to any customer or to any class of customers. We have already found that the Commission-approved Price Regulation Plan protects the affordability of basic local exchange service. To the extent that residential and business local exchange services continue to be affordable, those customers are not unreasonably prejudiced. Furthermore, under the Commission-approved Price Regulation Plan, all customers will

have access to additional local calling area access lines and the number of local calling area access lines accessible to each customer will be more nearly equal than under current rates.

Under the Commission-approved Price Regulation Plan, the Commission will continue to have jurisdiction over the Company and the terms and conditions of its service to the public. The prices, terms and conditions of those services are consistent and will not unreasonably prejudice any class of customers. The Commission still retains its jurisdiction over any disputes that may arise between the Company and its customers or between the Company and any other telecommunications company. Furthermore, the Commission-approved Price Regulation Plan contains anticompetitive safeguard language which, in conjunction with certain statutory provisions, should provide aggrieved parties with a clearly defined avenue for redress in the event CTC should engage in anticompetitive conduct.

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 pubic 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, 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.

No party offered any testimony to show that the Stipulated Plan is not in the public interest, and we conclude that it is in the public interest. First, the Commission-approved Price Regulation Plan provides the rate rebalancing required by CTC to open its market to competition, and CTC has agreed to do so. Second, as we have previously found, the Commission-approved Price Regulation Plan provides affordable rates and assures that CTC will continue to provide adequate service to its customers. Third, the productivity offsets require CTC to share gains in future productivity with its customers. Fourth, the five-year review and the submission of the annual TS-1 surveillance report and the Annual Report should have a major influence upon CTC's behavior during the operation of the Commission-approved Price Regulation Plan. Fifth, we believe that the Commission-approved Price Regulation Plan properly shifts the risk of future investment decisions from CTC'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 that it will engender significant benefits for the citizens of this State through improved services, lower prices, and greater technological innovation. Finally, we conclude that the Commission-approved Price Regulation Plan offers significant potential for enhanced economic development.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 6

In the Commission-approved Price Regulation Plan, CTC agrees that if it should receive a bona fide request for interconnection, services or network elements, it will not claim an exemption under Section 251(f)(1). During cross-examination, counsel for Time Warner and the North Carolina

Payphone Association asked CTC witness Rubens if CTC was requesting the Commission to make a determination under TA96 Section 251(f)(1)(B) to terminate CTC's exemption under TA96 Section 251(f)(1)(A). Witness Rubens replied that CTC was "not trying to take away any responsibility or authority that this Commission has" but that CTC has "no problem being exempted from this . . . paragraph."

The Commission concludes that it is not required to conduct an inquiry for the purpose of determining whether to terminate the exemption under TA96 Section 251(f)(1) since that determination is only required when the party making a bona fide request of a rural telephone company for interconnection, services, or network elements shall submit a notice of its request to the State commission, and no such request is before the Commission at this time. Nevertheless, CTC has testified that it intends to open its service area to competition (as it is required to do by G.S. § 62-110(f2) in order to qualify for price regulation under G.S. § 62-133.5(a). Therefore, to avoid any need for any party to come before the Commission seeking an inquiry for the purpose of determining whether to terminate the exemption under TA96 Section 251(f)(1), we find that, under the circumstances of this case, the termination of this exemption upon the effective date of the Plan is not unduly economically burdensome, is technically feasible, and is consistent with TA96 Section 254 (other than subsections (b)(7) and (c)(1)(D) thereof). Our conclusion is supported by CTC's voluntary waiver of its status as an exempt rural telephone company under the provisions of TA96 Section 251(f)(1) and our findings and conclusions that the adoption of the Commission-approved Price Regulation Plan and the opening of CTC's service area to competition is in the public interest. Our conclusion, however, does not impact CTC's ability to seek a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) of TA96 Section 251 as it is permitted to do under the provisions of TA96 Section 251(f)(2).

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 7

The Commission issued an Order Regarding Financial Reports and Claims of Confidentiality on April 15, 1997, one day after the evidentiary hearing in this docket, in Dockets P-55, Sub 1013, P-7, Sub 825, P-10, Sub 479, and P-19, Sub 277 (Price Regulation of BellSouth Telecommunications, Inc., Carolina Telephone and Telegraph Company, Central Telephone Company, and GTE South, Incorporated). The Commission ordered that LECs under price regulation should continue to file (1) the TS-1 Reports without any modifications or exemption of schedules and (2) the Annual Report (ARMIS 43-02 and 43-08) as well as the following North Carolina schedules instead of the complete Form M filed in previous years:

Schedule	Title
B-1	Balance Sheet Accounts
B-5-1	Analysis of Accumulated Depreciation
B-7	Bases of Charges for Depreciation
B-12	Net Deferred Income Taxes
I-1	Income Statement Accounts
S-5	Statistical Data

The Commission ordered that any other local exchange telephone company hereafter electing price regulation in North Carolina is required to observe the financial reporting requirements described above.

The Commission has revised "Section 9. Commission Oversight" of the Stipulated Price Regulation Plan to reflect the Commission's April 15, 1997 Order.

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 CTC effective not later than 90 days after the acceptance of the Commission-approved Price Regulation Plan, provided that CTC shall, not later than 7 days following the date of this Order:

   A. File a statement in this docket notifying the Commission that CTC 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 not later than 90 days after the date of the filing of said statement; and

   B. Incorporate the modifications reflected in the Commission-approved Price Regulation Plan and refile said Plan prior to the effective date of the plan; and

   C. File appropriate tariffs in conformity with the provisions of this Order and the Commission-approved Price Regulation Plan reflecting an effective date that corresponds with the effective date of said Plan.

2. That the exemption for certain rural telephone companies provided by Section 251(f)(1) of the Telecommunication Act of 1996 shall terminate as to CTC upon the effective date of the Plan.

ISSUED BY ORDER OF THE COMMISSION
This the 30th day of May, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioners Laurence A. Cobb and Charles H. Hughes did not participate in this decision.

Appendix A

SMALL LOCAL EXCHANGE CARRIER PRICE REGULATION PLAN FOR THE CONCORD TELEPHONE COMPANY

EFFECTIVE

________, 1997

DEFINITIONS

The following definitions will apply to the terms as used in this Price Regulation Plan (the "Plan") for The Concord Telephone Company (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 the 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 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 the Company.

New Service - A regulated and tariffed service that is not offered by the 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 there is no requirement that the prices 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 there is no requirement that the prices 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 The Concord Telephone Company that are regulated by the North Carolina Utilities Commission. The effective date of the Plan will be concurrent with the effective date of the tariffs which fully implement the provisions of Section 11 herein.

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 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 Company shall make a written filing with ~~notify, in writing,~~ the Public Staff, the Attorney General, and the Commission. 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 Company shall provide the appropriate documentation to the Commission and Public Staff supporting the proposed classification or reclassification of the service.

(1) Simultaneous with such notification, the Company will designate the service category into which the new tariffed 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 75-day suspension 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 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 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 any of the rates, terms or conditions ~~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 respect ~~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. Contract Service Arrangements

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 its 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 (as represented by the PRI) 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 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 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 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. The details of specific imputation requirements, if contested, and whether to allow any rate increases to end users, which the Company 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.

(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 unreasonable or unlawful preference or advantage 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 effective date of the Plan shall be the initial 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 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 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 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 I 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 following, price changes resulting from changes in the PRI will not be impacted, or in any way affected, by changes resulting from governmental action.

C. Non-Basic 2 Services

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 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;

(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.

~~Any rate adjustment resulting in a financial impact caused by compliance with the Telecommunications Act of 1996 ("TA96") or arising from or as a result of TA96 (including, but not limited to, separations matters, access reform, interconnection and universal service fund mechanisms) shall be deemed to be 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. 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 9. 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 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 Company will file its Annual Report (ARMIS 43-02 and 43-08) as well as the following North Carolina schedules instead of the complete Form M filed in previous years:

Schedule	Title
B-1	Balance Sheet Accounts
B-5-1	Analysis of Accumulated Depreciation
B-7	Bases of Charges for Depreciation
B-12	Net Deferred Income Taxes
I-1	Income Statement Accounts
S-5	Statistical Data

D. The Commission 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 10. Depreciation

Coincident with the effective date of the Plan, the Company will determine and set its own depreciation rates.

Section 11. Expansion of Services; Simplification of Rates; Rebalancing of Rates and Reduction of Revenues

TELEPHONE - RATES

A. Expansion of Services

1. Local Calling Areas. The Company has nine exchanges -- Albemarle, Badin, China Grove, Concord, Harrisburg, Kannapolis, Mount Pleasant, New London and Oakboro. As of May 31, 1996, the number of local calling area access lines available to customers in these various exchanges (excluding external EAS) ranges from a low of 20,958 to a high of 81,097. Under the Plan, each exchange will have the same number (approximately 94,200 as of May 31, 1996) of local calling area access lines available to it.

2. Metro Plan. Concord has an extended area calling plan ("DRP/DAP") called the "Metro Calling Plan." The number of access lines currently included in the Metro Calling Plan will be expanded under the Plan. The approximate number of access lines currently included in the Metro Calling Plan for each exchange and the approximate number that will be initially available after the proposed expansion is shown on Attachment C.

3. A comparison between the existing calling area and the proposed calling area for each of the Company's nine exchanges is shown on Attachment D.

B. Simplification of Rate Structure

1. Exchanges. The Company currently has nine exchanges with seven different local calling areas and six different basic local exchange rates. Under the Plan, all of the nine exchanges will have the same local calling area within the Company's certificated service area. All exchanges will also have the same basic local exchange rate except the Harrisburg exchange. The Harrisburg exchange will have a slightly higher rate to reflect its extended area service which includes Charlotte.

2. Residential Rate Classes. The Company currently has two residential rate classes, one applying to a residence with a single line and another applying to residences with multiple lines terminating in a single phone. Under the Plan, there is a single residential class.

3. Business Rate Classes. The Company currently has four business rate classes: Business-One Party, Business-Key, Business PBX and Business Centrex. Under the Plan, Business-One Party and Business Key is combined into a single rate class-Business, PBX customers will remain on Business PBX and Centrex customers will remain on Business-Centrex.

4. Touch Calling. Currently there is a separate charge for Touch Calling. This charge is eliminated under the Plan for all classes of service.

5. Metro Calling Plan. Currently, there are 37 different options under the Company's Metro Calling Plan. Under the Plan, there will be a standard plan and three additional options.

6. IntraLATA rates. Currently, there are 10 separate banded IntraLATA rates with the initial minute always being higher than the subsequent minute and with three separate time-of-day rates. Under the Plan, there will be only two rates, one for peak use and one for off-peak use.

C. **Rebalancing of Rates** - Under the Plan, Concord's rates will be rebalanced as shown on Attachment B and Attachment E.

D. **Reduction of Revenues** - The rebalancing of rates is designed to reduce annual revenues derived from tariffed services by approximately $696,500.

Section 12. Election of Competition

The Company agrees that if it should receive a bona fide request for interconnection, services or network elements, it will not claim an exemption under Section 251(f)(1) of TA96.

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

DOCKET NO. P-19, SUB 277

In the Matter of
Application of GTE South Incorporated For, and Election of, Price Regulation

ORDER REGARDING FINANCIAL REPORTS AND CLAIMS OF CONFIDENTIALITY

BY THE COMMISSION: The Commission entered Orders in these dockets in 1996, authorizing price regulation for the following local exchange telephone companies (LECs): BellSouth Telecommunications, Inc., Carolina Telephone and Telegraph Company, Central Telephone Company, and GTE South Incorporated. Each of the Orders authorizing price regulation specified that the LEC subject to price regulation will annually file 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.

The Commission and Public Staff are now receiving informal requests from the affected LECs requesting clarification of the financial reporting requirements they will be expected to meet under price regulation. The Commission has reviewed this matter and, after consultation with the Public Staff, concludes that LECs under price regulation should continue to file (1) the TS-1 Reports without any modifications or exemption of schedules and (2) the Annual Report (ARMIS 43-02 and 43-08) as well as the following North Carolina schedules instead of the complete Form M filed in previous years:

Schedule	Title
B-1	Balance Sheet Accounts
B-5-1	Analysis of Accumulated Depreciation
B-7	Bases of Charges for Depreciation
B-12	Net Deferred Income Taxes
I-1	Income Statement Accounts
S-5	Statistical Data

LECs subject to price regulation will no longer be required to file the following Form M schedules:

Schedule	Title
C-3a	Compensation of Officers
B-6	Summary of Investment & Accumulated Depreciation by Jurisdiction
I-4	Operating Other Taxes

Regarding claims of confidentiality which may be made by the affected LECs with respect to all or any portion of the above-referenced financial reporting requirements, the Commission concludes that the following procedures should apply:

> Consistent with G.S. 132-1.2, any claim of confidentiality made by a LEC subject to price regulation shall relate to "trade secrets" as defined in G.S. 66-152(3) and shall be explicit; i.e., every page for which such a claim is asserted shall be clearly stamped "CONFIDENTIAL" at the time of filing. In the event an interested person shall desire access to TS-1 or other information claimed by the affected LEC to constitute a trade secret, the person desiring such access shall file a letter with the Chief Clerk of the Commission, with a copy to the affected LEC, requesting a determination as to the extent to which the information in question is actually protected from public disclosure under the Public Records Act.

IT IS, THEREFORE, ORDERED that the financial reporting requirements and procedures regarding claims of confidentiality set forth above shall be observed and followed by BellSouth Telecommunications, Inc., Carolina Telephone and Telephone Company, Central Telephone Company, GTE South Incorporated, and any other local exchange telephone company hereafter electing price regulation in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of April, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

WATER AND SEWER - EMERGENCY OPERATORS

DOCKET NO. W-796, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Harrco Utility Corporation - Request To Be Relieved of Duties as a Public Utility and for Appointment of an Emergency Operator for All of Harrco's Sewer Utility Systems in North Carolina	)))))	ORDER APPOINTING EMERGENCY OPERATOR AND APPROVING RATES

BY THE COMMISSION: Harrco Utility Corporation (Harrco or Company) is a public utility regulated by the North Carolina Utilities Commission and has been granted certificates of public convenience and necessity to provide sewer utility service in the following service areas: Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, and Woods of Tiffany Subdivisions in Wake County; and Hardscrabble Subdivision in Durham County (Harrco sewer systems or Harrco subdivisions).

Hurricane Fran hit North Carolina on September 5 and 6, 1996, and severely damaged the majority of the low-pressure pipe (LPP) sewer systems being operated by Harrco. On September 30, 1996, the Commission entered an Order in this docket concluding that the damages caused by Hurricane Fran resulted in an emergency in a number of the areas served by Harrco. An emergency is defined by G.S. 62-118(b) as the imminent danger of losing adequate sewer utility service or the actual loss thereof. Under the circumstances, the Commission found good cause to approve Harrco's proposal to remain in place as a public utility, subject to the terms, conditions, and rates specified in that Order. The Commission requested the Public Staff to investigate Harrco's financial condition and report its findings as soon as possible and stated that it was the Commission's intention to authorize whatever remedial action was found to be necessary to ensure adequate service to all of Harrco's customers both then and in the future.

On January 17, 1997, the Public Staff filed the audit report of Harrco's books and records as required by the Commission Order of September 30, 1996.

On January 21, 1997, Harrco filed a letter in this docket, which the Commission regards as a request for, and consent to, appointment of an emergency operator for the Harrco-owned sewer systems serving the Sheffield Manor, Woods of Tiffany, Stone Creek, Stonebridge VI, Park Ridge, River Oaks, and Hardscrabble Subdivisions. Harrco requested that this change be made effective prior to January 31, 1997. Harrco set forth the following statements, in pertinent part, in support of its request:

> "**Harrco has operated since the Hurricane [Fran] with a considerable loss. All funds have been depleted and there are not sufficient revenues to continue operation.** The five damaged subdivisions [Sheffield Manor, Woods of Tiffany, Stone Creek, Stonebridge VI, and River Oaks] have recently requested to

hook up to City sewer which would resolve all problems, if Harrco could survive the current shortfall. **Unfortunately, there are no funds available to Harrco to continue it's operation at this time.** Therefore, this letter is written to advise the Utility Commission that effective midnight January 31, 1997, Harrco will discontinue providing sewer service to its customers. It is requested that an interim or emergency operator be put in place prior to January 31, 1997. **Of course, Harrco will cooperate for a smooth transition.**" (Emphasis added)

On January 29, 1997, the Commission entered an Order in Docket Nos. W-796, Sub 12, W-848, Sub 16, and W-957, Sub 1, concluding that:

"The emergency affecting the sewer systems in question [Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, Woods of Tiffany, Hardscrabble, Banbury Woods, Monticello, Manchester, Woods of Ashbury, Hollybrook, Saddleridge, and Yates Mill Run] continues and such emergency has been further exacerbated by Harrco's pending request to be relieved of its duties as a public utility and emergency operator. The Commission is in the process of appointing emergency operators for the fourteen affected Harrco, North State, and Intech sewer systems and expects to make those appointments effective not later than Saturday, February 1, 1997, by further Orders to be entered in these dockets. Based upon the statements contained in the filing made by Harrco on January 21, 1997, regarding its current financial situation and the results of the Public Staff's recent audit report, the Commission finds good cause to enter this Order directing and ordering Harrco to (1) immediately cease making any and all disbursements from the Company's checking accounts and any other accounts related to utility operations; ensure that any disbursement of funds from said checking accounts or from any other accounts or sources shall be made only after having received express written approval from the Commission to make such disbursement; and deposit all funds hereafter received from any source related to utility property and operations in the Company's checking accounts; (2) prepare and file a statement of the Company's checking account balances as of the date of this Order not later than Friday, January 31, 1997; (3) prepare and file, not later than Wednesday, February 5, 1997, a complete list of all plant, property, equipment, and any other assets, including the purchase prices or book values thereof, acquired by or transferred by Harrco between September 6, 1996, and the date of this Order; and (4) prepare and file a complete list of all outstanding accounts payable in existence as of January 31, 1997, not later than Wednesday, February 5, 1997. Harrco shall also prepare and file a complete inventory of all plant, property, and equipment owned by the corporation not later than Friday, February 28, 1997. Furthermore, Harrco shall not dispose of or divest itself of any utility property, real or personal, without the prior written consent of the Commission."

Carolina Water Service, Inc. of North Carolina (Carolina Water Service) has advised the Commission that it is willing to be appointed as the emergency operator for the LPP sewer utility systems franchised to Harrco; i.e., Hardscrabble, Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge. Carolina Water Service has agreed to accept this appointment effective February 1, 1997, subject to the monthly sewer rates of $55.10 per residential

customer and $165.30 per nonresidential customer which the Commission has previously approved for Harrco.

Based upon the foregoing and careful consideration of the records on file with the Commission, the Commission now makes the following

FINDINGS OF FACT

1. Harrco Utility Corporation is a public utility regulated by this Commission and is presently certified to provide sewer utility service in one subdivision in Durham County and six subdivisions in Wake County.

2. Harrco was granted certificates of public convenience and necessity for the sewer utility systems serving the Hardscrabble Subdivision in Durham County and the Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge Subdivisions in Wake County by various Commission Orders in 1988 and 1990.

3. On January 21, 1997, Harrco filed a letter in this docket whereby the Commission was requested to appoint an emergency operator for the Harrco sewer utility systems effective prior to January 31, 1997.

4. Carolina Water Service is willing to be appointed to serve as emergency operator of the sewer utility systems serving the Hardscrabble, Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge Subdivisions effective February 1, 1997.

5. Carolina Water Service is willing to serve as emergency operator pursuant to the following conditions:

a. That the monthly rates for service be set at $55.10 per residential connection and $165.30 per nonresidential connection per month for service in arrears.

b. That Heater Utilities, Inc. (Heater), the certificated public utility providing water utility service in each of the subdivisions in question, be authorized to disconnect water service in the event of non-payment of a sewer bill owed to Carolina Water Service.

6. Harrco has filed $40,000 in bonds with the Utilities Commission pursuant to G.S. 62-110.3. Those bonds have been forfeited by Harrco as a result of the Company's written request for, and consent to, appointment of an emergency operator for its sewer utility systems. The bond proceeds will be subject to distribution by the Commission pursuant to further Orders.

EVIDENCE AND CONCLUSIONS

The evidence in support of these findings of fact is found in the Commission's records. These facts are uncontroverted. The emergency caused by Hurricane Fran continues and such emergency has been further exacerbated by Harrco's request to be relieved of its duties as a public utility. The Commission, therefore, concludes that there is an emergency in all of the sewer utility service areas

of Harrco which requires the appointment of an emergency operator pursuant to G.S. 62-118(b) and that Carolina Water Service should be appointed as the emergency operator of the Hardscrabble, Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge systems effective February 1, 1997.

IT IS, THEREFORE, ORDERED, as follows:

1. That the letter filed in this docket by Harrco Utility Corporation on January 21, 1997, shall be regarded as a request for, and consent to, appointment of an emergency operator for the Harrco sewer systems serving the Hardscrabble Subdivision in Durham County and the Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge Subdivisions in Wake County, North Carolina. Sewer bills for the Harrco sewer systems for service through the month of January 1997, shall remain due and payable to Harrco. The service of any customer remaining in arrears to Harrco is subject to discontinuance for failure of the customer to pay past due amounts. Harrco shall be responsible for collecting these bills, but may request the assistance of the Commission in discontinuing service.

2. That Carolina Water Service, Inc. of North Carolina, 5701 Westpark Drive, Suite 101, Post Office Box 240705, Charlotte, North Carolina 28224, is hereby appointed as the emergency operator of the sewer utility systems serving the Hardscrabble Subdivision in Durham County and the Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge Subdivisions in Wake County, North Carolina, effective February 1, 1997.

3. That Carolina Water Service is authorized to charge provisional monthly rates of $55.10 per residential customer and $165.30 per nonresidential customer for service in arrears.

4. That Harrco Utility Corporation, including its officers, directors, and shareholders, is hereby ordered to offer all reasonable assistance to the emergency operator. Harrco Utility Corporation, its officers, directors, and shareholders, shall not by any act or omission unreasonably prevent or impair the continued existence of Harrco Utility Corporation, as a North Carolina corporation in good standing. Harrco Utility Corporation, is directed to accept or transfer any property, the acceptance or transfer of which is reasonably necessary to the continued provision of sewer service in the Hardscrabble, Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge Subdivisions. Harrco Utility Corporation shall not dispose or divest itself of any utility property, real or personal, without the prior written consent of the Commission.

5. That the bonds posted by Harrco pursuant to G.S. 62-110.3 are hereby declared forfeited; the proceeds of those bonds shall be distributed by subsequent Orders of the Commission.

6. That Heater Utilities, Inc., is authorized to disconnect water utility service for failure of any customer to pay sewer charges owed to Carolina Water Service.

7. That Carolina Water Service, pursuant to is duties as the emergency operator of the Harrco sewer systems, shall maintain full records of receipts and expenses and shall file with the Commission and the Public Staff by the end of the subsequent month, a summary financial report by subdivision on a monthly basis.

8. That the rates established by this Order are provisional. The emergency operator may, at any time, request a review of the sufficiency of these rates. The Public Staff is requested to review the emergency operator's reports of revenues and expenses as received and to advise the Commission if any adjustments to rates appear reasonable or necessary.

9. That the emergency operator shall have charge of the daily operation of the sewer systems in the Harrco subdivisions, and the emergency operator's duties and responsibilities shall include, among others, the following:

(i) Regular inspections and testing of the sewer systems;
(ii) Billing of all customers and collection of bills;
(iii) Routine and emergency maintenance and repair;
(iv) System renovations and additions necessary to maintain adequate sewer service;
(v) Monthly accounting to the Utilities Commission and the Public Staff of all rates collected, expenses incurred, checks written, and all monies spent; and
(vi) Providing customers with a telephone number for routine and emergency calls and its mailing address.

10. That the emergency operator may contract with any person or corporation to carry out any of the duties necessary for the proper operation, repair, and expansion of the Harrco sewer systems, but the emergency operator alone shall have the ultimate responsibility to see that such duties are carried out.

11. That the emergency operator, in the performance of its duties, shall be free to seek assistance from customers of the sewer systems, plumbers, engineers, attorneys, and such other persons as may be necessary for the performance of its duties and responsibilities.

12. That the emergency operator shall, when it becomes necessary in the performance of its duties, seek the assistance of the Division of Environmental Health, the North Carolina Utilities Commission, the Public Staff of the Utilities Commission, and the Wake County Health Department.

13. That the emergency operator shall collect from the customers of the sewer systems such rates and assessments as may be approved by the North Carolina Utilities Commission and shall be fully authorized to bill and collect said rates and assessments and to disburse such of those funds as may be necessary to provide safe, reliable, and adequate sewer utility service to the customers. Any customer who fails to pay the bill(s) authorized by this paragraph and Order shall be disconnected by the emergency operator as provided by the Orders, rules and regulations of the Utilities Commission.

14. That the emergency operator shall be entitled to all available records relating to the sewer systems serving the Harrco subdivisions. Those records shall include, but shall not be limited to, the following:

(i) Customer information for each residence connected to the systems, containing at a minimum, customer name, service address, billing address, and contact phone numbers (home and work);
(ii) Copy of latest electrical power bill for dosing stations (needed for transfer of service);

(iii) Copy of latest water bill, if any, for dosing stations (needed for transfer of service);
(iv) Copy of system plans and specifications with any noted discoveries or changes by current owner for the past 12 months;
(v) Copies of all monitoring reports and evaluation completed by current operator for the past 12 months;
(vi) Copies of any files or available data related to STEP systems;
(vii) Copies of all available Groundwater Monitoring Reports;
(viii) Plans and as-built plans for the systems;
(ix) Individual system operating procedures;
(x) Individual system maintenance logs for 1996 and 1997 to date;
(xi) Individual system operating logs for 1996 and 1997 to date;
(xii) Records of individual STEP tank pumping for each system;
(xiii) Schedule of future individual STEP tank pumping for each system;
(xiv) List of all contractors and suppliers, including telephone numbers; and
(xv) Billings records for 1996 and 1997 to date.

Harrco shall make all necessary records available to Carolina Water Service not later than February 1, 1997.

15. That the emergency operator shall keep records of all monies collected through the rates and assessments and all monies expended in the operation of the Harrco sewer systems. In order to protect the customers' investments in the sewer systems in the event the sewer systems should be sold or revert to Harrco Utility Corporation, the emergency operator is required to keep a separate record of all monies and assessments collected from customers and expended on improving and upgrading the sewer systems, including, but not limited to, the installation of new plant, meters, wells, rebuilt equipment, and the cost of labor associated with those improvements whether performed by the emergency operator or a contractor hired by the emergency operator.

16. That the emergency operator shall pay only those liabilities incurred by the emergency operator on and after the date of the appointment of the emergency operator. Those liabilities shall be defined as the liabilities arising from the emergency operator's operation of the Harrco sewer systems pursuant to Commission Order. The emergency operator shall account for any funds advanced by it for the operations. Upon request by the emergency operator, Harrco shall promptly deliver possession to the emergency operator of all materials, supplies, inventories, plant, property, and other equipment owned by the corporation. If the emergency operator elects to use any utility plant or equipment owned by Harrco, the following provisions shall apply:

(i) Harrco shall be entitled to reimbursement from the emergency operator for any payments made after February 1, 1997, with respect to any outstanding debts currently owed on or secured by such property;
(ii) Harrco shall, at the request of the emergency operator, maintain in effect any insurance currently held on such utility plant and equipment and Harrco shall be entitled to reimbursement for premiums paid to maintain such insurance; and
(iii) The emergency operator shall indemnify Harrco for any liability arising out of the use of such property.

WATER AND SEWER - EMERGENCY OPERATORS

17. That Harrco Utility Corporation, its officers, agents, servants, and employees, shall not:

(i) Interfere with the emergency operator's operation of the sewer utility plant, including the pumps, easements, rights-of-way, treatment facilities, mains, distribution lines, storage or holding facilities, meters, filters, or taps;
(ii) Receive or attempt to collect any sewer bill payments or monies for sewer service provided by the emergency operator; or
(iii) Alter, impair, or remove any of the sewer utility plant.

18. That the appointment of Carolina Water Service as the emergency operator shall continue until terminated by an Order of the Commission finding that the emergency has ended and that the emergency operator is no longer required pursuant to G.S. 62-118(b) to provide sewer public utility service to the customers of the Harrco sewer systems.

19. That Carolina Water Service may petition the Commission at any time to be discharged as the emergency operator herein; and the emergency operator, prior to its discharge, shall provide an acceptable accounting to the Utilities Commission of all monies collected and disbursed during its tenure as emergency operator, as well as the amounts due and owing the emergency operator at the time of its discharge for its services performed as emergency operator. The emergency operator filing a petition for discharge shall also mail a copy of said petition to the Wake County Health Department and the Division of Environmental Health.

20. That this docket shall remain open for further motions, reports, etc., of the parties, the emergency operator, the Wake County Health Department, the Division of Environmental Health, and for further Orders of the Commission.

21. That, prior to February 1, 1997, Harrco and Carolina Water Service shall meet at the Harrco sewer systems at a mutually acceptable time in order to review the systems and simplify the transfer of duties.

22. That Harrco shall, not later than February 28, 1997, file the following information with the Commission:

(i) The balance sheet for Harrco Utility Corporation as of December 31, 1996;
(ii) The income statements for the twelve months ended December 31, 1996, for Harrco's utility operations, the North State emergency operatorship, the Yates Mill Run emergency operatorship, and Harrco's nonutility operations;
(iii) The balance sheet for Harrco Utility Corporation as of January 31, 1997;
(iv) The income statements for the month of January 1997, for Harrco's utility operations, the North State emergency operatorship, the Yates Mill Run emergency operatorship, and Harrco's nonutility operations; and
(v) A complete inventory of all plant, property, equipment, and other assets owned by Harrco.

23. That the Public Staff is hereby requested to conduct an audit of the books and records maintained by Harrco through January 31, 1997, and file the results of its accounting investigation,

including recommendations regarding how to treat outstanding debts or amounts, if any, claimed by Harrco, excess revenues, if any, collected by Harrco, and Harrco's final accounting and refund plans. The Public Staff shall file its audit report not later than April 30, 1997.

24. That the Notice to Customers and Schedule of Rates, attached hereto as Appendices A and B, shall be mailed by the Chief Clerk to all affected customers in the Hardscrabble, Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge Subdivisions.

25. That the Chief Clerk shall mail a copy of this Order to Harrco's attorney, Samuel Roberti, Roberti, Wittenberg, Holtcamp & Lauffer, P.A., Attorneys at Law, P.O. Box 3359, Durham, North Carolina 27702.

26. That the Chief Clerk shall mail a copy of this Order to Gary McGibbon, Chairperson, Wake County Community LPP Emergency Task Force, 10308 Grafton Road, Raleigh, North Carolina 27615.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

DOCKET NO. W-796, SUB 12

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Harrco Utility Corporation - Request To Be	)	
Relieved of Duties as a Public Utility and for	)	
Appointment of an Emergency Operator for All	)	NOTICE TO CUSTOMERS
of Harrco's Sewer Utility Systems in North	)	
Carolina	)	

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order in this docket regarding the appointment of an emergency operator. The Commission ordered the following:

1. That Carolina Water Service, Inc. of North Carolina (Carolina Water Service) is appointed as the emergency operator of the sewer utility systems serving the Hardscrabble Subdivision in Durham County and the Stonebridge VI, Stone Creek, Sheffield Manor, Woods of Tiffany, River Oaks, and Park Ridge Subdivisions in Wake County, North Carolina, effective February 1, 1997.

2. That effective February 1, 1997, Carolina Water Service is authorized to charge a provisional monthly residential rate of $55.10 and a provisional monthly nonresidential rate of

$165.30 per customer for service in arrears as reflected in the attached Schedule of Rates. Heater Utilities, Inc. (Heater) is authorized to disconnect water utility service for non-payment of sewer charges owed to Carolina Water Service. Sewer bills for service rendered by Harrco Utility Corporation (Harrco) through the month of January 1997, remain due and payable to Harrco. The service of any customer remaining in arrears to Harrco is subject to discontinuance for failure of the customer to pay past due amounts. Harrco will be responsible for collecting these bills, but may request the assistance of the Commission in discontinuing service.

3. That the Public Staff has been requested to conduct an audit of the books and records maintained by Harrco as operator of the sewer systems and file the results of its accounting investigation, including recommendations regarding how to treat outstanding debts or amounts, if any, claimed by Harrco, excess revenues, if any, collected by Harrco, and Harrco's final accounting report. This audit report will be filed with the Commission not later than April 30, 1997.

In case of an emergency involving your wastewater system, Carolina Water Service may be reached by calling 1-800-348-2383.

This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

SCHEDULE OF RATES
for
HARRCO UTILITY CORPORATION
CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA, Emergency Operator
for providing sewer utility service in

PARK RIDGE, RIVER OAKS, SHEFFIELD MANOR, STONEBRIDGE VI, STONE CREEK, AND WOODS OF TIFFANY SUBDIVISIONS
Wake County, North Carolina
and
HARDSCRABBLE SUBDIVISION
Durham County, North Carolina

Flat Sewer Rates:

Residential	$ 55.10
Nonresidential	$165.30

Connection Charges:

1/ Park Ridge, River Oaks, Sheffield Manor, Stonebridge VI, and Stone Creek Subdivision	$ 0.00
Woods of Tiffany	$3,000.00
Hardscrabble	$3,150.00

WATER AND SEWER - EMERGENCY OPERATORS

Reconnection Charges:

If sewer service cut off by utility for good cause by disconnecting water service -	$15.00 [2]
If sewer service cut off by utility for good cause by any method other than that noted above -	Actual cost

Returned Check Charge:	$20.00
Bills Due:	On billing date
Bills Past Due:	25 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] Unless provided differently by contract approved by and on file with this Commission.

[2] Heater Utilities, Inc., shall also be authorized to collect a reconnection charge of $25.00 for water service in such situations.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-796, Sub 12, on this the 31st day of January, 1997.

DOCKET NO. W-796, SUB 13

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Harrco Utility Corporation - Request for Approval) RECOMMENDED ORDER
Of Pass-Through Assessment From Customers) DENYING REQUEST FOR
To Cover Revenue Shortage) ASSESSMENT

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611, on Wednesday, February 13, 1997

BEFORE: Commissioner Charles H. Hughes, Presiding, and Commissioner Laurence A. Cobb

APPEARANCES:

For Harrco Utility Corporation:

Samuel Roberti, Attorney at Law, Roberti, Wittenburg, Holtkamp & Lauffe, P.A., 100 E. Parrish Street, Suite 200, Durham, North Carolina 27701

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel and Robert B. Cauthen, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: Harrco Utility Corporation (Harrco or Company) is a public utility regulated by the North Carolina Utilities Commission which has been granted certificates of public convenience and necessity to provide sewer utility service in the following service areas: Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, and Woods of Tiffany Subdivisions in Wake County; and Hardscrabble Subdivision in Durham County. The low-pressure pipe (LPP) sewer systems serving the Sheffield Manor, Stonebridge, Stone Creek, Woods of Tiffany, and River Oaks Subdivisions were severely impacted and damaged by Hurricane Fran.

On October 25, 1996, Harrco filed a request in this docket for a pass-through assessment to be collected from its customers in the total amount of $87,472.84. The per-customer charge would be $240.31 from each of the Company's residential customers and $720.93 from each nonresidential customer. In its petition, Harrco asserted that this pass-through assessment request was necessitated by the extraordinary expenses it incurred in the aftermath of Hurricane Fran and the revenue shortage experienced by the Company prior to receiving its general rate increase on October 1, 1996. By Order dated December 17,1996, the Commission scheduled a public hearing for February 13, 1997, to consider the pass-through assessment request in the amount of $87,472.84 proposed by Harrco.

On January 21, 1997, Harrco filed a letter in Docket No. W-796. Sub 12, which the Commission regarded as a request for, and consent to, appointment of an emergency operator for the Harrco-owned sewer systems serving the Sheffield Manor, Woods of Tiffany, Stone Creek, Stonebridge VI, Park Ridge, River Oaks, and Hardscrabble Subdivisions. Harrco requested that this change be made effective prior to January 31, 1997. On January 29, 1997, the Commission entered an Order in Docket Nos. W-796, Sub 12, W-848, Sub 16, and W-957, Sub 1, concluding that:

> "The emergency affecting the sewer systems in question [Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, Woods of Tiffany, Hardscrabble, Banbury Woods, Monticello, Manchester, Woods of Ashbury, Hollybrook, Saddleridge, and Yates Mill Run] continues and such emergency has been further exacerbated by Harrco's pending request to be relieved of its duties as a public utility and emergency operator. The Commission is in the process of appointing emergency operators for the fourteen affected Harrco, North State, and Intech sewer systems and expects to make those appointments effective not later than Saturday, February 1, 1997, by further Orders to be entered in these dockets. Based upon the statements contained in the filing made by Harrco on January 21, 1997, regarding its current financial situation and the results of the Public Staff's recent audit report, the Commission finds good cause to enter this Order directing and ordering Harrco to (1) immediately cease making any and all disbursements from the Company's checking accounts and any other accounts related to utility operations; ensure that any disbursement of funds from said checking accounts or from any other accounts or sources shall be made only after having received express written approval

from the Commission to make such disbursement; and deposit all funds hereafter received from any source related to utility property and operations in the Company's checking accounts; (2) prepare and file a statement of the Company's checking account balances as of the date of this Order not later than Friday, January 31, 1997; (3) prepare and file, not later than Wednesday, February 5, 1997, a complete list of all plant, property, equipment, and any other assets, including the purchase prices or book values thereof, acquired by or transferred by Harrco between September 6, 1996, and the date of this Order; and (4) prepare and file a complete list of all outstanding accounts payable in existence as of January 31, 1997, not later than Wednesday, February 5, 1997. Harrco shall also prepare and file a complete inventory of all plant, property, and equipment owned by the corporation not later than Friday, February 28, 1997. Furthermore, Harrco shall not dispose of or divest itself of any utility property, real or personal, without the prior written consent of the Commission."

On January 31, 1997, the Commission entered an Order in Docket No. W-796, Sub 12 appointing Carolina Water Service, Inc. of North Carolina (Carolina Water Service) as the emergency operator of the Harrco sewer systems effective February 1, 1997. The Commission authorized the emergency operator to charge provisional monthly rates of $55.10 per residential customer and $165.30 per nonresidential customer for service in arrears. The "Order Appointing Emergency Operator And Approving Rates" also contained numerous other provisions and requirements which will not be repeated here.

By letter filed with the Commission on February 6, 1997, Gary McGibbon, the Chairperson of the Wake County Community LPP Emergency Task Force, requested, on behalf of all affected Harrco customers, that the pass-through hearing be canceled.

On February 7,1997, Harrco filed a motion in Docket Nos. W-796, Subs 12 and 13 setting forth three requests. First, Harrco amended its pending pass-through assessment request in Docket No. W-796, Sub 13, to reduce its request from $87,472.84 to $38,774.26. This reduction results from Harrco's stated intent to pursue recovery of only hurricane-related damages at this time. Second, Harrco requested that the Commission require Carolina Water Service, the emergency operator, to pay Harrco $1,076.60 per month. According to Harrco, this amount represents that portion of the monthly sewer rates being collected by the emergency operator which should be paid to Harrco as compensation for its ownership of the capital equipment, plant, pipes, and other sewer system and company assets and as reimbursement for Harrco's unrecovered capital costs. Third, Harrco requested that it be allowed to present evidence at the hearing on February 13, 1997, regarding the financial and other restrictions placed upon the Company by the Orders entered by the Commission in these dockets on January 29, 1997, and January 31, 1997. Harrco asserts that these Orders appear to condemn or seize Company-owned property without compensation and require the Company to perform numerous duties without allowing it to expend funds, employ persons, protect its assets, or otherwise function as a corporation.

On February 10, 1997, the Public Staff filed certain comments in response to Harrco's motion of February 7, 1997. In its comments, the Public Staff referenced the audit report of Harrco's books and records which it has previously filed in Docket Nos. W-796, Sub 12, W-848, Sub 16, and W-957, Sub 1 on January 17, 1997, wherein the Public Staff documented and identified damages to the

Harrco sewer systems caused by Hurricane Fran in the amount of $22,634.11. According to the Public Staff, this item is roughly equivalent in character to the amounts which other public utilities were allowed to recoup through amortization following Hurricane Hugo. The Public Staff further stated that the sudden expense generated by Hurricane Fran depleted Harrco's operating capital and forced the Company to, in effect, borrow from the emergency operator surplus which will need to be refunded to affected customers once they begin receiving service from the City of Raleigh later this year. The Public Staff also indicated that, in addition to its cash holdings and the amount of any recovery of its Hurricane Fran expenses, Harrco has some assets which, if liquidated, may be sufficient to provide the cash needed for customer refunds.

In its comments, the Public Staff further stated that it is prepared to support a transfer of sufficient funds to Harrco to allow full refunds to be made to those customers served by Harrco as emergency operator and that either the $1.8 million fund made available by the State of North Carolina or the proceeds of Harrco's forfeited bonds could be appropriately used for this purpose. The Public Staff does not support the use of any of these funds to compensate Harrco. Nor does the Public Staff support Harrco's request for compensation for the use of its capital or assets. According to the Public Staff, G.S. 62-118(b) allows such compensation under some circumstances but expressly limits the amount to no more than the net average monthly income of the utility for the preceding 12-month period. It appears to the Public Staff that Harrco experienced a net loss during that period. The Public Staff concluded its comments by stating that it does not agree with Harrco's characterization of the Commission's Order of January 31, 1997, as condemning or seizing property owned by the Company, but does not object to Harrco being heard on that matter.

On February 11, 1997, the Commission issued an Order Regarding Issues To Be Addressed During Pass-Through Assessment Hearing wherein it ruled on Harrco's motion filed on February 7, 1997, and stated that it intended to limit the February 13, 1997, hearing to consideration of the following issues:

(a) Whether Harrco's customers in the Stonebridge VI, Stone Creek, Woods of Tiffany, Sheffield Manor, and River Oaks Subdivisions should be required to reimburse the Company for the extra expenses incurred in conjunction with and arising from Hurricane Fran?

(b) If the answer to issue (a) is yes, in what amount and through what source or mechanism should such recovery be allowed?

(c) If the answer to issue (a) is no, how should and from what source or sources should Harrco be expected to raise the funds necessary to, at a minimum, make full refunds to the North State and Yates Mill Run customers?

(d) Whether any of the terms and conditions specified by the Commission in either the Order Regarding Emergency and Imposing Financial Restrictions dated January 29, 1997, or the Order Appointing Emergency Operator and Approving Rates dated January 31, 1997, should be changed or modified in any manner?

(e) Harrco's responses to the six additional matters or issues set forth in the Order of February 11, 1997, pertaining to the Company's failure to prepare and file certain information required by the Commission, Harrco's requests to pay salaries to employees, make other disbursements of funds, and sell assets, and the Company's intention to file other reports and information required by the Commission.

This matter came on for hearing as scheduled. Harrco presented the testimony of its President, Lexie W. Harrison and Lehman B. Pollard, C.P.A., Nelson and Company. The Public Staff presented the testimony of Katherine A. Fernald, Water Supervisor of the Public Staff's Accounting Division. The following customers appeared and offered testimony: Bruce Deerson, Gary McGibbon, Willis Lumpkin, Hoyt Stewart, Kathleen Culver, Michael Lemacks, Jim Carter, and Gerald Ritter.

Based upon the evidence presented in this matter and the Commission's official files and records, the Commission makes the following

FINDINGS OF FACT

1. Harrco is a public utility franchised by this Commission to provide sewer service in the following service areas: Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, and Woods of Tiffany Subdivisions in Wake County; and Hardscrabble Subdivision in Durham County.

2. That the sewer systems serving the Sheffield Manor, Stonebridge, Stone Creek, Woods of Tiffany, and River Oaks Subdivisions were severely impacted and damaged by Hurricane Fran.

3. On January 21, 1997, Harrco filed a letter in Docket No. W-796, Sub 12, advising the Commission that effective January 31, 1997, it would discontinue providing sewer service to its customers.

4. On January 31, 1997, the Commission entered an Order in Docket No. W-796, Sub 12, appointing Carolina Water Service, Inc. of North Carolina as the emergency operator of the Harrco sewer systems effective February 1, 1997.

5. Harrco has filed $40,000 in bonds with the Commission pursuant to G.S. 62-110.3. Those bonds have been forfeited by Harrco as a result of the Company's written request for, and consent to, appointment of an emergency operator for its sewer utility systems. The bond proceeds will be subject to distribution by the Commission pursuant to further Orders.

6. Harrco has sought a pass-through assessment of customers in Stonebridge VI, Stone Creek, Woods of Tiffany, Sheffield Manor, and River Oaks Subdivisions to recover $38,774.26 in hurricane-related damages.

7. The Public Staff, in its audit report filed with the Commission on January 17, 1997, made several adjustments to the level of Hurricane Fran damage for the subject Harrco utility systems and concluded that $22,634.11 was the appropriate level of costs incurred.

8. That the customers in the Stonebridge VI, Stone Creek, Woods of Tiffany, Sheffield Manor, and River Oaks Subdivisions should not be required to reimburse Harrco through a pass-through assessment for the extra expenses incurred in conjunction with and arising from Hurricane Fran.

9. That the issue regarding any refunds which become due from Harrco to the North State and Yates Mill Run customers should be considered and determined by the Commission pursuant to further Order.

10. That following a hearing on May 19, 1997, in Wake County Superior Court, Harrco, Lexie W. Harrison, the Commission, and the Attorney General agreed on a Consent Order in the form of a Preliminary Injunction (the Consent Order) which was adopted and approved as an Order of the Court.

11. That portions of Orders of the Commission dated January 29, and January 31, 1997, relating to financial and other restrictions on Harrco have been rendered moot by the Consent Order.

12. That Harrco's responses to the six additional matters or issues set forth in the Order in this docket dated February 11, 1997, pertaining to the Company's failure to prepare and file certain information required by the Commission, Harrco's requests to pay salaries to employees, make other disbursements of funds, and sell assets, and the Company's intention to file other reports and information required by the Commission have either been addressed by Harrco, rendered moot by the Consent Order, or are no longer relevant.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

The evidence in support of this finding of fact is contained in the files of the Commission and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

The evidence in support of this finding of fact is contained in the files of and Orders entered by the Commission in this docket and from the testimony of Harrco witness Harrison. No party has contended that the subject sewer systems were not severely impacted and damaged by Hurricane Fran.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 - 6

The evidence in support of these findings of fact is contained in the Order of the Commission entered on January 31, 1997, in Docket No. W-796, Sub 12, and the Motion filed by Harrco in Docket No. W-796, Subs 12 and 13, 1997, on February 7, 1997. These findings are uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence in support of this finding of fact is contained in the audit report filed by the Public Staff on January 17, 1997, in Docket No. W-796, Sub 12, Docket No. W-848, Sub 16, and Docket No. W-957, Sub 1, and in the testimony of Company witnesses Harrison and Pollard and Public Staff witness Fernald.

Although a difference exists between the parties with respect to the monetary amount of hurricane damage, the Commission, in denying the pass-through assessment request, is of the opinion that a quantification of the appropriate level of expense is not warranted at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence in support of this finding of fact is contained in the Commission's official files and records and the testimony of the witnesses appearing at the hearing.

Harrco amended its pass-through assessment proposal in this docket to reduce its request from $87,472.84 to $38,774.26. This reduction results from Harrco's stated intent to pursue recovery of the expenses incurred by Harrco in the aftermath of Hurricane Fran.

Witness Harrison testified that in the aftermath of Hurricane Fran, he discovered that five of the seven systems that Harrco operated, the Stonebridge VI, Stone Creek, Woods of Tiffany, Sheffield Manor, and River Oaks Subdivisions had sustained significant damage by the hurricane. The damage occurred when the winds forced the trees down on the sites, bringing up the roots, and the roots in turn pulled up pipes in these areas. According to witness Harrison, all of the damage was confined to the field areas, and to the fencing areas around the perimeter, and no damage resulted to the pump stations.

Witness Harrison further testified that on September 13, 1997, the Wake County Health Department declared the damaged systems an eminent health hazard and placed them under pump and haul. He testified that he immediately tried to get to the sites as quickly as possible to get to the dosing chambers where the effluent was stored. His concern was that when the storm came through, it knocked the power to most of the houses so they would not pump effluent to the stations at that time and as power came back on, effluent would be coming to these stations and he needed to find out if he was, in fact, going to be able to pump from the stations without there being an environmental spill. Witness Harrison also testified that he had to get chain saws, wood chippers, and other equipment to cut his way to the dosing stations and to clear the way for trucks to get to the sites to pump the effluent. He testified that he had to move brush and trees off the fields to assess the damage to determine whether Harrco could start the systems back up or not. He testified that the further he got into the fields, the more damage he found, and the job became overwhelming.

The customers which testified at the hearing spoke in opposition to the pass-through assessment proposal.

On March 5, 1997, the Public Staff filed its Further Comments as directed by the presiding Commissioner at the close of the February 13, 1997 hearing. In such comments, the Public Staff stated the following:

> •The assessment of water and sewer customers is governed by G.S. 62-118(c) and is allowed when the Commission "...finds that the facilities being used to furnish water and sewer utility service are inadequate to such an extent that an emergency (as defined in G.S. 62-118(b) above) exists, and further finds that there is no reasonable probability of the owner or operator of such utility obtaining the capital necessary to improve or replace the facilities from sources other than the customers...."
>
> •It is clear from the record that, although Harrco incurred extra expenses as a result of Hurricane Fran, the money sought by Harrco is not to be used "to improve or replace the facilities" serving these subdivisions. The money is to be used to replace

funds being held in reserve by Harrco subject to refund to customers in the North State and Yates Mill systems which Harrco served as emergency operator. The emergency situation contemplated by G.S. 62-118(c) does not exist. Furthermore, there has been no showing that Harrco is not able to obtain the amount of capital requested (approximately $25,000 before Harrco's calculated "gross-up") from sources other than customers. In fact, the record suggests that after liquidation of certain assets, Harrco may actually have sufficient funds to repay the North State and Yates Mill customers.

•On the basis of the foregoing, it is clear that Harrco's request for an assessment should be denied.

Based upon the foregoing and the entire record in this proceeding, the Commission concludes that Harrco's proposed pass-through assessment should be denied for the reasons as indicated by the Public Staff. In so concluding, the Commission notes that Harrco made a voluntary decision to abandon its utility obligations and forego the receipt of rates which perhaps may have provided recovery of some of the costs it seeks.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9 and 10

The evidence in support of these findings of fact is contained in the Order of the Commission entered on February 11, 1997, in Docket No. W-796, Subs 12 and 13, the testimony of the witnesses appearing at the hearing on February 13, 1997, and the Consent Order which was adopted and approved as an Order of the Wake County Superior Court on May 22, 1997, and filed with the Commission in Docket No. W-796, Sub 12, on May 22, 1997.

In its Order of February 11, 1997, entitled Order Regarding Issues To Be Addressed During Pass-Through Assessment Hearing in Docket No. W-796, Subs 12 and 13, the Commission limited the February 13, 1997 hearing to consideration of five specific issues, one of which was that if Harrco's customers were not required to reimburse the Company for the extra expenses associated with Hurricane Fran through a pass-through assessment, then how should and from what source or sources should Harrco be expected to raise the funds necessary to, at a minimum, make full refunds to the North State and Yates Mill Run customers.

As noted earlier, on January 31, 1997, the Commission issued several Orders in Docket No. W-796, Sub 12, Docket No. W-848, Sub 16, and Docket No. W-957, Sub 1, appointing emergency operators for Harrco, North State, and Yates Mill Run Subdivisions systems. The Commission also requested the Public Staff to conduct an audit of the books and records maintained by Harrco as emergency operator of the Yates Mill Run and North State systems through January 31, 1997, and file the results of its accounting investigation, including recommendations regarding how to treat outstanding debts or amounts, if any, claimed by Harrco, excess revenues, if any, collected by Harrco, and Harrco's final accounting and refund plan. The Commission requested that the Public Staff file its audit report not later than April 30, 1997. On April 30, 1997, the Public Staff filed its report. By Order in these same dockets on May 2, 1997, the Commission requested that Harrco advise the Commission if it requested a hearing to respond to the audit report or to be allowed to file comments. On May 9, 1997, Harrco responded stating that it desires that no action be taken by the Commission

until such time as a hearing be held so that Harrco may present evidence, arguments, and make other objections to the Public Staff report.

The Consent Order entered into on May 22, 1997, provided the following:

•In lieu of the relief sought by the Commission and the Attorney General in the form of a mandatory preliminary injunction, the Defendant Harrison is hereby ordered to deposit the sum of $45,002.00 in the business account of the Defendant Harrco and the Defendant Harrco is hereby ordered to deposit the sum of $65,000.00, with the Clerk of the Superior Court of Wake County, North Carolina, such funds to be deposited by the Clerk in an interest-bearing account. Said funds, together with any other funds subsequently added to the account, are to be held as the security for the payment of any refunds which become due from Harrco as the result of any final order entered after a hearing before the full Commission, and after the exhaustion of all appeal rights, which adjudicates the rights of former Harrco customers under North State and Intech franchises for which Harrco served as an emergency operator. Funds deposited with the Clerk will be disbursed only pursuant to court order entered following the entry of a final order by the Commission, or upon the written agreement of the parties hereto incorporated into a disbursement order of this Court.

•The Defendant Harrison has agreed, and is hereby ordered, to execute a written personal guaranty agreement, in such form as is agreed to by the Defendant Harrison, or failing that agreement, in a form ordered by the Court, guaranteeing the payment of any refunds ordered to be paid by Harrco to North State and Intech customers in any final order of the Commission, to the extent such refunds exceed the amounts deposited with the Clerk pursuant to this order, up to a maximum gross amount of refunds of $85,000.00.

Based upon the foregoing, the Commission concludes that the issue regarding any refunds which become due from Harrco to the North State and Yates Mill Run customers should be considered and determined after a subsequent hearing before the full Commission pursuant to the Consent Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence for this finding of fact is contained in the Commission's files and records, the testimony of the witnesses at the hearing, and the Consent Order.

Another of the five issues to be addressed at the February 13, 1997 hearing concerns whether any of the terms and conditions specified by the Commission in either the Order Regarding Emergency and Imposing Financial Restrictions dated January 29, 1997, or the Order Appointing Emergency Operator and Approving Rates dated January 31, 1997, should be changed or modified in any manner.

The Consent Order entered on May 22, 1997, provided the following:

•The Defendants Harrco and Harrison agree not to convey, impair, transfer or dispose of any tangible or intangible assets of Harrco used or useful in the former operations of Harrco in its public utility franchises without prior order of the Commission. If Harrco or Harrison dispose or transfer any such assets with the permission of the Commission, the proceeds will be deposited with the Clerk of Superior Court to be disbursed as provided in paragraph 1, above.

•Portions of orders of the Commission dated January 29, January 31, March 19, and March 25, 1997, relating to financial restrictions on Harrco have been rendered moot by this preliminary injunction. Enforcement proceedings thereto for those portions of said Commission orders, including a hearing presently scheduled for May 27, 1997, are hereby suspended. In the event that the Defendants Harrco or Harrison are not in compliance with orders of this Court and pending further orders of this Court, the Commission may enter such additional lawful orders as it deems appropriate, including but not limited to orders which are identical to the January 29, January 31, March 19, and March 25, 1997, orders, as it is the intent of the parties to preserve any and all appellate rights of the Defendants Harrco or Harrison as they relate to the said January 29, January 31, March 19, and March 25, 1997, orders.

•Upon entry this order, the Defendant Harrco has agreed and is ordered to give notice pursuant to the North Carolina Rules of Appellate Procedure that it is withdrawing its appeals from said orders as said orders are suspended and said orders are not final.

•By agreeing to this Order, no party is waiving any right it has except to the extent of the requirements of this order. Specifically, and by way of illustration and not limitation, ...(b) Harrco reserves its rights to obtain an adjudication of its rights, if any, for compensation pursuant to N.C.G.S. Section 62-118(b), and its rights, if any to bring any civil or administrative action for relief for any matter not foreclosed by this Order....

Based upon the foregoing, the Commission concludes that portions of Orders of the Commission dated January 29, and January 31, 1997, relating to financial and other restrictions of Harrco have been rendered moot by the Consent Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence in support of this finding of fact is contained in the testimony of the witnesses at the hearing, the Commission's official files and records, and the Consent Order.

The last of the five issues to be addressed at the February 13, 1997 hearing related to Harrco's responses pertaining to the Company's failure to prepare and file certain information required by the Commission, Harrco's requests to pay salaries to employees, make other disbursements of funds, and sell assets, and the Company's intention to file other reports and information required by the Commission.

Based upon a review of the Commission's files and records and the Consent Order, the Commission concludes that these matters have either been addressed by Harrco, rendered moot by the Consent Order, or are no longer relevant and no further action is warranted.

IT IS, THEREFORE, ORDERED as follows:

1. That the request by Harrco Utility Corporation for a pass-through assessment to be collected from its customers in Stonebridge VI, Stone Creek, Woods of Tiffany, Sheffield Manor, and River Oaks Subdivisions for the extra expenses incurred in conjunction with and arising from Hurricane Fran is hereby denied.

2. That the remaining issues identified for consideration by the Commission in this docket, as set forth in its Order dated February 11, 1997, are hereby decided in accordance with the provisions of this Order.

3. That the Chief Clerk mail a copy of this Order to the following:

Mr. Samuel Roberti
Roberti, Wittenberg, Holtcamp & Lauffer, P.A.
Attorneys at Law
P.O. Box 3359
Durham, North Carolina 27702

Mr. Gary McGibbon, Chairperson
Wake County Community LPP Emergency Task Force
10308 Grafton Road
Raleigh, North Carolina 27615

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of June, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. W-848, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
North State Utilities, Inc. - Appointment of	)	ORDER APPOINTING NEW
Emergency Operators Pursuant to	)	EMERGENCY OPERATOR AND
G.S. 62-118(b)	)	APPROVING RATES

BY THE COMMISSION: By Order entered in this docket on September 1, 1993, Harrco Utility Corporation (Harrco) was appointed emergency operator of the low-pressure pipe (LPP) sewer utility systems serving nine (9) subdivisions in Wake, Orange, and Durham Counties, North Carolina. Harrco's appointment as emergency operator was effective September 1, 1993.

Based upon the estimated date of connection of the Monticello and Saddleridge systems to a sewage treatment plant owned and operated by Heater Utilities, Inc. (Heater), Harrco requested that it be relieved from its duties and responsibilities as emergency operator of the LPP sewer utility systems serving Monticello and Saddleridge Subdivisions not later than November 15, 1996. On October 25, 1996, the Commission issued an Order of Clarification Discharging Harrco at Saddleridge and Monticello effective November 15, 1996. The Commission issued an Order Requiring Notice to Customers on November 14, 1996, that appointed Heater as the emergency operator in the interim until a replacement for Harrco could be found.

On January 29, 1997, the Commission entered an Order in Docket Nos. W-796, Sub 12, W-848, Sub 16, and W-957, Sub 1, concluding that:

> "The emergency affecting the sewer systems in question [Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, Woods of Tiffany, Hardscrabble, Banbury Woods, Monticello, Manchester, Woods of Ashbury, Hollybrook, Saddleridge, and Yates Mill Run] continues and such emergency has been further exacerbated by Harrco's pending request to be relieved of its duties as a public utility and emergency operator. The Commission is in the process of appointing emergency operators for the fourteen affected Harrco, North State, and Intech sewer systems and expects to make those appointments effective not later than Saturday, February 1, 1997, by further Orders to be entered in these dockets. Based upon the statements contained in the filing made by Harrco on January 21, 1997, regarding its current financial situation and the results of the Public Staff's recent audit report, the Commission finds good cause to enter this Order directing and ordering Harrco to (1) immediately cease making any and all disbursements from the Company's checking accounts and any other accounts related to utility operations; ensure that any disbursement of funds from said checking accounts or from any other accounts or sources shall be made only after having received express written approval from the Commission to make such disbursement; and deposit all funds hereafter received from any source related to utility property and operations in the Company's checking accounts; (2) prepare and file a statement of the Company's checking account balances as of the date of this Order not later than Friday, January 31, 1997; (3) prepare and file, not later than Wednesday, February 5, 1997, a complete list of

all plant, property, equipment, and any other assets, including the purchase prices or book values thereof, acquired by or transferred by Harrco between September 6, 1996, and the date of this Order; and (4) prepare and file a complete list of all outstanding accounts payable in existence as of January 31, 1997, not later than Wednesday, February 5, 1997. Harrco shall also prepare and file a complete inventory of all plant, property, and equipment owned by the corporation not later than Friday, February 28, 1997. Furthermore, Harrco shall not dispose of or divest itself of any utility property, real or personal, without the prior written consent of the Commission."

On January 22, 1997, Culligan Operating Services, Inc. (Culligan) filed a letter with the Commission agreeing to be appointed as the emergency operator for the Monticello and Saddleridge sewage collection systems. Culligan agreed to accept this appointment at the rate of $28.00 per month and agreed to allow Heater to act as its agent for billing and revenue collection.

Based upon the foregoing and careful consideration of the records on file with the Commission, the Commission now makes the following

FINDINGS OF FACT

1. North State Utilities, Inc., is a public utility regulated by this Commission and is presently certified to provide sewer utility service in one subdivision in Mecklenburg County and six subdivisions in Wake County.

2. Harrco was appointed as the emergency operator for the sewer utility systems serving the Monticello and Saddleridge Subdivisions in Wake County by Commission Order dated September 1, 1993. At its request, Harrco was relieved from its duties and responsibilities as emergency operator of said sewer utility systems effective November 15, 1996.

3. Heater was appointed as the interim emergency operator for the sewer utility systems serving the Monticello and Saddleridge Subdivisions in Wake County by Commission Order dated November 14, 1996. Said appointment was effective November 15, 1996.

4. Culligan is willing to be appointed to serve as emergency operator of the sewer utility systems serving the Monticello and Saddleridge Subdivisions effective February 1, 1997.

5. Culligan is willing to serve as emergency operator pursuant to the following conditions:

a. That the monthly rate for service be set at $28.00 per connection per month for service in advance.

b. That Heater be authorized to act as Culligan's agent for purposes of billing, revenue collection, and revenue distribution to Culligan.

c. That Heater, as Culligan's billing and collection agent, be authorized to disconnect water service in the event of non-payment of a sewer bill.

d. That the Commission provide Culligan with 60 days' notice of intent to terminate its emergency operator appointment.

EVIDENCE AND CONCLUSIONS

The evidence in support of these findings of fact is found in the Commission's records. These facts are uncontroverted. The Commission, therefore, concludes that Heater should be discharged from its appointment as interim emergency operator of the systems at the Monticello and Saddleridge Subdivisions effective at midnight on Friday, January 31, 1997. The Commission further concludes that Culligan should be appointed as the emergency operator of the sewage collection systems serving those subdivisions effective Saturday, February 1, 1997.

IT IS, THEREFORE, ORDERED, as follows:

1. That Heater Utilities, Inc., is hereby discharged from its duties and responsibilities as the interim emergency operator of the sewer utility systems serving the Monticello and Saddleridge Subdivisions in Wake County, North Carolina, effective at midnight on Friday, January 31, 1997.

2. That Culligan Operating Services, 951 Sand Hill Road, Asheville, North Carolina 28806, is hereby appointed as the emergency operator for the sewer utility collection systems serving the Monticello and Saddleridge Subdivisions in Wake County, North Carolina, effective Saturday, February 1, 1997.

3. That Culligan is hereby authorized to charge a provisional monthly rate of $28.00 per customer for service in advance.

4. That North State Utilities, Inc., Heater Utilities, Inc., and Harrco Utility Corporation, their officers, directors, and shareholders, are hereby ordered to offer all reasonable assistance to the emergency operator. North State Utilities, Inc., its officers, directors, and shareholders, shall not by any act or omission unreasonably prevent or impair the continued existence of North State Utilities, Inc., as a North Carolina corporation in good standing. North State Utilities, Inc., is directed to accept or transfer any property, the acceptance or transfer of which is reasonably necessary to the continued provision of sewer service in the Monticello and Saddleridge Subdivisions. North State Utilities, Inc., shall not dispose or divest itself of any utility property, real or personal, without the prior written consent of the Commission.

5. That Culligan, as emergency operator, is authorized to obtain billing and collection services from Heater Utilities, Inc. Heater is authorized to provide billing and collection services to the emergency operator in the Monticello and Saddleridge Subdivisions. Heater is authorized to charge $2.00 per connection per month for those billing and collection services, said amount to be retained from the gross proceeds, and to disconnect water utility service for failure of any customer to pay sewer charges owed to Culligan..

6. That Culligan, pursuant to is duties as the emergency operator of the Monticello and Saddleridge sewage collection systems, shall maintain full records of receipts and expenses and shall file with the Commission and the Public Staff by the end of the subsequent month, a summary financial report by subdivision on a monthly basis.

7. That the monthly rate established by this Order is provisional. The emergency operator may, at any time, request a review of the sufficiency of the rate. The Public Staff is requested to review the emergency operator's reports of revenues and expenses as received and to advise the Commission if an adjustment to the rate appears reasonable or necessary.

8. That the emergency operator shall have charge of the daily operation of the sewage collection systems in the Monticello and Saddleridge Subdivisions, and the emergency operator's duties and responsibilities shall include, among others, the following:

(i) Regular inspections and testing of the sewer systems;
(ii) Billing of all customers and collection of bills;
(iii) Routine and emergency maintenance and repair;
(iv) System renovations and additions necessary to maintain adequate sewer service;
(v) Monthly accounting to the Utilities Commission and the Public Staff of all rates collected, expenses incurred, checks written, and all monies spent; and
(vi) Providing customers with a telephone number for routine and emergency calls and its mailing address.

9. That the emergency operator may contract with any person or corporation to carry out any of the duties necessary for the proper operation, repair, and expansion of the Monticello and Saddleridge sewage collection systems, but the emergency operator alone shall have the ultimate responsibility to see that such duties are carried out.

10. That the emergency operator, in the performance of its duties, shall be free to seek assistance from customers of the sewer systems, plumbers, engineers, attorneys, and such other persons as may be necessary for the performance of its duties and responsibilities.

11. That the emergency operator shall, when it becomes necessary in the performance of its duties, seek the assistance of the Division of Environmental Health, the North Carolina Utilities Commission, the Public Staff of the Utilities Commission, and the Wake County Health Department.

12. That the emergency operator shall collect from the customers of the sewer systems such rates and assessments as may be approved by the North Carolina Utilities Commission and shall be fully authorized to bill and collect said rates and assessments and to disburse such of those funds as may be necessary to provide safe, reliable, and adequate sewer utility service to the customers. Any customer who fails to pay the bill(s) authorized by this paragraph and Order shall be disconnected by the emergency operator as provided by the Orders, rules and regulations of the Utilities Commission.

13. That the emergency operator shall be entitled to all available records relating to the sewage collection systems serving the Monticello and Saddleridge Subdivisions. Those records shall include, but shall not be limited to, the following:

(i) Customer information for each residence connected to the systems, containing at a minimum, customer name, service address, billing address, and contact phone numbers (home and work);
(ii) Copy of latest electrical power bill for dosing stations (needed for transfer of service);

(iii) Copy of latest water bill, if any, for dosing stations (needed for transfer of service);
(iv) Copy of system plans and specifications with any noted discoveries or changes by current owner for the past 12 months;
(v) Copies of all monitoring reports and evaluation completed by current operator for the past 12 months;
(vi) Copies of any files or available data related to STEP systems;
(vii) Copies of all available Groundwater Monitoring Reports;
(viii) Plans and as-built plans for all systems;
(ix) Individual system operating procedures;
(x) Individual system maintenance logs for 1996 and 1997 to date;
(xi) Individual system operating logs for 1996 and 1997 to date;
(xii) Records of individual STEP tank pumping for each system;
(xiii) Schedule of future individual STEP tank pumping for each system;
(xiv) List of all contractors and suppliers, including telephone numbers; and
(xv) Billings records for 1996 and 1997 to date.

Harrco and Heater shall make all necessary records available to Culligan not later than February 1, 1997.

14. That the emergency operator shall keep records of all monies collected through the rates and assessments and all monies expended in the operation of the Monticello and Saddleridge sewer systems. In order to protect the customers' investments in the sewer systems in the event the sewer systems should be sold or revert to North State Utilities, Inc., the emergency operator is required to keep a separate record of all monies and assessments collected from customers and expended on improving and upgrading the sewer systems, including, but not limited to, the installation of new plant, meters, wells, rebuilt equipment, and the cost of labor associated with those improvements whether performed by the emergency operator or a contractor hired by the emergency operator.

15. That the emergency operator shall pay only those liabilities incurred by the emergency operator on and after the date of the appointment of the emergency operator. Those liabilities shall be defined as the liabilities arising from the emergency operator's operation of the Monticello and Saddleridge sewer systems pursuant to Commission Order. The emergency operator shall account for any funds advanced by it for the operations.

16. That North State Utilities, Inc., its officers, agents, servants, and employees, shall not:

(i) Interfere with the emergency operator's operation of the sewer utility plant, including the pumps, easements, rights-of-way, treatment facilities, mains, distribution lines, storage or holding facilities, meters, filters, or taps;
(ii) Receive or attempt to collect any sewer bill payments or monies for sewer service provided by the emergency operator; or
(iii) Alter, impair, or remove any of the sewer utility plant.

17. That the appointment of Culligan as the emergency operator shall continue until terminated by an Order of the Commission finding that the emergency has ended and that the

emergency operator is no longer required pursuant to G.S. 62-118(b) to provide sewer public utility service to the customers of the Monticello and Saddleridge sewer systems.

18. That Culligan may petition the Commission at any time to be discharged as the emergency operator herein; and the emergency operator, prior to its discharge, shall provide an acceptable accounting to the Utilities Commission of all monies collected and disbursed during its tenure as emergency operator, as well as the amounts due and owing the emergency operator at the time of its discharge for its services performed as emergency operator. The emergency operator filing a petition for discharge shall also mail a copy of said petition to the Wake County Health Department and the Division of Environmental Health.

19. That this docket shall remain open for further motions, reports, etc., of the parties, the emergency operator, the Wake County Health Department, the Division of Environmental Health, and for further Orders of the Commission.

20. That, prior to February 1, 1997, Harrco and Culligan shall meet at the Monticello and Saddleridge sewer systems at a mutually acceptable time in order to review the systems and simplify the transfer of duties.

21. That the Notice to Customers and Schedule of Rates, attached hereto as Appendices A and B, shall be mailed by the Chief Clerk to all affected customers in the Monticello and Saddleridge Subdivisions.

22. That the Chief Clerk shall mail a copy of this Order to Heater Utilities, Inc.

23. That the Chief Clerk shall mail a copy of this Order to Harrco's attorney, Samuel Roberti, Roberti, Wittenberg, Holtcamp & Lauffer, P.A., Attorneys at Law, P.O. Box 3359, Durham, North Carolina 27702.

24. That the Chief Clerk shall mail a copy of this Order to Jonathan P. Carr, the attorney representing the Saddleridge Homeowners Association, at the following address: Jordan, Price, Wall, Gray & Jones, LLP, Attorneys at Law, Post Office Box 2021, Raleigh, North Carolina 27602-2021.

25. That the Chief Clerk shall mail a copy of this Order to Gary McGibbon, Chairperson, Wake County Community LPP Emergency Task Force, 10308 Grafton Road, Raleigh, North Carolina 27615.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

DOCKET NO. W-848, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
North State Utilities, Inc. - Appointment of)
Emergency Operators Pursuant to) NOTICE TO CUSTOMERS
G.S. 62-118(b))

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order in this docket regarding the appointment of a new emergency operator for the sewage collection systems serving the Monticello and Saddleridge Subdivisions. The Commission ordered the following:

1. That Heater Utilities, Inc. (Heater) is discharged from its duties and responsibilities as interim emergency operator of the sewer utility systems serving the Monticello and Saddleridge Subdivisions in Wake County, North Carolina, effective at midnight on Friday, January 31, 1997.

2. That Culligan Operating Services, Inc. (Culligan) is appointed as the new emergency operator of the sewer utility systems serving the Monticello and Saddleridge Subdivisions in Wake County, North Carolina, effective Saturday, February 1, 1997.

3. That Culligan is authorized to charge a provisional monthly rate of $28.00 per customer for service in advance as reflected in the attached Schedule of Rates. Heater is authorized to provide monthly billing and collection service for Culligan and to disconnect water utility service for non-payment of sewer charges owed to Culligan. Heater will also charge each customer $36.84 per month for wastewater treatment service billed in arrears.

In case of an emergency involving your wastewater system, Culligan may be reached by calling 1-800-231-8889.

This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

SCHEDULE OF RATES
for
NORTH STATE UTILITIES, INC.
CULLIGAN OPERATING SERVICES, INC., Emergency Operator
for providing sewer utility service in

MONTICELLO AND SADDLERIDGE SUBDIVISIONS
Wake County, North Carolina

Monthly Flat Sewer Rate: $ 28.00 [1]

Pumping Individual STEP and Septic Tanks: $115.77 per 1,000 gallons pumped

Reconnection Charges:

If sewer service cut off by utility for good cause by disconnecting water service - $15.00 [2]

If sewer service cut off by utility for good cause by any method other than that noted above - Actual cost

Deposits: Two months estimated bill (in accordance with NCUC Rule R12-4)

Returned Check Charge: $20.00

Bills Due: On billing date

Bills Past Due: 25 days after billing date

Billing Frequency: Shall be monthly for service in advance

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] There will also be a $36.84 charge from Heater Utilities, Inc., for wastewater treatment service billed in arrears.

[2] Heater Utilities, Inc., shall also be authorized to collect a reconnection charge of $25.00 for water service in such situations.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-848, Sub 16, on this the 31st day of January, 1997.

DOCKET NO. W-848, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
North State Utilities, Inc. - Appointment of	)	ORDER APPOINTING NEW
Emergency Operators Pursuant to	)	EMERGENCY OPERATOR AND
G.S. 62-118(b)	)	APPROVING RATES

BY THE COMMISSION: By Order entered in this docket on September 1, 1993, Harrco Utility Corporation (Harrco) was appointed emergency operator of the low-pressure pipe (LPP) sewer utility systems serving nine (9) subdivisions in Wake, Orange, and Durham Counties, North Carolina. Harrco's appointment as emergency operator was effective September 1, 1993.

On January 21, 1997, Harrco filed a letter with the Commission requesting that it be relieved from its duties and responsibilities as emergency operator of the LPP sewer utility systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions effective not later than January 31, 1997.

On January 29, 1997, the Commission entered an Order in Docket Nos. W-796, Sub 12, W-848, Sub 16, and W-957, Sub 1, concluding that:

> "The emergency affecting the sewer systems in question [Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, Woods of Tiffany, Hardscrabble, Banbury Woods, Monticello, Manchester, Woods of Ashbury, Hollybrook, Saddleridge, and Yates Mill Run] continues and such emergency has been further exacerbated by Harrco's pending request to be relieved of its duties as a public utility and emergency operator. The Commission is in the process of appointing emergency operators for the fourteen affected Harrco, North State, and Intech sewer systems and expects to make those appointments effective not later than Saturday, February 1, 1997, by further Orders to be entered in these dockets. Based upon the statements contained in the filing made by Harrco on January 21, 1997, regarding its current financial situation and the results of the Public Staff's recent audit report, the Commission finds good cause to enter this Order directing and ordering Harrco to (1) immediately cease making any and all disbursements from the Company's checking accounts and any other accounts related to utility operations; ensure that any disbursement of funds from said checking accounts or from any other accounts or sources shall be made only after having received express written approval from the Commission to make such disbursement; and deposit all funds hereafter received from any source related to utility property and operations in the Company's checking accounts; (2) prepare and file a statement of the Company's checking account balances as of the date of this Order not later than Friday, January 31, 1997; (3) prepare and file, not later than Wednesday, February 5, 1997, a complete list of all plant, property, equipment, and any other assets, including the purchase prices or book values thereof, acquired by or transferred by Harrco between September 6, 1996, and the date of this Order; and (4) prepare and file a complete list of all outstanding accounts payable in existence as of January 31, 1997, not later than

Wednesday, February 5, 1997. Harrco shall also prepare and file a complete inventory of all plant, property, and equipment owned by the corporation not later than Friday, February 28, 1997. Furthermore, Harrco shall not dispose of or divest itself of any utility property, real or personal, without the prior written consent of the Commission."

On January 23, 1997, Culligan Operating Services, Inc. (Culligan) filed a letter with the Commission agreeing to be appointed as the emergency operator for the LPP sewer utility systems serving Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions. Culligan agreed to accept this appointment at the rate of $28.00 per month and agreed to allow Heater Utilities, Inc. (Heater) to act as its agent for billing and revenue collection.

Based upon the foregoing and a careful consideration of the records on file with the Commission, the Commission now makes the following

FINDINGS OF FACT

1. North State Utilities, Inc., is a public utility regulated by this Commission and is presently certified to provide sewer utility service in one subdivision in Mecklenburg County and six subdivisions in Wake County.

2. Harrco was appointed as the emergency operator for the sewer utility systems serving Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions in Wake County by Commission Order dated September 1, 1993.

3. Culligan is willing to be appointed to serve as emergency operator of the sewer utility systems serving Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions effective February 1, 1997.

4. Culligan is willing to serve as emergency operator pursuant to the following conditions:

a. That the monthly rate for service be set at $28.00 per connection per month for service in advance.

b. That Heater be authorized to act as Culligan's agent for billing, revenue collection, and revenue distribution to Culligan.

c. That Heater, as Culligan's billing and collection agent, be authorized to disconnect water service in the event of non-payment of a sewer bill.

d. That the Commission provide Culligan with 60 days' notice of intent to terminate its emergency operator appointment.

EVIDENCE AND CONCLUSIONS

The evidence in support of these findings of fact is found in the Commission's records. These facts are uncontroverted. The emergency continues and such emergency has been further exacerbated by Harrco's request to be relieved of its duties as emergency operator. The Commission, therefore, concludes that Harrco should be discharged from its appointment as emergency operator of the sewer systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions effective at midnight on Friday, January 31, 1997. The Commission further concludes that Culligan should be appointed as the emergency operator of said systems effective Saturday, February 1, 1997.

IT IS, THEREFORE, ORDERED, as follows:

1. That Harrco is discharged from its duties and responsibilities as emergency operator of the sewer utility systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions in Wake County, North Carolina, effective at midnight on Friday, January 31, 1997. Sewer bills for service rendered by Harrco through the month of January 1997, shall remain due and payable to Harrco. The service of any customer remaining in arrears to Harrco is subject to discontinuance for failure of the customer to pay past due amounts. Harrco shall be responsible for collecting these bills, but may request the assistance of the Commission in discontinuing service.

2. That Culligan Operating Services, 951 Sand Hill Road, Asheville, North Carolina 28806, is hereby appointed as the emergency operator for the sewer utility collection systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions in Wake County, North Carolina, effective Saturday, February 1, 1997.

3. That Culligan is hereby authorized to charge a provisional monthly rate of $28.00 per customer for service in advance.

4. That North State Utilities, Inc., and Harrco Utility Corporation, their officers, directors, and shareholders, are hereby ordered to offer all reasonable assistance to the emergency operator. North State Utilities, Inc., its officers, directors, and shareholders, shall not by any act or omission unreasonably prevent or impair the continued existence of North State Utilities, Inc., as a North Carolina corporation in good standing. North State Utilities, Inc., is directed to accept or transfer any property, the acceptance or transfer of which is reasonably necessary to the continued provision of sewer service in the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions. North State Utilities, Inc., shall not dispose or divest itself of any utility property, real or personal, without the prior written consent of the Commission.

5. That Culligan, as emergency operator, is authorized to obtain billing and collection services from Heater Utilities, Inc. Heater is authorized to provide billing and collection services to the emergency operator in the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions. Heater is authorized to charge $2.00 per connection per month for those billing and collection services, said amount to be retained from the gross proceeds, and to disconnect water utility service for failure of any customer to pay sewer charges owed to Culligan.

6. That Culligan, pursuant to is duties as the emergency operator of the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook sewer systems, shall maintain full records of receipts and expenses and shall file with the Commission and the Public Staff by the end of the subsequent month, a summary financial report by subdivision on a monthly basis.

7. That the monthly rate established by this Order is provisional. The emergency operator may, at any time, request a review of the sufficiency of the rate. The Public Staff is requested to review the emergency operator's reports of revenues and expenses as received and to advise the Commission if an adjustment to the rate appears reasonable or necessary.

8. That the emergency operator shall have charge of the daily operation of the sewer systems in the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions, and the emergency operator's duties and responsibilities shall include, among others, the following:

(i) Regular inspections and testing of the sewer systems;
(ii) Billing of all customers and collection of bills;
(iii) Routine and emergency maintenance and repair;
(iv) System renovations and additions necessary to maintain adequate sewer service;
(v) Monthly accounting to the Utilities Commission and the Public Staff of all rates collected, expenses incurred, checks written, and all monies spent; and
(vi) Providing customers with a telephone number for routine and emergency calls and its mailing address.

9. That the emergency operator may contract with any person or corporation to carry out any of the duties necessary for the proper operation, repair, and expansion of the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook sewer systems, but the emergency operator alone shall have the ultimate responsibility to see that such duties are carried out.

10. That the emergency operator, in the performance of its duties, shall be free to seek assistance from customers of the sewer systems, plumbers, engineers, attorneys, and such other persons as may be necessary for the performance of its duties and responsibilities.

11. That the emergency operator shall, when it becomes necessary in the performance of its duties, seek the assistance of the Division of Environmental Health, the North Carolina Utilities Commission, the Public Staff of the Utilities Commission, and the Wake County Health Department.

12. That the emergency operator shall collect from the customers of the sewer systems such rates and assessments as may be approved by the North Carolina Utilities Commission and shall be fully authorized to bill and collect said rates and assessments and to disburse such of those funds as may be necessary to provide safe, reliable, and adequate sewer utility service to the customers. Any customer who fails to pay the bill(s) authorized by this paragraph and Order shall be disconnected by the emergency operator as provided by the Orders, rules and regulations of the Utilities Commission.

13. That the emergency operator shall be entitled to all available records relating to the sewer systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions. Those records shall include, but shall not be limited to, the following:

(i) Customer information for each residence connected to the systems, containing at a minimum, customer name, service address, billing address, and contact phone numbers (home and work);
(ii) Copy of latest electrical power bill for dosing stations (needed for transfer of service);
(iii) Copy of latest water bill, if any, for dosing stations (needed for transfer of service);
(iv) Copy of system plans and specifications with any noted discoveries or changes by current owner for the past 12 months;
(v) Copies of all monitoring reports and evaluation completed by current operator for the past 12 months;
(vi) Copies of any files or available data related to STEP systems;
(vii) Copies of all available Groundwater Monitoring Reports;
(viii) Plans and as-built plans for all systems;
(ix) Individual system operating procedures;
(x) Individual system maintenance logs for 1996 and 1997 to date;
(xi) Individual system operating logs for 1996 and 1997 to date;
(xii) Records of individual STEP tank pumping for each system;
(xiii) Schedule of future individual STEP tank pumping for each system;
(xiv) List of all contractors and suppliers, including telephone numbers; and
(xv) Billings records for 1996 and 1997 to date.

Harrco shall make all necessary records available to Culligan not later than February 1, 1997.

14. That the emergency operator shall keep records of all monies collected through the rates and assessments and all monies expended in the operation of the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook sewer systems. In order to protect the customers' investments in the sewer systems in the event the sewer systems should be sold or revert to North State Utilities, Inc., the emergency operator is required to keep a separate record of all monies and assessments collected from customers and expended on improving and upgrading the sewer systems, including, but not limited to, the installation of new plant, meters, wells, rebuilt equipment, and the cost of labor associated with those improvements whether performed by the emergency operator or a contractor hired by the emergency operator.

15. That the emergency operator shall pay only those liabilities incurred by the emergency operator on and after the date of the appointment of the emergency operator. Those liabilities shall be defined as the liabilities arising from the emergency operator's operation of the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook sewer systems pursuant to Commission Order. The emergency operator shall account for any funds advanced by it for the operations.

16. That North State Utilities, Inc., its officers, agents, servants, and employees, shall not

(i) Interfere with the emergency operator's operation of the sewer utility plant, including the pumps, easements, rights-of-way, treatment facilities, mains, distribution lines, storage or holding facilities, meters, filters, or taps;
(ii) Receive or attempt to collect any sewer bill payments or monies for sewer service provided by the emergency operator; or
(iii) Alter, impair, or remove any of the sewer utility plant.

17. That the appointment of Culligan as the emergency operator shall continue until terminated by an Order of the Commission finding that the emergency has ended and that the emergency operator is no longer required pursuant to G.S. 62-118(b) to provide sewer public utility service to the customers of the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook sewer systems.

18. That Culligan may petition the Commission at any time to be discharged as the emergency operator herein; and the emergency operator, prior to its discharge, shall provide an acceptable accounting to the Utilities Commission of all monies collected and disbursed during its tenure as emergency operator, as well as the amounts due and owing the emergency operator at the time of its discharge for its services performed as emergency operator. The emergency operator filing a petition for discharge shall also mail a copy of said petition to the Wake County Health Department and the Division of Environmental Health.

19. That this docket shall remain open for further motions, reports, etc., of the parties, the emergency operator, the Wake County Health Department, the Division of Environmental Health, and for further Orders of the Commission.

20. That, prior to February 1, 1997, Harrco and Culligan shall meet at the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook sewer systems at a mutually acceptable time in order to review the systems and simplify the transfer of duties.

21. That Harrco shall, not later than February 7, 1997, file its financial report for the month of December 1996, covering, on a subdivision-by-subdivision basis, its operation of the sewer systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions.

22. That Harrco shall, not later than February 28, 1997, file its financial report for the month of January 1997, covering, on a subdivision-by-subdivision basis, its operation of the sewer systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions.

23. That Harrco shall, not later than February 28, 1997, file a final accounting of all monies collected and disbursed during its time as emergency operator of the North State sewer systems, including the amounts due and owing Harrco as of January 31, 1997.

24. That Harrco shall, not later than February 28, 1997, file the following information with the Commission:

(i) The balance sheet for Harrco Utility Corporation as of December 31, 1996;
(ii) The income statements for the twelve months ended December 31, 1996, for Harrco's utility operations, the North State emergency operatorship, the Yates Mill Run emergency operatorship, and Harrco's nonutility operations;
(iii) The balance sheet for Harrco Utility Corporation as of January 31, 1997; and
(iv) The income statements for the month of January 1997, for Harrco's utility operations, the North State emergency operatorship, the Yates Mill Run emergency operatorship, and Harrco's nonutility operations.

25. That Harrco shall, not later than February 28, 1997, file a plan for refunding the reserve balances in existence as of January 31, 1997, to the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook customers, indicating the source of the funds to make the refunds and including all supporting work papers and calculations.

26. That the Public Staff is hereby requested to conduct an audit of the books and records maintained by Harrco as emergency operator of the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook sewer systems through January 31, 1997, and file the results of its accounting investigation, including recommendations regarding how to treat outstanding debts or amounts, if any, claimed by Harrco, excess revenues, if any, collected by Harrco, and Harrco's final accounting and refund plan. The Public Staff shall file its audit report not later than April 30, 1997.

27. That the Notice to Customers and Schedule of Rates, attached hereto as Appendices A and B, shall be mailed by the Chief Clerk to all affected customers in the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions.

28. That the Chief Clerk shall mail a copy of this Order to Harrco's attorney, Samuel Roberti, Roberti, Wittenberg, Holtcamp & Lauffer, P.A., Attorneys at Law, P.O. Box 3359, Durham, North Carolina 27702.

29. That the Chief Clerk shall mail a copy of this Order to Gary McGibbon, Chairperson, Wake County Community LPP Emergency Task Force, 10308 Grafton Road, Raleigh, North Carolina 27615.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

DOCKET NO. W-848, SUB 16

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
North State Utilities, Inc. - Appointment of Emergency Operators Pursuant to G.S. 62-118(b)) NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the North Carolina Utilities Commission has issued an Order in this docket regarding the appointment of a new emergency operator for the sewer systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions. The Commission ordered the following:

1. That Harrco Utility Corporation (Harrco) is discharged from its duties and responsibilities as emergency operator of the sewer utility systems serving the Manchester, Banbury

Woods, Woods of Ashbury, and Hollybrook Subdivisions in Wake County, North Carolina, effective at midnight on Friday, January 31, 1997. The Commission has required Harrco to file, not later than February 28, 1997, (a) a final accounting of all monies collected and disbursed during its time as emergency operator of the North State sewer systems, including the amounts due and owing Harrco as of January 31, 1997, and (2) a plan for refunding the reserve balances in existence as of January 31, 1997, to the North State customers.

2. That Culligan Operating Services, Inc. (Culligan) is appointed as the new emergency operator of the sewer utility systems serving the Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions in Wake County, North Carolina, effective Saturday, February 1, 1997.

3. That effective February 1, 1997, Culligan is authorized to charge a provisional monthly rate of $28.00 per customer for service in advance as reflected in the attached Schedule of Rates. Heater is authorized to provide monthly billing and collection service for Culligan and to disconnection water utility service for non-payment of sewer charges owed to Culligan. Sewer bills for service rendered through the month of January 1997, shall remain due and payable to Harrco. The service of any customer remaining in arrears to Harrco is subject to discontinuance for failure of the customer to pay past due amounts. Harrco shall be responsible for collecting these bills, but may request the assistance of the Commission in discontinuing service.

4. That the Public Staff has been requested to conduct an audit of the books and records maintained by Harrco Utility Corporation as emergency operator of the sewer systems through January 31, 1997, and file the results of its accounting investigation, including recommendations regarding how to treat outstanding debts or amounts, if any, claimed by Harrco or excess revenues, if any, collected by Harrco, and Harrco's final accounting and refund plan. This audit report will be filed with the Commission not later than April 30, 1997.

In case of an emergency involving your wastewater system, Culligan may be reached by calling 1-800-231-8889.

This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

SCHEDULE OF RATES
for
NORTH STATE UTILITIES, INC.
CULLIGAN OPERATING SERVICES, INC., Emergency Operator
for providing sewer utility service in

MANCHESTER, BANBURY WOODS, WOODS OF ASHBURY
AND HOLLYBROOK SUBDIVISIONS
Wake County, North Carolina

Monthly Flat Sewer Rate: $ 28.00

Pumping Individual STEP and Septic Tanks: $115.77 per 1,000 gallons pumped

Reconnection Charges:
If sewer service cut off by utility for good cause by disconnecting water service - $15.00 [1/]
If sewer service cut off by utility for good cause by any method other than that noted above - Actual cost

Deposits: Two months estimated bill (in accordance with NCUC Rule R12-4)

Returned Check Charge: $20.00

Bills Due: On billing date

Bills Past Due: 25 days after billing date

Billing Frequency: Shall be monthly for service in advance

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/] Heater Utilities, Inc., shall also be authorized to collect a reconnection charge of $25.00 for water service in such situations.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-848, Sub 16, on this the 31st day of January, 1997.

WATER AND SEWER - EMERGENCY OPERATORS

DOCKET NO. W-957, SUB 1

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Unauthorized Abandonment of Utility Service at Yates Mill Run Subdivision, Wake County, North Carolina, by Intech Utilities, Inc., and Appointment of Emergency Operator	))))	ORDER APPOINTING NEW EMERGENCY OPERATOR AND APPROVING RATES

BY THE COMMISSION: By Order entered in this docket on March 21, 1995, Harrco Utility Corporation (Harrco) was appointed emergency operator of the low-pressure pipe (LPP) sewer utility system serving the Yates Mill Run Subdivision in Wake County, North Carolina. Harrco's appointment as emergency operator was effective after March 31, 1995.

On January 21, 1997, Harrco filed a letter with the Commission requesting that it be relieved from its duties and responsibilities as the emergency operator of the LPP sewer utility system serving the Yates Mill Run Subdivision not later than January 31, 1997.

On January 29, 1997, the Commission entered an Order in Docket Nos. W-796, Sub 12, W-848, Sub 16, and W-957, Sub 1, concluding that:

> "The emergency affecting the sewer systems in question [Stonebridge VI, Stone Creek, Sheffield Manor, Park Ridge, River Oaks, Woods of Tiffany, Hardscrabble, Banbury Woods, Monticello, Manchester, Woods of Ashbury, Hollybrook, Saddleridge, and Yates Mill Run] continues and such emergency has been further exacerbated by Harrco's pending request to be relieved of its duties as a public utility and emergency operator. The Commission is in the process of appointing emergency operators for the fourteen affected Harrco, North State, and Intech sewer systems and expects to make those appointments effective not later than Saturday, February 1, 1997, by further Orders to be entered in these dockets. Based upon the statements contained in the filing made by Harrco on January 21, 1997, regarding its current financial situation and the results of the Public Staff's recent audit report, the Commission finds good cause to enter this Order directing and ordering Harrco to (1) immediately cease making any and all disbursements from the Company's checking accounts and any other accounts related to utility operations; ensure that any disbursement of funds from said checking accounts or from any other accounts or sources shall be made only after having received express written approval from the Commission to make such disbursement; and deposit all funds hereafter received from any source related to utility property and operations in the Company's checking accounts; (2) prepare and file a statement of the Company's checking account balances as of the date of this Order not later than Friday, January 31, 1997; (3) prepare and file, not later than Wednesday, February 5, 1997, a complete list of all plant, property, equipment, and any other assets, including the purchase prices or book values thereof, acquired by or transferred by Harrco between September 6, 1996, and the date of this Order; and (4) prepare and file a complete list of all outstanding accounts payable in existence as of January 31, 1997, not later than

Wednesday, February 5, 1997. Harrco shall also prepare and file a complete inventory of all plant, property, and equipment owned by the corporation not later than Friday, February 28, 1997. Furthermore, Harrco shall not dispose of or divest itself of any utility property, real or personal, without the prior written consent of the Commission."

On January 23, 1997, Culligan Operating Services, Inc. (Culligan) filed a letter with the Commission agreeing to be appointed the emergency operator for the sewer utility system serving the Yates Mill Run Subdivision effective February 1, 1997. Culligan agreed to accept this appointment at the rate of $28.00 per month and agreed to allow Heater Utilities, Inc. (Heater) to act as its agent for billing and revenue collection.

Based upon the foregoing and careful consideration of the records on file with the Commission, the Commission now makes the following

FINDINGS OF FACT

1. Intech Utilities, Inc. (Intech) is a public utility regulated by this Commission and is presently certified to provide sewer utility service in the Yates Mill Run Subdivision in Wake County.

2. Harrco was appointed as the emergency operator for the sewer utility system serving the Yates Mill Run Subdivision in Wake County by Commission Order dated March 21, 1995.

3. Culligan is willing to be appointed to serve as emergency operator of the sewer utility system serving the Yates Mill Run Subdivision effective February 1, 1997.

4. Culligan is willing to serve as emergency operator pursuant to the following conditions:

a. That the monthly rate for service be set at $28.00 per connection per month for service in advance.

b. That Heater be authorized to act as Culligan's agent for purposes of billing, revenue collection, and revenue distribution to Culligan.

c. That Heater, as Culligan's billing and collection agent, be authorized to disconnect water service in the event of non-payment of a sewer bill.

d. That the Commission provide Culligan with 60 days' notice of intent to terminate its emergency operator appointment.

EVIDENCE AND CONCLUSIONS

The evidence in support of these findings of fact is found in the Commission's records. These facts are uncontroverted. The emergency affecting the Yates Mill Run Subdivision continues and such emergency has been further exacerbated by Harrco's request to be relieved of its duties as emergency operator. The Commission, therefore, concludes that Harrco should be discharged from

its appointment as emergency operator of the sewer system at the Yates Mill Run Subdivision effective at midnight on Friday, January 31, 1997. The Commission further concludes that Culligan should be appointed as the emergency operator of said sewer system effective Saturday, February 1, 1997.

IT IS, THEREFORE, ORDERED, as follows:

1. That Harrco Utility Corporation is hereby discharged from its duties and responsibilities as emergency operator of the sewer utility system serving the Yates Mill Run Subdivision in Wake County, North Carolina, effective at midnight on Friday, January 31, 1997. Sewer bills for service rendered by Harrco through the month of January 1997, shall remain due and payable to Harrco. The service of any customer remaining in arrears to Harrco is subject to discontinuance for failure of the customer to pay past due amounts. Harrco shall be responsible for collecting these bills, but may request the assistance of the Commission in discontinuing service.

2. That Culligan Operating Services, 951 Sand Hill Road, Asheville, North Carolina 28806, is hereby appointed as the emergency operator for the sewer utility system serving the Yates Mill Run Subdivision in Wake County, North Carolina, effective Saturday, February 1, 1997.

3. That Culligan is hereby authorized to charge a provisional monthly rate of $28.00 per customer for service in advance.

4. That Intech Utilities, Inc., and Harrco Utility Corporation, their officers, directors, and shareholders, are hereby ordered to offer all reasonable assistance to the emergency operator. Intech Utilities, Inc., its officers, directors, and shareholders, shall not by any act or omission unreasonably prevent or impair the continued existence of Intech Utilities, Inc., as a North Carolina corporation in good standing. Intech Utilities, Inc., is directed to accept or transfer any property, the acceptance or transfer of which is reasonably necessary to the continued provision of sewer service in the Yates Mill Run Subdivision. Intech Utilities, Inc., shall not dispose or divest itself of any utility property, real or personal, without the prior written consent of the Commission.

5. That Culligan, as emergency operator, is authorized to obtain billing and collection services from Heater. Heater is authorized to provide billing and collection services to the emergency operator in the Yates Mill Run Subdivision. Heater is authorized to charge $2.00 per connection per month for those billing and collection services, said amount to be retained from the gross proceeds, and to disconnect water utility service for failure of any customer to pay sewer charges owed to Culligan.

6. That Culligan, pursuant to is duties as the emergency operator of the Yates Mill Run sewer system, shall maintain full records of receipts and expenses and shall file with the Commission and the Public Staff by the end of the subsequent month, a summary financial report by subdivision on a monthly basis.

7. That the monthly rate established by this Order is provisional. The emergency operator may, at any time, request a review of the sufficiency of the rate. The Public Staff is requested to review the emergency operator's reports of revenues and expenses as received and to advise the Commission if an adjustment to the rate appears reasonable or necessary.

WATER AND SEWER - EMERGENCY OPERATORS

8. That the emergency operator shall have charge of the daily operation of the sewer system in the Yates Mill Run Subdivision, and the emergency operator's duties and responsibilities shall include, among others, the following:

- (i) Regular inspections and testing of the sewer system;
- (ii) Billing of all customers and collection of bills;
- (iii) Routine and emergency maintenance and repair;
- (iv) System renovations and additions necessary to maintain adequate sewer service;
- (v) Monthly accounting to the Utilities Commission and the Public Staff of all rates collected, expenses incurred, checks written, and all monies spent; and
- (vi) Providing customers with a telephone number for routine and emergency calls and its mailing address.

9. That the emergency operator may contract with any person or corporation to carry out any of the duties necessary for the proper operation, repair, and expansion of the Yates Mill Run sewer system, but the emergency operator alone shall have the ultimate responsibility to see that such duties are carried out.

10. That the emergency operator, in the performance of its duties, shall be free to seek assistance from customers of the sewer system, plumbers, engineers, attorneys, and such other persons as may be necessary for the performance of its duties and responsibilities.

11. That the emergency operator shall, when it becomes necessary in the performance of its duties, seek the assistance of the Division of Environmental Health, the North Carolina Utilities Commission, the Public Staff of the Utilities Commission, and the Wake County Health Department.

12. That the emergency operator shall collect from the customers of the sewer system such rates and assessments as may be approved by the North Carolina Utilities Commission and shall be fully authorized to bill and collect said rates and assessments and to disburse such of those funds as may be necessary to provide safe, reliable, and adequate sewer utility service to the customers. Any customer who fails to pay the bill(s) authorized by this paragraph and Order shall be disconnected by the emergency operator as provided by the Orders, rules and regulations of the Utilities Commission.

13. That the emergency operator shall be entitled to all available records relating to the sewer system serving the Yates Mill Run Subdivision. Those records shall include, but shall not be limited to, the following:

- (i) Customer information for each residence connected to the system, containing at a minimum, customer name, service address, billing address, and contact phone numbers (home and work);
- (ii) Copy of latest electrical power bill for dosing stations (needed for transfer of service);
- (iii) Copy of latest water bill, if any, for dosing stations (needed for transfer of service);
- (iv) Copy of system plans and specifications with any noted discoveries or changes by current owner for the past 12 months;
- (v) Copies of all monitoring reports and evaluation completed by current operator for the past 12 months;

(vi) Copies of any files or available data related to STEP systems;
(vii) Copies of all available Groundwater Monitoring Reports;
(viii) Plans and as-built plans for the system;
(ix) Individual system operating procedures;
(x) Individual system maintenance logs for 1996 and 1997 to date;
(xi) Individual system operating logs for 1996 and 1997 to date;
(xii) Records of individual STEP tank pumping for each system;
(xiii) Schedule of future individual STEP tank pumping for each system;
(xiv) List of all contractors and suppliers, including telephone numbers; and
(xv) Billings records for 1996 and 1997 to date.

Harrco shall make all necessary records available to Culligan not later than February 1, 1997.

14. That the emergency operator shall keep records of all monies collected through the rates and assessments and all monies expended in the operation of the Yates Mill Run sewer system. In order to protect the customers' investments in the sewer system in the event the sewer system should be sold or revert to Intech Utilities, Inc., the emergency operator is required to keep a separate record of all monies and assessments collected from customers and expended on improving and upgrading the sewer system, including, but not limited to, the installation of new plant, meters, wells, rebuilt equipment, and the cost of labor associated with those improvements whether performed by the emergency operator or a contractor hired by the emergency operator.

15. That the emergency operator shall pay only those liabilities incurred by the emergency operator on and after the date of the appointment of the emergency operator. Those liabilities shall be defined as the liabilities arising from the emergency operator's operation of the Yates Mill Run sewer system pursuant to Commission Order. The emergency operator shall account for any funds advanced by it for the operations.

16. That Intech Utilities, Inc., its officers, agents, servants, and employees, shall not:

(i) Interfere with the emergency operator's operation of the sewer utility plant, including the pumps, easements, rights-of-way, treatment facilities, mains, distribution lines, storage or holding facilities, meters, filters, or taps;
(ii) Receive or attempt to collect any sewer bill payments or monies for sewer service provided by the emergency operator; or
(iii) Alter, impair, or remove any of the sewer utility plant.

17. That the appointment of Culligan as the emergency operator shall continue until terminated by an Order of the Commission finding that the emergency has ended and that the emergency operator is no longer required pursuant to G.S. 62-118(b) to provide sewer public utility service to the customers of the Yates Mill Run sewer system.

18. That Culligan may petition the Commission at any time to be discharged as the emergency operator herein; and the emergency operator, prior to its discharge, shall provide an acceptable accounting to the Utilities Commission of all monies collected and disbursed during its tenure as emergency operator, as well as the amounts due and owing the emergency operator at the time of its discharge for its services performed as emergency operator. The emergency operator filing

a petition for discharge shall also mail a copy of said petition to the Wake County Health Department and the Division of Environmental Health.

19. That this docket shall remain open for further motions, reports, etc., of the parties, the emergency operator, the Wake County Health Department, the Division of Environmental Health, and for further Orders of the Commission.

20. That, prior to February 1, 1997, Harrco and Culligan shall meet at the Yates Mill Run sewer system at a mutually acceptable time in order to review the system and simplify the transfer of duties.

21. That Harrco shall, not later than February 7, 1997, file its financial report for the month of December 1996, covering its operation of the sewer system serving the Yates Mill Run Subdivision.

22. That Harrco shall, not later than February 28, 1997, file its financial report for the month of January 1997, covering its operation of the sewer system serving the Yates Mill Run Subdivision.

23. That Harrco shall, not later than February 28, 1997, file a final accounting of all monies collected and disbursed during its time as emergency operator of the Yates Mill Run sewer system, including the amounts due and owing Harrco as of January 31, 1997.

24. That Harrco shall, not later than February 28, 1997, file the following information with the Commission:

(i) The balance sheet for Harrco Utility Corporation as of December 31, 1996;
(ii) The income statements for the twelve months ended December 31, 1996, for Harrco's utility operations, the North State emergency operatorship, the Yates Mill Run emergency operatorship, and Harrco's nonutility operations;
(iii) The balance sheet for Harrco Utility Corporation as of January 31, 1997; and
(iv) The income statements for the month of January 1997, for Harrco's utility operations, the North State emergency operatorship, the Yates Mill Run emergency operatorship, and Harrco's nonutility operations.

25. That Harrco shall, not later than February 28, 1997, file a plan for refunding the reserve balance in existence as of January 31, 1997, to the Yates Mill Run customers, indicating the source of the funds to make the refunds and including all supporting work papers and calculations.

26. That the Public Staff is hereby requested to conduct an audit of the books and records maintained by Harrco as emergency operator of the Yates Mill Run sewer system through January 31, 1997, and file the results of its accounting investigation, including recommendations regarding how to treat outstanding debts or amounts, if any, claimed by Harrco, excess revenues, if any, collected by Harrco, and Harrco's final accounting and refund plan. This audit report shall be filed not later than April 30, 1997.

27. That the Notice to Customers and Schedule of Rates, attached hereto as Appendices A and B, shall be mailed by the Chief Clerk to all affected customers in the Yates Mill Run Subdivision.

28. That the Chief Clerk shall mail a copy of this Order to Harrco's attorney, Samuel Roberti, Roberti, Wittenberg, Holtcamp & Lauffer, P.A., Attorneys at Law, P.O. Box 3359, Durham, North Carolina 27702.

29. That the Chief Clerk shall mail a copy of this Order to Bruce C. Rinne, President, Yates Mill Run Homeowner's Association, Post Office Box 37778, Raleigh, North Carolina 27627.

30. That the Chief Clerk shall mail a copy of this Order to Gary McGibbon, Chairperson, Wake County Community LPP Emergency Task Force, 10308 Grafton Road, Raleigh, North Carolina 27615.

ISSUED BY ORDER OF THE COMMISSION.
This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

DOCKET NO. W-957, SUB 1
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION
In the Matter of

Unauthorized Abandonment of Utility Service at Yates Mill Run Subdivision, Wake County, North Carolina, by Intech Utilities, Inc., and Appointment of Emergency Operator	))))	NOTICE TO CUSTOMERS

NOTICE IS HEREBY GIVEN that the Commission has issued an Order in this docket regarding the appointment of a new emergency operator. The Commission ordered the following:

1. That Harrco Utility Corporation (Harrco) is discharged from its duties and responsibilities as emergency operator of the sewer utility system serving the Yates Mill Run Subdivision in Wake County, North Carolina, effective at midnight on Friday, January 31, 1997. The Commission has required Harrco to file, not later than February 28, 1997, (a) a final accounting of all monies collected and disbursed during its time as emergency operator of the Yates Mill Run sewer system, including the amounts due and owing Harrco as of January 31, 1997, and (b) a plan for refunding the reserve balances in existence as of January 31, 1997, to the Yates Mill Run customers.

2. That Culligan Operating Services, Inc. (Culligan) is appointed as the new emergency operator of the sewer utility system serving the Yates Mill Run Subdivision in Wake County, North Carolina, effective Saturday, February 1, 1997.

3. That effective February 1, 1997, Culligan is authorized to charge a provisional monthly rate of $28.00 per customer for service in advance as relected in the attached Schedule of Rates. Heater Utilities, Inc. (Heater) is authorized to provide monthly billing and collection service for Culligan and to disconnect water utility service for non-payment of sewer charges owed to Culligan. Sewer bills for service rendered by Harrco through the month of January 1997, remain due and payable to Harrco. The service of any customer remaining in arrears to Harrco is subject to discontinuance for failure of the customer to pay past due amounts. Harrco will be responsible for collecting these bills, but may request the assistance of the Commission in discontinuing service.

4. That the Public Staff has been requested to conduct an audit of the books and records maintained by Harrco Utility Corporation as emergency operator of the Yates Mill Run sewer system through January 31, 1997, and file the results of its accounting investigation, including recommendations regarding how to treat outstanding debts or amounts, if any, claimed by Harrco, excess revenues, if any, collected by Harrco, and Harrco's final accounting and refund plan. This audit report will be filed with the Commission not later than April 30, 1997.

In case of an emergency involving your wastewater system, Culligan may be reached by calling 1-800-231-8889.

This the 31st day of January, 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

SCHEDULE OF RATES
for
INTECH, INC.
CULLIGAN OPERATING SERVICES, INC., Emergency Operator
for providing sewer utility service in
YATES MILL RUN SUBDIVISION
Wake County, North Carolina

Monthly Flat Sewer Rate:	$ 28.00
Pumping Individual STEP and Septic Tanks:	$115.77 per 1,000 gallons pumped
Connection Charges:	
When tap and service line installed by developer -	None
If utility makes tap or installs service line -	Actual cost
Reconnection Charges:	
If sewer service cut off by utility for good cause by disconnecting water service -	$15.00 [1]
If sewer service cut off by utility for good cause by any method other than that noted above -	Actual cost
Deposits:	Two months estimated bill (in accordance with NCUC Rule R12-4)
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 advance
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] Heater Utilities, Inc., shall also be authorized to collect a reconnection charge of $25.00 for water service in such situations.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-957, Sub 1, on this the 31st day of January, 1997.

DOCKET NO. W-778, SUB 31

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina 28210, for Authority to Increase Its Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina	)	ORDER GRANTING PARTIAL RATE INCREASE

HEARD IN: Fairfield Community Center, 585 Broad Creek Road, New Bern, North Carolina, on Wednesday, June 18, 1997, at 7:00 p.m.

Hospitality Room, Ramsey Center, Western Carolina University, Cullowhee, North Carolina, on Wednesday, June 25, 1997, at 7:00 p.m.

Sapphire Valley Ski Lodge, Fairfield Sapphire Valley Subdivision, Sapphire, North Carolina, on Thursday, June 26, 1997, at 9:30 a.m.

Colony Lake Lure Golf Resort, 201 Boulevard of the Mountains, Lake Lure, North Carolina, on Friday, June 27, 1997, at 9:30 a.m.

Utilities Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, July 16 1997, at 7:00 p.m.

Utilities Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on July 17 and 18, 1997, at 9:30 a.m.

BEFORE: Commissioner William R. Pittman, Presiding, and Commissioners Allyson K. Duncan and Ralph A. Hunt

APPEARANCES:

FOR CWS SYSTEMS, INC. :

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

FOR THE PUBLIC STAFF:

Amy Barnes Babb, 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, N. C. Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602
For the Using and Consuming Public

BY THE COMMISSION: On January 30, 1997, CWS Systems, Inc. (CWSS, Company, or Applicant), filed an application with the Commission for authority to increase its rates and charges for providing water and sewer service in all five of its systems - Forest Hills, Fairfield Mountain (sewer only), Fairfield Harbour, Fairfield Sapphire Valley, and Clearwater Systems. CWSS provided the information to set rates on a system specific basis in that filing.

By Order dated February 24, 1997, the Commission declared this matter to be a general rate case, suspended the proposed new rates, scheduled the matter for public hearings, and required CWSS to provide public notice of the hearings and the proposed rate increase to all customers.

On May 19, 1997, CWSS prefiled the direct testimony and exhibits of Carl Daniel, Group Vice President, and Patricia M. Cuddie, Director of Customer Relations and Administrative Services, formerly Manager of Regulatory Affairs.

On June 16, 1997, the Public Staff filed a Motion for Extension of Time to File Testimony requesting a one business day extension of time, to and including Wednesday, June 18, 1997, in which to file testimony of its witnesses.

On June 17, 1997, CWSS filed a motion for leave to withdraw its application to increase its rates with respect to the Clearwater Systems. On June 24, 1997, the Commission granted CWSS' motion and requested that CWSS mail notice to its customers in the Clearwater Systems.

On June 18, 1997, the Public Staff filed Testimony and Exhibits of Gina Y. Casselberry, Utilities Engineer, Water Division; David A. Poole, Staff Accountant, Accounting Division; and John Robert Hinton, Financial Analyst, Economic Research Division.

On June 27, 1997, CWSS requested an extension of time until Monday, June 30, 1997, to file its Rebuttal Testimony.

On June 30, 1997, CWSS filed Rebuttal Testimony of Patricia M. Cuddie and Frank J. Hanley, President of AUS Consultants of Moorestown, New Jersey.

On July 7, 1997, Patricia M. Cuddie filed a letter with Geneva S. Thigpen, Chief Clerk of the Utilities Commission, notifying the Commission that CWSS was withdrawing the portion of its petition related to tap fees and indicating that the Company was proposing no change in tap fees.

On July 14, 1997, CWSS filed Supplemental Rebuttal Testimony and Exhibits of Patricia Cuddie and Exhibits 13-16 and Page 5 of Exhibit 12 of the rebuttal exhibits of Frank Hanley. In the exhibits to her supplemental testimony, Ms. Cuddie requested a rate design for the Forest Hills and Fairfield Mountain systems which was higher than CWSS had requested in its original application.

On July 16, 1997, the Public Staff filed Supplemental Testimony and Revised Exhibits to the direct testimony of witnesses Casselberry, Poole, and Hinton.

On July 16, 1997, the Public Staff also filed a Motion in Limine requesting a ruling from the Commission that, due to lack of notice by the Applicant to its customers of a larger increase in its rates than originally filed, the maximum levels of revenue at issue for CWSS' systems were the amounts that would be produced by the rates proposed in the original application and shown in the notices to customers in those areas and that the maximum rates that would be approved for CWSS' systems were the rates that would produce such revenues. The Public Staff requested, in the alternative, that the Commission continue the hearing with respect to Forest Hills and Fairfield Mountain, pending amendment of the application and additional notice of the proposed rates; that the application with respect to the Clearwater Systems be reopened; and that these matters be rescheduled at a later date so that CWSS' revenue requirements for its remaining services and areas could also be reviewed.

On July 17, 1997, the Attorney General filed a Notice of Intervention.

Public hearings were held as scheduled. The following public witnesses testified at the public hearings held in this case:

June 18 - New Bern	James White, William J. Field, Catherine Delura, Laura Babington, George Giffin, Eric Lief, James Hauser
June 25 - Cullowhee	None
June 26 - Sapphire	Dwight Carithers, Robert Medvecky, Robert Blood, Margaret Burkard, Jeffrey G. Oliver, Wayne Jennings, Lester Freeman, Dick Day
June 27 - Lake Lure	Marie Antweiler

The evidentiary hearing was held in Raleigh on July 17-18, 1997. The Applicant presented the direct testimony of its witnesses Daniel and Cuddie.

The Public Staff presented the direct and supplemental testimony of its witnesses Casselberry, Poole, and Hinton. Mr. George Giffin of Fairfield Harbor was the only public witness to testify at the evidentiary hearing.

The Company presented the rebuttal testimony of witnesses Cuddie and Hanley.

On August 6, 1997, the Public Staff filed the Late Filed Exhibit A of David A. Poole, which was requested by the Company's attorney at the hearing. On August 13, 1997, the Public Staff filed corrections to the Late Filed Exhibit A of David A. Poole.

The Company and the Public Staff filed their Proposed Orders on August 29, 1997.

On October 1, 1997, CWSS filed its Notice of Increase in Rates Pursuant to G.S. 62-135, of its intent to place into effect in 10 days increases in its rates and charges in accordance with schedules attached to the notice.

On October 10, 1997, the Commission issued its order granting approval of the increase in rates as requested by the Company, and requiring an undertaking to refund with interest, from the date that such rates are put into effect, any revenues in excess of those the Commission ultimately determines to be appropriate.

On October 20, 1997, CWSS filed with the Commission an undertaking stating that the Company will make refund to its customers at 10% interest per annum, if any refund is required by Final Order of the Commission, any amount of the approved interim rate that may be finally determined by the Commission to be excessive.

Based upon the application, the testimony and exhibits, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

General Matters

1. CWSS is a corporation duly organized under the laws of and is authorized to do business in the State of North Carolina. It is a franchised public utility providing water and/or sewer service to customers in this State.

2. CWSS is properly before the Commission, pursuant to Charter 62 of the General Statues of North Carolina, for a determination of the justness and reasonableness of its proposed rates.

3. The test year appropriate for use in this proceeding is the twelve months ended December 31, 1995, updated for actual and known changes.

4. The Applicant provides water utility service to approximately 3,200 customers and sewer utility service to approximately 2,300 customers in 16 service areas.

5. The Applicant has approximately 2,800 water availability customers and approximately 1,600 sewer availability customers in two service areas.

6. The Applicant filed proposed rates with its application on a system-specific basis. On July 14, 1997, the Applicant filed supplemental schedules requesting revised proposed rates. The present, proposed, and revised proposed rates are as follows:

WATER AND SEWER - RATES

Forest Hills Subdivision
Water Utility Service

Residential: Base facility charges	Present Rate	Proposed Rate	Revised Proposed Rate
A. Single family residence	$ 10.78	$ 12.30	$ 13.27
B. Where service is provided through a master meter and each dwelling unit is billed individually (per unit)	$ 10.78	$ 12.30	$ 13.27
C. Usage per 1,000 gallons	$ 2.70	$ 3.03	$ 3.26
Commercial and other (based on meter size):			
A. Base facility charge			
5/8" x 3/4" meter	$ 10.78	$ 12.30	$ 13.27
3/4" meter	$ 16.17	$ 18.45	$ 19.91
1" meter	$ 26.95	$ 30.75	$ 33.18
1 ½" meter	$ 53.90	$ 61.50	$ 66.35
2" meter	$ 86.24	$ 98.40	$ 106.16
3" meter	$ 161.70	$ 184.50	$ 199.05
4" meter	$ 269.50	$ 307.50	$ 331.75
6" meter	$ 539.00	$ 615.00	$ 663.50
B. Usage per 1,000 gallons	$ 2.70	$ 3.03	$ 3.26

Fairfield Harbour Development
Water Utility Service

Residential: Base facility charges	Present Rate	Proposed Rate	Revised Proposed Rate
A. Single family residence	$ 6.00	$ 6.76	$ 6.39
B. Where service is provided through a master meter and each dwelling unit is billed individually (per unit)	$ 6.00	$ 6.76	$ 6.39
C. Usage per 1,000 gallons	$ 1.62	$ 1.84	$ 1.66

WATER AND SEWER - RATES

Commercial and other (based on meter size):

A. Base facility charge

5/8" x 3/4" meter	$ 6.00	$ 6.67	$ 6.39
3/4" meter	$ 9.00	$ 10.14	$ 9.59
1" meter	$ 15.00	$ 16.90	$ 15.98
1 ½" meter	$ 30.00	$ 33.80	$ 31.95
2" meter	$ 48.00	$ 54.08	$ 51.12
3" meter	$ 90.00	$ 101.40	$ 95.85
4" meter	$ 150.00	$ 169.00	$ 159.75
6" meter	$ 300.00	$ 338.00	$ 319.50
B. Usage per 1,000 gallons	$ 1.62	$ 1.84	$ 1.66
C. Availability charge	$ 2.00	$ 2.00	$ 2.00

Fairfield Harbour Development
Sewer Utility Service

Residential:	Present Rate	Proposed Rate	Revised Proposed Rate
Base facility charges			
A. Flat rate per month per dwelling unit	$ 24.12	$ 30.00	$ 29.21

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting unit.

Commercial and other:

Customers without water service (per single family equivalent)	$ 24.12	$ 30.00	$ 29.21
A. Base facility charge			
5/8" x 3/4" meter	$ 6.00	$ 8.30	$ 7.82
3/4" meter	$ 9.00	$ 12.45	$ 11.73
1" meter	$ 15.00	$ 20.75	$ 19.55
1 ½" meter	$ 30.00	$ 41.50	$ 39.10
2" meter	$ 48.00	$ 66.40	$ 62.56
3" meter	$ 90.00	$ 124.50	$ 117.30
4" meter	$ 150.00	$ 207.50	$ 195.50
6" meter	$ 300.00	$ 415.00	$ 391.00

B. Usage per 1,000 gallons	$ 3.76	$ 5.20	$ 4.90
C. Availability charge	$ 2.00	$ 2.00	$ 2.00

Sapphire Valley Subdivision
Water Utility Service

Residential: Base facility charges	Present Rate	Proposed Rate	Revised Proposed Rate
A. Single family residence	$ 11.00	$ 12.90	$ 11.16
B. Where service is provided through a master meter and each dwelling unit is billed individually (per unit)	$ 11.00	$ 12.90	$ 11.16
C. Usage per 1,000 gallons	$ 5.30	$ 6.23	$ 5.38
Commercial and other (based on meter size):			
A. Base facility charge			
5/8" x 3/4" meter	$ 11.00	$ 12.90	$ 11.16
3/4" meter	$ 16.50	$ 19.35	$ 16.74
1" meter	$ 27.50	$ 32.25	$ 27.90
1 ½" meter	$ 55.00	$ 64.50	$ 55.80
2" meter	$ 88.00	$ 103.20	$ 89.28
3" meter	$ 165.00	$ 193.50	$ 167.40
4" meter	$ 275.00	$ 322.50	$ 279.00
6" meter	$ 550.00	$ 645.00	$ 558.00
B. Usage per 1,000 gallons	$ 5.30	$ 6.23	$ 5.38
C. Availability charge	$ 5.00	$ 5.00	$ 5.00

Sapphire Valley Subdivision
Sewer Utility Service

Residential: Base facility charges	Present Rate	Proposed Rate	Revised Proposed Rate
A. Flat rate per month per dwelling unit	$ 27.65	$ 35.40	$ 32.88

WATER AND SEWER - RATES

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting unit.

Commercial and other:

A. Customers without water service (per single family equivalent)	$ 27.65	$ 35.40	$ 32.88
B. Base facility charge			
5/8" x 3/4" meter	$ 11.00	$ 14.95	$ 14.84
3/4" meter	$ 16.50	$ 22.43	$ 22.26
1" meter	$ 27.50	$ 37.38	$ 37.10
1 ½" meter	$ 55.00	$ 74.75	$ 74.20
2" meter	$ 88.00	$ 119.60	$ 118.72
3" meter	$ 165.00	$ 224.25	$ 222.60
4" meter	$ 275.00	$ 373.75	$ 371.00
6" meter	$ 550.00	$ 747.50	$ 742.00
C. Usage per 1,000 gallons	$ 6.05	$ 8.15	$ 8.15
D. Availability charge	$ 7.50	$ 7.50	$ 7.50

Fairfield Mountain Development
Sewer Utility Service

Residential:	Present Rate	Proposed Rate	Revised Proposed Rate
A. Collection charge/dwelling unit	$ 6.50	$ 9.58	$ 10.41
B. Treatment charge/dwelling unit	$ 16.00	$ 16.00	$ 16.00
Commercial and other (based on meter size):			
A. Minimum rate:	$ 22.50	$ 25.58	$ 25.58
B. Customers without water service (per single family equivalent)	$ 22.50	$ 25.58	$ 25.58
C. Treatment charge per dwelling unit:			
Small unit (less than 2,500 gallons/month)	$ 18.00	$ 18.00	$ 18.00
Medium user (between 2,500 and 10,000 gallons/month)	$ 36.00	$ 36.00	$ 36.00
Large user (over 10,000 gallons/month)	$ 110.00	$ 110.00	$ 110.00
D. Collection charge (per 1,000 gallons)	$ 5.95	$ 8.80	$ 9.28

WATER AND SEWER - RATES

7. The Public Staff received four written complaints in response to customer notice of this proceeding. In addition, 16 CWSS customers testified at the hearings.

8. The Company appears to be providing good quality water and sewer utility service in all of its service areas except Fairfield Harbour. The greater weight of the evidence indicates that the service in Fairfield Harbour is merely adequate.

Rate Base

9. The amounts agreed to by the Public Staff and the Company for contributions in aid of construction, customer deposits, water service rate base, and loan, as shown in the evidence and conclusions for this finding of fact, are the appropriate levels for use in this proceeding.

10. It is appropriate to classify all post test year plant additions as plant in service.

11. It is appropriate to include the organization costs proposed by the Company in plant in service.

12. The methodology used by the Public Staff to calculate depreciation is the appropriate methodology for use in this proceeding.

13. Accumulated depreciation should be updated to reflect the levels of plant in service, CIAC, purchase acquisition adjustment, water service rate base, and loan found appropriate by the Commission elsewhere in this Order.

14. The working capital allowance should be updated to reflect the levels of expenses and certain taxes found appropriate by the Commission elsewhere in this Order.

15. The amounts for plant acquisition adjustment should be updated to reflect the composite depreciation rates found reasonable by the Commission.

16. Accumulated deferred income taxes should be adjusted to reflect the accumulated deferred income taxes related to rate case costs, organization costs, and deferred maintenance costs.

17. It is appropriate to reduce the level of deferred rate case costs to reflect one year of amortization.

18. It is appropriate to reduce the level of deferred maintenance costs to reflect one year of amortization for the post test year deferred maintenance project.

19. The $2,737 pro forma adjustment for Fairfield Mountain - sewer operations should be excluded from this case since there is no basis to support this amount.

20. Based on the foregoing, the appropriate levels of rate base used and useful in providing service are as follows:

WATER AND SEWER - RATES

Fairfield Harbour - water operations	$ 549,444
Fairfield Harbour - sewer operations	1,252,312
Fairfield Sapphire Valley - water operations	1,310,921
Fairfield Sapphire Valley - sewer operations	547,042
Forest Hills	130,077
Fairfield Mountain - sewer operations	81,475

Revenues

21. The appropriate levels of service revenues and miscellaneous revenues under present rates are as follows:

	Service Revenues	Miscellaneous Revenues
Fairfield Harbour - water operations	$254,801	$ 4,410
Fairfield Harbour - sewer operations	415,032	5,339
Fairfield Sapphire Valley - water operations	430,229	5,152
Fairfield Sapphire Valley - sewer operations	237,168	2,303
Forest Hills	44,412	939
Fairfield Mountain - sewer operations	52,749	313

22. The appropriate levels of uncollectibles expense under present rates are as follows:

Fairfield Harbour - water operations	$ 3,595
Fairfield Harbour - sewer operations	4,413
Fairfield Sapphire Valley - water operations	5,584
Fairfield Sapphire Valley - sewer operations	1,412
Forest Hills	374
Fairfield Mountain - sewer operations	274

23. The total operating revenues under present rates appropriate for use in this proceeding are as follows:

Fairfield Harbour - water operations	$ 255,616
Fairfield Harbour - sewer operations	415,958
Fairfield Sapphire Valley - water operations	429,797
Fairfield Sapphire Valley - sewer operations	238,059
Forest Hills	44,977
Fairfield Mountain - sewer operations	52,788

Operation And Maintenance Expenses

24. The amounts agreed to by the Public Staff and the Company for purchased power, maintenance testing, chemicals, transportation, operating expenses charged to plant, outside services - other, and water service corporation, as shown in the evidence and conclusions for this finding of fact, are the appropriate levels for use in this proceeding.

25. It is appropriate to remove $2,257 from salaries for Fairfield Harbour for a part-time employee who has not been replaced, as agreed to by the Public Staff and the Company.

26. It is appropriate to include sludge hauling as a separate line item.

27. The amortization of deferred maintenance charges recommended by the Public Staff is the appropriate amount for use in this proceeding since it reflects the additional invoices received by the Company.

28. Based on the foregoing, the appropriate levels of operation and maintenance expenses for use in this proceeding are as follows:

Fairfield Harbour - water operations	$ 55,401
Fairfield Harbour - sewer operations	158,793
Fairfield Sapphire Valley - water operations	104,047
Fairfield Sapphire Valley - sewer operations	109,397
Forest Hills	18,004
Fairfield Mountain - sewer operations	29,901

General Expenses

29. The amounts agreed to by the Public Staff and the Company for salaries and wages - general, office supplies and other office expense, pensions and other benefits, rent, insurance, office utilities, and miscellaneous expense, as shown in the evidence and conclusions for this finding of fact, are the appropriate levels for use in this proceeding.

30. The appropriate levels of regulatory commission expense allowed by the Commission in this proceeding are as follows:

Fairfield Harbour - water operations	$ 7,237
Fairfield Harbour - sewer operations	7,120
Fairfield Sapphire Valley - water operations	6,182
Fairfield Sapphire Valley - sewer operations	2,606
Forest Hills	378
Fairfield Mountain - sewer operations	1,093

31. Based on the foregoing, the appropriate levels of general expense for use in this proceeding are as follows:

Fairfield Harbour - water operations	$ 84,959
Fairfield Harbour - sewer operations	88,780
Fairfield Sapphire Valley - water operations	74,109
Fairfield Sapphire Valley - sewer operations	42,257
Forest Hills	7,943
Fairfield Mountain - sewer operations	25,505

WATER AND SEWER - RATES

Other Operating Revenue Deductions

32. The amounts agreed to by the Public Staff and the Company for other taxes, customer deposit interest, and rental and other income, as shown in the evidence and conclusions for this finding of fact, are the appropriate levels for use in this proceeding.

33. Depreciation expense should be updated to reflect the levels of plant in service and pro forma adjustments found appropriate by the Commission elsewhere in this Order.

34. Payroll taxes should be adjusted to reflect the exclusion of the part-time operator salary found appropriate by the Commission elsewhere in this Order.

35. The amounts for gross receipts tax and regulatory fee should be calculated based on the statutory rates using the levels of revenues, net of uncollectibles, found reasonable by the Commission elsewhere in this Order.

36. The amounts for state and federal income taxes should be calculated based on the tax rates of 7.5% for state and 34% for federal using the levels of revenues and expenses found reasonable by the Commission elsewhere in this Order.

37. Based on the foregoing, the appropriate levels of other operating revenue deductions under present rates for use in this proceeding are as follows:

Fairfield Harbour - water operations	$ 58,133
Fairfield Harbour - sewer operations	84,482
Fairfield Sapphire Valley - water operations	113,889
Fairfield Sapphire Valley - sewer operations	53,717
Forest Hills	10,914
Fairfield Mountain - sewer operations	13,887

38. The overall operating revenue deductions under present rates appropriate for use in this proceeding are as follows:

Fairfield Harbour - water operations	$ 198,493
Fairfield Harbour - sewer operations	332,055
Fairfield Sapphire Valley - water operations	292,045
Fairfield Sapphire Valley - sewer operations	205,371
Forest Hills	36,861
Fairfield Mountain - sewer operations	69,293

Overall Cost of Capital

39. The proper capital structure for use in determining the Applicant's revenue requirement for purposes of this proceeding is 48.33% common equity and 51.67% long-term debt. The appropriate cost rate for long-term debt is 9.01%.

WATER AND SEWER - RATES

40. The comparable earnings model employed by Company witness Hanley and the comparable earnings model employed by Public Staff witness Hinton based on his group of 10 comparable water companies should be given the greatest weight in determining the cost of common equity for purposes of this proceeding. The DCF model approaches employed by the witnesses should be accorded moderate weight for purposes of this proceeding.

41. The risk premium methodologies, including the CAPM, presented by Company witness Hanley should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

42. Company witness Hanley's specific inclusion of 20 basis points (0.20%) in his recommended cost of common equity, which in his view was required in order to give appropriate recognition to certain additional investment risk of the Company, vis-a-vis his most comparable proxy group of five eastern water companies, is not supported by the evidence and therefore is inappropriate for purposes of this proceeding.

43. No specific additional common equity risk premium related to the Company's size, liquidity, customer or geographical diversity, or other business or financial risk is appropriate for purposes of this proceeding.

44. The cost of common equity to CWSS for use herein is 11.10%.

45. The overall fair rate of return which the Company should be afforded the opportunity to earn on its rate base, under rates established herein, is 10.02%.

Rates, Fees, And Other Matters

46. The Commission finds that the Applicant's rates should be changed by amounts which, after pro forma adjustments, will produce the following increases (decreases):

Fairfield Harbour - water operations	$ (3,532)
Fairfield Harbour - sewer operations	72,530
Fairfield Sapphire Valley - water operations	(10,925)
Fairfield Sapphire Valley - sewer operations	38,597
Forest Hills	8,404
Fairfield Mountain - sewer operations	29,240

These increases (decreases) will allow the Applicant the opportunity to earn a 10.02% overall rate of return, which the Commission has found to be reasonable upon consideration of the findings in this Order.

47. The Company has collected meter fees in the Forest Hills system which were not authorized by the Commission in its tariff. The Company should refund, with interest at 10% compounded annually, all meter fees collected in the Forest Hills system.

48. The Applicant is allowed to change from a bi-monthly to a monthly billing cycle and a monthly meter reading.

WATER AND SEWER - RATES

49. The attached Schedule of Rates is fair and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-3

The evidence for these findings of fact is contained in the Company's application. They are essentially informational, procedural, and jurisdictional in nature, and the matters that they involve are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-6

The evidence for these findings of fact is contained in the Company's application, testimony, and supplemental testimony. They are essentially informational, and the matters that they involve are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 AND 8

The evidence supporting these findings of fact is contained in the testimony of Public Staff witness Casselberry, Company witness Daniel, and the public witnesses.

With regards to water and sewer utility service, approximately 16 customers appeared and testified at the customer hearings held around the state. Some of the customers testified that they had problems with the quality of service. The Company has been asked by the Public Staff to respond to the service and/or quality complaints of these customers. Other customers commented on the excellent service provided by CWSS employees. The Public Staff also received four written customer complaints from Sapphire Valley. One complaint raised questions concerning rate base. The Public Staff conducted a thorough audit of CWSS' books and records to include plant additions since the last rate case and any adjustments associated with rate base. One customer complained that he left standing water in his toilet for over two months, and it left a sizable amount of sediment in his toilet. A copy of the complaint was sent to CWSS to investigate. CWSS investigated the complaint. The Public Staff was satisfied with CWSS' response. The Public Staff received one complaint opposing CWSS' proposed increase. The Public Staff also received a complaint concerning Utilities, Inc. (stockholders, stocks, equity), which was referred to the Financial Analyst, John Robert Hinton. Ms. Casselberry also addressed a customer's concern with the Division of Environmental Health (DEH) approval letters for contiguous expansions in Sapphire Valley.

Witness Daniel testified that customer satisfaction is the primary responsibility of each and every CWSS employee, and that the Company holds periodic staff meetings to specifically address service concerns and increase employee sensitivity to customer satisfaction. Witness Daniel also testified that CWSS provides continuing education programs for all employees. He testified that CWSS has capital improvement and operational programs which provide routine testing, periodic water main flushing to improve water quality, the use of sequestering agents, the cleaning of 10% of sewer collection mains each year, and 24-hour-a-day, seven-day-a-week on call emergency service. Witness Daniel testified that CWSS communicates with its customers and community leaders on issues that may affect water and sewer quality and cost through attending Property Owners Association meetings, sending customers letters, back-of-the-bill messages, welcome letters, and writing informational articles.

With regards to the testimony of CWSS customers, during the customer hearings, 7 customers of Fairfield Harbour testified, 8 customers of Fairfield Sapphire Valley testified, 1 customer from Fairfield Mountain testified and no customers from Forest Hills testified. One customer, Mr. George Giffin, testified at both the Fairfield Harbour customer hearing and the evidentiary hearing. At the Fairfield Harbour customer hearing, the customers testified to smell and discoloration problems with the water which caused them to install water softeners and reverse osmosis systems. However, the softeners and systems did not solve the smell and discoloration problems. The customers also testified to sewage back-ups. Some customers also testified that they did not want a flat sewage rate but preferred metered sewage. One customer testified that he wanted the fireplugs certified. Other customers testified of the need for excess plant to be adjusted from sewer rate base, of the need for system specific financial data in CWSS' annual reports, of the need to maintain bi-monthly billing, of the need to reject the increase in tap-on fees, and requested that the Company not prepare the proposed order and that the Commission consider in its order the public witnesses testimonies and rule upon them. At the Fairfield Sapphire Valley customer hearing, the customers testified in opposition to a rate increase, opposed the Northbrook expenses being charged to the individual systems and to the cost of capital of Utilities, Inc. being charged to the individual systems. Customers also testified concerning water leaks, the fact that notice of the hearing was placed in Utilities, Inc. envelopes instead of CWS Systems, Inc. envelopes, whether the transportation costs were appropriate, the benefit of monthly billing and the need for another employee to work on monthly billing, and the need for minimum monthly charges for seasonal customers. At the Fairfield Mountain customer hearing, Ms. Antweiler testified that the personnel had been helpful. Public witness Antweiler also expressed concern regarding the installation of a fire hydrant.

The Commission concludes that written customer complaints have been addressed appropriately, and that CWSS' quality of water and sewer utility service appears to be good in all of its service areas except Fairfield Harbour. The evidence indicates that the service being provided in Fairfield Harbour is merely adequate.

At the evidentiary hearing, Mr. George Giffin of Fairfield Harbour testified for the second time. Mr. Giffin passed out written testimony which was identified and admitted into evidence as Public Staff Witness Giffin Exhibit 1. On the stand, Mr. Giffin orally summarized the main points of his testimony. Mr. Giffin testified that the change to monthly billing should be rejected on the basis that it adds cost and provides no benefit to the ratepayers. Mr. Giffin stated that the addition of a clerical employee was one of the added costs. He also testified that he doubted that many customers really wanted to change to monthly billing as the Company contended.

Mr. Giffin testified that sewer service should be based on metered water quantity rather than at the flat rate currently imposed. He referenced Commission Rule 10-18 and indicated that it clearly states that sewer service should be based on the amount of water metered except where impractical.

Mr. Giffin further testified that an adjustment should be made for the excess sewer plant and that the adjustment should be made on the same percentage utilization method that was used in Docket No. W-354, Sub 111. He testified that he disagrees with the Public Staff's position that availability fees should be used to offset the loss of income based on reduction of the sewer rate base. He testified that he knew of no legal reason for the Public Staff's position.

Mr. Giffin also testified of his request that CWSS be required to include system specific financial data in its annual reports to the Utilities Commission to the same elements of cost and detail that it uses in rate cases to avoid unreasonable increases in rates.

Mr. Giffin quoted from a June 2, 1990, letter from a Mr. Andrew Dopuch, Manager of Corporate Operations of Utilities, Inc., which according to Mr. Giffin stated, "Utilities, Incorporated does not manage local operations but instead provides all capital funding and necessary computer service support. CWS Systems, Incorporated is managed locally as are our other Carolina subsidiaries" and contrasted its remarks with Ms. Cuddie's pre-filed testimony, which according to Mr. Giffin stated, "Water Services Corporation provides centralized data processing, accounting, tax reporting, regulatory reporting, capital financing, purchasing, engineering and management functions to this group of companies. By centralizing these functions, the customers of each of the operating companies can benefit from the economies of scale that would not, otherwise, exist." Mr. Giffin stated that the large increase in rates are due in large part to the centralized management and control of Water Services Corporation.

Mr. Giffin quoted from Docket No. W-778, Sub 2, as indication that CWSS does not keep separate accounting records. Mr. Giffin stated that if CWSS would maintain separate accounts as he understands the Commission ordered, the cost of preparing the schedules for the rate cases would be greatly reduced.

Mr. Giffin testified further that he is concerned about the high cost of being managed from out of state as well as the lack of system specific data being provided by the company. He quoted from letters by Attorney General Lacy Thornburg and Public Staff Executive Director Robert Gruber.

Finally, Mr. Giffin testified that he was very disturbed by the large increase in the rate case expenses and by the fact that 55% of the rate case expenses were allocated to Fairfield Harbour. He stated that he felt that rate case expense was unfairly allocated.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-20

The evidence for Findings of Fact Nos. 9-20 is contained in the testimony and exhibits of Public Staff witness Poole and Company witness Cuddie. The following tables summarize the amounts which the Company and the Public Staff contend are the proper levels of rate base to be used in this proceeding:

FAIRFIELD HARBOUR - WATER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$2,509,975	$2,513,460	$ 3,485
Accumulated depreciation	(224,339)	(222,311)	2,028
Working capital allowance	12,091	11,392	(699)
Contributions in aid of construction	(1,752,437)	(1,752,437)	0
Purchase acquisition adjustment	(27,598)	(27,598)	0
Accumulated deferred income taxes	(54,134)	(54,134)	0
Customer deposits	0	0	0

Deferred charges	23,220	7,336	(15,884)
Water service rate base	31,233	31,233	0
Pro forma adjustments	190,932	187,447	(3,485)
Loan	(149,748)	(149,748)	0
Total original cost rate base	$ 559,195	$ 544,640	$ (14,555)

FAIRFIELD HARBOUR - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$6,403,654	$6,410,580	$ 6,926
Accumulated depreciation	(205,961)	(205,759)	202
Working capital allowance	21,983	22,231	248
Contributions in aid of construction	(5,057,986)	(5,057,986)	0
Purchase acquisition adjustment	(39,054)	(39,054)	0
Accumulated deferred income taxes	(83,531)	(83,531)	0
Customer deposits	0	0	0
Deferred charges	64,528	44,671	(19,857)
Water service rate base	30,726	30,726	0
Pro forma adjustments	645,690	638,764	(6,926)
Loan	(510,294)	(510,294)	0
Total original cost rate base	$1,269,755	$1,250,348	$ (19,407)

FAIRFIELD SAPPHIRE VALLEY - WATER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$2,481,254	$2,482,902	$ 1,648
Accumulated depreciation	(367,995)	(366,801)	1,194
Working capital allowance	15,872	15,828	(44)
Contributions in aid of construction	(201,520)	(201,520)	0
Purchase acquisition adjustment	(76,882)	(76,882)	0
Accumulated deferred income taxes	(156,736)	(156,736)	0
Customer deposits	0	0	0
Deferred charges	19,501	12,407	(7,094)
Water service rate base	26,672	26,672	0
Pro forma adjustments	513,637	511,989	(1,648)
Loan	(937,336)	(937,336)	0
Total original cost rate base	$1,316,467	$1,310,523	$ (5,944)

FAIRFIELD SAPPHIRE VALLEY - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$1,067,842	$1,067,842	$ 0
Accumulated depreciation	(246,131)	(246,100)	31
Working capital allowance	14,390	14,449	59
Contributions in aid of construction	(184,164)	(184,164)	0
Purchase acquisition adjustment	(26,418)	(26,418)	0
Accumulated deferred income taxes	(65,419)	(65,419)	0
Customer deposits	0	0	0
Deferred charges	12,151	10,191	(1,960)
Water service rate base	11,245	11,245	0
Pro forma adjustments	219,203	219,203	0
Loan	(252,340)	(252,340)	0
Total original cost rate base	$ 550,359	$ 548,489	$ (1,870)

FOREST HILLS

Item	Company	Public Staff	Difference
Plant in service	$ 194,637	$ 194,637	$ 0
Accumulated depreciation	(35,919)	(35,864)	55
Working capital allowance	3,947	2,850	(1,097)
Contributions in aid of construction	(3,296)	(3,296)	0
Purchase acquisition adjustment	(19,853)	(19,853)	0
Accumulated deferred income taxes	(9,814)	(12,539)	(2,725)
Customer deposits	(1,250)	(1,250)	0
Deferred charges	912	5,981	5,069
Water service rate base	2,880	2,880	0
Pro forma adjustments	0	0	0
Loan	0	0	0
Total original cost rate base	$ 132,244	$ 133,546	$ (1,302)

FAIRFIELD MOUNTAIN - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Plant in service	$ 135,949	$ 135,949	$ 0
Accumulated depreciation	(31,668)	(31,629)	39
Working capital allowance	5,077	5,349	272
Contributions in aid of construction	(21,276)	(21,276)	0
Purchase acquisition adjustment	(1,955)	(1,933)	22
Accumulated deferred income taxes	(11,605)	(15,887)	(4,282)
Customer deposits	(963)	(963)	0
Deferred charges	2,960	6,335	3,375

Water service rate base	8,323	8,323	0
Pro forma adjustments	2,737	0	(2,737)
Loan	0	0	0
Total original cost rate base	$ 87,579	$ 84,268	$ (3,311)

As shown in the preceding tables, the Public Staff and the Company agree on the amounts for contributions in aid of construction (CIAC), customer deposits, water service rate base, and loans. Therefore, the Commission concludes that the amounts agreed to by the parties for these items are the appropriate levels for use in this proceeding.

PLANT IN SERVICE

The first component of rate base on which the parties disagree is plant in service. The differences in the levels of plant in service recommended by the Company and the Public Staff relate to (1) the classification of certain post test year plant additions for Fairfield Harbour - water operations, Fairfield Harbour - sewer operations, and Fairfield Sapphire Valley - water operations and (2) organization costs for Forest Hills and Fairfield Mountain - sewer operations.

Classification of Certain Post Test Year Plant Additions

The Public Staff included certain post test year plant additions in plant in service, while the Company included these costs in pro forma adjustments. These costs are plant in service items, therefore, the Commission concludes that it is appropriate to include them in plant in service.

Organization Costs

As discussed in her rebuttal testimony, Ms. Cuddie included organization costs for Forest Hills, Fairfield Mountain - sewer operations, Fairfield Harbour, and Fairfield Sapphire Valley in plant in service. In its proposed order, the Public Staff agreed with the Company's amounts. Therefore, the Commission concludes that it is appropriate to include these costs in plant in service.

Based on the foregoing, the Commission concludes that the appropriate levels of plant in service for use in this proceeding are as follows:

Fairfield Harbour - water operations	$2,513,460
Fairfield Harbour - sewer operations	6,410,580
Fairfield Sapphire Valley - water operations	2,482,902
Fairfield Sapphire Valley - sewer operations	1,067,842
Forest Hills	194,637
Fairfield Mountain - sewer operations	135,949

ACCUMULATED DEPRECIATION

In its rebuttal schedules, the Company appears to have adopted the accumulated depreciation amounts listed in the Public Staff's prefiled testimony, adjusted to include the accumulated amortization related to organization costs. However, these amounts differ from the Public Staff's

supplemental schedules due to changes in the levels of post test year plant additions, CIAC, and the loan amounts. The Commission concludes that the methodology used by the Public Staff, and adopted by the Company in its rebuttal exhibits, is the appropriate methodology for calculating depreciation. Based on this methodology, and the levels of plant in service, CIAC, purchase acquisition adjustment, water service rate base, and loan found appropriate elsewhere in this Order, the Commission concludes that the appropriate levels of accumulated depreciation for use in this proceeding are as follows:

Fairfield Harbour - water operations	$ 222,311
Fairfield Harbour - sewer operations	205,759
Fairfield Sapphire Valley - water operations	366,801
Fairfield Sapphire Valley - sewer operations	246,100
Forest Hills	35,864
Fairfield Mountain - sewer operations	31,629

WORKING CAPITAL ALLOWANCE

The Company and the Public Staff recommended different amounts of working capital due to differing levels of expenses and tax accruals recommended by each party. Based upon its conclusions reached elsewhere in this Order regarding the appropriate level of expenses and certain taxes, the Commission determines that the appropriate levels of working capital are as follows:

Fairfield Harbour - water operations	$ 11,838
Fairfield Harbour - sewer operations	22,414
Fairfield Sapphire Valley - water operations	15,865
Fairfield Sapphire Valley - sewer operations	14,315
Forest Hills	2,527
Fairfield Mountain - sewer operations	5,090

PURCHASE ACQUISITION ADJUSTMENT

The next area of disagreement is the levels of purchase acquisition adjustment for Fairfield Harbour - water operations, Fairfield Sapphire Valley - water operations, and Fairfield Sapphire Valley - sewer operations. In its rebuttal schedules, the Company appears to have adopted the Public Staff's prefiled amounts for purchase acquisition adjustment. These amounts differ from the Public Staff's revised schedules as a result of the change in the composite depreciation rate. As discussed elsewhere, the Commission has accepted the Public Staff's methodology for calculating depreciation. Therefore, the Commission concludes that the levels of purchase acquisition adjustment recommended by the Public Staff are appropriate for use in this proceeding.

ACCUMULATED DEFERRED INCOME TAXES (ADIT)

In its final position, the Company appears to have adopted the Public Staff's prefiled amount for ADIT. These amounts differ from the Public Staff's supplemental schedules due to the Public Staff's inclusion of ADIT related to rate case costs, organization costs, and deferred maintenance in its supplemental schedules. It does not appear that the Company gave consideration to the inclusion in rate base the unamortized amounts for rate case costs, organization costs, and deferred

maintenance when it presented its level of ADIT. These three items have tax implications which should be recognized in ADIT. Therefore, based on the levels of rate case costs, organization costs and deferred maintenance found appropriate elsewhere in this Order, the Commission concludes that the appropriate levels of ADIT are as follows:

Fairfield Harbour - water operations	$ 56,915
Fairfield Harbour - sewer operations	84,666
Fairfield Sapphire Valley - water operations	156,966
Fairfield Sapphire Valley - sewer operations	64,581
Forest Hills	10,533
Fairfield Mountain - sewer operations	14,271

DEFERRED CHARGES

The differences in the levels of deferred charges recommended by the Company and the Public Staff are due to (1) rate case costs for all systems and (2) deferred maintenance costs for Fairfield Harbour - sewer operations.

Rate Case Costs

The difference in deferred rate case costs is due to (1) the parties disagreement on the allocation of rate case costs, and (2) the adjustment made by the Public Staff to deduct one year of amortization to derive the unamortized balance of rate case expense. In the evidence and conclusions discussed elsewhere, the Commission determined the appropriate level of total rate case costs for this proceeding. The only remaining issue is whether these amounts should be reduced by one year of amortization. The Company did not provide any testimony on why it disagreed with the Public Staff on this issue, nor did its attorney list this item as one of the issues remaining in dispute between the parties at the hearing.

It has been the practice of this Commission to reduce total rate case expense by one year of amortization to determine the unamortized balance. This matching adjustment is necessary since the Commission has made a pro forma adjustment to include one year of amortization of rate case costs in expenses. Therefore, the Commission concludes that it is appropriate to reduce the level of deferred rate case costs to reflect one year of amortization.

Deferred Maintenance Costs

The difference in deferred maintenance costs for Fairfield Harbour - sewer operations is due to the adjustment made by the Public Staff to deduct one year of amortization to derive the unamortized balance of deferred maintenance costs. The Company did not provide any testimony on why it disagreed with the Public Staff on this issue, nor did its lawyer list this item as one of the issues remaining between the parties at the hearing.

It has been the practice of this Commission to reduce a post test year deferred maintenance project by one year of amortization to determine the unamortized balance. This matching adjustment is necessary since the Commission has made a pro forma adjustment to include one year of amortization of the deferred maintenance project in expenses. Therefore, the Commission concludes

that it is appropriate to reduce the level of deferred maintenance costs to reflect one year of amortization for the post test year deferred maintenance project.

Based on the foregoing, the Commission concludes that the appropriate levels of deferred charges are as follows:

Fairfield Harbour - water operations	$ 14,475
Fairfield Harbour - sewer operations	47,587
Fairfield Sapphire Valley - water operations	12,998
Fairfield Sapphire Valley - sewer operations	8,040
Forest Hills	829
Fairfield Mountain - sewer operations	2,185

PRO FORMA ADJUSTMENTS

The differences in the levels of pro forma adjustments recommended by the Company and the Public Staff are due to (1) differences in the classification of certain post test year plant additions for Fairfield Harbour - water operations, Fairfield Harbour - sewer operations, and Fairfield Sapphire Valley - water operations and (2) an unexplained difference for Fairfield Mountain - sewer operations.

Classification of Certain Post Test Year Plant Additions

The Public Staff included certain post test year plant additions in plant in service, while the Company included these costs in pro forma adjustments. These costs are plant in service items, therefore, the Commission concludes that it is appropriate to include them in plant in service.

Unexplained Difference for Fairfield Mountain - Sewer Operations

In its rebuttal exhibits, the Company included $2,737 in pro forma adjustments for Fairfield Mountain - sewer operations. However, the Company did not provide any rebuttal testimony or any other evidence to support the inclusion of this amount. Inasmuch as there is no basis for the inclusion of this amount, the Commission concludes that it should be excluded from pro forma adjustments.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate levels of rate base are as follows:

Fairfield Harbour - water operations	$ 549,444
Fairfield Harbour - sewer operations	1,252,312
Fairfield Sapphire Valley - water operations	1,310,921
Fairfield Sapphire Valley - sewer operations	547,042
Forest Hills	130,077
Fairfield Mountain - sewer operations	81,475

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence supporting this finding of fact is contained in the testimony and exhibits of Public Staff witnesses Casselberry and Poole and Company witness Cuddie. The Company and the Public Staff agree that the appropriate levels of service revenues and miscellaneous revenues under present rates are as follows:

	Service Revenues	Miscellaneous Revenues
Fairfield Harbour - water operations	$254,801	$ 4,410
Fairfield Harbour - sewer operations	415,032	5,339
Fairfield Sapphire Valley - water operations	430,229	5,152
Fairfield Sapphire Valley - sewer operations	237,168	2,303
Forest Hills	44,412	939
Fairfield Mountain - sewer operations	52,749	313

Therefore, the Commission concludes that these levels are reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence for this finding of fact is contained in the application, the prefiled and rebuttal testimony and exhibits of Ms. Cuddie, the prefiled and supplemental testimony of Public Staff witness Poole, Cuddie Cross-Examination Exhibits 1 and 2, and Poole Late Filed Exhibit A. There is no disagreement between the parties concerning the uncollectibles factors for service revenues. Therefore, the Commission finds that the uncollectibles factors for service revenues agreed to by the parties are the appropriate factors for use in this proceeding.

The only differences between the parties in calculating uncollectibles expense is due to the factors used for availability customers. Ms. Cuddie testified that it was the Company's belief that availability customers with unpaid account balances over 90 days old would never pay the availability fees owed. When questioned about three specific accounts on only one page of the aging accounts with apparently decreasing balances, Ms. Cuddie testified that these represented only a few uncommon occurrences of that nature and would not cause her percentage to change. Poole Late Filed Exhibit A, however, shows that there are actually 36 water and sewer customers in Fairfield Harbour who have either apparently decreasing balances or who appear on the aging accounts for the first time in June 1997. For Fairfield Sapphire Valley, there are fifty-three water and seven sewer customers who have either apparently decreasing balances or who appear on the June 1997 aging account for the first time. Ms. Cuddie further testified that she did not include customers in the Fairfield Harbour factor with outstanding balances of less than $12 for water and less than $12 for sewer, and for Fairfield Sapphire Valley she did not include customers with outstanding balances of less than $30 for water and $45 for sewer. These exclusions resulted in a change from her prefiled testimony. Witness Poole testified that his factors for Fairfield Harbour and Fairfield Sapphire Valley excluded customers appearing on the aging reports for the first time in June 1997, and those customers who had account balances equal to or less in June 1997 than in December 1996, indicating that they were paying at least some amount toward their accounts.

Based on a review of the exhibits, the Commission agrees with the Public Staff that it is premature to assume that customers with only oné delinquent bill at June 1997, will never pay their bills. There is an insufficient payment history to support this assumption. In fact, it would be more logical to assume that these customers have paid their bills in the past, since they do not have an outstanding balance on the December 1996 report. Only additional payment histories over time will indicate whether or not these overdue bills will remain uncollectible. Furthermore, an analysis of the aging reports identified as Cuddie Cross-Examination Exhibits 1 and 2 shows that there are customers listed on the December 1996 report who are paying towards their delinquent accounts. These customers either do not appear again on the June 1997 report or show lower balances in the June 1997 report than the December 1996 report. The Commission finds it reasonable to exclude customers who have only one delinquent bill from the calculation of the uncollectibles factors. The Commission also finds it reasonable to exclude those customers with balances the same or lower in the June 1997 report compared to the December 1996 report. A reduction in the delinquent balance from December 1996 to June 1997, or balances that remain the same, indicates that the customers are making some payment on their accounts, which contradicts the Company's classification of those customers as customers who will never pay their bills.

Based on the foregoing, the Commission finds and concludes that the factors used by the Public Staff as shown in Poole Late Filed Exhibit A are appropriate for determining the reasonable level of uncollectibles expense for availability customers for Fairfield Harbour's water and sewer operations and for Fairfield Sapphire Valley's water and sewer operations.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

Based on our findings in Findings of Fact Nos. 21 and 22, the total operating revenues under present rates appropriate for use in this proceeding are as follows:

Fairfield Harbour - water operations	$ 255,616
Fairfield Harbour - sewer operations	415,958
Fairfield Sapphire Valley - water operations	429,797
Fairfield Sapphire Valley - sewer operations	238,059
Forest Hills	44,977
Fairfield Mountain - sewer operations	52,788

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-28

The evidence supporting these findings of fact is contained in the testimony and exhibits of Public Staff witnesses Poole and Casselberry and Company witness Cuddie. The following tables summarize the positions of the parties for operation and maintenance expenses:

FAIRFIELD HARBOUR - WATER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - O&M	$ 22,476	$ 22,476	$ 0
Purchased power	18,517	18,517	0
Maintenance and repair	9,733	9,733	0

Maintenance testing	1,497	1,497	0
Chemicals	2,540	2,540	0
Transportation	2,391	2,391	0
Operating exp. charged to plant	(6,759)	(6,759)	0
Outside services - other	7,403	7,403	0
Water service corp.	(2,397)	(2,397)	0
Total operation & maintenance exp.	$ 55,401	$ 55,401	$ 0

FAIRFIELD HARBOUR - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - O&M	$ 52,445	$ 52,445	$ 0
Purchased power	72,523	72,523	0
Maintenance and repair	29,780	20,862	(8,918)
Sludge hauling	0	11,453	11,453
Maintenance testing	4,375	4,375	0
Chemicals	2,399	2,399	0
Transportation	5,579	5,579	0
Operating exp. charged to plant	(15,770)	(15,770)	0
Outside services - other	7,285	7,285	0
Water service corp.	(2,358)	(2,358)	0
Total operation & maintenance exp.	$ 156,258	$ 158,793	$ 2,535

FAIRFIELD SAPPHIRE VALLEY - WATER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - O&M	$ 36,657	$ 36,657	$ 0
Purchased power	23,730	23,730	0
Maintenance and repair	28,686	28,686	0
Maintenance testing	5,095	5,095	0
Chemicals	6,346	6,346	0
Transportation	5,146	5,146	0
Operating exp. charged to plant	(5,681)	(5,681)	0
Outside services - other	6,016	6,016	0
Water service corp.	(1,948)	(1,948)	0
Total operation & maintenance exp.	$ 104,047	$ 104,047	$ 0

FAIRFIELD SAPPHIRE VALLEY - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - O&M	$ 54,985	$ 54,985	$ 0
Purchased power	21,227	21,227	0
Maintenance and repair	27,605	17,124	(10,481)
Sludge hauling	0	10,481	10,481
Maintenance testing	3,183	3,183	0
Chemicals	1,189	1,189	0
Transportation	7,720	7,720	0
Operating exp. charged to plant	(8,523)	(8,523)	0
Outside services - other	2,973	2,973	0
Water service corp.	(962)	(962)	0
Total operation & maintenance exp.	$ 109,397	$ 109,397	$ 0

FOREST HILLS

Item	Company	Public Staff	Difference
Salaries and wages - O&M	$ 5,170	$ 5,170	$ 0
Purchased power	3,604	3,604	0
Maintenance and repair	4,929	4,929	0
Maintenance testing	2,113	2,113	0
Chemicals	248	248	0
Transportation	477	477	0
Operating exp. charged to plant	(1,078)	(1,078)	0
Outside services - other	2,762	2,762	0
Water service corp.	(221)	(221)	0
Total operation & maintenance exp.	$ 18,004	$ 18,004	$ 0

FAIRFIELD MOUNTAIN - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - O&M	$ 23,924	$ 23,924	$ 0
Purchased power	1,641	1,641	0
Maintenance and repair	3,554	3,554	0
Maintenance testing	37	37	0
Chemicals	0	0	0
Transportation	2,529	2,529	0
Operating exp. charged to plant	(3,118)	(3,118)	0

WATER AND SEWER - RATES

Outside services - other	1,973	1,973	0
Water service corp.	(639)	(639)	0
Total operation & maintenance exp.	$ 29,901	$ 29,901	$ 0

As shown in the preceding tables, the Public Staff and the Company agree on the amounts for salaries and wages - O&M, purchased power, maintenance testing, chemicals, transportation, operating expenses charged to plant, outside services - other, and water service corporation. Therefore, the Commission concludes that the amounts agreed to by the parties for these items are the appropriate levels for use in this proceeding.

MAINTENANCE AND REPAIR

The first area of disagreement between the parties is the differences in the levels of maintenance and repair. These differences in the amounts recommended by the Company and the Public Staff are due to (1) classification of sludge hauling for Fairfield Harbour - sewer operations and Fairfield Sapphire Valley - sewer operations and (2) amortization of deferred maintenance charges for Fairfield Harbour - sewer operations.

Classification of Sludge Hauling

The Public Staff made an adjustment to reclassify sludge hauling to a separate line item. The Commission concludes that this adjustment is appropriate.

Amortization of Deferred Maintenance Charges

In her rebuttal testimony, Company witness Cuddie testified that the amortization expense related to the deferred maintenance project for Fairfield Harbour - sewer operations should be increased due to additional invoices received by the Company. However, the Company failed to reflect the additional expense in maintenance and repair on its schedules. The difference between the parties in the amount of amortization of deferred maintenance charges is due to this oversight by the Company. Therefore, the Commission concludes that the amount of amortization of deferred maintenance charges recommended by the Public Staff is the appropriate amount for use in this proceeding.

SLUDGE HAULING

The final area of disagreement between the parties is sludge hauling expense. The difference in the expense levels is due to the Public Staff's adjustment to reclassify sludge hauling to a separate line item, which the Commission has concluded is appropriate.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate levels of operation and maintenance expenses are as follows:

WATER AND SEWER - RATES

Fairfield Harbour - water operations	$ 55,401
Fairfield Harbour - sewer operations	158,793
Fairfield Sapphire Valley - water operations	104,047
Fairfield Sapphire Valley - sewer operations	109,397
Forest Hills	18,004
Fairfield Mountain - sewer operations	29,901

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 29-31

The evidence supporting these findings of fact is contained in the testimony and exhibits of Public Staff witnesses Poole and Casselberry and Company witness Cuddie. The following tables summarize the positions of the parties for general expenses:

FAIRFIELD HARBOUR - WATER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - general	$ 31,342	$ 31,342	$ 0
Office supplies & other office exp.	15,200	15,200	0
Regulatory commission exp.	9,213	3,668	(5,545)
Pensions and other benefits	9,650	9,650	0
Rent	2,584	2,584	0
Insurance	6,205	6,205	0
Office utilities	8,906	8,906	0
Miscellaneous	3,835	3,835	0
Total general expenses	$ 86,935	$ 81,390	$ (5,545)

FAIRFIELD HARBOUR - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - general	$ 30,834	$ 30,834	$ 0
Office supplies & other office exp.	14,949	14,949	0
Regulatory commission exp.	6,142	5,662	(480)
Pensions and other benefits	14,700	14,700	0
Rent	2,541	2,541	0
Insurance	6,104	6,104	0
Office utilities	8,755	8,755	0
Miscellaneous	3,777	3,777	0
Total general expenses	$ 87,802	$ 87,322	$ (480)

FAIRFIELD SAPPHIRE VALLEY - WATER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - general	$ 25,467	$ 25,467	$ 0
Office supplies & other office exp.	13,271	13,271	0
Regulatory commission exp.	6,289	5,886	(403)
Pensions and other benefits	10,946	10,946	0
Rent	2,099	2,099	0
Insurance	5,042	5,042	0
Office utilities	8,843	8,843	0
Miscellaneous	2,259	2,259	0
Total general expenses	$ 74,216	$ 73,813	$ (403)

FAIRFIELD SAPPHIRE VALLEY - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - general	$ 12,584	$ 12,584	$ 0
Office supplies & other office exp.	6,422	6,422	0
Regulatory commission exp.	3,108	3,682	574
Pensions and other benefits	11,724	11,724	0
Rent	1,037	1,037	0
Insurance	2,491	2,491	0
Office utilities	4,277	4,277	0
Miscellaneous	1,116	1,116	0
Total general expenses	$ 42,759	$ 43,333	$ 574

FOREST HILLS

Item	Company	Public Staff	Difference
Salaries and wages - general	$ 2,890	$ 2,890	$ 0
Office supplies & other office exp.	1,372	1,372	0
Regulatory commission exp.	280	2,955	2,675
Pensions and other benefits	1,356	1,356	0
Rent	238	238	0
Insurance	572	572	0
Office utilities	909	909	0
Miscellaneous	228	228	0
Total general expenses	$ 7,845	$ 10,520	$ 2,675

FAIRFIELD MOUNTAIN - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Salaries and wages - general	$ 8,353	$ 8,353	$ 0
Office supplies & other office exp.	3,778	3,778	0
Regulatory commission exp.	987	3,168	2,181
Pensions and other benefits	5,648	5,648	0
Rent	1,934	1,934	0
Insurance	1,653	1,653	0
Office utilities	2,437	2,437	0
Miscellaneous	609	609	0
Total general expenses	$ 25,399	$ 27,580	$ 2,181

As shown in the preceding tables, the Public Staff and the Company agree on the amounts for salaries and wages - general, office supplies and other office expense, pension and other benefits, rent, insurance, office utilities, and miscellaneous. Therefore, the Commission concludes that the amounts agreed to by the parties for these items are the appropriate levels for use in this proceeding.

REGULATORY COMMISSION EXPENSE

The only area of disagreement between the parties is regulatory commission expense. The Public Staff and the Company agree to a total rate case expense amount of $87,718. However, the Company and the Public Staff differ on how this total cost of $87,718 should be allocated between the various operations and service areas. The Company allocated expenses incurred prior to the hearings to all of its systems based on ratios of customer equivalents. The remaining costs to complete the case, some documented and some estimated, were allocated only to Fairfield Harbour and Fairfield Sapphire Valley based on the customer equivalents of those two systems. The Public Staff allocated the various components of rate case expenses for pre-hearing costs based on ratios that factored in the time involved in pre-hearing efforts. However, the Public Staff used ratios to allocate costs estimated to complete the case based on the levels of rate base for Fairfield Harbour and Fairfield Sapphire Valley only, since rate base related directly to the rate of return issue which is the main issue being litigated between the Company and the Public Staff.

Since the parties agree on the total amount of rate case expense, the Commission is left to determine which method of allocating the expense is appropriate. The Public Staff argues that its method allocates rate case costs using ratios that are more closely related to cost causation and are more directly related to the specific components of rate case expenses. The Company argues that it has utilized an allocation method based on customer equivalents, which is the traditional method relied upon by the Commission in the past. This method recognizes that, as a percentage of total expenses, more expense is incurred for systems with more customers. According to the Company, larger systems have more customers requiring more costs to be audited and adjusted during the test year, such as improvements, repairs, tap fees, and many other costs. The Company further argues that larger systems also have more issues to be litigated.

WATER AND SEWER - RATES

The Commission has taken all arguments into consideration. The Commission understands that the allocation of costs should be utilized only when direct assignment of costs cannot be accomplished. In the past, this Commission has relied on the customer equivalents allocation methodology to allocate costs incurred in rate proceedings. To arbitrarily use another method of allocation, without the benefit of an allocation study, may not be the appropriate method to apply at this time. The Commission is also of the opinion that the various components of rate case expenses for pre-hearing costs should be allocated to all systems, including Clearwater and Fairfield Mountain water system. However, based on the arguments presented by the parties, the Commission agrees with both the Company and the Public Staff with respect to the remaining estimated costs to complete the case. These costs should be allocated to Fairfield Harbour and Fairfield Sapphire Valley using the customer equivalents allocation methodology.

Based on the foregoing, the Commission finds and concludes that the amount of rate case expenses allocated to each system and service area using the customer equivalents allocation methodology is just and reasonable in this rate proceeding.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate levels of general expenses are as follows:

Fairfield Harbour - water operations	$ 84,959
Fairfield Harbour - sewer operations	88,780
Fairfield Sapphire Valley - water operations	74,109
Fairfield Sapphire Valley - sewer operations	42,257
Forest Hills	7,943
Fairfield Mountain - sewer operations	25,505

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 32-37

The evidence supporting these findings of fact is contained in the testimony and exhibits of Public Staff witness Poole and Company witness Cuddie. The following tables summarize the positions of the parties for other operating revenue deductions:

FAIRFIELD HARBOUR - WATER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation	$ 16,831	$ 17,680	$ 849
Payroll taxes	4,347	4,347	0
Gross receipts tax & regulatory fee	10,451	10,481	30
Other taxes	6,470	6,470	0
Income taxes - federal	15,535	17,443	1,908
Income taxes - state	3,705	4,160	455
Customer deposit interest	0	0	0
Rental & other income	(970)	(970)	0
Total other operating rev. deduct.	$ 56,369	$ 59,611	$ 3,242

FAIRFIELD HARBOUR - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation	$ 31,248	$ 30,640	$ (608)
Payroll taxes	6,720	6,720	0
Gross receipts tax & regulatory fee	25,329	25,373	44
Other taxes	6,367	6,367	0
Income taxes - federal	13,634	13,677	43
Income taxes - state	3,251	3,262	11
Customer deposit interest	0	0	0
Rental & other income	(954)	(954)	0
Total other operating rev. deduct.	$ 85,595	$ 85,085	$ (510)

FAIRFIELD SAPPHIRE VALLEY - WATER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation	$ 36,557	$ 37,815	$ 1,258
Payroll taxes	5,033	5,033	0
Gross receipts tax & regulatory fee	17,492	17,622	130
Other taxes	5,258	5,258	0
Income taxes - federal	38,849	39,623	774
Income taxes - state	9,264	9,449	185
Customer deposit interest	0	0	0
Rental & other income	(788)	(788)	0
Total other operating rev. deduct.	$ 111,665	$ 114,012	$ 2,347

FAIRFIELD SAPPHIRE VALLEY - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation	$ 27,206	$ 26,845	$ (361)
Payroll taxes	5,534	5,534	0
Gross receipts tax & regulatory fee	14,486	14,522	36
Other taxes	2,598	2,598	0
Income taxes - federal	3,230	3,360	130
Income taxes - state	770	801	31
Customer deposit interest	0	0	0
Rental & other income	(389)	(389)	0
Total other operating rev. deduct.	$ 53,435	$ 53,271	$ (164)

FOREST HILLS

Item	Company	Public Staff	Difference
Depreciation	$ 6,209	$ 6,520	$ 311
Payroll taxes	653	653	0
Gross receipts tax & regulatory fee	1,844	1,844	0
Other taxes	597	597	0
Income taxes - federal	1,158	1,352	194
Income taxes - state	276	322	46
Customer deposit interest	75	75	0
Rental & other income	(89)	(89)	0
Total other operating rev. deduct.	$ 10,723	$ 11,274	$ 551

FAIRFIELD MOUNTAIN - SEWER OPERATIONS

Item	Company	Public Staff	Difference
Depreciation	$ 6,365	$ 6,520	$ 155
Payroll taxes	2,624	2,624	0
Gross receipts tax & regulatory fee	3,220	3,220	0
Other taxes	1,724	1,724	0
Income taxes - federal	(6,391)	0	6,391
Income taxes - state	(1,524)	0	1,524
Customer deposit interest	58	58	0
Rental & other income	(259)	(259)	0
Total other operating rev. deduct.	$ 5,817	$ 13,887	$ 8,070

As shown in the preceding tables, the Public Staff and the Company agree on the amounts for other taxes, customer deposit interest, and rental & other income. Therefore, the Commission concludes that the amounts agreed to by the parties for these items are the appropriate levels for use in this proceeding.

DEPRECIATION EXPENSE

As previously discussed, the Commission has concluded that the methodology used by the Public Staff to calculate depreciation, and adopted by the Company in its rebuttal exhibits, is the appropriate methodology for use in this proceeding. Although the parties agree on methodology, their numbers differ due to (1) differences in the levels of plant in service and pro forma adjustments and (2) apparent errors in the Company's calculation of depreciation expense. Based on the levels of plant in service and pro forma adjustments found reasonable by the Commission elsewhere in this Order, and the methodology agreed to by the parties, the Commission concludes that the appropriate levels of depreciation expense are as follows:

WATER AND SEWER - RATES

Fairfield Harbour - water operations	$ 17,680
Fairfield Harbour - sewer operations	30,640
Fairfield Sapphire Valley - water operations	37,815
Fairfield Sapphire Valley - sewer operations	26,845
Forest Hills	6,520
Fairfield Mountain - sewer operations	6,520

PAYROLL TAXES

The differences between the parties in payroll taxes are due to the inclusion of the part-time operator salary and related payroll taxes by the Company. Elsewhere in this Order, the Commission has found that the salary for a part-time operator should not be included in expenses in this case. Therefore, the Commission concludes that it is appropriate to exclude from expenses the payroll taxes related to the part-time operator.

GROSS RECEIPTS TAX AND REGULATORY FEE

The differences between the parties in gross receipts tax and regulatory fee arise from the parties' disagreements over uncollectibles. The Commission concludes that these amounts should be calculated based on the statutory rates using the levels of revenues, net of uncollectibles, determined appropriate by the Commission in this Order.

STATE AND FEDERAL INCOME TAXES

The differences between the parties in state and federal income taxes arise from the parties' disagreements over revenues and expenses. The Commission concludes that these amounts should be calculated based on the tax rates of 7.5% for state income taxes and 34% for federal income taxes using the levels of revenues and expenses, determined appropriate by the Commission in this Order.

SUMMARY CONCLUSION

Based on the foregoing, the Commission concludes that the appropriate levels of other operating revenue deductions are as follows:

Fairfield Harbour - water operations	$ 58,133
Fairfield Harbour - sewer operations	84,482
Fairfield Sapphire Valley - water operations	113,889
Fairfield Sapphire Valley - sewer operations	53,717
Forest Hills	10,914
Fairfield Mountain - sewer operations	13,887

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 38

Based on our findings in Findings of Fact Nos. 24-37, the overall level of operating revenue deductions under present rates appropriate for use in this proceeding are as follows:

WATER AND SEWER - RATES

FAIRFIELD HARBOUR

Item	Water Operations	Sewer Operations
Operation & Maintenance Expense:		
Salaries and wages - O&M	$ 22,476	$ 52,445
Purchased power	18,517	72,523
Maintenance and repair	9,733	20,862
Sludge hauling	0	11,453
Maintenance testing	1,497	4,375
Chemicals	2,540	2,399
Transportation	2,391	5,579
Operating exp. charged to plant	(6,759)	(15,770)
Outside services - other	7,403	7,285
Water service corp.	(2,397)	(2,358)
Total operation & maintenance expense	55,401	158,793
General Expenses:		
Salaries and wages - general	31,342	30,834
Office supplies & other office exp.	15,200	14,949
Regulatory commission exp.	7,237	7,120
Pensions and other benefits	9,650	14,700
Rent	2,584	2,541
Insurance	6,205	6,104
Office utilities	8,906	8,755
Miscellaneous	3,835	3,777
Total general expenses	84,959	88,780
Total maintenance & general exp.	140,360	247,573
Depreciation	17,680	30,640
Payroll taxes	4,347	6,720
Gross receipts tax & regulatory fee	10,481	25,373
Other taxes	6,470	6,367
Income taxes - federal	16,250	13,191
Income taxes - state	3,875	3,145
Customer deposit interest	0	0
Rental & other income	(970)	(954)
Total operating revenue deductions	$ 198,493	$ 332,055

FAIRFIELD SAPPHIRE VALLEY

Item	Water Operations	Sewer Operations
Operation & Maintenance Expense:		
Salaries and wages - O&M	$ 36,657	$ 54,985
Purchased power	23,730	21,227
Maintenance and repair	28,686	17,124
Sludge hauling	0	10,481
Maintenance testing	5,095	3,183
Chemicals	6,346	1,189
Transportation	5,146	7,720
Operating exp. charged to plant	(5,681)	(8,523)
Outside services - other	6,016	2,973
Water service corp.	(1,948)	(962)
Total operation & maintenance expense	104,047	109,397
General Expenses:		
Salaries and wages - general	25,467	12,584
Office supplies & other office exp.	13,271	6,422
Regulatory commission exp.	6,182	2,606
Pensions and other benefits	10,946	11,724
Rent	2,099	1,037
Insurance	5,042	2,491
Office utilities	8,843	4,277
Miscellaneous	2,259	1,116
Total general expenses	74,109	42,257
Total maintenance & general exp.	178,156	151,654
Depreciation	37,815	26,845
Payroll taxes	5,033	5,534
Gross receipts tax & regulatory fee	17,622	14,522
Other taxes	5,258	2,598
Income taxes - federal	39,524	3,720
Income taxes - state	9,425	887
Customer deposit interest	0	0
Rental & other income	(788)	(389)
Total operating revenue deductions	$ 292,045	$ 205,371

FOREST HILLS

Item	Water Operations
Operation & Maintenance Expense:	
Salaries and wages - O&M	$ 5,170
Purchased power	3,604
Maintenance and repair	4,929
Maintenance testing	2,113
Chemicals	248
Transportation	477
Operating exp. charged to plant	(1,078)
Outside services - other	2,762
Water service corp.	(221)
Total operation & maintenance expense	18,004
General Expenses:	
Salaries and wages - general	2,890
Office supplies & other office exp.	1,372
Regulatory commission exp.	378
Pensions and other benefits	1,356
Rent	238
Insurance	572
Office utilities	909
Miscellaneous	228
Total general expenses	7,943
Total maintenance & general exp.	25,947
Depreciation	6,520
Payroll taxes	653
Gross receipts tax & regulatory fee	1,844
Other taxes	597
Income taxes - federal	1,061
Income taxes - state	253
Customer deposit interest	75
Rental & other income	(89)
Total operating revenue deductions	$ 36,861

FAIRFIELD MOUNTAIN

Sewer Item	Operations
Operation & Maintenance Expense:	
Salaries and wages - O&M	$ 23,924
Purchased power	1,641
Maintenance and repair	3,554
Maintenance testing	37
Chemicals	0
Transportation	2,529
Operating exp. charged to plant	(3,118)
Outside services - other	1,973
Water service corp.	(639)
Total operation & maintenance expense	29,901
General Expenses:	
Salaries and wages - general	8,353
Office supplies & other office exp.	3,778
Regulatory commission exp.	1,093
Pensions and other benefits	5,648
Rent	1,934
Insurance	1,653
Office utilities	2,437
Miscellaneous	609
Total general expenses	25,505
Total maintenance & general exp.	55,406
Depreciation	6,520
Payroll taxes	2,624
Gross receipts tax & regulatory fee	3,220
Other taxes	1,724
Income taxes - federal	0
Income taxes - state	0
Customer deposit interest	58
Rental & other income	(259)
Total operating revenue deductions	$ 69,293

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 39

The evidence for this finding is contained in the testimony and exhibits of Company witnesses Cuddie and Hanley and Public Staff witness Hinton.

In prefiled direct testimony, witness Cuddie originally requested a capital structure for ratemaking purposes consisting of 46.92% common equity and 53.08% long-term debt. Ms. Cuddie

testified that adopting the consolidated 1995 fiscal year-end capital structure of Utilities, Inc., which is the parent company of CWSS, is appropriate. Ms. Cuddie noted that the Company's overall cost of capital depends, in part, on debt financing from large institutional banks and other lenders.

The Public Staff recommended the 1996 calendar year-end capital structure of Utilities, Inc. for use herein, which consisted of 48.33% common equity and 51.67% long-term debt. Witness Hinton testified that said capital structure contained more common equity capital and a higher common equity capitalization ratio than did the Company's original request. According to witness Hinton, his proposed capital structure reflects a higher common equity capitalization ratio than does the average common equity capitalization ratio of his larger comparable group, i.e., the Edward D. Jones group of water utilities. Witness Hinton further testified that he applied five Standard & Poor's (S&P's) financial benchmarks to Utilities, Inc. and his comparable group of 10 water utilities and found that Utilities, Inc. was comparable in financial risk to that group. Witness Hinton also noted Utilities, Inc.'s high growth in common equity capital from approximately 41% in 1990 to over 48% in 1996.

The Company did not oppose witness Hinton's update of its capital structure to December 31, 1996.

Based on the foregoing and the entire evidence of record, the Commission concludes that the capital structure proposed by witness Hinton, which is composed of 48.33% common equity and 51.67% long-term debt, should be adopted for purposes of this proceeding.

In prefiled direct testimony, witness Cuddie advocated use of an 8.99% cost rate for long-term debt. That cost rate was based on data as of December 31, 1995, but excluded the impact of current maturities of long-term debt. Witness Hinton included current maturities of long-term debt in determining the long-term debt cost rate of 9.01% which he considered to be appropriate. His cost rate was based on data as of December 31, 1996. The Company did not oppose witness Hinton's recommendation.

Based on the foregoing and the entire evidence of record, the Commission concludes that the appropriate long-term debt cost rate for purposes of this proceeding is 9.01%.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 40-45

The evidence for these findings of fact is contained in the testimony and exhibits of Company witnesses Cuddie and Hanley and Public Staff witness Hinton.

The Company and the Public Staff were not in agreement with respect to the cost of common equity. Witness Cuddie, in her direct testimony, advocated a cost rate of 12.0%. In rebuttal testimony, she referred the cost of common equity issue to witness Hanley. Witness Hanley, on rebuttal, argued that the Company's cost of common equity was 12.20%. His assessment of the cost of common equity included a specific allowance of 20 basis points, which in witness Hanley's view was required in order to give appropriate recognition to certain additional investment risk of the Company vis-a-vis his most comparable proxy group of five eastern water companies. Witness Hinton argued that the Commission should find 10.50% to be the Company's cost of common equity for purposes of this proceeding.

Because the common stock of CWSS is not publicly traded, both witnesses Hanley and Hinton used other companies as proxies for CWSS in their assessments of the Company's cost of common equity. Witness Hanley's methodologies are first presented below. Thereafter, the approaches utilized by witness Hinton are set forth.

Witness Hanley employed a number of different approaches in his analysis. Those approaches included various versions or applications of certain widely used cost of capital models, including the DCF model, risk premium analysis - including the capital asset pricing model (CAPM) - and the comparable earnings approach.

Witness Hanley's Single-Stage Growth DCF Model

Witness Hanley performed single-stage growth DCF studies on a proxy group composed of five eastern water companies and on a proxy group composed of six Value Line water companies. The studies employed different approaches in estimating the growth parameter of the model. For both proxy groups, the indicated return on common equity, based on historical and projected growth in DPS, EPS, and BR+SV, was 10%. For the five eastern water company study, witness Hanley calculated a 6.1% dividend yield, consisting of a historical yield of 6.0% and a dividend yield growth component of 0.1%. The 0.1% dividend yield growth component, according to witness Hanley, equals one-half of the growth rate in dividends to reflect the periodic payment of same. The market price growth parameter of the comparable group of five eastern water companies was 3.9%. With respect to the six Value Line water companies, the indicated return of 10% was based on a dividend yield of 5.4%, including a 0.1% dividend yield growth component, and a 4.6% market price growth rate.

With respect to witness Hanley's single-stage growth DCF studies based on projected growth in EPS, the indicated cost of common equity for both the proxy group of five eastern water companies and the proxy group of six Value Line water companies was 10.2%. The dividend yield components were 6.1% and 5.4%, respectively, including a dividend yield growth component of 0.1%. The market price growth parameters were 4.1% and 4.8%, respectively.

Witness Hanley's Two-Stage Growth DCF Model

Witness Hanley also performed two-stage growth DCF studies wherein the market price growth component of the model embodied two separate and distinct growth rates, or stages. The first stage, which was for years one through five, employed I/B/E/S's forecasted growth in EPS. The second stage, which was for years six through twenty, was based on growth in the gross domestic product (GDP). For the five eastern water companies, the indicated cost of common equity was 10.5%, based upon a 6.1% yield parameter which included a dividend yield growth component of 0.1%, and a 4.4% market price growth rate. For the six Value Line water companies, the indicated return on equity was 10%, based upon a 5.4% yield parameter which included a dividend yield growth component of 0.1%, and a 4.6% market price growth rate.

Witness Hanley's Traditional and Empirical CAPMs

Using a traditional CAPM based on the proxy group of five eastern water companies, witness Hanley determined the Company's common equity cost rate to be 11.4%. For the six Value Line

water companies, he determined the cost rate to be 10.9%. Under his empirical CAPM approach, witness Hanley determined the common equity cost rate for the proxy group of five eastern water companies to be 11.9%; and for the six Value Line water companies, he found the cost rate to be 11.5%.

According to witness Hanley, the CAPM defines risk as the covariability of a security's returns with the market's returns. This covariability is measured by beta ("β"), an index measure of an individual security's variability relative to the market. A beta less than 1.0 indicates lower variability while a beta greater than 1.0 indicates greater variability than the market. Witness Hanley explained that all risk, i.e., all non-market or unsystematic risk, can be eliminated through diversification. The risk that cannot be eliminated through diversification is called market, or systematic, risk. The model presumes that investors require compensation for risks that cannot be eliminated through diversification. Systematic risks are caused by socioeconomic and other events that affect the return on all assets. In essence, the model is applied by adding a risk-free rate of return to a market risk premium. This market risk premium is adjusted proportionally to reflect the systematic risk of the individual security relative to the market as measured by beta.

Witness Hanley's Risk Premium
Model Based On Regression Analysis of Prior NCUC Orders

Witness Hanley developed a common equity cost rate of 12.03% by estimating a linear regression between the equity risk premium and the yields on Moody's Aa rated public utility bonds. The estimated equation was:

> Premium = 7.58 - 0.46 Aa rate + 0.49 Gas, where the Aa public utility bond yield represents the six month average and the variable "Gas" is one if the Order was for a gas company and zero if the Order was for an electric company.

The equation means that the equity premium resulting from certain of this Commission's Orders declines by 46 basis points (0.46%) for each 100 basis points increase in the Moody's yield on Aa rated public utility bonds. It also means that, on average, gas companies are allowed equity returns that are 49 basis points (0.49%) higher than the equity returns allowed to electric utilities. The equity returns were calculated by determining the equity premium from the regression equation and adding it to the six month average yield on Moody's Aa public utility bonds.

Under this approach, witness Hanley determined the common equity premium to be 4.29%. That common equity premium was then added to the yield of 7.74%, on Moody's Aa rated public utility bonds for the six months ended May 1997, producing a common equity cost rate of 12.03%.

Witness Hanley's Risk Premium
Model Using an Adjusted Total Market Approach

Witness Hanley performed risk premium studies using an adjusted total market approach. For the five eastern water companies, this methodology produced a common equity cost rate of 12.4% and for the six Value Line Companies a cost rate of 12.1%. Under this approach, witness Hanley started with an average forecasted cost rate for public utility bonds of 8% for the five eastern water companies and 7.9% for the six Value Line water companies. The 8% cost rate for the five eastern

water companies was adjusted from 7.9%, according to witness Hanley, to make the rate reflective of the rate that would be applicable to companies with an average Moody's bond rating of A2/A3. The 7.9% cost rate for the six Value Line water companies required no such adjustment.

The equity risk premium developed by witness Hanley in this regard was 4.4% for the five eastern water companies and 4.2% for the six Value Line water companies. In developing his equity risk premium, witness Hanley relied upon two different historical equity risk premium studies, as well as *Value Line's* forecasted total annual return on the market over the prospective yield on high grade corporate bonds.

Witness Hanley's Comparable Earnings Approach

To check on the reasonableness of his common equity cost rate of 12.20%, witness Hanley performed comparable earnings analysis of a proxy group of domestic non-utility companies similar in total risk to the proxy group of five eastern water companies. Witness Hanley opined that comparable earnings is derived from the "corresponding risk" standard of the landmark cases of the U.S. Supreme Court. Thus, he argued that comparable earnings is consistent with the *Hope* doctrine that the return to the equity owner should be commensurate with returns on investments in other firms having corresponding risks.

This method, according to witness Hanley, is based on the opportunity cost principle which maintains that the true cost of an investment is equal to the cost of the best available alternative use of the funds to be invested. Witness Hanley acknowledged that the difficulty in application of the comparable earnings model is the selection of a proxy group of companies that are similar in risk but which are not price regulated utilities. Witness Hanley argued that utilities should be excluded from the proxy group of companies to avoid circularity, since the returns on book common equity of utilities are substantially influenced by regulatory awards.

Witness Hanley's comparable earnings approach resulted in a common equity cost rate of 11.1%. However, in commenting on this finding, he stated that "[c]learly, an opportunity return rate needs to be much higher to take into account the impact of attrition", and he asserted that his comparable earnings approach confirmed the propriety of his recommended common equity cost rate of 12.20%.

The results of witness Hanley's various techniques may be summarized as follows:

	Approach	Cost of Common Equity
1.	One-stage DCF - Historical and Projected Growth[1]	
	- Five Company Comparable Group	10.0%
	- Six Company Comparable Group	10.0%

---

1 Witness Hanley indicated that the growth parameter included in this version of the DCF model was based upon historical and projected growth in dividends per share (DPS), earnings per share (EPS), and that portion of the overall return to investors which is reinvested into the firm and the sales of new common stock (BR + SV where B = the fraction of earnings retained by the firm, i.e., the retention ratio; R = the return on common equity; S = the growth in common shares outstanding; and V = the premium/discount of a company's stock price relative to its book value, i.e., one minus the complement of the market/book ratio).

2.	One-stage DCF - Projected Growth[1]	
	- Five Company Comparable Group	10.2%
	- Six Company Comparable Group	10.2%
3.	Two-stage DCF	
	- Five Company Comparable Group[2]	10.5%
	- Six Company Comparable Group[3]	10.0%
4.	Traditional CAPM	
	- Five Company Comparable Group	11.4%
	- Six Company Comparable Group	10.9%
5.	Empirical CAPM	
	- Five Company Comparable Group	11.9%
	- Six Company Comparable Group	11.5%
6.	NCUC Regression Analysis Risk Premium	12.03%
7.	Adjusted Total Market Risk Premium	
	- Five Company Comparable group	12.4%
	- Six Company Comparable Group	12.1%
8.	Comparable Earnings Analysis	11.1%

As indicated above, based on his analysis, witness Hanley concluded that the Company's cost of common equity was 12.2%, which included a specific allowance of 20 basis points in recognition, according to witness Hanley, of certain additional investment risk of the Company, vis-a-vis his most comparable proxy group of five eastern water companies[4]. As support for his 20 basis points adjustment, witness Hanley noted that his proxy group of five eastern water companies have, on average, a Moody's bond rating of A2/A3; a S&P rating of A+/A; and a "high average" business position rating by S&P. Witness Hanley compared Utilities, Inc.'s (CWSS's parent corporation's) financial position to certain key financial benchmarks published by S&P and determined that Utilities, Inc. is more risky than his proxy group of five eastern water companies. More specifically, witness Hanley asserted that Utilities, Inc.'s bond rating, if established, would be found to be BBB+ by S&P and Baa by Moody's, which is indicative of Utilities, Inc.'s greater investment risk as compared to witness Hanley's proxy group of five eastern water companies. In recognition of that greater risk,

---

[1] Witness Hanley indicated that the growth parameter included in this version of the DCF model was based upon projected growth in EPS.

[2] Witness Hanley indicated that the growth parameter included in this version of the DCF model was based upon the Institutional Brokers Estimate System's (I/B/E/S's) projected five-year growth in EPS and annual growth in gross domestic product.

[3] Ibid.

[4] Before consideration of his 20 basis point adjustment, witness Hanley indicated that his common equity cost rate of 12% was based on his risk premium and CAPM methodologies applied to his proxy group of five eastern water companies.

witness Hanley added 20 basis points to his common equity cost rate of 12%, which he indicated was derived from application of his risk premium and CAPM methodologies.

In arriving at his recommendation as to the cost rate to be applied to the Company's common equity investment for purposes of this proceeding, witness Hinton relied upon the DCF model. As a reasonableness check of the results of his DCF model approach, witness Hinton compared his recommended common equity cost rate of 10.5% to the earned returns on common equity of his group of 10 comparable utilities and to the weighted average earned returns on common equity of 17 water utility companies as reported by the stock brokerage firm of Edward Jones for the 12-month period ended December 31, 1996.

Witness Hinton's DCF Model

Witness Hinton utilized the constant growth DCF model in his analysis. As previously indicated, his analysis employed a group of 10 utilities which he considered comparable to Utilities, Inc. Witness Hinton explained the use of comparable companies as follows:

> "... the company must compete for equity funds with other investments on a risk-adjusted basis. Recognition of this fact allows one to identify a group of companies comparable in risk to Utilities, Inc."

Witness Hinton's group of comparable companies consisted of 10 water utilities included in *Value Line's* standard and expanded editions. Such companies were selected based on various accepted measures of risk and certain key financial and operating characteristics. Witness Hinton argued that his group of 10 water utilities was comparable both in terms of business and financial risk to Utilities, Inc., and hence CWSS.

Witness Hinton filed revised testimony on July 15, 1997, to reflect updated financial market data. His 26-week dividend yield was revised to reflect trading as of July 9, 1997, and his historical and forecasted growth rates were revised to reflect current financial conditions, including current recommendations of security analysts.

Based on his DCF approach, witness Hinton determined that the Company's common equity cost rate lay within a range from 10% to 11%. He testified that such range was consistent with an expected dividend yield of 5.7% and an expected market price growth rate in a range from 4.30% to 5.30%. He selected the midpoint of his range, i.e., 10.5%, as his point estimate of the cost of common equity to CWSS.

Witness Hinton compared his recommended return on equity of 10.50% to recently earned returns on equity for his group of 10 comparable water utilities and the 17 water utilities that are followed by Edward D. Jones with the following results. Over a five-year period ending on December 31, 1996, the average calendar year returns for witness Hinton's group of 10 comparable water utilities range from a low of 9.92% in 1996 to a high of 11.11% in 1993. The mean return for the Edward D. Jones group of 17 water utilities was 9.8% for the calendar year ended December 31, 1996.

Witness Hinton testified that his recommended equity return, in combination with his recommended capital structure, would provide the Company with a reasonable opportunity to achieve a pre-tax interest coverage ratio of 2.8 times. According to witness Hinton, that level of pre-tax interest coverage is consistent with the S&P benchmark coverage ratio that would qualify the Company for a debt rating in the single "A" category.

Witness Hinton disagreed with the Company's contentions that the authorized return should include an equity risk premium for the Company's small size and lack of liquidity. With respect to size, witness Hinton testified that, if such an adjustment was allowed, then an incentive would exist for large water utilities to form subsidiaries so that the smaller entities would be allowed higher returns. He noted that the academic literature in finance often cited the size of a company as an issue with regard to investment risk; however, in regard to those studies, he stressed the inappropriateness of applying a conclusion based on studies of non-regulated companies that are not protected from competition to CWSS, which is a regulated company with exclusive monopoly protection in its franchised territory. Regarding the liquidity issue, witness Hinton presented five years of information on the trading of the Company's stock through the brokerage firm of William Blair and Company. That data revealed that the trading of the Company's stock and the number of shares outstanding had significantly grown over the period reviewed. Based on those findings, witness Hinton concluded that lack of liquidity was not an issue for Utilities, Inc. and, therefore, did not warrant a risk premium adjustment. Parenthetically, the Commission notes that witness Hanley, in his prefiled rebuttal testimony, stated that his "... added increment for investment risk of 0.20% has nothing to do with CWS's small size or limited liquidity."

Witness Hinton also disagreed with witness Hanley regarding witness Hanley's contention that a 20 basis points adjustment to increase the Company's cost of common equity was in order so as to give recognition to the fact that, if established, Utilities, Inc.'s bond rating would be found, according to witness Hanley, to be BBB+ by S&P and Baa by Moody's. According to witness Hinton, based upon S&P's financial criteria, Utilities, Inc.'s bond rating, if established, would qualify for a debt rating within the single "A" category.

Determination of the fair rate of return is of great importance and must be made with great care and consideration for the reason that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers. In the final analysis, the determination of a fair rate of return must be made by this Commission using its own impartial judgment and guided by the testimony of expert witnesses and other evidence of record. Whatever return is allowed must balance the interests of the ratepayers and investors and meet the test set forth in G.S. 62-133(b)(4):

> "[to] enable the public utility by sound management to produce a fair return for its shareholders, considering changing economic conditions and other factors, as they then 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 fair to its customers and to its existing investors."

The return allowed must not burden ratepayers any more than is necessary for the utility to continue to provide adequate service. The North Carolina Supreme Court has stated that the history of G.S. 62-133(b):

> "supports the inference that the Legislature intended for the Commission to fix rates as low as may be reasonably consistent with the requirements of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States."

State ex rel. Utilities Commission v. Duke Power Co., 285 N.C. 377, 388, 206 S.E.2d 269, 276 (1974).

The Commission is mindful that its conclusion regarding the appropriate rate of return must be based upon specific findings showing what effect it gave to particular factors in reaching its decision. State ex rel. Utilities Commission v. Public Staff, 322 N.C. 689, 699, 370 S.E.2d 567, 573 (1988). Based on the entire evidence of record, the Commission concludes:

(1) The comparable earnings model employed by Company witness Hanley and the comparable earnings model employed by Public Staff witness Hinton based on his group of 10 comparable water companies should be given the greater weight in determining the cost of common equity for purposes of this proceeding. The Commission's decision to place the greater weight on the comparable earnings methodology, in this case, is due to the Commission's having found the comparable earnings approach to be a valid and generally accepted method of determining a public utility's cost of common equity and the Commission's having found the witnesses' applications of this approach to be the most objective and creditable of all of the various cost of common equity approaches utilized. In reaching this conclusion, the Commission is cognizant of the fact that the comparable earnings standard, perhaps more than any other, is consistent with the United States Supreme Court's holdings in Bluefield Waterworks Improvement Company v. Public Service Commission of West Virginia, 262 U.S. 679 (1923), and in Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591 (1944). We emphasize that this decision is based upon the unique facts of this case and cannot be construed to be a generic endorsement of any particular model for determining the cost of common equity.

While the witnesses' DCF model approaches were moderately persuasive — notwithstanding the fact that Company witness Hanley asserted that the DCF model was unreliable because it significantly understates the cost of common equity when the market value of a company exceeds its book value — they were significantly less persuasive in this case than the comparable earnings approaches. Witness Hanley was unpersuasive in his support of his risk premium approaches, including the CAPM. Witness Hanley's lack of persuasiveness and the inherently subjective nature and variability of many of the risk premium approaches' inputs causes the Commission to have serious concerns regarding their efficacy for purposes of this proceeding. The comparable earnings models, as applied in this case, appear to be the most objective of the numerous approaches utilized by the witnesses. In reaching this conclusion, the Commission was very much aware of the fact that selection of the comparable companies, a matter of crucial importance, quite clearly involves the application of subjective judgement.

The Company takes the position that the 10 water companies included in witness Hinton's comparable group are not comparable to Utilities, Inc. and consequently CWSS. The Company argued that witness Hinton's comparable companies are larger and more diversified, with vastly different service area characteristics, and that six of the companies are the exact same companies that the Public Staff used in Carolina Water Service, Inc. of North Carolina's last general rate case in 1994. In that case, the Commission was not persuaded that such companies were in fact comparable. CWSS further argued that since 1994 *Value Line* has added four water companies to those it follows and that the Public Staff's broad criteria picked up those four additional companies in its analysis. The Company then asserted that the four additional companies were more comparable to the original six than to Utilities, Inc., or CWSS, and that their addition does little to improve, according to the Company, the faulty Public Staff comparison. Witness Hanley, in his prefiled rebuttal testimony, stated, as previously noted, that utilities should not be included as comparable companies in a comparable earnings approach so as to avoid circularity, since the returns on book common equity of utilities are substantially influenced by regulatory awards.

According to witness Hinton, the 10 water companies included in his comparable group were selected based on certain *Value Line* and S&P risk measures and certain S&P financial and operating ratios. The *Value Line* risk measures included safety rank, beta, price stability rank, earnings predictability, and financial strength. The S&P risk measures and financial ratio benchmarks included the pre-tax interest coverage ratio, the total debt leverage ratio, funds from operations interest coverage, funds from operations as a percentage of average total debt, net cash flow as a percentage of capital expenditures, investment in net utility plant per customer, investment in net utility plant, total capital, and total revenues. Witness Hinton testified that, based on his review of S&P's financial benchmarks and other financial and operating ratios and the *Value Line* measures, it was his opinion that Utilities, Inc. was comparable to his group of 10 water utilities. He further testified that each of the 10 companies was in the business of providing public water utility service, that each of the 10 companies derived the majority of its revenue from provision of such service, and that each company was subject to regulation. Witness Hinton opined that it is reasonable to assume that investors would consider Utilities, Inc. to be of comparable risk to his group of companies since they all exhibit approximately the same level of investment risk. Witness Hinton further stated that *Value Line* often reports to investors that, " '. . . the water utility is in many respects our nation's last pure utility monopoly.' "

No party to this proceeding appears to have taken exception to the results of witness Hanley's determination of the cost of common equity under his comparable earnings approach, per se. Indeed, as stated in the brief of the Attorney General, the comparable earnings methodology was virtually unchallenged in this proceeding, i.e., with the exception of the Company's disagreement with witness Hinton's selection of his 10 comparable companies.

Based on the foregoing and the entire evidence of record, the Commission concludes that the aforesaid comparable earnings approaches should be accorded the greater weight in determining the cost of common equity for purposes of this proceeding. In reaching this decision, the Commission, after having carefully considered the criteria utilized by witness Hinton in selecting his comparable companies and the evidence offered by the Company in support of its disagreement with witness Hinton, has determined, for purposes of this proceeding, that the greater weight of the evidence supports witness Hinton's view of the reasonableness of the comparability of those companies.

While the data presented in witness Hinton's Exhibit JRH-2, captioned "S&P Financial Ratio Benchmarks", generally presents compelling evidence as to the reasonableness of the 10 companies he selected for use in his analysis, certain of the data presented in witness Hinton's Exhibit JRH-3, captioned "Risk Measures", specifically the S&P data contained in that exhibit, is significantly less compelling in some instances. Generally, the S&P data in JRH-3 focuses on the relative size of the 10 companies in comparison to Utilities, Inc. as measured by various indices. For example, the S&P data in Exhibit JRH-3 shows that American Water Works has total capital of $2.9 billion whereas Utilities, Inc.'s total capital is shown to be $0.9 billion. It might appear at first glance, due to the vast difference in total capital, that these two firms are not comparable in terms of investment risk. However, the record is not at all clear as to how the overall economic dimension of a regulated monopoly affects or relates to investment risk with any acceptable degree of specificity, when considered either in conjunction with or to the exclusion of other benchmarks widely accepted and used as indicators of the relative riskiness of alternative investments.

On the other hand, as shown in JRH-2, four out of five widely accepted "yardsticks" commonly used in assessing the relative riskiness of alternative investments imply that an investment in Utilities, Inc. is less risky or of no greater risk than an investment in American Water Works. Specifically, Utilities, Inc. has a total debt leverage ratio of 52% as compared to American Water Works' total debt leverage ratio of 62%, which standing alone implies that an investment in Utilities, Inc. is less risky. The pre-tax interest coverage ratio — 2.36 times for Utilities, Inc. versus 2.12 times for American Water Works — and net cash flow as a percentage of capital expenditures — 67% for Utilities, Inc. versus 61% for American Water Works — also imply that an investment in Utilities, Inc. is less risky. The funds from operations as a percentage of average total debt ratio of 13% is the same for both companies implying investments of equal risk. The remaining criteria presented in witness Hinton's Exhibit JRH-2 for assessing the relative riskiness of alternative investments is the number of times funds from operations cover interest expense —2.60 times for American Water Works versus 2.44 times for Utilities, Inc. Thus, in only this one instance, an investment in American Water Works would be perceived to be less risky than an investment in Utilities, Inc. when based solely on the instant coverage ratio.

In consideration of all of the foregoing, together with the other evidence of record, the Commission determines, for purposes of this proceeding, that the greater weight of the evidence supports witness Hinton's view of the reasonableness of the comparability of his 10 comparable companies.

Witness Hinton's application of the DCF model produced a cost of common equity range of 10.00% to 11.00%. Witness Hanley also performed DCF studies on groups of comparable companies and found common equity cost rates ranging from 10.0% to 10.50%. The Commission notes that 39 regulatory agencies, including this Commission, utilize to some extent the DCF model. Eight state utility regulatory agencies report that they rely on the DCF methodology exclusively. Clearly, the DCF model approach is an entirely reasonable, valid, and useful approach to employ in estimating the cost of common equity. However, based on the evidence in this case, the Commission has concern that the DCF model, under current market conditions, might tend to produce a cost of common equity at the lower bound of a range of reasonableness. The Commission wishes to make it clear, however, that it is not persuaded by the evidence that the DCF model generally understates the cost of common equity when the market value of a company's common stock is substantially greater than book value, as asserted by witness Hanley.

After having carefully considered the foregoing and all other evidence of record, the Commission concludes that the DCF model as employed by the witnesses in this proceeding should be accorded moderate weight.

(2) The risk premium methodologies, including the CAPM, presented by Company witness Hanley should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

Without exception, every methodology utilized in this proceeding to determine the cost of common equity involved a degree of subjectivity; however, the risk premium and CAPM approaches as presented are particularly subjective. As applied in this proceeding by witness Hanley, there are three areas of subjectivity related to the CAPM mathematical formula that are of particular significance and concern: (1) the selection of a beta (β); (2) the selection of a risk free rate, i.e., the appropriate treasury bond rate; and (3) the use of an arithmetic as opposed to a geometric mean in calculating the expected risk premium. Regarding the selection of a beta, one may select an unadjusted S&P's beta, a Merrill Lynch beta, or the beta selected by witness Hanley, an adjusted *Value Line* beta; each beta would lead to a different result. Regarding the risk free rate, witness Hanley chose to use a higher yielding 30-year treasury bond rate as opposed to a 60- or 90- day treasury bond rate which, again, if the latter had been chosen, would have resulted in a different, and lower, cost of common equity. Finally, witness Hanley elected to use an arithmetic mean in lieu of a geometric mean. Use of the geometric mean is required by the Securities and Exchange Commission in the reporting of historic returns. It appears to be well known and generally accepted that an arithmetic mean will yield a higher value than a geometric mean. The arithmetic mean as advocated by witness Hanley implies a 12.7% return on the market whereas the geometric mean implies a 10.7% market return.

Witness Hanley also relied on two risk premium models which were described as (1) an adjusted total market approach and (2) a regression analysis of NCUC authorized returns on common equity. Generally, the first method is dependent on the spreads between utility bond yields and returns on the S&P 500. The regression approach is based on allowed returns established by Orders of this Commission in certain general rate case proceedings and utility bond yields.

The adjusted total market risk premium study employs, among other things, an average of beta-derived historical equity risk premiums and a mean historical equity risk premium applicable to certain public utilities based on holding period returns. Thus, the adjusted total market approach presents the same concerns discussed above with respect to the CAPM.

Regarding witness Hanley's regression approach, witness Hinton testified that such approach made use of historical data from unrepresentative periods, i.e., periods prior to 1984 which contained negative or unreasonably low common equity risk premiums, and as a result produced suspect results. Witness Hinton further testified that there are different approaches that could be taken in performing risk premium analysis. If one were to take simple arithmetic averages of the equity risk premiums for the companies presented under witness Hanley's regression approach, one would conclude that the average equity risk premium for all years listed, 1980 through 1996, was 2.46% and that the average equity risk premium from 1984 through 1996 was 3.31%. When the foregoing risk premiums are combined with witness Hanley's six-month average Aa bond yield of 7.74%, the resultant cost of common equity estimates become 10.2% and 11.05%, respectively, as compared to witness Hanley's

regression predicted results of 11.76% for electric utilities and 12.25% for natural gas utilities. Witness Hinton also testified that witness Hanley's use of electric and natural gas utilities in his regression analysis was inappropriate since the water utility industry was less risky than the electric and natural gas industries because of the restructuring that is taking place with respect to the latter industries.

Because of the Commission's significant concern regarding the high degree of variability and subjectivity present in the risk premium methodologies, including the CAPM and regression approaches, as applied by witness Hanley in determining the cost of common equity and the lack of persuasiveness of the testimony offered by this witness in support of those approaches, the Commission concludes that the subject methodologies should be accorded only minimal weight in determining CWSS's cost of common equity for purposes of this proceeding.

(3) Witness Hanley's inclusion of 20 basis points in his recommended cost of common equity in recognition of certain additional investment risk of the Company is inappropriate for purposes of this proceeding. Witness Hanley included a specific allowance of 20 basis points in his recommended cost of common equity in recognition, according to witness Hanley, of certain additional investment risk of the Company, vis-a-vis his most comparable proxy group of five eastern water companies.

As support for his 20 basis points adjustment, witness Hanley noted that his proxy group of five eastern water companies have, on average, a Moody's bond rating of A2/A3; a S&P rating of A+/A; and a "high average" business position rating by S&P. Witness Hanley compared Utilities, Inc.'s (CWSS's parent corporation) financial position to certain key financial benchmarks published by S&P and determined that Utilities, Inc. is more risky than his proxy group of five eastern water companies. More specifically, witness Hanley asserted that Utilities, Inc.'s bond rating, if established, would be found to be BBB+ by S&P and Baa by Moody's, which, according to witness Hanley, is indicative of Utilities, Inc.'s greater investment risk as compared to witness Hanley's proxy group of five eastern water companies. In recognition of that greater risk, witness Hanley added 20 basis points to his common equity cost rate of 12%, which he indicated was derived from application of his risk premium and CAPM methodologies.

According to witness Hinton, based on his assessment of the S&P financial benchmarks set forth in Hinton Exhibit JRH-2 and in consideration of the pre-tax interest coverage ratio of 2.8 times that would result under the Public Staff's proposed cost of service, Utilities, Inc. would qualify for a debt rating within the single "A" rating range.

The Commission, after having carefully considered the testimony of witnesses Hanley and Hinton as well as all other evidence of record, concludes that the Company has not carried the burden of proof to clearly show that the subject 20 basis point adjustment, as proposed by witness Hanley, is warranted for purposes of this proceeding.

(4) No specific additional common equity risk premium related to the Company's size, liquidity, customer or geographical diversity, or other business or financial risk is appropriate for purposes of this proceeding. The Company has generally argued that an additional common equity risk premium related to the Company's size, liquidity, customer or geographical diversity, or other business or financial risk is appropriate for purposes of this proceeding.

As stated previously, witness Hinton disagreed with the Company's contentions that the authorized return should include an equity risk premium for the Company's small size and lack of liquidity. With respect to size, witness Hinton testified that, if such an adjustment was allowed, then an incentive would exist for large water utilities to form subsidiaries so that the smaller entities would be allowed higher returns. He noted that the academic literature in finance often cited the size of a company as an issue with regard to investment risk; however, in regard to those studies, he stressed the inappropriateness of applying a conclusion based on studies of nonregulated companies that are not protected from competition to CWSS, which is a regulated company with exclusive monopoly protection in its franchised territory.

Regarding the liquidity issue, witness Hinton presented five years of information on the trading of the Company's stock through the brokerage firm of William Blair and Company. That data revealed that the trading of the Company's stock and the number of shares outstanding had significantly grown over the period reviewed. Based on those findings, witness Hinton concluded that lack of liquidity was not an issue for Utilities, Inc. and, therefore, did not warrant a risk premium adjustment. The Commission also again notes that witness Hanley, in his prefiled rebuttal testimony, stated that his " . . . added increment for investment risk of 0.20% has nothing to do with CWSS's small size or limited liquidity."

With respect to the other operating and financial characteristics not heretofore specifically addressed, which the Company argued are unique to CWSS and as such warrant an additional equity risk premium, witness Hinton essentially argued that it was not unreasonable to conclude that his comparable companies too possessed certain unique characteristics that increased the levels of their overall business and financial risks.

After having carefully considered the foregoing and the entire evidence of record, the Commission concludes that the Company has not shown, by the greater weight of the evidence, that an additional common equity risk premium related to the Company's size, liquidity, customer or geographical diversity, or other business or financial risk is appropriate for purposes of this proceeding.

<u>The cost of common equity capital to CWSS for purposes of this proceeding is 11.10%.</u> For purposes of determining the cost of common equity, for reasons previously explained, the Commission has placed the greatest weight on the comparable earnings model employed by witness Hanley and the comparable earnings model employed by witness Hinton based on his group of 10 comparable water companies. Under the comparable earnings approach, witness Hanley found the cost of common equity to be 11.10% and witness Hinton found such cost to range from 9.92% to 11.11%.

After having carefully considered the entire evidence of record, the Commission concludes that the reasonable cost of common equity to the Company for purposes of this proceeding is 11.10%. Such cost rate is consistent with the results of witness Hanley's comparable earnings approach and is within the range of cost rates determined by witness Hinton to be reasonable based on the results of his comparable earnings approach employing 10 comparable water companies. In reaching this conclusion, the Commission is mindful of witness Hanley's assertion that the cost of common equity derived under his comparable earnings approach needs to be much higher to take into account the impact of attrition. The evidence of record, however, is such that the Commission is

simply not persuaded that such an allowance is in order or that the reasonable cost of common equity to the Company is greater than 11.10%.

The overall fair rate of return which the Company should be afforded the opportunity to earn on its rate base is 10.02%. Based on the foregoing conclusions with respect to the proper capital structure and the appropriate cost rates for long-term debt and common equity, the Commission finds and concludes that the overall fair rate of return that the Company should be afforded the opportunity to earn on its rate base is 10.02%.

It is well-settled law in this State that it is for the administrative body, in an adjudicatory proceeding, to determine the weight and sufficiency of the evidence and the credibility of the witnesses, to draw inferences from the facts, and to appraise conflicting evidence. State ex rel. Utilities Commission v. Duke Power Company, 305 N.C. 1, 287 S.E.2d 786 (1982); Commissioner of Insurance v. North Carolina Rate Bureau, 300 N.C. 381, 269 S.E.2d 547 (1980). The Commission has followed these principles in good faith in exercising its impartial judgment in determining the fair and reasonable rate of return in this proceeding. The determination of the appropriate rate of return is not a mechanical process and can only be made after a study of the evidence based upon careful consideration of a number of different methodologies weighed and tempered by the Commission's impartial judgment. The determination of rate of return in one case is not res judicata in succeeding cases. State ex rel. Utilities Commission v. Duke Power Company, 285 N.C. 377, 395, 206 S.E.2d 269, 281 (1974). The proper rate of return on common equity is "essentially a matter of judgment based on a number of factual considerations that vary from case to case." State ex rel. Utilities Commission v. Public Staff, 322 N.C. 689, 697, 370 S.E.2d 567, 570 (1988). Thus, the determination must be made based on the evidence presented and its weight and credibility in each case.

The Commission cannot guarantee that CWSS will, in fact, achieve the levels of return on rate base and common equity found to be just and reasonable in this Order. Indeed, the Commission would not guarantee the authorized rate of return even if it could. Such a guarantee would remove necessary incentives for the Company to achieve the utmost in operational and managerial efficiency. The Commission finds and concludes that the rate of return approved in this Order will afford the Company a reasonable opportunity to earn a reasonable return for its stockholder while providing adequate and economical service to its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 46

The following schedules summarize the gross revenues and rates of return that the Company should have a reasonable opportunity to achieve based upon the increases and/or decreases approved in this Order. These schedules, illustrating the Company's gross revenue requirements, incorporate the findings and conclusions found fair by the Commission in this Order.

SCHEDULE I
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
FAIRFIELD HARBOUR - WATER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Present Rates	Decrease Approved	After Approved Decrease
Operating Revenue:			
Service Revenue	$ 254,801	$ (3,530)	$ 251,271
Miscellaneous Revenue	4,410	(20)	4,390
Uncollectibles	(3,595)	18	(3,577)
Total Operating Revenue	255,616	(3,532)	252,084
Operating Revenue Deductions:			
Operation & Maintenance Exp.	55,401	0	55,401
General Expenses	84,959	0	84,959
Depreciation	17,680	0	17,680
Payroll Taxes	4,347	0	4,347
Gross Receipts Tax and Regulatory Fee	10,481	(146)	10,335
Other Taxes	6,470	0	6,470
Income Taxes - Federal	16,250	(1,065)	15,185
Income Taxes - State	3,875	(254)	3,621
Customer Deposit Interest	0	0	0
Rental and Other Income	(970)	0	(970)
Total Operating Revenue Deductions	198,493	(1,465)	197,028
Net Operating Income For Return	$ 57,123	$ (2,067)	$ 55,056

SCHEDULE II
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF RATE BASE AND RATE OF RETURN
FAIRFIELD HARBOUR - WATER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Amount
Plant in service	$2,513,460
Accumulated depreciation	(222,311)
Working capital allowance	11,838
Contributions in aid of construction	(1,752,437)
Purchase acquisition adjustment	(27,598)
Accumulated deferred income taxes	(56,915)
Customer deposits	0
Deferred charges	14,475
Water service rate base	31,233
Pro forma adjustments	187,447
Loan	(149,748)
Total original cost rate base	$ 549,444
Rates of Return:	
Present	10.40%
Approved	10.02%

SCHEDULE III
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF CAPITALIZATION AND RELATED COSTS
FAIRFIELD HARBOUR - WATER OPERATIONS
For the Twelve Months Ended December, 1995

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long Term Debt	51.67%	$ 283,898	9.01%	$ 25,579
Common Equity	48.33%	265,546	11.88%	31,544
Total	100.00%	$ 549,444		$ 57,123

APPROVED RATES

Long Term Debt	51.67%	$ 283,898	9.01%	$ 25,579
Common Equity	48.33%	265,546	11.10%	29,476
Total	100.00%	$ 549,444		$ 55,055

SCHEDULE I
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
FAIRFIELD HARBOUR - SEWER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$ 415,032	$ 72,489	$ 487,521
Miscellaneous Revenue	5,339	410	5,749
Uncollectibles	(4,413)	(369)	(4,782)
Total Operating Revenue	415,958	72,530	488,488
Operating Revenue Deductions:			
Operation & Maintenance Expenses	158,793	0	158,793
General Expenses	88,780	0	88,780
Depreciation	30,640	0	30,640
Payroll Taxes	6,720	0	6,720
Gross Receipts Tax and Regulatory Fee	25,373	4,424	29,797
Other Taxes	6,367	0	6,367
Income Taxes - Federal	13,191	21,418	34,609
Income Taxes - State	3,145	5,108	8,253
Customer Deposit Interest	0	0	0
Rental and Other Income	(954)	0	(954)
Total Operating Revenue Deductions	332,055	30,950	363,005
Net Operating Income For Return	$ 83,903	$ 41,580	$ 125,483

SCHEDULE II
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF RATE BASE AND RATE OF RETURN
FAIRFIELD HARBOUR - SEWER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Amount
Plant in service	$6,410,580
Accumulated depreciation	(205,759)
Working capital allowance	22,414
Contributions in aid of construction	(5,057,986)
Purchase acquisition adjustment	(39,054)
Accumulated deferred income taxes	(84,666)
Customer deposits	0
Deferred charges	47,587
Water service rate base	30,726
Pro forma adjustments	638,764
Loan	(510,294)
Total original cost rate base	$1,252,312
Rates of Return:	
Present	6.70%
Approved	10.02%

SCHEDULE III
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF CAPITALIZATION AND RELATED COSTS
FAIRFIELD HARBOUR - SEWER OPERATIONS
For the Twelve Months Ended December, 1995

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long Term Debt	51.67%	$ 647,069	9.01%	$ 58,301
Common Equity	48.33%	605,242	4.23%	25,603
Total	100.00%	$1,252,312		$ 83,904

WATER AND SEWER - RATES

APPROVED RATES

Long Term Debt	51.67%	$ 647,069	9.01%	$ 58,301
Common Equity	48.33%	605,242	11.10%	67,182
Total	100.00%	$1,252,312		$ 125,483

SCHEDULE I
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
FAIRFIELD SAPPHIRE VALLEY - WATER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Present Rates	Decrease Approved	After Approved Decrease
Operating Revenue:			
Service Revenue	$ 430,229	$ (10,893)	$ 419,336
Miscellaneous Revenue	5,152	(53)	5,099
Uncollectibles	(5,584)	21	(5,563)
Total Operating Revenue	429,797	(10,925)	418,872
Operating Revenue Deductions:			
Operation & Maintenance Expenses	104,047	0	104,047
General Expenses	74,109	0	74,109
Depreciation	37,815	0	37,815
Payroll Taxes	5,033	0	5,033
Gross Receipts Tax and Regulatory Fee	17,622	(448)	17,174
Other Taxes	5,258	0	5,258
Income Taxes - Federal	39,524	(3,296)	36,228
Income Taxes - State	9,425	(785)	8,640
Customer Deposit Interest	0	0	0
Rental and Other Income	(788)	0	(788)
Total Operating Revenue Deductions	292,045	(4,529)	287,516
Net Operating Income For Return	$ 137,752	$ (6,396)	$ 131,356

SCHEDULE II
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF RATE BASE AND RATE OF RETURN
FAIRFIELD SAPPHIRE VALLEY - WATER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Amount
Plant in service	$2,482,902
Accumulated depreciation	(366,801)
Working capital allowance	15,865
Contributions in aid of construction	(201,520)
Purchase acquisition adjustment	(76,882)
Accumulated deferred income taxes	(156,966)
Customer deposits	0
Deferred charges	12,998
Water service rate base	26,672
Pro forma adjustments	511,989
Loan	(937,336)
Total original cost rate base	$1,310,921
Rates of Return:	
Present	10.51%
Approved	10.02%

SCHEDULE III
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF CAPITALIZATION AND RELATED COSTS
FAIRFIELD SAPPHIRE VALLEY - WATER OPERATIONS
For the Twelve Months Ended December, 1995

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long Term Debt	51.67%	$ 677,353	9.01%	$ 61,030
Common Equity	48.33%	633,568	12.11%	76,722
Total	100.00%	$1,310,921		$ 137,752

WATER AND SEWER - RATES

APPROVED RATES

Long Term Debt	51.67%	$ 677,353	9.01%	$ 61,030
Common Equity	48.33%	633,568	11.10%	70,326
Total	100.00%	$1,310,921		$ 137,752

SCHEDULE I
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
FAIRFIELD SAPPHIRE VALLEY - SEWER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$ 237,168	$ 38,483	$ 275,651
Miscellaneous Revenue	2,303	187	2,490
Uncollectibles	(1,412)	(73)	(1,485)
Total Operating Revenue	238,059	38,597	276,656
Operating Revenue Deductions:			
Operation & Maintenance Expenses	109,397	0	109,397
General Expenses	42,257	0	42,257
Depreciation	26,845	0	26,845
Payroll Taxes	5,534	0	5,534
Gross Receipts Tax and Regulatory Fee	14,522	2,354	16,876
Other Taxes	2,598	0	2,598
Income Taxes - Federal	3,720	11,398	15,118
Income Taxes - State	887	2,718	3,605
Customer Deposit Interest	0	0	0
Rental and Other Income	(389)	0	(389)
Total Operating Revenue Deductions	205,371	16,470	221,841
Net Operating Income For Return	$ 32,688	$ 22,127	$ 54,815

SCHEDULE II
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF RATE BASE AND RATE OF RETURN
FAIRFIELD SAPPHIRE VALLEY - SEWER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Amount
Plant in service	$1,067,842
Accumulated depreciation	(246,100)
Working capital allowance	14,315
Contributions in aid of construction	(184,164)
Purchase acquisition adjustment	(26,418)
Accumulated deferred income taxes	(64,581)
Customer deposits	0
Deferred charges	8,040
Water service rate base	11,245
Pro forma adjustments	219,203
Loan	(252,340)
Total original cost rate base	$ 547,042
Rates of Return:	
Present	5.98%
Approved	10.02%

SCHEDULE III
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF CAPITALIZATION AND RELATED COSTS
FAIRFIELD SAPPHIRE VALLEY - SEWER OPERATIONS
For the Twelve Months Ended December, 1995

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long Term Debt	51.67%	$ 282,656	9.01%	$ 25,467
Common Equity	48.33%	264,385	2.73%	7,221
Total	100.00%	$ 547,041		$ 32,688

APPROVED RATES

Long Term Debt	51.67%	$ 282,656	9.01%	$ 25,467
Common Equity	48.33%	264,385	11.10%	29,347
Total	100.00%	$ 547,041		$ 54,814

SCHEDULE I
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
FOREST HILLS
For the Twelve Months Ended December 31, 1995

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$ 44,412	$ 8,450	$ 52,862
Miscellaneous Revenue	939	25	964
Uncollectibles	(374)	(71)	(445)
Total Operating Revenue	44,977	8,404	53,381
Operating Revenue Deductions:			
Operation & Maintenance Expenses	18,004	0	18,004
General Expenses	7,943	0	7,943
Depreciation	6,520	0	6,520
Payroll Taxes	653	0	653
Gross Receipts Tax and Regulatory Fee	1,844	344	2,188
Other Taxes	597	0	597
Income Taxes - Federal	1,061	2,534	3,595
Income Taxes - State	253	604	857
Customer Deposit Interest	75	0	75
Rental and Other Income	(89)	0	(89)
Total Operating Revenue Deductions	36,861	3,482	40,343
Net Operating Income For Return	$ 8,116	$ 4,922	$ 13,038

SCHEDULE II
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF RATE BASE AND RATE OF RETURN
FOREST HILLS
For the Twelve Months Ended December 31, 1995

Item	Amount
Plant in service	$ 194,637
Accumulated depreciation	(35,864)
Working capital allowance	2,527
Contributions in aid of construction	(3,296)
Purchase acquisition adjustment	(19,853)
Accumulated deferred income taxes	(10,533)
Customer deposits	(1,250)
Deferred charges	829
Water service rate base	2,880
Pro forma adjustments	0
Loan	0
Total original cost rate base	$ 130,077
Rates of Return:	
Present	6.25%
Approved	10.02%

SCHEDULE III
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF CAPITALIZATION AND RELATED COSTS
FOREST HILLS
For the Twelve Months Ended December, 1995

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long Term Debt	51.67%	$ 67,211	9.01%	$ 6,056
Common Equity	48.33%	62,866	3.28%	2,020
Total	100.00%	$130,077		$ 8,116

APPROVED RATES

Long Term Debt	51.67%	$ 67,211	9.01%	$ 6,056
Common Equity	48.33%	62,866	11.10%	6,978
Total	100.00%	$ 130,077		$13,034

SCHEDULE I
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
FAIRFIELD MOUNTAIN - SEWER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$ 52,749	$ 29,371	$ 82,120
Miscellaneous Revenue	313	22	335
Uncollectibles	(274)	(153)	(427)
Total Operating Revenue	52,788	29,240	82,028
Operating Revenue Deductions:			
Operation & Maintenance Expenses	29,901	0	29,901
General Expenses	25,505	0	25,505
Depreciation	6,520	0	6,520
Payroll Taxes	2,624	0	2,624
Gross Receipts Tax and Regulatory Fee	3,220	1,784	5,004
Other Taxes	1,724	0	1,724
Income Taxes - Federal	0	2,251	2,251
Income Taxes - State	0	537	537
Customer Deposit Interest	58	0	58
Rental and Other Income	(259)	0	(259)
Total Operating Revenue Deductions	69,293	4,572	73,865
Net Operating Income For Return	$ (16,505)	$ 24,668	$ 8,163

SCHEDULE II
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF RATE BASE AND RATE OF RETURN
FAIRFIELD MOUNTAIN - SEWER OPERATIONS
For the Twelve Months Ended December 31, 1995

Item	Amount
Plant in service	$ 135,949
Accumulated depreciation	(31,629)
Working capital allowance	5,090
Contributions in aid of construction	(21,276)
Purchase acquisition adjustment	(1,933)
Accumulated deferred income taxes	(14,271)
Customer deposits	(963)
Deferred charges	2,185
Water service rate base	8,323
Pro forma adjustments	0
Loan	0
Total original cost rate base	$ 81,475
Rates of Return:	
Present	(20.25%)
Approved	10.02%

SCHEDULE III
CWS SYSTEMS, INC.
DOCKET NO. W-778, SUB 31

STATEMENT OF CAPITALIZATION AND RELATED COSTS
FAIRFIELD MOUNTAIN - SEWER OPERATIONS
For the Twelve Months Ended December, 1995

Item	Ratio %	Original Cost Rate Base	Embedded Cost	Net Operating Income
		PRESENT RATES		
Long Term Debt	51.67%	$ 42,098	9.01%	$ 3,793
Common Equity	48.33%	39,377	(51.55%)	(20,298)
Total	100.00%	$ 81,475		$(16,505)

APPROVED RATES

Long Term Debt	51.67%	$ 42,098	9.01%	$ 3,793
Common Equity	48.33%	39,377	11.10%	4,371
Total	100.00%	$ 81,475		$ 8,164

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 47

The evidence supporting this finding of fact is contained in the testimony of Public Staff witness Poole. Mr. Poole testified that during his review of the Company's records, he found that the Company had charged a $50 meter fee in the Forest Hills system, which is not provided for in its tariff. Ms. Cuddie did not provide any testimony concerning this issue.

The Commission concludes that the Company should be required to refund the meter fees collected in the Forest Hills system. As stated by Mr. Poole, these fees were not authorized by this Commission and should not have been collected by the Company. Therefore, the Commission will order CWSS to refund all meter fees collected in the Forest Hills system with interest at 10% compounded annually. The Company will also be ordered to file a refund plan within 30 days of the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 48

The evidence supporting this finding of fact is contained in the testimony of Public Staff witness Casselberry and Company witness Cuddie. In its application, CWSS requested to change from a bi-monthly to a monthly billing. Ms. Cuddie testified in her prefiled testimony that the change is in response to requests by customers to change to a monthly billing cycle to simplify home budgeting. The Public Staff did not oppose the change, as stated in Ms. Casselberry's prefiled testimony.

During customer hearings held for all CWSS service areas, two customers testified opposing the change from a bi-monthly to a monthly billing. Mr. Giffin, a customer of Fairfield Harbour stated, "I find it patently ridiculous that customers would request this change knowing it would increase their cost. Monthly billing should not be allowed unless it reduces customer cost." Mr. Giffin also testified at the evidentiary hearing in Raleigh on July 17, 1997, stating, "Both the CWSS and Public Staff testimonies indicate added clerical costs and expenses for this change. The only explanation for the change that I have seen is the Cuddie testimony." He further added, "In my mind, that's nonsense. I doubt very many customers would want to change to monthly billing knowing it will increase rates plus the bother and cost of extra checks, envelopes, and stamps six times a year." Mr. Oliver, a customer of Sapphire Valley, stated that it was fine if CWSS changes from a bi-monthly to a monthly billing; however, he did not think the customers should have to pay more for creating a new position because the Company was changing from a bi-monthly to a monthly billing.

As shown in the schedules filed by the Public Staff and the Company, the parties have included the following costs associated with the change to monthly billing in expenses:

Fairfield Harbour - water operations	$	5,136
Fairfield Harbour - sewer operations		5,051
Fairfield Sapphire Valley - water operations		5,401
Fairfield Sapphire Valley - sewer operations		2,564
Forest Hills		451
Fairfield Mountain - sewer operations		1,093

These costs equate to a cost per customer of approximately $0.35 per month.

The Company stated in its proposed order that under its proposed procedure, CWSS will bill monthly but will read meters bi-monthly. Every other bill will be estimated based on historical usage for each customer, and there will be an automatic true-up on the next subsequent bill when the meter is read.

On July 8, 1997, in Docket No. W-354, Sub 184, Carolina Water Service, Inc. of North Carolina (CWS), sister utility to CWSS, filed a similar request to amend its tariff to allow it to bill customers for service on a monthly basis, while only reading water meters on a bi-monthly basis. On August 21, 1997, the Public Staff filed a request for an interpretation of Commission Rules R7-23(c) and R10-19(3) regarding the frequency of billing and meter reading. On September 5, 1997, the Commission issued its Order Interpreting Rules and Denying Request of CWS to amend its tariff to allow it to bill customers for service on a monthly basis, while only reading water meters on a bi-monthly basis. The Order stated that the Commission has promulgated two rules that address the issue of billing frequency and meter reading frequency. Rule R7-23(c) states, "Meters will be read as nearly as possible at regular intervals..." Rule R10-19(3) also states, "Meters will be read or flat rate billings rendered as nearly as possible at regular intervals..." The Order further stated that as a matter of public policy, the Commission is concerned about the potential for adverse affects from setting a precedent of allowing a company to uniformly and unilaterally break the link which has historically existed between meter reading and billing. If the customers are billed bi-monthly, then the customers' water meter should be read bi-monthly. If, however, the customers are billed monthly, then the customers' water meter must be read monthly. Therefore, the request of CWS to amend its tariff to allow monthly billing and bi-monthly meter reading in Docket No. W-354, Sub 184, was denied by the Commission.

On October 3, 1997, CWS filed a letter stating its intention to begin monthly billing and monthly meter reading. On October 13, 1997, in Docket No. W-354, Sub 184, the Commission issued its Order Approving Tariff Revision and Requiring Notice which allowed Carolina Water Service, Inc., of North Carolina to amend it tariff by monthly billing upon the commencement of monthly meter reading.

Based on the foregoing, the Commission finds and concludes that CWSS, in this docket, is granted its request to change from a bi-monthly to a monthly billing. However, in an effort to comply with Commission Rules R7-23(c) and R10-19(3), the Company is required to read meters on a monthly basis as well.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 49

This finding of fact is supported by the Commission's conclusions reached in this Order. This issue involves the Schedule of Rates. The Commission has determined that these rates will allow the Company to generate its revenue requirements and are fair and reasonable and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That CWS Systems, Inc. is authorized to adjust its rates and charges for the Fairfield Harbour - water operations, Fairfield Harbour - sewer operations, Fairfield Sapphire Valley - water operations, Fairfield Sapphire Valley - sewer operations, Forest Hills, and Fairfield Mountain - sewer operations so as to produce, based upon the adjusted test year levels of operations, the following increases (decreases) in gross annual revenues:

Fairfield Harbour - water operations	$ (3,532)
Fairfield Harbour - sewer operations	72,530
Fairfield Sapphire Valley - water operations	(10,925)
Fairfield Sapphire Valley - sewer operations	38,597
Forest Hills	8,404
Fairfield Mountain - sewer operations	29,240

2. That the Schedules of Rates, attached as Appendix A, are approved for Fairfield Harbour - water operations, Fairfield Harbour - sewer operations, Fairfield Sapphire Valley - water operations, Fairfield Sapphire Valley - sewer operations, Forest Hills, and Fairfield Mountain - sewer operations. These rates shall become effective for service rendered on and after the date of this Order. The Commission considers these Schedules of Rates to be filed as required by G.S. 62-138.

3. That CWS Systems, Inc. is authorized to change its billing frequency from bi-monthly to monthly upon the commencement of monthly meter reading.

4. That a copy of the attached Appendices A and B shall be delivered by CWS Systems, Inc. to all of its customers in conjunction with the next billing statement after the date of this Order.

5. That CWS Systems, Inc. shall file the attached Certificate of Service, properly signed, and notarized, within 10 days of completing the requirement of Ordering Paragraph No. 4.

6. That CWS Systems, Inc. shall refund all meter fees collected in the Forest Hills system with interest at 10% compounded annually.

7. That CWS Systems, Inc. shall file a refund plan for the meter fees within 30 days of the date of this Order and the Public Staff shall file a response to said refund plan no later than 60 days from the date of this Order.

8. That CWS Systems, Inc. shall refund all interim rates and charges in excess of the final rates and charges found to be appropriate by the Commission in the Fairfield Harbour and Fairfield Sapphire Valley with interest at 10% compounded annually.

WATER AND SEWER - RATES

9 That CWS Systems, Inc. shall file a refund plan for excess interim rates and charges collected from the customers in Fairfield Harbour and Fairfield Sapphire Valley within 30 days of the date of this Order and the Public Staff shall file a response to said refund plan no later than 60 days from the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This 26th day of November 1997.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

SCHEDULE OF RATES
for
CWS SYSTEMS, INC.
for providing water utility service in
FOREST HILLS SUBDIVISION
Jackson County, North Carolina

Residential:

A. Base facility charge (zero usage) $ 13.15

The base facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

B. Usage charge (per 1,000 gallons) $ 3.16

Commercial and Other:

A. Base Charge, zero usage (based on meter size)

Meter Size	Base Charge
5/8 x 3/4 inch	$ 13.15
3/4 inch	$ 19.75
1 inch	$ 32.90
1 ½ inch	$ 65.75
2 inch	$ 105.20
3 inch	$ 197.25
4 inch	$ 328.75
6 inch	$ 657.50

B. Usage Charge, per 1,000 gallons (all meter sizes) $ 3.16

WATER AND SEWER - RATES

Connection Charge: (new service only)

5/8 inch meter	$ 500.00

All other meter sizes: Actual cost of meter installation

New Water Customer Charge: $ 27.00

Reconnection Charge:

If water service is cut off by utility for good cause	$ 27.00
If water service is disconnected at the customer's request	$ 27.00

(Customers who request reconnection within nine months of disconnection will be charged the base charge for the number of months they were disconnected.)

Bills Due:	On billing date
Bills Past Due:	21 days after billing date
Return Check Fee:	$ 10.00
Billing Frequency:	Bills shall be rendered monthly for service in arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date

---

Issued in Accordance with Authority by the North Carolina Utilities Commission in Docket No. W-778, Sub 31, on this 26th day of November 1997.

WATER AND SEWER - RATES

SCHEDULE OF RATES
for
CWS SYSTEMS, INC.

for providing sewer utility service in
FAIRFIELD MOUNTAIN DEVELOPMENT
Rutherford County, North Carolina

Residential:

A.	Collection charge/dwelling unit	$ 10.05
B.	Treatment charge/dwelling unit	$ 16.00

Commercial and Other:

A.	Minimum rate	$ 26.05
B.	Customers without water service (per single family equivalent)	$ 26.05
C.	Treatment charge per dwelling unit:	
	Small User (less than 2,500 gallons per month)	$ 18.00
	Medium User (between 2,500 and 10,000 gallons per month)	$ 36.00
	Large User (over 10,000 gallons per month)	$ 110.00

(NOTE - Classification of user is determined by the Town of Lake Lure)

D.	Collection Charge (per 1,000 gallons)	$ 9.05

Connection Charge: (tap on fee) $ 550.00

New Sewer Customer Charge: $ 22.00
(If customer also receives water service, this charge will be waived)

Reconnection Charge:

If sewer service is cut off by utility for good cause, the actual cost of disconnection and reconnect will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish the estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service from CWS Systems, Inc.

WATER AND SEWER - RATES

Bills Due:	On billing date
Bills Past Due:	21 days after billing date
Return Check Fee:	$ 10.00
Billing frequency:	Bills shall be rendered monthly for service in arrears

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date

---

Issued in Accordance with Authority by the North Carolina Utilities Commission in Docket No. W-778, Sub 31, on this 26th day of November 1997.

SCHEDULE OF RATES
for
CWS SYSTEMS, INC.

for providing water and sewer utility service in
SAPPHIRE VALLEY SUBDIVISION
Jackson and Transylvania Counties, North Carolina

WATER UTILITY SERVICE

Residential:

A. Base Charge (zero usage) $ 10.95

The base facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

B. Usage Charge (per 1,000 gallons) $ 5.05

Commercial and Other:

A. Base Charge (zero usage)

5/8 x 3/4 inch	$ 10.95
3/4 inch	$ 16.45
1 inch	$ 27.40
1 ½ inch	$ 54.75
2 inch	$ 87.60
3 inch	$ 164.25
4 inch	$ 273.75
6 inch	$ 547.50

B. Usage Charge, per 1,000 gallons $ 5.05

Availability Rate: $ 5.00

Connection Charge: 1\

All Areas Except Holley Forest XI, Holley Forest XIV, Holley Forest XV, Whisper Lake I, Whisper Lake II, Whisper Lake III and Deer Run

$ 0.00 (recoupment of capital)
$ 400.00 (tap-on fee)

Holley Forest XI

$ 2,400.00 per tap (recoupment of capital fee)
$ 400.00 per tap (tap-on fee)

Holley Forest XIV

$ 250.00 per tap (recoupment of capital fee)
$ 400.00 per tap (tap-on fee)

Holley Forest XV

$ 500.00 per tap (recoupment of capital fee)
$ 400.00 per tap (tap-on fee)

Whisper Lake Phase I

$ 1,250.00 per tap (recoupment of capital fee)
$ 400.00 per tap (tap-on fee)

Whisper Lake Phase II and III

$ 2,450.00 per tap (recoupment of capital fee)
$ 400.00 per tap (tap-on fee)

Deer Run

$ 1,900.00 per tap (recoupment of capital fee)
$ 400.00 per tap (tap-on fee)

Meter Installation Charge: (new service only) $150.00

New Customer Charge: $ 27.00

WATER AND SEWER - RATES

Reconnection Charge:

If water service is cut off by utility for good cause	$ 27.00
If water service is disconnected at the customer's request	$ 27.00

(Customers who request reconnection within nine months of disconnection will be charged the base charge for the number of months they were disconnected.)

SEWER UTILITY SERVICE

Residential:

Flat rate per month, per dwelling unit:	$ 32.20

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other: (based on water usage)

A.	Minimum rate	$ 32.20
B.	Customers who do not take water service (per single family equivalent)	$ 32.20
C.	Base Charge: (zero usage)	
	5/8 x 3/4 inch	$ 14.15
	3/4 inch	$ 21.25
	1 inch	$ 35.40
	1 ½ inch	$ 70.75
	2 inch	$ 113.20
	3 inch	$ 212.25
	4 inch	$ 353.75
	6 inch	$ 707.50
C.	Usage Charge, per 1,000 gallons	$ 7.32

Availability Rate: $ 7.50

Connection Charge: 1\

All Areas Except Holley Forest XIV, Holley Forest XV, and Deer Run

$ 0.00 per tap (recoupment of capital fee)
$ 550.00 per tap (tap-on fee)

WATER AND SEWER - RATES

Holley Forest XIV

$ 1,650.00 per tap (recoupment of capital fee)
$ 550.00 per tap (tap-on fee)

Holley Forest XV

$ 475.00 per tap (recoupment of capital fee)
$ 550.00 per tap (tap-on fee)

Deer Run

$ 1,600.00 per tap (recoupment of capital fee)
$ 550.00 per tap (tap-on fee)

New Customer Charge: $ 22.00
(If customer also receives water service, this charge will be waived.)

Reconnection Charge:

If sewer service is cut off by utility for good cause, the actual cost of disconnection and reconnect will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish the estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service from CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Return Check Fee: $ 10.00

Billing Frequency:

Metered billings shall be rendered monthly for service in arrears.
Availability billings shall be rendered semi-annually for service in advance.

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date.

1/ The recoupment of capital portion of the connection charges shall be due and payable at such time as the main water and sewer lines are installed in front of each lot within, and the tap-on fee for water and sewer shall be payable upon request by the owner of each lot to be connected to the water and sewer lines. With written consent of the company, payment of the recoupment capital portion of the connection charge may be made payable over a five year period

following the installation of the water and sewer mains in front of each lot, payment to be made in such a manner and in such installments as agreed upon between lot owner and the company, together with interest on the balance of the unpaid recoupment of capital fee from said time until payment in full at the rate of six percent per annum.

Issued in Accordance with Authority by the North Carolina Utilities Commission in Docket No. W-778, Sub 31, on this 26th day of November 1997.

SCHEDULE OF RATES
for
CWS SYSTEMS, INC.

for providing water and sewer utility service in
FAIRFIELD HARBOUR DEVELOPMENT
Craven County, North Carolina

WATER UTILITY SERVICE

Residential:

A. Base Charge (zero usage) $ 5.90

The base facility charge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually.

B. Usage Charge (per 1,000 gallons) $ 1.60

C. Fire Hydrant Surcharge: $2.76 per dwelling per month

This $2.76 surcharge shall also apply where the service is provided through a master meter and each individual dwelling unit is being billed individually. This surcharge, approved by the Fairfield Harbour Property Owners Association, is to cover the cost of installing 119 hydrants.

Commercial and Other:

A.	Base Charge (zero usage)		Fire Hydrant Surcharge (zero usage)
	5/8 x 3/4 inch	$ 5.90	$ 2.27
	3/4 inch	$ 8.85	$ 4.14
	1 inch	$ 14.75	$ 6.90
	1 ½ inch	$ 29.50	$ 13.80
	2 inch	$ 47.20	$ 22.08
	3 inch	$ 88.50	$ 41.40
	4 inch	$ 147.50	$ 69.00
	6 inch	$ 295.00	$138.00

B. Usage Charge, per 1,000 gallons $ 1.60

Availability Rate: $ 2.00

Connection Charge: 1\

All Areas Except Harbor Pointe II Subdivision

$ 335.00 (recoupment of capital)
$ 140.00 (tap-on fee)

Harbor Pointe Subdivision and any area where mains have been installed after July 24, 1989:

$ 650.00 per tap (recoupment of capital fee)
$ 320.00 per tap (tap-on fee)

New Customer Charge: $ 27.00

Reconnection Charge:

If water service is cut off by utility for good cause $ 27.00

If water service is disconnected at the customer's request $ 27.00

(Customers who request reconnection within nine months of disconnection will be charged the base charge for the number of months they were disconnected.)

SEWER UTILITY SERVICE

Residential:

Flat rate per month, per dwelling unit: $ 28.75

Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor erecting the unit.

Commercial and Other: (based on water usage)

A. Customers who do not take water service (per single family equivalent) $ 28.75

B. Base Charge (zero usage)

5/8 x 3/4 inch	$ 7.60
3/4 inch	$ 11.40
1 inch	$ 19.00

1 ½ inch	$ 38.00
2 inch	$ 60.80
3 inch	$ 114.00
4 inch	$ 190.00
6 inch	$ 380.00

C. Usage Charge, per 1,000 gallons $ 4.25

Availability Rate: $ 2.00

Connection Charge: 1\

All Areas Except Harbor Pointe II Subdivision

$ 735.00 (recoupment of capital)
$ 140.00 (tap-on fee)

Harbor Pointe Subdivision and any area where mains have been installed after July 24, 1989:

$ 2,215.00 per tap (recoupment of capital fee)
$ 310.00 per tap (tap-on fee)

New Customer Charge: $ 22.00
(If customer also receives water service, this charge will be waived.)

Reconnection Charge:

If sewer service is cut off by utility for good cause, the actual cost of disconnection and reconnect will be charged.

The utility will itemize the estimated cost of disconnecting and reconnecting service and will furnish the estimate to customer with cut-off notice.

This charge will be waived if customer also receives water service from CWS Systems, Inc.

Bills Due: On billing date

Bills Past Due: 21 days after billing date

Return Check Fee: $ 10.00

Billing Frequency:
Metered billings shall be rendered monthly for service in arrears.
Availability billings shall be rendered semi-annually for service in advance.

Finance Charges for Late Payment: 1% per month will be applied to the unpaid balance due 25 days after billing date.

WATER AND SEWER - RATES

1/ The recoupment of capital portion of the connection charges shall be due and payable at such time as the main water and sewer lines are installed in front of each lot within and the tap-on fee for water and sewer shall be payable upon request by the owner of each lot to be connected to the water and sewer lines. With written consent of the company, payment of the recoupment capital portion of the connection charge may be made payable over a five year period following the installation of the water and sewer mains in front of each lot, payment to be made in such a manner and in such installments as agreed upon between lot owner and the company, together with interest on the balance of the unpaid recoupment of capital fee from said time until payment in full at the rate of six percent per annum.

Issued in Accordance with Authority by the North Carolina Utilities Commission in Docket No. W-778, Sub 31, on this 26th day of November 1997.

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

NOTICE TO CUSTOMERS
DOCKET NO. W- 778, SUB 31
BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

NOTICE IS HEREBY GIVEN that CWS Systems, Inc., 5701 Westpark Drive, Suite 101, Charlotte, North Carolina, 28217 filed an application with the North Carolina Utilities Commission for authority to increase rates for providing water utility service for Amber Acres North, Ashley Hills North, Country Crossing, Jordan Woods, Neuse Woods, Oakes Plantation, Sandy Trails, Stewart's Ridge, and Tuckahoe Subdivisions in Wake County; Heather Glen Subdivision in Durham County; Wilder's Village Subdivision in Franklin County; Ransdell Forest Subdivision in Nash County; and Forest Hills Subdivision in Jackson County (Clearwater); water and sewer utility service in Fairfield Harbour Development in Craven County and Fairfield Sapphire Valley Subdivision in Transylvania and Jackson Counties; and sewer utility service for Fairfield Mountain Development in Rutherford County. On June 17, 1997, CWSS filed a Motion to Withdraw application for a rate increase for the Clearwater Systems and on June 24, 1997, the Commission issued an order granting the Motion to Withdraw.

The customer hearings and evidentiary hearing were held as scheduled. Based on the entire record in this matter, the North Carolina Utilities Commission has approved the rates as shown on the attached Schedule of Rates.

ISSUED BY ORDER OF THE COMMISSION
This the 26th day of November 1997.

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-778, Sub 31, and the Notice to Customers was mailed or hand delivered by the date specified in the Order.

This the _____ day of ___________________ 1997.

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-778, Sub 31.

Witness my hand and notarial seal, this the ____ day of ________________ 1997.

____
Notary Public

ORDERS AND DECISIONS - PRINTED

INDEX OF ORDERS PRINTED

GENERAL ORDERS

GENERAL ORDERS - GENERAL PAGE

M-100, Sub 89 - Order Adopting Revised Safety Rules (01-07-96) 1

M-100, Sub 89 - Errata Order (01-08-97) 2

GENERAL ORDERS - ELECTRICITY

E-100, Sub 79 - Order Establishing Standard Rates and Contract Terms for Qualifying Facilities (06-19-97) 3

GENERAL ORDERS - GAS

G-100, Sub 44 - Order Authorizing Modifications To Form G-1 (12-03-97) 25

G-100, Sub 44 - Order Adopting Form G-1 (12-19-97) 31

G-100, Sub 74 - Order of the Chair Amending Rules (12-04-97) 32

GENERAL ORDERS - TELEPHONE

P-100, Sub 72 - Order Revising Aggravating Circumstances Penalty (03-05-97) 34

P-100, Sub 84 - Order Denying Invision Fraud Prevention Program Proposal (04-11-97)(Commissioner Allyson K. Duncan dissents. Commissioner Laurence A. Cobb did not participate.) 36

P-100, Sub 84a - Order Amending Commission Rule R13 (10-07-97) 41

P-100, Sub 114; P-100, Sub 124 - Order Rescinding Rule R16-1(12-03-97) 92

P-100, Sub 133 - Order Ruling On Petition For Declaratory Ruling (03-31-97) 93

P-100, Sub 133 - Order of Clarification (05-20-97) 95

P-100, Sub 133 - Order Amending CLP Certificates (08-27-97) 96

P-55, Sub 1022; P-100, Sub 133 - Order Clarifying Report Requirements (11-21-97) 97

P-100, Sub 133a - Order Establishing Intrastate Discounts for Schools and Libraries (06-17-97) 98

P-100, Sub 133a - Order Confirming Discounts (07-15-97) 100

P-100, Sub 133c - Order Granting Waivers and Designating Carriers (12-15-97) 101

P-100, Sub 133e - Order Designating Interim Service Areas and Requesting Comments (10-03-97) 103

P-100, Sub 133f - Final Order Regarding Lifeline and Link-Up (12-23-97) 105

P-100, Sub 137 - Order Approving Modified Geographic Split Option to Provide Area Code Relief (08-20-97)(Commissioner William R. Pittman concurs. Commissioner Charles H. Hughes dissents.) 107

P-100, Sub 137 - Order Denying Triad Motion for Reconsideration (10-15-97) 130

P-100, Sub 137 - Order Ruling on Motions for Reconsideration (10-29-97) 132

GENERAL ORDERS - WATER AND SEWER

W-100, Sub 5 - Order Amending Rules R7-37 and R10-24 and Associated Sample Bond Forms (11-07-97) 137

W-100, Sub 17 - Order Revising Application Forms and Rule R1-5(G) (04-08-97) 137

W-100, Sub 30 - Order Adopting Final Rules (01-30-97) 139

ELECTRICITY

ELECTRICITY - CERTIFICATES

E-2, Sub 700 - Carolina Power & Light Company - Order Granting Certificate of Public Convenience and Necessity (08-01-97) 144

E-2, Sub 713 - Carolina Power & Light Company - Order Issuing Certificate of Environmental Compatibility and Public Convenience and Necessity and Waiving Public Notice and Hearing (07-31-97) 151

ORDERS AND DECISIONS - PRINTED

ELECTRICITY - COMPLAINTS

E-2, Sub 699 - Carolina Power & Light Company - Further Order on Petition for Investigation and Complaint (02-06-97)(Commissioner Pittman did not participate.)........ 154

ELECTRICITY - RATES

E-2, Sub 712 - Carolina Power & Light Company - Order Approving Net Fuel Charge Decrease (09-08-97) 156

E-7, Sub 598 - Duke Power Company - Order Approving Fuel Charge Adjustment (06-17-97) 164

E-7, Sub 598 - Duke Power Company - Errata Order (06-24-97) 175

E-22, Sub 373 - North Carolina Power - Order Approving Fuel Charge Adjustment (12-29-97) 176

ELECTRICITY - SECURITIES

E-7, Sub 596 - Duke Power Company - Order Approving Merger and Issuance of Securities (04-22-97) 189

GAS

GAS - CERTIFICATES

G-38, Sub 1 - Frontier Utilities of North Carolina, Inc. - Order Awarding Certificate and Approving Rates for Warren County (03-27-97)(Commissioner Cobb concurs.)........ 206

G-39; G-37, Sub 1; G-5, Sub 327; G-9, Sub 351 - Cardinal Extension Company, LLC; Cardinal Pipeline Company, LLC; Public Service Company of North Carolina, Inc. and Piedmont Natural Gas Company, Inc. - Order Granting Certificate and Approving Rates, Terms and Conditions, Merger and Transfer and Abandonment of Gas Service (11-06-97) (Commissioners Hughes and Cobb did not participate in this decision.) 218

GAS - RATES

G-3, Sub 202 - North Carolina Gas Service, a Division of NUI Corporation - Order on Annual Review of Gas Costs (10-14-97) 238

G-5, Sub 377 - Public Service Company of North Carolina, Inc. - Order on Annual Review of Gas Costs (10-09-97) 244

G-9, Sub 393 - Piedmont Natural Gas Company, Inc. - Order on Annual Review of Gas Costs (12-11-97) 251

G-21, Sub 355 - North Carolina Natural Gas Corporation - Order on Annual Review of Gas Costs (06-13-97) 259

GAS - MISCELLANEOUS

G-5, Sub 372 - Public Service Company of North Carolina, Inc. - Order Approving Expansion Project for Funding from Expansion Fund (04-22-97) 267

G-21, Sub 347 - North Carolina Natural Gas Corporation - Order Approving Stipulation on E&D Activities (02-07-97) (Commissioner Judy Hunt concurs. Commissioner Pittman did not participate in this decision.) 272

TELEPHONE

TELEPHONE - INTERCONNECTION AGREEMENTS

P-140, Sub 50 - AT&T Communications of the Southern States, Inc. - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (04-11-97) 277

P-140, Sub 50 - AT&T Communications of the Southern States, Inc. - Order Approving BellSouth/AT&T Interconnection Agreement (05-12-97) 311

P-140, Sub 51 - AT&T Communications of the Southern States, Inc. - Recommended Arbitration Order (02-04-97) 312

P-140, Sub 51 - AT&T Communications of the Southern States, Inc. - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-03-97) 372

P-141, Sub 29 - MCI Telecommunications Corporation - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (04-11-97) 451

P-141, Sub 29 - MCI Telecommunications Corporation - Order Approving Interconnection Agreement (05-12-97) 492

P-141, Sub 30 - MCI Telecommunications Corporation - Recommended Arbitration Order (02-04-97) 494

P-141, Sub 30 - MCI Telecommunications Corporation - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-03-97) 554

P-141, Sub 31 - MCI Telecommunications Corporation - Recommended Arbitration Order (05-01-97) 613

P-141, Sub 31 - MCI Telecommunications Corporation - Order Ruling on Objections and Composite Agreement (07-01-97) 631

P-294, Sub 8 - Sprint Communications Company, L.P. - Recommended Arbitration Order (04-07-97) 635

P-294, Sub 8 - Sprint Communications Company, L.P. - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-02-97) 647

P-294, Sub 9 - Sprint Communications Company, L.P. - Recommended Arbitration Order (04-07-97) 657

P-294, Sub 9 - Sprint Communications Company, L.P. - Order Ruling on Objections, Comments, Unresolved Issues, and Composite Agreement (07-02-97) 687

P-141, Sub 30; P-141, Sub 31; P-140, Sub 51; P-294, Sub 8; P-294, Sub 9 - MCI Telecommunications Corporation; AT&T Communications of the Southern States, Inc.; and Sprint Communications Company, L.P. - Order Deferring Rulings (09-16-97). 700

TELEPHONE - RATES

P-16, Sub 181 - Concord Telephone Company - Order Authorizing Price Regulation (05-30-97) (Commissioners Laurence A. Cobb and Charles H. Hughes did not participate in this decision.) 703

P-55, Sub 1013; P-7, Sub 825; P-10, Sub 479; P-19, Sub 277 - BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company and GTE South Incorporated - Order Regarding Financial Reports and Claims of Confidentiality (04-15-97) 726

WATER AND SEWER

WATER AND SEWER - EMERGENCY OPERATORS

W-796, Sub 12 - Harrco Utility Corporation - Order Appointing Emergency Operator and Approving Rates (01-31-97) 729

W-796, Sub 13 - Harrco Utility Corporation - Recommended Order Denying Request for Assessment (06-26-97) 738

W-848, Sub 16 - North State Utilities, Inc. - Order Appointing New Emergency Operator and Approving Rates (01-31-97)(Monticello and Saddleridge Subdivisions). 749

ORDERS AND DECISIONS - PRINTED

W-848, Sub 16 - North State Utilities, Inc. - Order Appointing New Emergency Operator and Approving Rates (01-31-97)(Manchester, Banbury Woods, Woods of Ashbury, and Hollybrook Subdivisions) 757

W-957, Sub 1 - Intech Utilities, Inc. - Order Appointing New Emergency Operator and Approving Rates (01-31-97) 766

WATER AND SEWER - RATES

W-778, Sub 31 - CWS Systems, Inc. - Order Granting Partial Rate Increase (11-26-97) 775

INDEX OF
ORDERS AND DECISIONS LISTED

GENERAL ORDERS

GENERAL ORDERS - GENERAL

M-100, Sub 28; M-100, Sub 61 - Order Allowing Waiver of Rule (09-04-97)

M-100, Subs 28 and 61 - Order Allowing Partial Waiver of Commission Rule (09-05-97)

GENERAL ORDERS - ELECTRICITY

E-100, Sub 37 - Order Granting Request of North Carolina Alternative Energy Corporation for Name Change to North Carolina Advanced Energy Corporation (05-08-97)

E-100, Sub 75A - Order Approving Duke Power Company's Special Needs Energy Products Loan Pilot Program (04-01-97)

E-100, Sub 75A - Order Granting Approval of Duke Power Company's Modifications to Its Existing Residential Housing Program (08-12-97)

E-100, Sub 75A - Order Granting Approval of Duke Power Company's Neighborhood Revitalization Energy Products Loan Pilot Project (08-12-97)

E-100, Sub 75C - Order Approving North Carolina Power's Consumer Financing Program Effective January 1, 1997 (01-22-97)

E-100, Sub 79 - Order on Motion of Consolidated Hydro to Compel Duke to Comply with December 13, 1996, Order (06-19-97)

E-100, Sub 79 - Order Denying Duke Power Company's Motion for Reconsideration (08-19-97)

SP-100, Sub 1 - Order Allowing Expansion of Landfill Gas Capacity at the Raleigh Landfill (06-18-97)

SP-100, Sub 12 - Order on Request of Asheville Landfill Gas, LLC for Declaratory Ruling (04-08-97)

SP-100, Sub 13 - Order on Request of Pitt Landfill Gas, LLC for Declaratory Ruling for a Facility Located in Greenville, North Carolina (03-19-97)

SP-100, Sub 14 - Order Accepting Notification of Construction of a Diesel Fired Self-Generation Facility in Rose Hill, North Carolina and Granting Exemption (06-19-97)

ORDERS AND DECISIONS LISTED

GENERAL ORDERS - GAS

G-100, Sub 73 - Order Allowing Motion to Suspend Proceeding in the Matter of Petition of the Town of Franklin, NC, the City of Toccoa, GA, and the Municipal Gas Authority of Georgia for a Declaratory Order (10-14-97)

GENERAL ORDERS-TELEPHONE

P-100, Sub 72 - Order Authorizing Certified Interexchange Carriers to Offer 1+ and 0+ IntraLATA Service to Customers of Carolina Telephone and Central Telephone (07-30-97)

P-100, Sub 84a - Order Initiating Rulemaking in the Matter of Amendments to Regulations Applicable to Payphone Service and Requesting Comments (04-11-97) Errata Order (06-03-97)

P-100, Sub 84a - Order Denying GTE South Incorporated's Motion for Reconsideration in Its Entirety (11-04-97)

P-100, Sub 84b, P-55, Sub 1040 - Order Dismissing Petitions of North Carolina Payphone Association and of MCI and Directing Filings (05-15-97)

P-100, Sub 133 - Order on Negotiated Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. (07-30-97) Order on Negotiated Interconnection Agreement between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc.(10-15-97)

P-100, Sub 133 - Order Requiring Reports (09-18-97)

P-100, Sub 133 - Order on Negotiated Interconnection Agreement Amendment Between BellSouth Telecommunications, Inc. and Time Warner Connect (11-20-97) Order on Amendment to Negotiated Interconnection Agreement (12-23-97)

P-100, Sub 133b - Order Electing to Submit Forward-Looking Economic Cost Study to the FCC and Setting Hearing (08-12-97) Order of Clarification (08-22-97)

P-100, Sub 133b - Order Revising Forward-Looking Economic Cost Study Time Table (08-29-97)

P-100, Sub 133 - Order Prescribing the Specific Issues to be Addressed in this Proceeding Concerning Forward-Looking Economic Cost Studies (10-03-97)

P-100, Sub 133c - Order Outlining Procedure in the Matter of Designation of Carriers Eligible for Universal Service Support (08-12-97) Errata Order (09-03-97)

P-100, Sub 133f - Order Requiring Expanded Lifeline and Link-Up Services (11-05-97) Errata Order (11-10-97)

ELECTRICITY

ELECTRICITY - APPLICATION - AMENDING, DISMISSING OR DENYING

Central NUG Project, Limited Partnership - Recommended Order Denying Certificate at This Time But Holding Docket Open
SP-125 (07-10-97)

McCain NUG Project, Limited Partnership - Recommended Order Denying Certificate at This Time But Holding Docket Open
SP-126 (07-10-97)

United Supply of America, Inc. - Recommended Order Denying Certificate at This Time But Holding Docket Open
SP-82, Sub 11 (07-10-97)

ELECTRICITY - CERTIFICATES

Edenton JUG Project, Limited Partnership - Order Issuing Certificate of Public Convenience and Necessity for a Natural Gas Fueled Cogeneration Facility to be Located Adjacent to the United Piece Dye Works, Incorporated Processing Plant on State Rt. 87 in Edenton, North Carolina
SP-124 (03-12-97)

Hydro Matrix Partnership, Ltd. - Order Issuing Certificate of Public Convenience and Necessity to Construct a Hydroelectric Fired Qualifying Small Power Facility near Moncure, NC
SP-127 (09-27-97)

North Carolina Eastern Municipal Power Agency - Order Granting Certificate to Install Diesel Generator Facilities and Requiring the Filing of an Annual Report
E-48, Sub 3 (01-15-97)

North Carolina Municipal Power Agency One - Order Granting Certificate to Install Diesel Generator Facilities and Requiring the Filing of an Annual Report
E-43, Sub 1 (01-15-97)

Shipyard Power and Light Company - Order Canceling Certificate
E-47, Sub 2 (12-03-97)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct a Natural Gas Fired Qualifying Cogeneration Facility Adjacent to Nash Johnson & Sons' Farms, Inc. North of Rose Hill, North Carolina
SP-82, Sub 6 (04-23-97)

United Supply of America, Inc. - Order Issuing Certificate of Public Convenience and Necessity to Construct a Natural Gas Fired Qualifying Cogeneration Facility Adjacent to Valley Protein, Inc. North of Rose Hill, North Carolina
SP-82, Sub 7 (04-23-97)

ELECTRICITY - COMPLAINTS

Blue Ridge Electric Membership Corporation - Order Keeping Docket Open for Six Months in the Complaint of Save Our Summits, The Blue Ridge Environmental Defense League, Inc.
EC-23, Sub 32 (03-13-97) Order Closing Docket (10-03-97)

Carolina Power & Light Company - Order Withdrawing Complaint of Mr. Ali Behnia and Closing Docket
E-2, Sub 701 (01-31-97)

Carolina Power & Light Company - Order Serving Notice of Dismissal in Complaint of Sherlie Ann Dowe and Closing Docket
E-2, Sub 705 (03-13-97)

Carolina Power & Light Company - Order Accepting Settlement Letter and Closing Docket in Complaint of Robert L. Prout
E-2, Sub 707 (10-03-97)

Carolina Power & Light Company - Order Closing Docket in Complaint of Clarence N. And Edna T. Stancil
E-2, Sub 708 (11-18-97)

Carolina Power & Light Company - Order Closing Docket in Complaint of Ahmed Elsayed
E-2, Sub 709 (07-16-97)

Carolina Power & Light Company - Order Closing Docket in Complaint of Frank Twohig
E-2, Sub 714 (10-14-97)

Duke Power Company; Haywood Electric Membership Corporation; Nantahala Power & Light Company - Order Closing Dockets in Complaints of Mrs. Delora Dennis, Mr. Thomas W. McGohey and Mrs. Carmeletta Moses
E-7, Sub 474; EC-10, Sub 37; E-13, Sub 151 (03-26-97)

Duke Power Company - Order Closing Docket in Complaint of Kevin A. Long
E-7, Sub 590 (04-10-97)

Duke Power Company - Order Closing Docket in Complaint of Bill F. Golden
E-7, Sub 591 (05-29-97)

Duke Power Company - Order Closing Docket in Complaint of R. Stephen Pace, dba Pace/Dowd Properties, Ltd.
E-7, Sub 592 (07-09-97)

Duke Power Company - Order Dismissing Complaint of Mrs. Cindy Wood and Closing Docket
E-7, Sub 602 (05-13-97)

Duke Power Company - Order Closing Docket in Complaint of Ms. Lisa McFalls
E-7, Sub 605 (10-16-97)

Duke Power Company - Recommended Order Denying Complaint of Brian Carr
E-7, Sub 606 (11-20-97)

Duke Power Company - Order Dismissing Complaint of Wayne L. Shannon, President, Real Properties, Inc. And Closing Docket
E-7, Sub 607 (09-09-97)

ELECTRICITY - APPROVING PURCHASE POWER ADJUSTMENT

COMPANY	CENTS PER kWH	DOCKET NO.	DATE
Nantahala Power & Light Company	.0282	E-13, Sub 177	08-19-97
Western Carolina University	.01066	E-35, Sub 22	04-23-97

ELECTRICITY - RATES

Carolina Power & Light Company - Order Approving Revised Economic Development Rider ED-3
E-2, Sub 681 (12-10-97)

Carolina Power & Light Company - Order Approving Self-Generation Deferral Rate Schedule LGS-TOU-GE-86 for General Electric Company
E-2, Sub 702 (03-17-97)

Carolina Power & Light Company - Order Approving Revised Area Lighting Service Schedule ALS-86A, Street Lighting Service Schedule SLS-86A, and Street Lighting Service Schedule SLR-86A
E-2, Sub 703 (01-15-97)

Carolina Power & Light Company - Order Approving Large General Service (Experimental-Real Time Pricing) Schedule LGS-RTP-1B
E-2, Sub 704 (02-18-97)

Carolina Power & Light Company - Order Approving Unmetered Service Rider US-1
E-2, Sub 710 (05-14-97)

Duke Power Company - Order Approving Modifications to Schedules RT; RTE, GT, IT and OPT
E-7, Sub 600 (04-15-97)

Duke Power Company - Order Approving Revised Schedule HP, Hourly Pricing for Incremental Load
E-7, Sub 526 (12-10-97)

Nantahala Power & Light Company - Order Approving Revised Tariff
E-13, Sub 171 (07-30-97)

Nantahala Power and Light Company - Order Approving Schedule "S" - Unmetered Signs
E-13, Sub 176 (06-24-97)

New River Light and Power Company - Recommended Order Granting Increase in Rates
E-34, Sub 32 (05-01-97)

North Carolina Power - Order Approving Residential Time-of Use Comparative Billing Program Closure
E-22, Sub 371 (07-15-97)

North Carolina Power - Order Approving Closure and Withdrawal of Five Schedules and Riders
E-22, Sub 372 (07-15-97)

ELECTRICITY - SALES AND TRANSFER

Coxlake Carbonton Associates, LLC - Order Transferring Certificate of Public Convenience and Necessity from Cox Lake-Carbonton Associates, L.P.
SP-1, Sub 2 (05-28-97)

ELECTRICITY - SECURITIES

Carolina Power & Light Company - Order Granting Authority to Issue Common Stock in Connection with the Merger of Knowledge Builders, Inc. Into CaroCapital, Inc.
E-2, Sub 711 (05-28-97)

Duke Power Company - Order Accepting Guaranty Agreements for Filing
E-7, Sub 603 (08-05-97)

Duke Power Company - Order Granting Authority to Issue Securities
E-7, Sub 608 (09-03-97)

Duke Energy Corporation - Order Granting Authority to Guarantee Certain Obligations
E-7, Sub 613 (11-26-97)

Nantahala Power & Light Company - Order Granting Authority to Issue Note to Purchase Right-of -Way
E-13, Sub 175 (04-22-97)

ELECTRICITY - MISCELLANEOUS

Carolina Power & Light Company - Order Approving Land Exchange Involving Harris Nuclear Plant Property
E-2, Sub 537; E-2, Sub 333 (01-15-97)

Carolina Power & Light Company - Order Modifying August 13, 1992 Order to Permit Certain Land Exchanges Without Prior Commission Approval
E-2, Sub 537; E-2, Sub 333 (03-19-97) Order Further Modifying the August 13, 1992, and March 19, 1997 Orders to Permit Certain Land Conveyances Without Prior Commission Approval (10-01-97)

Duke Power Company - Order Approving Update of the Standard for Testing of Polyphase Self-Contained Meters
E-7, Sub 554 (12-29-97)

North Carolina Electric Membership Corporation - Order Approving Incentive Programs
EC-67, Sub 10 (02-18-97)

Panda-Rosemary L.P., dba Panda-Rosemary Limited Partnership - Order on Notice of Change in Information and Request for Declaratory Ruling
SP-73; SP-100, Sub 15 (10-21-97)

GAS

GAS - APPLICATION - AMENDING, DISMISSING OR DENYING

North Carolina Natural Gas Corporation - Order Allowing Motion for Leave to Withdraw Application to Amend Rider B, and Rate Schedule Nos. 3A through 11 and RE-2, and for Partial Waiver of Rule R1-17(k)
G-21, Sub 366 (11-18-97)

GAS - CERTIFICATES

North Carolina Gas Service; Pennsylvania & Southern Gas Company, dba and Piedmont Natural Gas Company, Inc. - Order Denying Motion for Reconsideration of North Carolina Gas Service
G-3, Sub 191; G-9, Sub 372 (01-09-97)(Chairman R. Hunt and Commissioner J. Hunt dissent. Commissioner Cobb did not participate in this decision.)

ORDERS AND DECISIONS LISTED

GAS - COMPLAINTS

North Carolina Gas Service Company - Order Accepting Stipulation and Settlement and Closing Docket in Complaint of Faye Holt
G-3, Sub 199 (06-06-97)

North Carolina Natural Gas Corporation - Order Closing Docket in Complaint of Mary D. Johnson
G-21, Sub 361 (05-13-97)

Piedmont Natural Gas Company - Order Closing Docket in Complaint of Jane Roberts, dba Baskin Robbins
G-9, Sub 389 (05-29-97)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of Mrs. Mary Riggs
G-5, Sub 370 (02-21-97)

Public Service Company of North Carolina, Inc. - Order Closing Docket in Complaint of Frank Schmitt
G-5, Sub 378 (09-11-97)

GAS - EXPANSION

North Carolina Natural Gas Corporation - Order Granting Motion to Transfer Money into the Expansion Fund Escrow Account
G-21, Sub 289 (04-29-97)

Public Service Company of North Carolina, Inc. - Order Approving Request to Transfer Supplier Refunds into Escrow Account for Use in Expansion Fund Projects
G-5, Sub 279 (02-18-97)

GAS - RATES

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective April 1, 1997
G-21, Sub 359 (04-01-97)

North Carolina Natural Gas Corporation - Order Allowing Rate Increases Effective September 1, 1997
G-21, Sub 362 (08-27-97)

North Carolina Natural Gas Corporation - Order Allowing Rate Changes Effective November 1, 1997
G-21, Sub 365 (11-05-97)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Decreases Effective March 1, 1997
G-9, Sub 386 (02-18-97)

Piedmont Natural Gas Company, Inc. - Order Allowing Rates Changes Effective April 1, 1997
G-9, Sub 388 (04-01-97)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increases Effective August 1, 1997
G-9, Sub 392 (07-02-97)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increases Effective September 1, 1997
G-9, Sub 394 (08-27-97)

Piedmont Natural Gas Company, Inc. - Order Allowing Rate Increases Effective October 1, 1997
G-9, Sub 397 (10-01-97)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective March 1, 1997
G-5, Sub 373 (03-04-97)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective December 1, 1997
G-5, Sub 381 (11-25-97)

Public Service Company of North Carolina, Inc. - Order Allowing Rate Changes Effective January 1, 1998
G-5, Sub 383 (12-29-97)

GAS - SECURITIES

North Carolina Gas Service - Order Approving Acquisition of a Minority Interest in T.I.C. Enterprises, L.L.C.
G-3, Sub 201 (05-20-97)

North Carolina Natural Gas Corporation - Order Granting Authority to Issue Securities (Common Stock) Pursuant to North Carolina Natural Gas Corporation Long Term Incentive Plan
G-21, Sub 356 (04-22-97)

North Carolina Natural Gas Corporation - Order Granting Authority to Issue Securities (Common Stock) Pursuant to North Carolina Natural Gas Corporation Directors' Deferred Compensation Stock Plan
G-21, Sub 357 (04-22-97)

North Carolina Natural Gas Corporation - Order Granting Authority to Issue Securities (Common Stock) Pursuant to North Carolina Natural Gas Corporation Directors' Retirement Compensation Stock Plan
G-21, Sub 358 (04-22-97)

North Carolina Natural Gas Corporation - Order Approving Application for Authorization to (i) Reserve for Issuance and Sale Under a Proposed Shareholder Rights Plan, Up to 5,531,958 Shares of Common Stock, and (ii) Issue and Sell Said Common Stock in Accordance With Said Proposed Shareholder Rights Plan and Granting Request for Partial Waiver of Rule R1-16
G-21, Sub 364 (10-06-97)

Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue and Sell Debt Securities
G-9, Sub 390 (06-11-97)

Piedmont Natural Gas Company, Inc. - Order Granting Authority to Issue Securities
G-9, Sub 396 (10-06-97)

Public Service Company of North Carolina, Inc. - Order Granting Authority to Issue and Sell Shares of Common Stock Pursuant to its 1997 Nonqualified Stock Option Plan
G-5, Sub 374 (03-25-97)

Public Service Company of North Carolina, Inc. - Order Approving Application for Authorization to (i) Reserve for Issuance and Sale Under a Proposed Shareholder Rights Plan, Up to 1,500,000 Shares of Preferred Stock, and (ii) Issue and Sell Said Preferred Stock in Accordance with Said Proposed Shareholder Rights Plan and Granting Request for Partial Waiver of Rule R1-16
G-5, Sub 376 (04-08-97)

GAS - TARIFFS

North Carolina Natural Gas Corporation - Order Amending Service Regulations
G-21, Sub 334 (06-18-97)

Public Service Company of North Carolina, Inc. - Order Approving Revisions to Tariff and Rules and Regulations
G-5, Sub 356; G-5, Sub 363 (03-19-96)

Public Service Company of North Carolina, Inc. - Order Approving Rider D and Rate Schedules 145 and 150
G-5, Sub 379 (11-06-97)

GAS - MISCELLANEOUS

Cardinal Extension Company, LLC; Cardinal Pipeline Company, LLC; Public Service Company of North Carolina, Inc.; Piedmont Natural Gas Company, Inc. - Order Regarding Resale of Capacity
G-39; G-37, Sub 1; G-5, Sub 327; G-9, Sub 351 (12-22-97)

Piedmont Natural Gas Company, Inc. - Order Approving Incentive Programs
G-9, Sub 377 (01-31-97) Order Approving Revisions to Programs (03-05-97) Order Approving Programs (11/20/97)

Piedmont Natural Gas Company, Inc. - Order Approving Deferred Accounting Treatment Related to the Year 2000 Conversion Compliance Project
G-9, Sub 391 (09-15-97)

Piedmont Natural Gas Company, Inc. - Order Approving Contract
G-9, Sub 395 (10-24-97)

Public Service Company of North Carolina, Inc. - Order Approving Deferred Accounting Treatment Related to Year 2000 Conversion Costs
G-5, Sub 369 (04-29-97) Order on Reconsideration (06-12-97)

MOTOR BUSES

MOTOR BUSES - AUTHORITY GRANTED

COMPANY	CHARTER OPERATIONS	DOCKET NO.	DATE
Adventure Seekers Charter Tours			
Keith Ivey, dba	Statewide	B-655	01-03-97
Blue Sky Charter			
Bryan Alan Blue, dba	Statewide	B-664	05-07-97
Dana's Charter Service			
Richard Crabtree, dba	Statewide (Temp)	B-662	04-02-97
Express Tours			
Bruce E. Woodard, dba	Statewide (Temp)	B-660	03-19-97
Hidden Valley Motel			
James Harrison, III, dba	Statewide	B-661	04-25-97
Highlands Transportation Company, LLC	Statewide	B-665	05-30-97
Hollingsworth Bus Company			
Marion Hollingsworth, dba	Statewide (Temp)	B-668	07-02-97
J. & J. Tours, Inc.	Statewide (Temp)	B-676	11-17-97
J & M Charter Bus Company			
Robert Gibbs, dba	Statewide	B-671	12-08-97
Land Charter & Tour Service; Larry Eugene			
Sparks & Aaron Charles Hudgins, dba	Statewide	B-659	01-30-97
MacDrivers Expeditions			
Halbert McNeill, Jr., dba	Statewide(Temp)	B-678	12-31-97
McCoy Coach Co.			
Jerry E. McCoy, dba	Statewide	B-648	08-26-97
Party Time Tours, Inc.	Statewide (Temp)	B-672	10-21-97
R. J. Royster Charter Service			
R. J. Royster, dba	Statewide (Temp)	B-677	11-17-97
Tour South, Inc.	Statewide	B-656	01-08-97
UBAM Travel & Tours, Inc.	Statewide	B-559, Sub 4	06-18-97
Visions Tours and Charter			
Alton Ford, dba	Statewide	B-669	08-08-97

ORDERS AND DECISIONS LISTED

MOTOR BUSES-BROKER'S LICENSE

Carolina Culture Tours; Jan Ellen Schochet, dba - Order Granting Broker's License
B-667 (08-06-97)

Carousel of Raleigh; Sally D. Cooke and Grayson W. ReVille, dba - Order Affirming Previous Commission Order Cancelling Broker's License
B-381, Sub 1 (12-09-97)

Fantasy Tours; Jessie Yates, dba - Order Cancelling Broker's License
B-624, Sub 1 (11-05-97)

Fun Tours; Tara House, Inc., dba - Order Granting Broker's License
B-675 (10-31-97)

Northeastern Travel Service; Velvet Lynn Jennings & Lois L. Jennings, dba - Order Affirming Previous Commission Order Cancelling Broker's License
B-399, Sub 3 (12-09-97)

Sheryl's Tours, Inc. - Order Affirming Previous Commission Order Cancelling Broker's License
B-426, Sub 1 (12-09-97)

Show Bound, Inc. - Order Cancelling Broker's License
B-635, Sub 1 (12-08-97)

USA Luxury Tours, Inc. - Order Granting Broker's License
B-673 (11-14-97)

MOTOR BUSES - CERTIFICATES CANCELLED

A & H Tours; Harold Dinwiddie, dba - Order Cancelling Temporary Authority
B-653, Sub 1 (11-13-97)

Avery Tours, Incorporated - Recommended Order Cancelling Operating Authority
B-650, Sub 1 (06-26-97)

Brisco C., Inc. - Order Cancelling Certificate No. B-642
B-642, Sub 1 (03-24-97)

Dana's Charter Service; Richard Crabtree, dba - Order Affirming Previous Commission Order Cancelling Operating Authority
B-662, Sub 1 (12-09-97)

Eagle Parlor Tours of Va., Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-493, Sub 4 (10-15-97)

ORDERS AND DECISIONS LISTED

Executive Excursions, Inc. - Order Cancelling Certificate No. B-526
B-526, Sub 1 (01-17-97)

Gallop Bus Lines, Ltd. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-496, Sub 3 (10-15-97)

H & H Charter; Harvis Junior Mathis and Hattie B. Mathis, dba - Order Cancelling Certificate No. B-646
B-646, Sub 1 (02-14-97)

Kings's Charter; Archie Cree King, dba - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. B-494
B-494, Sub 1 (09-22-97)

Mitchell's Bus Lines; William Henry Mitchell, dba - Order Cancelling Certificate No. B-625
B-625, Sub 2 (12-03-97)

Nooney Bus Lines, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-41, Sub 8 (10-15-97)

Ollison Coach Lines, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-133, Sub 6 (10-15-97)

Quality Tours; Good Time Enterprises, Inc., dba - Order Affirming Previous Commission Order Cancelling Operating Authority
B-606, Sub 2 (10-15-97)

Safety Transit Tours of Eden, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-377, Sub 6 (10-15-97)

Scenic Tours, Inc. - Recommended Order Cancelling Operating Authority
B-428, Sub 4 (12-31-97)

Shuttle's Specialty Vehicle Service, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-629, Sub 1 (10-15-97)

Specialty Tours, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-654, Sub 1 (10-15-97)

UBAM Travel & Tours, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
B-559, Sub 5 (12-09-97)

ORDERS AND DECISIONS LISTED

MOTOR BUSES - RESCINDING CANCELLATIONS

Harris Executive Travel; Winfred Dale Harris, dba - Order Rescinding Order of November 19, 1996, Cancelling Authority
B-610, Sub 1 (03-10-97)

MOTOR BUSES - NAME CHANGES

B. K. Allen & Associates, Inc. - Order Approving Name Change from Discount Travel Services, Inc.
B-602, Sub 2 (05-05-97)

Runion Tours & Charters; TLC Motorcoach, Inc., dba - Order Approving Name Change from T.L.C. Motorcoach, Inc.
B-641, Sub 1 (03-24-97)

MOTOR BUSES - SALES/TRANSFERS

Cape Fear Coach Lines, Inc. - Order Approving Transfer of Control of Certificate No. B-591 by Stock Transfer from John M. Gurley to Reginald M. Thompson
B-591, Sub 1 (11-13-97)

Go Travels; Kelly Oxendine Fields, dba - Order Approving Transfer of Certificate No. B-481 from Travel Net, Inc. Dba Go Travels
B-481, Sub 3 (08-06-97)

MOTOR TRUCKS

MOTOR TRUCKS - APPLICATION AMENDED, DENIED, DISMISSED

Ace Moving Systems; Harry Tilden, dba - Recommended Order Dismissing Application for Authority to Transport Group 18-A, Household Goods, and Group 18-B, Household Goods Retail Delivery, Statewide
T-4097 (04-30-97)

Rhino Express Moving Co.; Winston F. Willams and Kenneth Rabideau dba - Order Allowing Withdrawal of Application
T-4091 (06-09-97)

MOTOR TRUCKS - AUTHORITY GRANTED

Affordable Movers; Charles S. Miller, dba - Recommended Order Granting Application for Authority to Transport Group 18-A, Household Goods, Statewide

T-4096 (05-15-97) Final Order Overruling Exceptions and Affirming Recommended Order (07-01-97)(Commissioners Ralph A. Hunt and Judy Hunt did not participate.)

Cashion-Lee Moving & Storage, Inc. - Order Granting Temporary Authority to Conduct Operations Under Certificate No. C-645 Held by Cashion Moving and Storage, Inc.
T-4108 (07-16-97)

Citywide Moving Systems, Inc. - Recommended Order Granting Application in Part to Transport Group 18, 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 Matthews and Charlotte and their commercial zone
T-4104, Sub 0 (12-04-97)

Kepley Moving & Storage, Inc. - Order Granting Common Carrier Authority to Transport Group 18-B, Household Goods Retail Delivery, Statewide
T-1006, Sub 4 (04-15-97)

Nelson's Delivery Service; John B. Nelson, dba - Order Granting Authority to Transport Group 18-B, Household Goods Retail Delivery, Statewide
T-3579, Sub 1 (01-08-97)

Prestige Professional Moving & Storage; JAI MA Services, Inc., dba - Order Granting Temporary Authority to Conduct Operations under Certificate No. C-1023 Transporting Household Goods Statewide
T-4100 (04-29-97)

Russell Transfer Company; Central Moving Systems of Charlotte, LLC, dba - Order Granting Temporary Authority to Conduct Operations under Certificate No. C-330 Transporting Household Goods Statewide
T-4103 (05-21-97)

Smoky Mountain Moving Co.; Gregory Leroy Dills, dba - Order Granting Temporary Authority to Conduct Operations Under C-2219 Transport Household Goods Between Points in Macon County
T-4111 (12-16-97)

MOTOR TRUCKS - AUTHORIZED SUSPENSION

Abernethy Transfer & Storage Company, Inc. - Order Granting Authorized Suspension Under Common carrier Certificate No. C-547 until March 1, 1998
T-744, Sub 3 (03-05-97)

Blevins Motor Express, Inc. - Order Granting Authorized Suspension Under Common Carrier Certificate No. C-860 until March 1, 1998
T-1242, Sub 8 (02-28-97)

ORDERS AND DECISIONS LISTED

Central Warehouse Company of Durham, Inc. - Order Granting Authorized Suspension Under Common Carrier Certificate No. C-2209 until April 1, 1998
T-948, Sub 9 (03-21-97)

Magnum Moving & Storage, Inc. - Order Granting Authorized Suspension Under Common Carrier Certificate No. C-697 until April 1, 1998
T-4089, Sub 1 (03-21-97)

Metrolina Movers; Metrolina Moving Systems, Inc., dba - Order Granting Authorized Suspension Under Common Carrier Certificate No. C-640 until October 1, 1997
T-3835, Sub 1 (03-27-97)

Stegall, T. G., Trucking Co. - Order Granting Authorized Suspension Under Common Carrier Certificate No. C-489 until January 1, 1998.
T-813, Sub 9 (06-10-97)

MOTOR TRUCKS - CERTIFICATES CANCELLED

A-1 Moving and Storage, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
T-871, Sub 16 (10-15-97)

A & A Moving; Pitt Movers, Inc., dba - Order Affirming Previous Commission Order Cancelling Operating Authority
T-2939, Sub 3 (10-15-97)

Atlantic Pacific Van & Storage, Inc. - Recommended Order Cancelling Operating Authority Under Common Carrier Certificate C-396
T-1798, Sub 1 (08-18-97) Order Rescinding Order Cancelling Authority (08-26-97)

Beltmann Moving and Storage Company; Irving Kirsch Corporation, dba - Order Affirming Previous Commission Order Cancelling Operating Authority
T-4084, Sub 1 (10-15-97) Order Vacating Previous Orders and Reinstating Operating Authority (11-04-97)

Glen's Moving & Storage; B & K Coastal, LLC, dba - Order Affirming Previous Commission Order Cancelling Operating Authority
T-3768, Sub 4 (10-15-97) Order Vacating Previous Orders and Reinstating Operating Authority (12-01-97) Errata Order (12-03-97)

Griffin Transfer & Storage Co., Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
T-864, Sub 8 (10-15-97)

Harrison Moving and Storage, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
T-1379, Sub 5 (10-15-97)

Jiffy Moving & Storage Company; W.M. Poole Enterprises, Inc., dba - Order Affirming Previous Commission Order Cancelling Operating Authority
T-1975, Sub 5 (10-15-97)

Melton Delivery; Francis Donald Melton, dba - Order Cancelling Certificate No. C-2231
T-3824, Sub 2 (01-31-97)

Umstead Brothers, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
T-1439, Sub 4 (10-15-97)

West Brothers Transfer & Storage, Hauling & Storage Division, Inc. - Order Cancelling Certificate No. C-2233
T-2085, Sub 10 (03-18-97)

Williams Transfer & Storage, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
T-1010, Sub 5 (10-15-97)

Yarbrough Transfer Company - Order Cancelling Portion of Certificate to Transport Group 18-B, Household Goods Retail Delivery
T-734, Sub 5 (02-20-97)

MOTOR TRUCKS - NAME CHANGE/TRADE NAME

Armstrong Relocation Co., Inc.; Armstrong Transfer & Storage Co., Inc., dba - Order Approving Name Change from Armstrong Transfer & Storage Co., Inc.
T-3206, Sub 1 (02-28-97)

Betts Household Moving Service; Shirley Edward Betts, dba - Order Approving Name Change from Shirley Edward Betts
T-2316, Sub 1 (05-05-97)

DunMar Movers Charlotte; Brown-Thomas Corporation, dba - Order Approving Name Change from Brown-Thomas Corp., dba Dunmar Moving Systems
T-2330, Sub 2 (05-14-97)

Glen's Moving & Storage; B & K Coastal, LLC dba - Order Approving Name Change from J. Keith Stark, dba Glen's Moving & Storage
T-3768, Sub 3 (04-18-97)

Moving Store, Inc., The - Order Approving Name Change from Clark Transfer Company, Inc.
T-919, Sub 11 (03-12-97)

Smith Dray Line & Storage Co., Inc. - Order Approving Name Change from Smith Dray Line & Storage Co. of N.C., Inc.
T-853, Sub 6 (01-13-97)

MOTOR TRUCKS - SALES/TRANSFERS/CHANGE OF CONTROL

Advance Moving and Storage; Lynda Bunch, dba - Order Approving Sale and Transfer of Certificate No. C-2064 from Bekins Moving & Storage of the Carolinas Co.
T-4101 (05-21-97)

Cashion-Lee Moving & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-645 from Cashion Moving & Storage, Inc.
T-4108 (08-21-97)

First, Inc.; Forsyth Initiative for Residential Self Treatment, Inc., dba - Order Approving Sale and Transfer of Certificate No. C-2209 from Central Warehouse Company of Durham, Inc.
T-4102 (05-21-97)

Lentz Transfer & Storage Co. - Order Approving Transfer of Control of Certificate No. C-684 by Stock Transfer from Sam L. Sanders to LTSA Corporation
T-840, Sub 6 (11-19-97)

Lytles Transfer & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-697 from Magnum Moving & Storage, Inc.
T-4098 (04-18-97)

Paul Arpin Van Lines, Inc. - Order Approving Sale and Transfer of Certificate No. C-640 from Metrolina Moving Systems, Inc.
T-4107 (07-18-97)

Prestige Professional Moving & Storage; JAI MA Services, Inc., dba - Order Approving Sale and Transfer of Certificate No. C-1023 from Prestige Professional Moving & Storage, Inc.
T-4100 (05-21-97)

Russell Transfer Company; Central Moving Systems of Charlotte, LLC dba - Order Approving Sale and Transfer of Certificate No. C-330 from Russell Transfer Company
T-4103 (06-19-97)

MOTOR TRUCKS - MISCELLANEOUS

Landstar Poole, Inc. - Order Granting Request to Self-Insure
T-4105 (06-10-97)

ORDERS AND DECISIONS LISTED

TELEPHONE

TELEPHONE - APPLICATIONS CANCELLED, WITHDRAWN, DENIED, or DISMISSED

American Business Alliance, Inc. - Order Allowing Withdrawal of Application Subject to Conditions
P-515 (02-11-97)

Avis Rent A Car Systems, Inc. - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate Service as a Switchless Reseller
P-599 (05-12-97)

Corporate Services Telcom, Inc. - Order Allowing Withdrawal of Application to Provide Intrastate Interexchange Telecommunications Services
P-522 (06-26-97)

Global Tel*Link Corporation - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate Long Distance Service as a Swithcless Reseller
P-593 (12-03-97)

Global Telephone Corporation - Order Dismissing Application with Prejudice for Certificate to Provide Intrastate Interexchange Service as a Switchless Reseller
P-618 (05-20-97) Order Reinstating Application and Requiring Penalty (06-10-97)

HUP Communications; George H. Francis/Elias G. Francis, dba - Order Allowing Withdrawal of Public Staff Petition and Closing Docket
SC-941, Sub 1 (01-15-97)

J3 Communications, Inc. - Order Dismissing Application for Certificate to Provide Long Distance Service as a Switchless Reseller
P-606 (05-22-97)

Key Communications Management, Inc. - Order Dismissing Application for Certificate to Provide Long Distance Telecommunications Services and Closing Docket
P-467 (03-21-97)

Long Distance Direct, Inc. - Order Dismissing Application for Certificate to Provide Long Distance Telecommunications Services With Prejudice
P-575 (10-28-97)

Milliwave Limited Partnership - Order Allowing Withdrawal of Application for Certificate to Provide Local Exchange and Local Exchange Access Telecommunications Services and Closing Docket
P-578 (01-08-97)

Milliwave Limited Partnership - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate Facilities-Based Interexchange Telecommunications Services
P-578, Sub 1 (01-08-97)

ORDERS AND DECISIONS LISTED

Online Telecommunications, Inc. - Order Concerning Dismissal of Application to Provide Long Distance Telecommunications Services
P-636 (05-28-97) Order Reinstating Application (08-26-97)

Pacific Bell Communications - Order Allowing Withdrawal of Application for Certificate to Operate as a Switchless Reseller
P-628 (06-13-97)

Paramount Wireless Communications of North Carolina, L.L.C. - Order Concerning Dismissal of Application for Certificate to Provide Local Exchange and Exchange Access Services
P-592 (10-23-97)

Rapid Link USA, Inc. - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate InterLATA and IntraLATA Interexchange Telecommunications Services and Closing Docket
P-408, Sub 1 (05-12-97)

STA Telecommunications Corporation - Order Allowing Withdrawal of Application for Certificate to Provide Long Distance Service and Closing Docket
P-579 (02-10-97)

Telecard Services International, Inc. - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate Long Distance Services and Closing Docket
P-594 (03-24-97)

TelStar International, Inc. - Order Concerning Dismissal of Application to Provide Long Distance Telecommunications Services
P-637 (05-28-97) Order Reinstating Application (08-26-97)

US Xchange of North Carolina, LLC - Order Allowing Withdrawal of Applications for Local Exchange Service and Interexchange Service Without Prejudice
P-625; P-625, Sub 1 (11-05-97)

UTMOST - Order Allowing Withdrawal of Application to Provide Local Exchange Telecommunications Services and Closing Docket
P-583, Sub 1 (04-16-97)

VIP Executive Suites, Inc. - Order Allowing Withdrawal of Application and Closing Docket
STS-37 (01-03-97)

Value Call International, Inc. - Order Allowing Withdrawal of Application to Provide Intrastate Long Distance Service as a Switchless Reseller
P-600 (03-04-97)

VoiceCom Systems, Inc. - Order Concerning Dismissal of Application to Provide Long Distance Telecommunications Services
P-567 (07-08-97)

ORDERS AND DECISIONS LISTED

TELEPHONE - CERTIFICATES

360° Telephone Company of North Carolina - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-613 (12-17-97)

10297, Inc.; Long Distance Wholesale Club, Inc., dba - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long Distance Telecommunications Services as a Reseller
P-528 (04-16-97) Order Allowing Recommended Order to Become Final (04-22-97)

ALLTEL Communications, Inc. - Recommended Order Amending Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-514, Sub 1 (04-02-97)

American Long Lines, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long-Distance Telecommunications Services as a Reseller
P-602 (02-11-97)

BellSouth Long Distance, Inc. - Recommended Order Granting Certificate to Provide Long-Distance Telecommunications Services as a Switchless Reseller
P-654, Sub 0 (11-26-97)

Buehner-Fry, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide IntraLATA and InterLATA Long-Distance Telecommunications Service as a Reseller
P-577 (12-03-97)

CTC Exchange Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-621 (06-03-97)

Carolina Telephone and Telegraph Company - Order Granting Application to Amend Certificate to Provide Intrastate InterLATA Non-Switched Data and Voice Telecommunications Services
P-7, Sub 833 (05-01-97)

CaroNet, LLC - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-462, Sub 1 (03-25-97)

CaroNet, LLC - Recommended Order Granting Certificate to Provide Facilities-Based Interexchange Telecommunications Services on an Intralata and Interlata Basis
P-462, Sub 2 (08-26-97)

ORDERS AND DECISIONS LISTED

Central Telephone Company - Order Granting Application to Amend Certificate to Provide Intrastate InterLATA Non-Switched Data and Voice Telecommunications Services
P-10, Sub 486 (05-01-97)

DeltaCom, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Services as a Competing Local Provider
P-500, Sub 1 (08-07-97)

DeltaCom Long Distance Services; DeltaCom, Inc., dba - Order Granting Application to Amend Certificate to Provide Intrastate Long Distance Service as a Switched Reseller
P-500, Sub 2 (05-01-97)

DukeNet Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-426, Sub 3 (03-27-97)

E-Z Tel, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-656 (12-09-97)

FiberSouth, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate IntraLATA and InterLATA Long-Distance Telecommunications Services
P-428, Sub 2 (05-07-97)

GE Capital Communications Services Corporation - Recommended Order Amending Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-348, Sub 4 (06-23-97)

GTE Long Distance; GTE Card Services Incorporated, dba - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-446, Sub 1 (04-16-97)

ICG Telecom Group, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-582 (03-26-97)

Intetech, L.L.C. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-559, Sub 1 (11-26-97)

ORDERS AND DECISIONS LISTED

KMC Telecom, Inc. - Recommended Order Granting Certificates of Public Convenience and Necessity to Provide Intrastate, Interexchange Long-Distance Telecommunications Services as a Reseller and to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-597; P-597, Sub 1 (04-08-97)

LCI International Telecom Corp. - Recommended Order Amending Certificate of Public Convenience and Necessity to Authorize Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-386, Sub 10 (02-25-97)

MFS Intelenet of North Carolina, Inc. - Recommended Order Amending Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-396, Sub 5 (07-08-97)

MetroLink Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange Long-Distance Telecommunications Services as a Reseller
P-535 (02-06-97)

NET-tel Corporation - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long-Distance Telecommunications Services as a Reseller
P-627 (11-05-97) Errata Order (11-07-97)

Network One; CRG International, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-505, Sub 1 (07-22-97) Order Allowing Recommended Order to Become Final (07-29-97)

NEXTLINK North Carolina, L.L.C. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-619 (06-03-97)

SmarTalk TeleServices, Inc. - Recommended Order Granting Certificate to Provide Long-Distance Telecommunications Services
P-487, Sub 1 (10-22-97)

Sprint Communications Company, L.P. - Recommended Order Amending Certificate of Public Convenience and Necessity to Authorize the Provision of Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-294, Sub 7 (03-07-97)

TCG of the Carolinas, Inc. - Recommended Order Granting Certificates of Public Convenience and Necessity to Provide Intrastate, Interexchange Long-Distance Telecommunications Services on a

Facilities Basis and to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-646; P-646, Sub 1 (09-16-97)

T-NETIX, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Automated Collect-Only Interexchange Long Distance Telecommunications Services to Inmates of Correctional Facilities
P-605 (06-12-97)

T-NETIX, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Automated Collect-Only Local Exchange Telecommunications Services to Inmates of Correctional Facilities
P-605, Sub 1 (08-29-97)

Telephone Company of Central Florida, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-649 (12-15-97)

Teltrust Communications Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide InterLATA and IntraLATA Long Distance Telecommunications Services as a Reseller
P-616 (04-21-97) Order Allowing Recommended Order to Become Final (04-30-97)

The Phone Co.; Tel-Save, Inc., dba - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-303, Sub 4 (09-25-97)

Total World Telecom; Total National Telecommunications, Inc., dba - Recommended Order Granting Probationary Certificate of Public Convenience and Necessity to Provide Intrastate Long-Distance Telecommunications Services as a Reseller
P-491 (02-12-97)

U.S. Long Distance, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-360, Sub 4 (08-27-97) Order Allowing Recommended Order to Become Final (09-09-97)

U.S. Telco, Inc. - Recommended Order Granting Certificate to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P634 (12-29-97)

UNICOM Communications, L.L.C. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-652 (12-29-97)

Universal Network Services of North Carolina, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long-Distance Telecommunications Services as a Reseller
P-448 (02-28-97)

WinStar Wireless of North Carolina, Inc. - Order Granting Petition to Amend Certificate of Public Convenience and Necessity to Authorize the Provision of Switched Local Exchange and Exchange Access Telecommunications Services
P-507, Sub 2 (07-30-97)

TELEPHONE - CERTIFICATES (Intrastate Interexchange Telephone Service by Switchless Resellers)

Docket No.	Company	Date
P-419	IDT Corporation	03-24-97
P-564	SETEL, LLC	06-12-97
P-566	Trans National Communications International, Inc.	03-31-97
P-591	Shared Communications Services, Inc.	05-08-97
P-595	North American Communications Control, Inc.	06-27-97
P-596	Startec, Inc., dba Maryland Startec, Inc.	02-03-97
P-598	USA Global Link, Inc.	06-06-97
P-601	Meridian Telecom Corporation	02-03-97
P-604	U.S. Republic Communications, Inc.	02-03-97
P-607	Discount Network Services, Inc.	05-28-97
P-608	Coast to Coast Telecommunications, Inc.	02-03-97
P-610	Providian Group, LLC	03-18-97
P-611	Clarity Telecom LD Network Services, Inc.	07-24-97
P-614	America One Communications, Inc.	10-01-97
P-617	McLeodUSA Telecommunications Services, Inc.	04-10-97
P-618	Global Telephone Corporation	06-18-97
P-620	FaciliCom International, L.L.C.	03-25-97
P-622	Custom Network Solutions, Inc.	05-14-97
P-623	American Telecommunications Systems, Inc.	04-14-97
P-624	BFI Communication, Inc.	06-27-97
P-626	Dolphin USA, Inc., dba Advance Communication Group(ACG)	05-06-97
P-629	Network Enhanced Technologies, Inc.	08-12-97
P-630	GST Net, Inc.	08-04-97
P-632	RSL COM U.S.A., Inc.	08-04-97
P-633	CIMCO Communications, Inc.	09-23-97
P-635	Association Administrators, Inc.	08-12-97
P-638	Southwestern Bell Communications Services, Inc.	06-04-97
P-640	Lightcom International, Inc.	08-12-97
P-641	C-Phone™ Corportation	06-20-97
P-642	International Charity Network, Inc.	08-12-97
P-651	G-A Technologies, Inc.	08-08-97
P-653	Discount Call Rating, Inc.	10-01-97
P-655	Speer Virtual Media, Ltd.	10-01-97

TELEPHONE - CERTIFICATES CANCELLED

Amerinet International, Inc. - Order Canceling Certificate
P-562, Sub 1 (10-23-97)

Apparel Markets of Charlotte, Inc. - Order Cancelling STS Certificate
STS-8, Sub 1 (10-27-97)

Business Services of North Mecklenburg - Order Canceling STS Certificate
STS-6, Sub 1 (10-27-97)

CTG Telecommunications, Inc. - Order Canceling Certificate
P-271, Sub 3 (07-29-97)

Carolina Telephone Long Distance, Inc. - Order Canceling Certificate Effective December 31, 1997
P-183, Sub 13 (10-31-97)

Community Spirit and Blue Earth Communications - Order Affirming Previous Commission Order Cancelling Operating Authority
P-506, Sub 1 (12-11-97)

Crystal Communications, Inc. - Order Canceling Certificate
P-555, Sub 1 (06-18-97)

GTE Telecommunications Services, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
P-431, Sub 1 (12-11-97)

Gillette Global Network - Order Affirming Previous Commission Order Cancelling Operating Authority
P-511, Sub 1 (12-11-97)

Independent Network Services - Order Affirming Previous Commission Order Cancelling Operating Authority
P-569, Sub 1 (12-11-97)

Long Distance Discount - Order Affirming Previous Commission Order Cancelling Operating Authority
P-456, Sub 1 (12-11-97)

Metrolink Communications, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
P-535, Sub 1 (12-11-97)

North American Communications Control, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
P-595, Sub 1 (12-11-97)

Preferred Telecom, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
P-524, Sub 1 (12-11-97)

Providian Group, LLC - Order Affirming Previous Commission Order Cancelling Operating Authority
P-610, Sub 1 (12-11-97)

Raleigh Technology Group, Inc. - Order Canceling Special Certificate
STS-1, Sub 1 (12-22-97)

Total World Telecom - Order Affirming Previous Commission Order Cancelling Operating Authority
P-491, Sub 1 (12-11-97)

Voyager Networks, Inc. - Order Canceling Certificate and Closing Docket
P-361, Sub 2 (06-26-97)

TELEPHONE - COMPLAINTS

AT&T Communications of the Southern States, Inc. - Order Dismissing Complaint of Robert and Linda Streble and Closing Docket
P-140, Sub 55 (12-17-97)

AT&T Communications of the Southern States, Inc. - Order Closing Docket in Complaint of Southland Transportation Company
P-140, Sub 58 (11-07-97)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Michael Giaquinto, North College Park, L.L.C.
P-55, Sub 1026 (07-21-97)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Timothy Eller
P-55, Sub 1028 (01-22-97)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Edgar and Evelyn Loman
P-55, Sub 1029 (08-28-97)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Robert S. Pilot
P-55, Sub 1034 (04-29-97)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Mrs. Vibha Goel, dba BRIJ Market
P-55, Sub 1044 (08-06-97)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Dan Slaughter
P-55, Sub 1047 (07-10-97)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Serving Notice of Dismissal and Closing Docket in Complaint of Allen Alston
P-55, Sub 1056 (11-12-97)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Kevin Meehan
P-55, Sub 1058 (10-16-97)

Carolina Telephone and Telegraph Company - Further Recommended Order in Complaint of Pansy McCamie, dba McCamie's Trash Removal
P-7, Sub 826 (09-10-97) Order Returning Bond (09-12-97) Order Allowing Withdrawal of Exceptions and Motion, Canceling Oral Argument, and Closing Docket (11-14-97)

Carolina Telephone and Telegraph Company - Order Serving Voluntary Dismissal of Complaint of the Pitt County Board of Commissioners and Closing Docket
P-7, Sub 830 (02-19-97)

Citizens Telephone Company - Order Closing Docket in Complaint of Brian D. Riddle
P-12, Sub 96 (05-13-97)

Complaint - Telephone - Order Closing Docket in Complaint of Samantha S. Daniels vs. Carolina Telephone & Telegraph Company and Sprint Communications Company, LP
P-89, Sub 54 (06-04-97)

Complaint - Telephone - Order Closing Docket in Complaint of Mary J. Budd vs. Carolina Telephone and Telegraph Company and Sprint Communications Company, LP
P-89, Sub 55 (06-12-97)

Dial & Save of North Carolina, Inc. - Order Accepting Notice of Settlement and Closing Docket in Complaint of Paul H. Hulth
P-414, Sub 6 (10-08-97) Order Reopening Docket and Serving Further Response (10-21-97)

Excel Telecommunications, Inc. - Order Closing Docket in Complaint of Dr. Murray Fleming
P-270, Sub 7 (05-13-97)

Frontier Communications Services; Allnet Communication Services, Inc., dba - Order Closing Docket in Complaint of Carolina Component Concepts
P-244, Sub 13 (04-29-97)

HCC Telemanagement, Hospitality Communications Corp., dba - Order Holding Docket in Abeyance in Complaint of Richard C. Flynt, dba Town and Country Real Estate
P-403, Sub 2 (03-18-97)

North State Telephone Company; LCI International - Order Giving Notice of Settlement, Canceling Hearing, and Closing Dockets in Complaints of Mrs. Debra F. Dennis
P-42, Sub 120; P-386, Sub 11 (01-09-97)

Qwest Communications Corporation - Order Closing Docket in Complaint of Bassam F. Helo, Manager, 6-Twelve Convenience Store
P-433, Sub 1 (01-08-97)

Sprint Communications Company L.P. - Order Closing Docket in Complaint of Rob Scott
P-294, Sub 13 (10-03-97)

Sprint Communications Company, L.P. - Order Closing Docket in Complaint of Sibrina Nicholson
P-294, Sub 14 (10-16-97)

TELEPHONE - EXTENDED AREA SERVICE (EAS)

ALLTEL Carolina, Inc. - Order Authorizing Broadway to Lillington Extended Area Service
P-118, Sub 84 (11-18-97)

Carolina Telephone and Telegraph Company - Order Authorizing Polling - Virgilina to Oxford and Roxboro Extended Area Service
P-7, Sub 835 (03-04-97) (Commissioner Allyson Duncan dissents.)

Carolina Telephone and Telegraph Company - Order Approving InterLATA Virgilina to Oxford and Roxboro Extended Area Service
P-7, Sub 835 (07-08-97) (Chairman Sanford and Commissioners Hughes and Pittman did not participate.)

Central Telephone Company - Order Authorizing No-Protest Notice - Roxboro to Durham Extended Area Service
P-10, Sub 482 (02-04-97) (Commissioner Laurence A. Cobb dissents.)

Central Telephone Company - Order Approving Roxboro to Durham Extended Area Service
P-10, Sub 482 (05-20-97)

TELEPHONE - INTERCONNECTION AGREEMENTS

AT&T Communications of the Southern States, Inc. - Order on Modification to Interconnection Agreement with BellSouth Telecommunications, Inc.
P-140, Sub 50 (10-15-97)

ALLTEL Carolina, Inc. - Order on Negotiated Interconnection Agreement Between ALLTEL and United States Cellular Corporation
P-118, Sub 82 (12-02-97)

ALLTEL Carolina, Inc. - Order on Negotiated Interconnection Agreement Between ALLTEL Carolina, Inc. and ALLTEL Mobile Communications, Inc.
P-118, Sub 83 (10-15-97)

ORDERS AND DECISIONS LISTED

ALLTEL Carolina, Inc. - Order on Negotiated Interconnection Agreement Between ALLTEL and 360° Communications Company
P-118, Sub 85 (11-20-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and WinStar Wireless of North Carolina, Inc.
P-55, Sub 1024 (01-29-97) Order on Negotiated Interconnection Agreement Amendment Between BellSouth and WinStar Telecommunications, Inc. (12-02-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Cellco Partnership, dba BellAtlantic NYNEX Mobile
P-55, Sub 1025 (02-04-97) Order Allowing Withdrawal of Petition for Arbitration and Canceling Hearing (02-06-97) Order Approving Amendment (06-18-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and US LEC of North Carolina, LLC
P-55, Sub 1027 (01-29-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and LCI International Telecom Corp.
P-55, Sub 1031 (05-14-97) Order on Negotiated Interconnection Agreement Addendum (09-24-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconncetion Agreement Between BellSouth and FiberSouth Incorporated
P-55, Sub 1032 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and ICG Telecom Group, Inc.
P-55, Sub 1033 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and 360° Communications Company
P-55, Sub 1035 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and DeltaCom, Inc.
P-55, Sub 1036 (05-14-97) Order on Negotiated Interconnection Agreement Amendment (09-24-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreemtent Between BellSouth and BellSouth Personal Communications, Inc.
P-55, Sub 1037 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and KMC Telecom, Inc.
P-55, Sub 1038 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreements Between BellSouth and GTE Mobilnet of Wilmington II, Inc., GTE Mobilnet of Jacksonville II, Inc., GTE Mobilnet of North Carolina, Inc., GTE Mobilnet of Raleigh, Inc., GTE Mobilnet of Asheville, Inc., GTE Mobilnet, Inc., and Fayetteville Cellular Telephone Company
P-55, Sub 1039 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and ALLTEL Mobile Communications, Inc.
P-55, Sub 1041 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and AT&T Wireless Services, Inc.
P-55, Sub 1042 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and United States Cellular Corporation
P-55, Sub 1043 (05-14-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Preferred Carrier Services, Inc.
P-55, Sub 1045 (06-24-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Time Warner Connect
P-55, Sub 1046 (06-24-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Teleport Communications Group.
P-55, Sub 1048 (07-09-97) Order on Amendment to Negotiated Interconnection Agreement (12-16-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and ALLTEL Communications
P-55, Sub 1049 (07-09-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and GTE South Incorporated
P-55, Sub 1051 (07-30-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Carolina Telephone & Telegraph Company
P-55, Sub 1053 (07-30-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Central Telephone Company
P-55, Sub 1054 (07-30-97)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and BTI Telecommunications, Inc.
P-55, Sub 1055 (07-30-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Dial Call, Inc.
P-55, Sub 1059 (08-20-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and GTE Card Services, dba GTE Long Distance
P-55, Sub 1060 (08-20-97)Order on Negotiated Interconnection Agreement Amendment (12-11-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and U.S. Telco, Inc.
P-55, Sub 1061 (08-20-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and One Point Communications - Georgia, LLC
P-55, Sub 1062 (09-04-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Intetech, L.C.
P-55, Sub 1066 (10-20-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and E-Z Tel, Inc.
P-55, Sub 1067 (11-07-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and CTC Exchange Services, Inc.
P-55, Sub 1069 (11-07-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and U.S. Long Distance, Inc.
P-55, Sub 1071 (12-02-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Interlink Telecommunications, Inc.
P-55, Sub 1074 (12-02-97)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement Between BellSouth and Annox, Inc.
P-55, Sub 1075 (12-16-97)

Carolina Telephone and Telegraph Company; Central Telephone Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and Intermedia Communications, Inc.
P-7, Sub 836; P-10, Sub 487 (05-28-97)

Carolina Telephone and Telegraph Company - Order on Negotiated Interconncetion Agreement Between Carolina and Time Warner Connect
P-7, Sub 837 (05-28-97)

Carolina Telephone and Telegraph Company - Order on Negotiated Interconnection Agreement Between Carolina and Central Telephone Company
P-7, Sub 839 (07-30-97)

Carolina Telephone and Telegraph Company - Order on Negotiated Interconnection Agreement Between Carolina and BellSouth Telecommunications, Inc.
P-7, Sub 840 (07-30-97)

Carolina Telephone and Telegraph Company - Order on Negotiated Interconnection Agreement Between Carolina and Central Telephone Company
P-7, Sub 842 (07-30-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and US LEC of North Carolina, L.L.C.
P-7, Sub 844; P-10, Sub 492 (10-08-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and GTE Mobilnet of Jacksonville II, Inc.
P-7, Sub 845; P-10, Sub 493 (10-08-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and GTE Mobilnet of Raleigh, Inc.
P-7, Sub 846; P-10, Sub 494 (10-08-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and GTE Mobilnet, Inc.
P-7, Sub 847; P-10, Sub 495 (10-08-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and GTE Mobilnet of Wilmington II, Inc.
P-7, Sub 848; P-10, Sub 496 (10-08-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and GTE Mobilnet of Asheville, Inc.
P-7, Sub 849; P-10, Sub 497 (10-08-97)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and Fayetteville Cellular Telephone Company, L.P. by GTE Mobilnet of Fayetteville, Inc.
P-7, Sub 850; P-10, Sub 498 (10-08-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and GTE Mobilnet of North Carolina, Inc.
P-7, Sub 851; P-10, Sub 499 (10-08-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and U.S. Telco, Inc.
P-7, Sub 852; P-10, Sub 501 (11-07-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Resale Agreement Between Carolina, Central and Diamond Communications International
P-7, Sub 854; P-10, Sub 502 (12-03-97)

Carolina Telephone and Telegraph Company & Central Telephone Company - Order on Negotiated Interconnection Agreement Between Carolina, Central and 360° Communications Company
P-7, Sub 855; P-10, Sub 503 (12-03-97) Order Rescinding Order of December 3, 1997 (12-09-97)

Central Telephone Company - Order on Negotiated Interconnection Agreement Between Central and BellSouth Telecommunications, Inc.
P-10, Sub 489 (07-30-97)

GTE South Incorporated - Order on Negotiated Interconnection Agreements with US LEC of North Carolina, L.L.C.; 360° Communications Company of North Carolina and ICG Telecom Group, Inc.
P-19, Sub 286; P-19, Sub 287; P-19, Sub 288 (04-29-97)

GTE South, Incorporated - Order on Negotiated Interconnection Agreement Between GTE and US LEC of North Carolina, L.L.C.
P-19, Sub 286 (10-08-97)

GTE South Incorporated - Order on Negotiated Interconnection Agreements with Intermedia Communications, Inc. And MCImetro Access Transmission Services, Inc.
P-19, Sub 289; P-141, Sub 30 (05-06-97) Order on Negotiated Interconnection Agreements Between GTE and Intermedia Communications, Inc. (10-15-97)

GTE South, Inc. - Order on Negotiated Interconnection Agreement Between GTE South and Dial Call, Inc., dba NEXTEL Communications
P-19, Sub 290 (08-20-97)

GTE South, Inc. - Order on Negotiated Interconnection Agreement Between GTE and Carolina Telephone & Telegraph Company
P-19, Sub 292 (07-30-97)

GTE South, Inc. - Order on Negotiated Interconnection Agreement Between GTE and Sprint Mid-Atlantic Telecom
P-19, Sub 292 (07-30-97)

GTE South, Inc. - Order on Negotiated Interconnection Agreement Between GTE and Central Telephone Company
P-19, Sub 292 (07-30-97)

GTE South, Inc. - Order on Negotiated Interconnection Agreement Between GTE and GTE Mobilnet, Inc. And GTE Mobilnet Communications, Inc.
P-19, Sub 295 (11-07-97)

GTE South; Inc. - Order on Negotiated Interconnection Agreement Between GTE and Business Telecom, Inc.
P-19, Sub 297 (12-29-97)

GTE South, Inc. - Order on Negotiated Interconnection Agreement Between GTE and GTE Communications Corporation
P-19, Sub 298 (12-29-97)

MCImetro Access Transmission Services, Inc. - Order on Negotiated Interconnection Agreement between MCImetro and Carolina Telephone and Telegraph Company
P-141, Sub 31 (06-24-97)

Time Warner Communications of North Carolina, Inc. - Order on Negotiated Interconnection Agreement Between Time Warner and GTE South, Inc.
P-472, Sub 2 (07-30-97)

Time Warner Communications of North Carolina, Inc. - Order Ruling on Request for Interconnection with Carolina Telephone and Telegraph Company and Central Telephone Company
P-472, Sub 3 (10-14-97)

TELEPHONE - MERGER

ALLTEL Communications, Inc. - Order Authorizing Merger with and Transfer of Control to ALLTEL Mobile Communications, Inc.
P-514, Sub 3 (11-10-97)

Consolidated Communications Telecom Services, Inc. - Order Approving Acquisition
P-516, Sub 1 (09-04-97)

Dial & Save of North Carolina, Inc. And Telco Holdings, Inc. - Order Approving Transfer of Certificate and Granting Exemption from Securities Regulation
P-414, Sub 5; P-639 (08-19-97)

EXCEL Communications, Inc.; Telco Communications Group, Inc. - Order Approving Merger and Related Transactions
P-270, Sub 8; P-639, Sub 1 (09-04-97)

ICG Telecom Services, Inc. and ICG Telecom Group, Inc. - Order Approving Merger and Transfer of Certificate of Public Convenience and Necessity
P-438, Sub 2; P-582, Sub 3 (06-05-97)

L.D. Services, Inc. - Order Approving Stock Acquisition and Merger Between L.D. Services, Inc. And STAR Telecommunications, Inc.
P-527, Sub 2 (11-10-97)

London Communications, Inc. - Order Approving Merger with Phonetel V., Inc.
SC-541, Sub 3 (06-03-97)

MCI Telecommunications Corporation, MCImetro Access Transmission Services, Inc. And SouthernNet, Inc. - Order Approving the Transfer of Control through Merger of MCI Communications Corporation and British Telecommunications plc
P-141, Sub 32; P-474, Sub 2; P-156, Sub 27 (03-18-97)

MEBCOM Communications, Inc.; MEBTEL, Inc. and Madison River Telephone Company, LLC - Order Approving Merger and Loan Facilities
P-35, Sub 93 (12-15-97) Order Granting Motion and Amending Previous Order Approving Merger and Loan Facilities (12-23-97)

Network Long Distance, Inc.; Eastern Telecom International Corporation - Order Approving Merger
P-416, Sub 2; P-318, Sub 3 (06-12-97)

TELEPHONE - PENALTIES

Long Distance Direct, Inc. - Order Concerning Penalty
P-575 (06-18-97)

TELEPHONE - SALES/TRANSFERS

AmeriConnect, Inc.; Phoenix Network, Inc. - Order Approving Transfer of Control from AmeriConnect to Phoenix Network
P-321, Sub 1; P-239, Sub 7 (06-02-97)

Clarity Telecom LD Network Services, Inc. - Order Approving Transfer of Customer Base of EXECUTONE Information Systems, Inc. To Clarity Telecom
P-611, Sub 1 (12-15-97)

FaciliCom International, L.L.C. - Order Approving Transfer of Control
P-620, Sub 1 (12-23-97)

Intellicall Operator Services, Inc. - Order Approving Transfer of Assets
P-390, Sub 3 (07-15-97)

Network One; CRG International, Inc., dba and Professional Communications Management Services, Inc., dba Procom - Order Approving Transfer of Assets of Network One to Procom
P-505, Sub 2; P-341, Sub 1 (12-12-97)

SmarTalk TeleServices, Inc.; ConQuest Long Distance Corp. - Order Approving Transfer of Control to SmarTalk
P-487, Sub 2; P-324, Sub 3 (11-10-97)

Sunbelt Line, Inc., dba TelMatch Telecommunications and TelMatch Telecommunications, Inc. - Order Granting Approval of Transfer of Assets
P-395, Sub 1; P-615 (02-20-97)

TresCom U.S.A., Inc. - Order Approving Transfer of Assets of United States Digital Network Limited Partnership to TresCom U.S.A., Inc.
P-542, Sub 1; P-378, Sub 1 (08-11-97)

USLD Communications, Inc. - Order Approving Transfer of Control
P-360, Sub 5 (11-10-97)

TELEPHONE - SECURITIES

Business Telecom, Inc. and FiberSouth, Inc. - Order Approving Corporate Reorganization and Related Transactions
P-165, Sub 23; P-165, Sub 24; P-428, Sub 3 (09-18-97)

Commonwealth Long Distance Company - Order Approving Corporation Reorganization
P-486, Sub 1 (06-05-97)

DeltaCom, Inc. - Order Approving Corporate Reorganization and Granting Request for Exemption From Securities Regulation
P-500, Sub 3 (06-19-97)

Dial & Save of North Carolina, Inc. - Order Approving Pledge of Stock
P-414, Sub 3 (02-11-97)

Dial & Save; Dial & Save of North Carolina, Inc. dba - Order Approving Stock Transfer
P-414, Sub 4 (06-02-97)

Group Long Distance, Inc. and Eastern Telecommunications Incorporated - Order Approving Transfer of Control of Eastern Telecommunications Incorporated to Group Long Distance, Inc.
P-350, Sub 1; P-530, Sub 1 (10-16-97)

ORDERS AND DECISIONS LISTED

L. D. Services, Inc.; IXC Long Distance, Inc. - Order Approving Transfer of Control of All Outstanding Capital Stock of L.D. Services, Inc. To IXC Long Distance, Inc.
P-527, Sub 1; P-454, Sub 3 (04-18-97) Order Rescinding Authority and Closing Docket (09-18-97)

Network Long Distance, Inc. and United Wats, Inc. - Order Approving Transfer of Control of United Wats, Inc. to Network Long Distance, Inc. through a Share Exchange Agreement
P-416, Sub 1; P-445, Sub 1 (02-21-97)

OpTex, Inc. - Order Approving Agreement and Plan of Merger Resulting in Transfer of Control Between Claremont Technology Group, Inc., Claremont Acquisition Corporation, and OpTex, Inc.
P-548, Sub 1 (10-16-97)

Strategic Alliances, Inc. - Order Approving Stock Purchase
P-345, Sub 1 (06-25-97)

Telecom One, Inc.; IXC Long Distance, Inc. - Order Approving Transfer of Control of All Outstanding Capital Stock of Telecom One to IXC Long Distance, Inc.
P-523, Sub 1; P-454, Sub 2 (04-18-97)

US LEC of North Carolina L.L.C. - Order Approving Change in Ownership from US LEC Corp. To US LEC L.L.C.
P-561, Sub 4 (02-19-97)

Value-Added Communications, Inc. - Order Approving Stock Transfer to Institutional Energy Management, Inc.
SC-804, Sub 2 (02-12-97)

WorldCom, Inc. - Order Granting Authority to Issue Debt Securities
P-283, Sub 17 (04-22-97)

WorldCom, Inc. - Order Approving Financing
P-283, Sub 18 (07-31-97)

WorldCom, Inc. - Order Approving Reorganization and Related Transactions
P-283, Sub 19; P-286, Sub 9; P-356, Sub 3; P-396, Sub 6; P-541, Sub 1; P-659 (09-18-97)

Zenex Long Distance, Inc. - Order Granting Motion to Withdraw Petition for Approval of a Corporate Merger with Advanced Communications Group, Inc. And Closing Docket
P-560, Sub 1 (10-17-97)

TELEPHONE - SPECIAL CERTIFICATES (Issued, Reinstated)

Docket No.	Company	Date
SC-500, Sub 4	Cecil B. Hatcher	07-24-97
SC-746, Sub 1	General Communications of North Carolina, Inc.	05-20-97
SC-891, Sub 1	Allied Communications, Inc.	05-07-97
SC-1068, Sub 1	BellSouth Public Communications, Inc.	03-04-97

SC-1335	Tele-Comm Solutions, Inc.	01-21-97
SC-1336	Hoang M. Tran and Son H. Nguyen	01-21-97
SC-1337	A+ Public Pay Phone Corporation	01-23-97
SC-1338	Sprint Communications Company L.P.	01-31-97
SC-1339	Sloppee's, Inc.	01-31-97
SC-1340	Barham's Prewire Service, Inc.	01-31-97
SC-1341	Carolina Communications of Charlotte, Inc.	01-31-97
SC-1342	Global Tel*Link Corporation	02-06-97
SC-1343	Richard L. Exum, dba Extel Communications	02-07-97
SC-1344	Ricky D. Gilbert, dba Gilbert Technologies	02-17-97
SC-1345	David L. Graham, Jr.	02-24-97
SC-1346	Paul Yates	02-24-97
SC-1347	VISIONCOMM, INC.	02-24-97
SC-1348	Reginald Todd Hines	02-27-97
SC-1349	Jack Williamson	02-28-97
SC-1350	Kien Tran	03-04-97
SC-1352	Cynthia Cameron	03-12-97
SC-1353	Telephone Operating Systems, Inc.	03-12-97
SC-1354	Good Ol' Days, Inc., dba Good Ol' Days Restaurant	03-12-97
SC-1356	Central Telephone Company	03-18-97
SC-1357	Commercial Pay Phones, Inc.	03-17-97
SC-1358	Lexington Telephone Company, dba Lexcom Telephone	03-19-97
SC-1359	Power House of Deliverance Church	03-20-97
SC-1360	Nathan J. And Brenda Beiler, dba Seaboard Communications	03-27-97
SC-1361	CTC Long Distance Services, Inc., dba CTC Public Phone Services	03-27-97
SC-1362	Citizens Telephone Company, dba Citizens Communications Systems	04-04-97
SC-1363	Pineville Telephone Company	04-03-97
SC-1364	Clark & Sipe LLC	04-04-97
SC-1365	MEBTEL, Inc., dba MEBTEL Communications	04-04-97
SC-1366	Roger H. Hice, dba R. H. Enterprises	04-04-97
SC-1367	GTE South Incorporated	04-09-97
SC-1368	Randolph Telephone Company	04-11-97
SC-1369	ALLTEL Carolina, Inc.	04-11-97
SC-1370	George J. Couchell	05-07-97
SC-1371	Ellerbe Telephone Company	04-18-97
SC-1372	F & M Enterprises, Inc., dba Coin Telephone Service	04-18-97
SC-1373	North State Telephone Company	04-18-97
SC-1374	Burris Foods, Inc.	04-25-97
SC-1375	Payphone Partners Incorporated	05-01-97
SC-1376	Sara Lee Sock Company	05-05-97
SC-1377	BCT Enterprises, Inc.	05-05-97
SC-1378	Orville R. Crabtree	05-07-97
SC-1379	Nesbitt Noble	05-09-97
SC-1380	Greer F. Smith, dba Triad Telecom	05-09-97

ORDERS AND DECISIONS LISTED

SC-1381	James H. Simpson	05-14-97
SC-1382	Randy S. Bartell	05-14-97
SC-1383	Michael Anthony Holoday	05-20-97
SC-1384	Jerry R. Goodson	05-20-97
SC-1385	J. Carr Swicegood	05-20-97
SC-1386	Kevin L. Baldwin, dba B. Executive Enterprise	05-20-97
SC-1387	Preferred Solutions, Inc.	05-20-97
SC-1388	William Downes, dba Payphones Plus	05-20-97
SC-1389	Birkdale Golf Associates, LLC	05-29-97
SC-1390	Burton M. Shermer III	06-02-97
SC-1391	Clarence E. McCanna	06-02-97
SC-1392	Carl Lester	06-12-97
SC-1393	Service Telephone Company	06-12-97
SC-1394	Barnardsville Telephone Company	06-12-97
SC-1395	Saluda Mountain Telephone Company	06-12-97
SC-1396	Piedmont Rescue Mission, Inc. dba Alamance Rescue Mission	06-12-97
SC-1397	Southeast Communications, Inc.	06-20-97
SC-1398	Franklin Inns, Inc.	06-20-97
SC-1399	Kristin Kirk Properties, Inc.	06-26-97
SC-1400	Lewis E. Smith	06-26-97
SC-1401	Derrick A. Ward, dba D & S Communications	07-03-97
SC-1402	D. C. May Co., Inc.	07-03-97
SC-1403	Robert Gragg, dba R & S Communications	07-21-97
SC-1404	Artice L. Council, Jr., dba Skyline Vending	08-04-97
SC-1405	Leila M. James	08-04-97
SC-1406	FAFCOM, Inc.	08-05-97
SC-1407	Russell H. Fleming, Jr.	08-05-97
SC-1408	Jiang Qing Wang	08-08-97
SC-1409	Robert Gragg	08-08-97
SC-1410	Don G. Harrell	08-14-97
SC-1411	Sherry L. Faw, dba Southeastern Telecom & Communications	08-14-97
SC-1412	Duke's Tire, Inc.	08-28-97
SC-1413	Advantage Mail Network, Inc.	08-28-97
SC-1414	Marty Hamel, dba Sandhills Communications	09-02-97
SC-1415	Beverly J. Moore	09-09-97
SC-1416	William E. Pope, Jr.	09-09-97
SC-1417	Theressa S. Waters & Sheryl W. Harvey, dba T & S Telecommunications	09-11-97
SC-1418	Travelers Telecom Corporation	09-15-97
SC-1419	George C. Thompson, dba Caribbean Cuisine Restaurant	09-25-97
SC-1420	Michael Aloia, dba The Laundry Room	09-25-97
SC-1421	Durham Exchange Club Industries, Inc.	10-01-97
SC-1422	Logan Trading Company, Inc.	10-14-97
SC-1423	Richard Wilson, dba Payphone Systems	10-14-97
SC-1424	John W. Pittman	10-24-97

SC-1425	AmeriCall, Inc.	10-24-97
SC-1426	Alexander Central High School	10-30-97
SC-1427	Talton Invision, Inc.	12-01-97
SC-1428	New York Fashions, Inc.	11-19-97
SC-1429	Michael Ivie	11-19-97
SC-1430	Hector E. Davis, dba Davis Communications Enterprises	11-26-97
SC-1431	Athol Manufacturing Corporation	11-26-97
SC-1432	John F. Parker	11-26-97
SC-1433	John Graham Singleton, Jr., dba JGS Communications	11-26-97
SC-1434	ETS Payphones, Inc.	12-09-97
SC-1435	Michael L. Riley	12-31-97
SC-1436	Jennifer A. Vestal	12-31-97

TELEPHONE - SPECIAL CERTIFICATES (Amended, Name Changed, Reissued)

Docket No.	Company	Date
SC-332, Sub 3	Computerized Payphone Systems	11-19-97
SC-366, Sub 1	Robert J. Babeck	02-07-97
SC-418, Sub 2	North Carolina Department of Correction	12-31-97
SC-473, Sub 3	Telaleasing Enterprises, Inc.	06-12-97
SC-491, Sub 1	Keith D. Smith dba Keith's Equipment	06-02-97
SC-656, Sub 1	J. Graham Singleton, dba JGS Payphones	10-24-97
SC-730, Sub 1	William H. Clementi, dba Pay-Com	02-24-97
SC-863, Sub 2	Stan C. Lee, dba SCL Communications	05-30-97
SC-864, Sub 5	Talton Telecommunications of Carolina, Inc.	10-01-97
SC-936, Sub 1	Willie L. Alexander, dba Alexander Communication Company	11-05-97
SC-969, Sub 1	Telecom, Inc.	05-29-97
SC-969, Sub 2	Telecom, Inc.	11-26-97
SC-988, Sub 1	Laura Lete, dba Dollars & Cents Pay Phones	03-27-97
SC-1019, Sub 1	Danita Cox Lanier, dba Lanier Communication Services Co.	03-20-97
SC-1024, Sub 1	William Randolph Thomas	11-19-97
SC-1031, Sub 1	Minh Nguyen	01-07-97
SC-1062, Sub 2	R. S. McKee, Inc.	04-04-97
SC-1071, Sub 1	David J. Paluck	04-15-97
SC-1131, Sub 1	John A. Luzzi, dba Highland Payphone Company	02-28-97
SC-1142, Sub 1	Stanley Randall, dba PR Communications	03-18-97
SC-1165, Sub 1	William F. Houghton	01-14-97
SC-1192, Sub 1	Beth M. Wrege, dba Environmental & Educational Enterprises	07-10-97
SC-1220, Sub 1	PykaTel, Inc.	03-17-97
SC-1228, Sub 1	George Streeter and Frances Streeter, dba Streeter Communications	10-24-97
SC-1237, Sub 1	Piedmont Communication, Inc.	07-21-97
SC-1243, Sub 1	W. Christopher	05-20-97
SC-1246, Sub 1	Lions Services, Inc.	04-09-97

SC-1249, Sub 1	Carolina Telephone and Telegraph Company	03-26-97
SC-1267, Sub 1	Jeffrey Fernald, dba Carolina Tel-Com	02-17-97
SC-1309, Sub 1	Wiley Wells	03-27-97
SC-1326, Sub 1	Bob Ross, dba Ross Telecommunications	06-26-97
SC-1414, Sub 1	Marty Hamel, dba Sandhills Communications	11-19-97
SC-1424, Sub 1	John Walter Pittman, dba J & J Communications	12-31-97

TELEPHONE - SPECIAL CERTIFICATES (Revoked, Cancelled or Closed)

Docket No.	Company	Date
SC-79, Sub 1	Anleco, Inc.	05-15-97
SC-178, Sub 2	SAV-WAY Food Stores	02-27-97
SC-187, Sub 1	Mitchell's Hairstyling Academy	01-16-97
SC-239, Sub 1	Sam Parham	01-16-97
SC-300, Sub 1	Pinebrook Grocery	02-14-97
SC-391, Sub 2	Param Investments, Inc., dba Bel Air Motel	03-12-97
SC-403, Sub 2	Mei Fone-Tek, Inc.	09-04-97
SC-450, Sub 1	Twins Family Restaurant/Mrs. Ruth Crouse	04-18-97
SC-495, Sub 1	Ward Drug Company of Nashville, Inc.	04-18-97
SC-500, Sub 3	Cecil B. Hatcher	06-05-97
SC-506, Sub 1	Crest High School	04-25-97
SC-564, Sub 2	Willie J. Waddell	02-20-97
SC-571, Sub 1	Adams-Millis	05-05-97
SC-619, Sub 2	Ray Trevathan	03-21-97
SC-732, Sub 1	Evans Foods, Inc.	03-04-97
SC-737, Sub 1	Carolina Coastal Telecom, Inc.	06-27-97
SC-757, Sub 1	Charles N. Bennett	01-16-97
SC-770, Sub 1	Bruce Ellis, dba Venture Communication	01-21-97
SC-793, Sub 1	Global Telcoin, Inc.	02-06-97
SC-851, Sub 3	Neuse Baptist Church	02-20-97
SC-858, Sub 1	Shoppers Advantage, Inc., dba Advantage Mail Network	09-04-97
SC-882, Sub 1	Fredrickson Motor Express Corporation	08-19-97
SC-885, Sub 1	Central Carolina Communications, Inc.	06-13-97
SC-894, Sub 3	Amtel Communications, Inc.	04-04-97
SC-896, Sub 1	Tallo-Gronback Sound, Inc., dba TGS, Inc.	11-19-97
SC-898, Sub 2	Robert C. Fleury, dba Fleury Communications	04-04-97
SC-902, Sub 1	David Liner	07-03-97
SC-971, Sub 1	James D. Wood	12-22-97
SC-976, Sub 1	Honor Telcom, Inc.	04-28-97
SC-982, Sub 1	Margaret Casey	02-20-97
SC-1019, Sub 2	Danita Cox Lanier, dba Lanier Communications Services Company	07-17-97
SC-1018, Sub 1	Bruce D. Ellis and Ron W. Ellis, dba Cuz Comm	12-31-97
SC-1025, Sub 1	Todd R. Rihn, dba Semper Fi Communications	04-04-97
SC-1029, Sub 1	Alan G. Ireland	03-17-97
SC-1038, Sub 1	Joe K. Ellenburg	01-16-97
SC-1043, Sub 1	Suraj Company, Inc.	08-20-97

SC-1044, Sub 1	William A. Gavilan	03-21-97
SC-1045, Sub 1	Anthony Corfios, Jr.	02-20-97
SC-1049, Sub 1	Jane Cox, dba J.C.'s Payphones	10-22-97
SC-1053, Sub 1	Stephen Murphy, dba Triad Telecomp	08-22-97
SC-1059, Sub 1	Anthony F. Meggs	06-05-97
SC-1092, Sub 1	T. Todd Faw	03-06-97
SC-1097, Sub 1	Tim Martin, dba Shuckers Oyster Bar	02-21-97
SC-1099, Sub 1	Steven Evangelis	02-14-97
SC-1101, Sub 1	Daryl Anderson, dba TPC	04-04-97
SC-1104, Sub 1	Dave Lombardi, dba B & L Chatters	07-10-97
SC-1109, Sub 1	Redell Bullard	01-16-97
SC-1111, Sub 1	Dana A. Williams	01-16-97
SC-1114, Sub 2	InVison Telecom, Inc.	12-01-97
SC-1117, Sub 1	Kimberly Howell	04-25-97
SC-1128, Sub 1	Wayne Gooch	10-22-97
SC-1133, Sub 1	Joseph W. Watson, Jr., dba Watson Communications	01-14-97
SC-1134, Sub 1	Michael R. Goodnight	03-21-97
SC-1139, Sub 1	Gordhan H. Kathrotia	04-28-97
SC-1145, Sub 2	Hoai Thanh Tran, dba Starcoin Payphone Company	06-13-97
SC-1148, Sub 1	Fineline, Inc., dba Fastprint, Inc.	10-22-97
SC-1152, Sub 1	Victoria R. Attorri, dba VAR Liberty Telecom	01-17-97
SC-1161, Sub 1	Mark A. Ewell	10-22-97
SC-1162, Sub 1	Robert L. Hager, dba Foneway	03-17-97
SC-1163, Sub 2	Roger D. Grady, dba G & S Communications	03-21-97
SC-1167, Sub 1	Maxville C. O'Neal	02-14-97
SC-1169, Sub 1	Franklin C. Ezzell, III/Franklin A. Ezzell, dba Bud-Al Enterprises	03-21-97
SC-1171, Sub 1	George W. Cates	11-21-97
SC-1177, Sub 1	Abdelaal A. Elmehrath	07-08-97
SC-1180, Sub 1	Benjamin Celinski	08-05-97
SC-1183, Sub 1	Darryl E. Dodd	04-18-97
SC-1184, Sub 1	BTA Incorporated, dba Eggleston's Community Grocery, Inc.	04-18-97
SC-1185, Sub 1	Dominion Tele-Systems, Inc.	02-14-97
SC-1190, Sub 1	Robert L. Claypool	01-16-97
SC-1194, Sub 1	James Allen Spencer	05-15-97
SC-1201, Sub 1	Russell J. Holt	06-13-97
SC-1211, Sub 1	Brian Anon Haynes	04-18-97
SC-1212, Sub 1	Pieter G. Schepp, dba PGS-Phones	04-28-97
SC-1213, Sub 1	Michael J. Volker, dba DP Telecom	02-21-97
SC-1221, Sub 1	Advance Pay Systems, Inc.	07-17-97
SC-1222, Sub 1	Mohamed Nabil Houbi	04-28-97
SC-1224, Sub 1	George Moulder	11-17-97
SC-1225, Sub 1	Tony D. Calhoun	03-21-97
SC-1227, Sub 1	Alan T. Grizzard	04-28-97
SC-1229, Sub 1	Stephen Zrebiec	10-01-97
SC-1232, Sub 1	John and Patricia Bishop	10-22-97

SC-1234, Sub 1	Bradley E. Whitley, dba Telelinc Communications	10-22-97
SC-1240, Sub 1	United Vending Systems of Charlotte, Inc.	04-28-97
SC-1246, Sub 2	Lions Services, Inc.	08-29-97
SC-1253, Sub 1	Tammy M. Vigliarolo	04-18-97
SC-1255, Sub 1	James E. Strother, dba A B COMM	01-16-97
SC-1261, Sub 1	Billy J. Withrow	03-21-97
SC-1264, Sub 1	Mike Jaroush	12-15-97
SC-1265, Sub 1	Harry S. Garman, III, dba H. G. Communications	12-05-97
SC-1267, Sub 2	Jeffrey Fernald, dba Carolina Tel-Com	12-31-97
SC-1278, Sub 1	Barbara King	03-12-97
SC-1279, Sub 1	Vann B. Sapp	11-26-97
SC-1286, Sub 1	Thomas J. Jamison	02-20-97
SC-1287, Sub 1	Jane A. Clark, dba Cribleman-Pary Group	10-27-97
SC-1300, Sub 1	Olga M. Friend	01-17-97
SC-1303, Sub 1	Bobby Glen Mills	01-14-97
SC-1306, Sub 1	Larry M. Jones/Joyce P. Jones, dba QuinTel Com	04-04-97
SC-1307, Sub 1	Alvaro de Jesus Durango V.	11-21-97
SC-1312, Sub 1	Trent Blalock	10-30-97
SC-1316, Sub 1	Anastasios Vogiatzis	12-22-97
SC-1319, Sub 1	Alamo Motel & Cottages L.L.C.	01-16-97
SC-1324, Sub 1	Randall D. Veselka	04-28-97
SC-1329, Sub 1	Lynn Huang	03-13-97
SC-1330, Sub 1	Standing Properties, Inc., dba Atlantic Telecommunications	02-14-97
SC-1336, Sub 1	Hoang M. Tran and Son H. Nguyen	06-13-97
SC-1340, Sub 1	Barham's Prewire Service, Inc.	11-17-97
SC-1346, Sub 1	Paul Yates	08-22-97
SC-1349, Sub 1	Jack Williamson	10-27-97
SC-1350, Sub 1	Kien Tran	10-22-97
SC-1377, Sub 1	BCT Enterprises, Inc.	12-31-97
SC-1390, Sub 1	Burton M. Shermer III	11-21-97
SC-1400, Sub 1	Lewis E. Smith	10-22-97

TELEPHONE - TARIFFS

AT&T Communications of the Southern States, Inc.; WorldCom, Inc. - Order Denying Motion for Reconsideration of Order Issued May 15, 1996, Allowing Tariffs to Go into Effect Subject to Providing Customer Notice to Dial-Around Customers by Means of a Recorded Announcement
P-140, Sub 49; P-283, Sub 10 (01-15-97)

BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company - Order Ruling on Joint Petition of MCI Telecommunications Corporation, AT&T Communications of the Southern States, and Sprint Communications Company, L.P., for Approval of Alternative Flow Through Rate Reduction Proposals
P-55, Sub 1013; P-7, Sub 825; P-10, Sub 479 (06-18-97) Errata Order (06-19-97)

BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company - Order Approving Proposed Tariffs Flowing Through the Access Charge Reductions of WorldCom, Inc. and WorldCom Network Services, Inc.
P-55, Sub 1013; P-7, Sub 825; P-10, Sub 479 (07-03-97)(Commissioner Laurence A. Cobb did not participate in this decision.)

BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company - Order Ruling on Tariff Filings of MCI Telecommunications Corporation and SouthernNet, Inc. Reflecting the Flow Through of Access Charge Reductions
P-55, Sub 1013; P-7, Sub 825; P-10, Sub 479 (08-05-97)

BellSouth Telecommunicaitons, Inc. - Order Allowing Tariff to Establish Rates for National Directory Assistance
P-55, Sub 1083 (12-23-97)

Concord Telephone Company - Order Allowing Customer Name and Address Tariff Subject to Modification
P-16, Sub 183 (11-05-97) Commissioner Judy Hunt dissents.

GTE South, Inc. - Order Allowing Tariff to Establish Per-Use Charges for Automatic Busy Redial and Automatic Call Return
P-19, Sub 296 (11-04-97) Commissioner Judy Hunt concurs in part and dissents in part. Commissioner William R. Pittman dissents.

Sprint Communications Company, L.P. - Order Disallowing Proposed Residential Time-Of-Day Rate Period Tariff Revisions
P-294, Sub 12 (08-20-97)

TELEPHONE - MISCELLANEOUS

BellSouth Telecommunications, Inc. - Order Regarding BellSouth's Statement of Generally Available Terms
P-55, Sub 1022 (12-23-97)

Christian Payphone and Communications; Clay H. Koontz, dba - Order Approving Stipulation of the Public Staff and Clay H. Koontz, dba Christian Payphone and Communications in the Investigation of COCOT Rule Violations
SC-950, Sub 2 (02-11-97) Order Dismissing Petition of the Public Staff and Closing Docket (06-26-97)

IBA Telecom, Inc. - Order Approving Joint Stipulation of the Public Staff and IBA Telecom, Inc., Dismissing Petition of the Public Staff, and Closing Docket in the Investigation of COCOT Rule Violations
SC-622, Sub 2 (07-02-97)

ORDERS AND DECISIONS LISTED

Lance, Inc. - Order Approving Stipulation of the Public Staff and Lance, Inc., Dismissing Petition of the Public Staff, and Closing Docket in the Investigation of COCOT Rule Violations
SC-489, Sub 1 (02-18-97)

Lions Services, Inc. - Order Dismissing Petition of the Public Staff and Closing Docket in the Investigation of COCOT Rule Violations
SC-1246, Sub 2 (07-02-97)

PhoneTel Technologies, Inc. - Order Approving Joint Stipulation, Dismissing Petition of the Public Staff and Closing Docket in the Investigation of COCOT Rule Violations
SC-485, Sub 3 (04-22-97)

Politis Payphones; Louie Pete Politis, dba - Order Approving Joint Stipulation and Closing Docket
SC-1015, Sub 1 (09-04-97)

US LEC of North Carolina L.L.C. - Order Approving Change in Ownership
P-561, Sub 5 (06-02-97)

WATER AND SEWER

WATER AND SEWER - APPLICATIONS WITHDRAWN, DENIED, OR DISMISSED

CWS Systems, Inc. - Order Granting Motion to Withdraw Application with Respect to the Former Clearwater Systems
W-778, Sub 31 (06-24-97)

Carolina Water Service, Inc. of North Carolina, Inc. - Order Denying Franchise to Furnish Water Utility Services in Riverwood Subdivision in Johnston County
W-354, Sub 147 (06-24-97) Order Denying Motion to Submit Renegotiated Contract (10-01-97)

Carolina Water Service, Inc. of North Carolina, Inc. - Order Granting Motion to Withdraw Application For General Rate Increase and Requiring that Public Hearings Be Held
W-354, Sub 165 (04-24-97)

Dutchman Creek, Inc. - Recommended Order Dismissing Application for Certificate to Provide Water Utility Service in Woodtrace Subdivision in Wake County Without Prejudice
W-1082, Sub 1 (10-24-97)

Hudson-Cole Water and Sewer Company - Order Canceling Hearing, Requiring Customer Notice, and Closing Docket Pursuant to Applicant's Request to Withdraw Application for Rate Increase
W-875, Sub 8 (01-13-97) Order Rescinding Customer Notice Requirement and Closing Docket (02-05-97)

Rock Creek Environmental Company - Order Allowing Withdrawal of Application to Increase Rates for Sewer Utility Service in Rock Creek Subdivision in Onslow County and Closing Docket
W-830, Sub 1 (09-08-97)

WATER AND SEWER - CERTIFICATES

Brook Arbor; Brook Arbor Limited Partnership, dba - Recommended Order Granting Franchise to Furnish Water and Sewer Utility Service in Brook Arbor Apartment Homes in Wake County
W-1087 (02-27-97)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchise to Furnish Water Utility Service in Buffalo Creek Subdivision, Phase I, in Johnston County and Approving Rates
W-354, Sub 159 (07-02-97)

Craven Water Works - Recommended Order Granting Franchise to Provide Water Utility Service in Lake Ridge Subdivision in Rowan County and Approving Rates
W-1090 (05-05-97)

Fairways Utilities, Inc. - Order Granting Franchise to Provide Water and Sewer Utility Service in Tidewater Plantation Subdivision in New Hanover County and Approving Rates
W-787, Sub 8 (04-15-97)

Fairways Utilities, Inc. - Order Granting Franchise to Provide Water and Sewer Utility Service in Old Cape Cod Subdivision in New Hanover County and Approving Rates
W-787, Sub 10 (08-12-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 100 (06-20-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 102 (06-20-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 110 (06-20-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 112 (05-20-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 113 (05-20-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 114 (05-20-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 115 (05-20-97)

Heater Utilities, Inc. - Order Closing Docket
W-274, Sub 117 (05-20-97)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Laurel Grove, Phase I, Subdivision in Wake County and Approving Rates
W-274, Sub 133 (03-19-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Creekstone, Phase VII Subdivision in Johnston County and Approving Rates
W-274, Sub 139 (03-14-97)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Macon's Path in Wake County and Approving Rates
W-274, Sub 140 (03-19-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Creedmoor Crest Subdivision in Wake County and Approving Rates
W-274, Sub 141 (03-14-97)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Sewer Utility Service in Salem Quarter Subdivision in Forsyth County, Approving Rates, and Requiring Customer Notice
W-274, Sub 142 (04-23-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Lake Fall, Phase II Subdivision in Wake County and Approving Rates
W-274, Sub 143 (03-14-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Chandler Point Subdivision in Wake County and Approving Rates
W-274, Sub 144 (03-19-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Deerfield, Section V, Subdivision in Johnston County and Approving Rates
W-274, Sub 145 (05-16-97)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Stoney Creek Subdivision in Wake County and Approving Rates
W-274, Sub 146 (05-16-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Cross Gate, Section V, Subdivision in Wake County and Approving Rates
W-274, Sub 147 (05-16-97)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Holland Ridge Subdivision in Wake County and Approving Rates
W-274, Sub 148 (05-28-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Waterfall Plantation, Phase III Subdivision in Wake County and Approving Rates
W-274, Sub 149 (07-15-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Creekstone, Phase VIII Subdivision in Johnston County
W-274, Sub 150 (07-15-97)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in La Ventana Subdivision in Wake County and Approving Rates
W-274, Sub 152 (07-15-97)

Heater Utilities, Inc. - Order Granting Franchise to Furnish Water Utility Service in Settler's Creek Subdivision in Wake County and Approving Rates
W-274, Sub 153 (07-15-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Olde Creedmoor, Phase IV Subdivision in Wake County and Approving Rates
W-274, Sub 154 (07-15-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Swallow Cove Lane Subdivision in Wake County and Approving Rates
W-274, Sub 156 (08-28-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Chandler Pointe II Subdivision in Wake County and Approving Rates
W-274, Sub 157 (08-28-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Old Mill Stream Subdivision in Johnston County and Approving Rates
W-274, Sub 158 (08-28-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in South Plantation Subdivision, Phase XIV, in Johnston County and Approving Rates
W-274, Sub 159 (07-29-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Willow Bluffs Subdivision in Wake County and Approving Rates
W-274, Sub 161 (09-23-97)

Heater Utilities, Inc. - Recognizing Contiguous Expansion of Water Utility Service in Heatherstone Four Subdivision in Wake County and Approving Rates
W-274, Sub 162 (09-23-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Moorefield's subdivision Phase I in Wake County and Approving Rates
W-274, Sub 163 (09-23-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Sewer Utility Service in Spring Creek Subdivision in Davidson County and Approving Rates
W-274, Sub 164 (12-09-97)

ORDERS AND DECISIONS LISTED

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Albany Acres III Subdivision in Johnston County and Approving Rates
W-274, Sub 165 (09-23-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in South Plantation Subdivision, Phases XII & XIII, in Johnston County and Approving Rates
W-274, Sub 166 (09-23-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Tyler Farms Subdivision in Wake County and Approving Rates
W-274, Sub 167 (11-05-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Forest Glen Two Subdivision in Wake County and Approving Rates
W-274, Sub 168 (11-05-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Laurel Grove Subdivision, Phase II, in Wake County and Approving Rates
W-274, Sub 169 (11-05-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Worthington Subdivision, Phase II, in Wake County and Approving Rates
W-274, Sub 170 (11-05-97)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Creekside Place Subdivision, Phase I, in Johnston County and Approving Rates
W-274, Sub 171 (11-18-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Chatsworth Subdivision in Wake County and Approving Rates
W-274, Sub 172 (11-18-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Clear Springs Subdivision, Section 2, in Wake County and Approving Rates
W-274, Sub 173 (11-18-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in South Hills Subdivision, Section IX, Phase II, in Johnston County and Approving Rates
W-274, Sub 172 (11-18-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Old Mill Stream Subdivision, Phase II, in Johnston County and Approving Rates
W-274, Sub 175 (11-25-97)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Wakefield Subdivision, Section III, Phases 1 & 2, in Wake County and Approving Rates
W-274, Sub 176 (11-25-97)

ORDERS AND DECISIONS LISTED

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Stoney Creek Subdivision, Phase 2A, in Wake County and Approving Rates
W-274, Sub 177 (12-17-97)

Mid South Water Systems, Inc. - Order Closing Docket
W-720, Sub 150 (05-30-97)

Pine Island-Currituck, LLC - Order Recognizing Contiguous Expansion of Sewer Utility Service from Pine Island Development into the Currituck Club in Currituck County and Approving Rates
W-1072, Sub 1 (01-13-97)

Ponderosa Mobile Home Park; Ponderosa Enterprises, Inc., dba - Recommended Order Granting Franchise to Furnish Water Utility Service in Ponderosa Mobile Home Park in Currituck County and Approving Rates
W-1086 (05-05-97)

River Dell Utilities, Inc. - Order Granting Franchise to Furnish Sewer Utility Service in Neuse Colony Subdivision, Sections B, C, and D in Johnston County, Approving Rates, and Releasing Bond
W-949, Sub 1 (03-07-97)

River Dell Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Neuse Colony, Sections C and D, Subdivision in Johnston County and Approving Rates
W-949, Sub 3 (05-16-97)

Southern Water Service, Inc. - Order Approving Bond, Granting Franchise to Provide Water Utility Service in University Manor Subdivision in Orange County, and Approving Rates
W-1094, Sub 1 (12-30-97)

Sugarloaf Utility, Inc. - Recommended Order Granting Franchise to Furnish Sewer Utility Service in Certain Areas of Atlantic Beach in Carteret County and Approving Rates
W-840, Sub 1 (12-08-97)

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Allen Woods Village in Surry County and Approving Rates
W-314, Sub 32 (12-10-97)

The Preserve at Ballantyne Commons; the Preserve at Ballantyne Limited Partnership, dba - Order Approving Bond, Granting Franchise to Provide Water and Sewer Utility Service in The Preserve at Ballantyne Commons in Mecklenburg County, and Approving Rates
W-1097 (12-17-97)

Webb Creek Water and Sewage, Inc. - Order Granting Franchise to Furnish Sewer Utility Service to Sand Ridge Elementary School in Onslow County and Approving Rates
W-864, Sub 3 (08-07-97)

Waterford Creek Limited Partnership - Order Granting Certificate of Authority to Resell Water and Sewer Utility Service in Waterford Creek Apartments in Mecklenburg County, Approving Rates nad Requiring Customer Notice
W-1095 (05-20-97)

WATER AND SEWER - CERTIFICATES CANCELLED OR REVOKED

Brookside Water Company - Order Canceling Water Utility Franchise for Brookside Subdivision in Haywood County and Requiring Customer Notice
W-330, Sub 10 (05-19-97)

Carolina Water Service, Inc. of North Carolina - Order Canceling Franchise to Provide Water Utility Service for the Hidden Hills and Farmwood-Section 18 Subdivisions in Mecklenburg County and Closing Docket
W-354, Sub 143 (06-16-97)

Carolina Water Service, Inc. of North Carolina - Order Canceling Franchise to Provide Water Utility Service for the Habersham Subdivision in Mecklenburg County and Closing Docket
W-354, Sub 145 (06-16-97)

Carolina Water Service, Inc. of North Carolina - Order Canceling Franchise to Provide Water Utility Service for the Hampton Green, Courtney and Courtney II Subdivisions in Mecklenburg County and Closing Docket
W-354, Sub 148 (06-18-97)

Carolina Water Service, Inc. of North Carolina - Order Canceling Franchise to Provide Water Utility Service for the Idlewood Subdivision in Mecklenburg County and Closing Docket
W-354, Sub 149 (06-18-97)

Carolina Water Service, Inc. of North Carolina - Order Canceling Franchise to Provide Water Utility Service for the Wood Hollow and Brandywine (Forest Hills) at Matthews Subdivision in Mecklenburg County and Closing Docket
W-354, Sub 150 (06-18-97)

Carolina Water Service, Inc. of North Carolina - Order Canceling Franchise to Provide Water Utility Service for the Providence West Subdivision in Mecklenburg County and Closing Docket
W-354, Sub 151 (06-18-97)

SH Corporation of Wake County, Inc. - Order Canceling Franchise to Provide Sewer Utility Service for Spring Haven Subdivision in Wake County
W-806, Sub 4 (12-05-97)

WATER AND SEWER - COMPLAINTS

Bald Head Island Utility Company - Recommended Order in Complaint of Martha D. Lee
W-798, Sub 6 (02-11-97)

ORDERS AND DECISIONS LISTED

Butler Mountain Water - Order Accepting Voluntary Dismissal Without Prejudice and Closing Docket in the Complaint of Jennifer Humphreys and Linda Stitzinger
W-1006, Sub 6 (09-10-97)

Hudson-Cole Development Corporation - Order Canceling Hearing and Closing Docket in Complaint of Grey B. Moody and Bradley K. Moody
W-875, Sub 6 (01-10-97)

Hydraulics, Ltd. - Final Order Overruling Exceptions and Affirming Recommended Order in Complaint of Hydraulics, Ltd. v. James Lawson Fallon
W-218, Sub 110 (01-09-97) Order Settling Record on Appeal (06-17-97)

Hydraulics, Ltd. - Order Closing Docket in Complaint of Patricia Cagle
W-218, Sub 112 (06-16-97)

North Chatham Water & Sewer Company, LLC; Hudson-Cole Water & Sewer Company - Order Granting Motion of Chatham Financial to Withdraw Formal Complaint
W-1101, Sub 0; W-875, Sub 9; W-875, Sub 10 (12-05-97)

North Topsail Water and Sewer, Inc. - Recommended Order Denying Complaint of Bill V. Cain and Closing Docket
W-754, Sub 23 (06-17-97) Order Denying Request for Reconsideration (07-15-97)

Wellington Mobile Home Park - Order Closing Docket in Complaint of Sybrena B. Wilkerson
W-1011, Sub 3 (12-12-97)

West Johnston Water Company - Recommended Order Requiring Improvements in Complaint of Olivia Johnson
W-1003, Sub 2 (02-05-97)

WATER AND SEWER - DISCONTINUANCE OF SERVICE, DISCONNECTIONS

Bradshaw Water Company - Order Allowing Discontinuance of Water Utility Service in Biltmore Estates Subdivision in Gaston County and Requiring Customer Notice
W-103, Sub 11 (04-09-97)

Carolina Water Service, Inc. Of North Carolina - Order Authorizing Discontinuance of Water Service in Wedgewood Subdivision in Moore County
W-354, Sub 185 (12-17-97)

Mineral Springs Mountain Water Supply; Troy Crouch, dba - Order Discontinuing Water Utility Service in Mineral Springs Mountain Subdivision in Burke County and Canceling Franchise
W-576, Sub 3 (07-02-97)

WATER AND SEWER - EMERGENCY OPERATOR

Harrco Utility Corporation; North State Utilities, Inc.; Intech Utilities, Inc. - Order Regarding Emergency and Imposing Financial Restrictions
W-796, Sub 12; W-848, Sub 16; W-957, Sub 1 (01-29-97)

Harrco Utility Corporation; North State Utilities, Inc.; Intech Utilities, Inc. - Order Regarding Financial Reports, Refund Plan, and Other Matters
W-796, Sub 12; W-848, Sub 16; W-957, Sub 1 (03-19-97)

Harrco Utility Corporation - Order Granting Motion for Access to Books and Records and Clarifying Prior Order
W-796, Sub 12 (03-25-97)

Harrco Utility Corporation - Order Granting Public Staff's Motion for Injunctive Relief, Monetary Penalties, and Investigation
W-796, Sub 12 (04-25-97)

Harrco Utility Corporation; North State Utilities, Inc.; Intech Utilities, Inc. - Order Authorizing Sale of Assets and Disbursement of Proceeds
W-796, Sub 12; W-848, Sub 16; W-957, Sub 1 (05-08-97)

Harrco Utility Corporation - Order Authorizing Rate Reduction
W-796, Sub 12 (09-30-97)

Mountain Ridge Estates Water System; Mr. Bill Triplett, dba - Order Granting Emergency Operator Authority to Assess Customers for Necessary Capital Improvements to the Water Utility Service in Mountain Ridge Estates Subdivision in Watauga County and Requiring Customer Notice
W-975, Sub 3 (01-24-97)

North State Utilities, Inc. - Order Discharging Emergency Operator at Manchester and Banbury Woods Subdivisions
W-848, Sub 16 (06-10-97)

North State Utilities, Inc. - Order Regarding Settlement Agreement Affecting Banbury Woods and Saddleridge Subdivisions
W-848, Sub 16 (09-08-97)

North State Utilities, Inc. - Order Authorizing Disbursement of Bond Funds
W-848, Sub 16 (11-06-97)

North State Utilities, Inc. - Order Requiring Conveyance of Real Property from North State Utilities, Inc.
W-848, Sub 16 (12-22-97)

Scotsdale Water and Sewer, Inc. - Order Appointing Emergency Operator and Approving Interim Provisional Rates
W-883, Sub 31 (06-02-97)

Scotsdale Water and Sewer, Inc. - Order Appointing Emergency Operator for Lakeland Village Subdivision in Columbus County and Approving Interim Provisional Rates
W-883, Sub 32 (07-15-97)

WATER AND SEWER - RATES

105 Place Utility Corporation - Order Granting Interim Rates for Sewer Utility Service in 105 Place Service Area in Watauga County and Requiring Customer Notice
W-1074 (05-16-97) Errata Order (05-19-97) Final Order Granting Partial Increase in Rates (08-20-97) Errata Order (08-25-97)

CWS Systems, Inc. - Order Granting Approval of Increase in Rates for Water and Sewer Utility Service in All Its Service Areas Pursuant to N.C. General Statute §62-135
W-778, Sub 31 (10-10-97)

Cross-State Development Company, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in All of Its Service Areas in Ashe and Wilkes Counties
W-408, Sub 6 (05-23-97) Final Order on Exceptions (08-28-97) Errata Order (09-03-97)

Emerald Plantation Utility Company - Recommended Order Granting Partial Rate Increase for Sewer Utility Service in Emerald Plantation Subdivision and Emerald Plaza Shopping Center in Carteret County
W-843, Sub 3 (02-14-97) Order Allowing Recommended Order to Become Effective and Final (02-14-97)

Fairways Utilities, Inc. - Recommended Order Approving Partial Rate Increase for Water and Sewer Utility Service in All Its Service Areas in New Hanover County
W-787, Sub 11 (09-15-97)

Farm Water Works; Van Harris Realty, Inc., dba - Recommended Order Granting Partial Rate Increase for Water Utility Service in Winding Creek Farm Subdivision in Lee County
W-844, Sub 4 (12-19-97)

Fisher Utilities, Inc. - Recommended Order Granting Increase in Rates and Charges and Requiring Reports of Improvements
W-365, Sub 38 (04-10-97) Order Implementing Increase in Water Rates in Ashley Hills and Ponderosa Subdivisions (11-14-97)

Goose Creek Utility Company - Recommended Order Approving Partial Rate Increase for Sewer Utility Service in Fairfield Plantation Subdivision in Union County
W-369, Sub 13 (05-02-97) Final Order Denying Exceptions In Part, and Affirming Recommended Order (09-05-97)

ORDERS AND DECISIONS LISTED

Honeycutt, Wayne M. - Order Granting Partial Rate Increase for Water Utility Service in All Its Service Areas in Gaston County and Requiring Customer Notice
W-472, Sub 10 (05-19-97)

Hydraulics, Ltd. - Order Approving Refund Plan Pursuant to Order of October 30, 1996, Granting a General Rate Increase
W-218, Sub 108 (01-30-97)

Hydraulics, Ltd. - Order on Public Staff Motion for Reconsideration of Order of October 30, 1996, Granting General Rate Increase
W-218, Sub 108 (02-05-97)

Springdale Water and Sewer Company - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in Springdale Estates Subdivision in Haywood County
W-406, Sub 4 (02-27-97)

Twin Lake Properties; Dutchman Creek, Inc. - Recommended Order Granting Increase in Rates, Approving Transfer of Water Utility Service in Twin Lake Farm Subdivision in Wake County, and Requiring Customer Notice
W-914, Sub 1; W-1082 (07-21-97)

WATER AND SEWER - SALES/TRANSFERS

Acqua, Inc. - Order Approving Transfer of Water Utility Service in Meadowbrook Village Subdivision in Catawba County to the City of Hickory (Owner Exempt from Regulation) and Requiring Customer Notice
W-270, Sub 5 (11-18-97)

CWS Systems, Inc. - Order Approving Transfer of Water Utility Service in Windsor Lake Estates Subdivision in Wilson County from Windsor Lake to CWS and Requiring Customer Notice
W-778, Sub 33 (06-12-97)

CWS Systems, Inc. - Order Approving Transfer of Water Utility Service in Treasure Cove, North Hills and Glen Arbor/North Bend Subdivisions in New Hanover County from Treasure Cove to CWS and Requiring Customer Notice
W-778, Sub 34 (06-12-97)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility System Serving Farmwood A and Applecreek Subdivisions in Mecklenburg County to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 178 (06-11-97)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility System Serving Lawyers Station/Mint Hollow Subdivision in Mecklenburg County to Charlotte Mecklenburg

Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 179 (06-11-97)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility System Serving Farmwood Subdivision (Sections 15, 20, and 21) and the Sewer Utility System Serving Sections 20 and 21 in Mecklenburg County to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 180 (06-11-97)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility System Serving Brandonwood Subdivision in Mecklenburg County to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 181 (06-11-97)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility System Serving Tarawoods Subdivision in Mecklenburg County to Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 182 (06-11-97)

Chimney Rock Water Works - Order Approving Transfer of Water Utility System Serving Chimney Rock Village in Rutherford County to Chimney Rock Village (Owner Exempt from Regulation)
W-102, Sub 12 (11-26-97)

Culligan Operating Services, Inc. - Recommended Order Granting Transfer of Water Utility Service in Buffalo Meadows, Skyview Park, Rolling Acres, and Kirk Glen and to Provide Sewer Utility Service in Buffalo Meadows, Hunter's Glen and Mountain Valley in Ashe, Buncombe, Gaston and Henderson Counties and Approving Rates
W-1081 (07-16-97)

D & D Environmental, Inc. - Order Approving Transfer of the Sewer Utility Franchise in Sherwood Forest Subdivision in Transylvania County, North Carolina from Sherwood Forest Utility, Inc.
W-1085 (01-08-97)

Eno Industrial Sewer Facility - Order Approving Transfer of Sewer Utility Service in the Eno Industrial Park in Durham County to the City of Durham (Owner Exempt from Commission Regulation)
W-763, Sub 3 (11-18-97)

Fairways at Piper Glen Apartments; ING U.S.-Residential Real Estate Investment Co., Inc. dba - Order Authorizing Transfer of Franchise to Provide Water and Sewer Utility Service in Fairways at Piper Glen Apartments, Mecklenburg County from Piper Glen Associates, dba Fairways at Piper Glen Apartments, Approving Rates, and Releasing Bond
W-1066, Sub 1 (08-19-97)

ORDERS AND DECISIONS LISTED

Foxhall Village Utilities; Chateau Properties, Inc. dba - Recommended Order Approving Transfer of Franchise to Furnish Water and Sewer Utility Service to Foxhall Village Mobile Home Park in Wake County from Buffaloe Limited Partnership, dba Foxhall Village Utilities
W-777, Sub 4 (07-29-97) Errata Order (10-27-97)

Heater Utilities, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Hardscrabble Plantation Subdivision in Durham and Orange Counties from Southland Associates, Inc., Acquisition Adjustment, and Maintaining Current Rates
W-274, Sub 122 (04-30-97)

Heater Utilities, Inc. - Order Approving Transfer of Franchise to Provide Water Utility Service in Spring Haven Subdivision in Wake County from SH Corporation of Wake County, Inc. And Requiring Customer Notice
W-274, Sub 151 (07-29-97)

Hydraulics, Ltd. - Order Approving Transfer of Water Utility Service in Pinewood Country Club in Randolph County to Seagrove/Ulah Metropolitan Water District (Owner Exempt from Regulation) and Requiring Customer Notice
W-218, Sub 113 (03-26-97)

King's Grant Water Company - Order Approving Transfer of Water Systems in New Hanover County to the New Hanover County Water and Sewer District (Owner Exempt from Commission Regulation), Canceling Franchise, Requiring Refunds, and Requiring Customer Notice
W-250, Sub 11 (12-17-97)

M-I Utility Corporation - Order Approving Transfer of All Its Sewer Systems in Brunswick County to the Town of Leland (Owner Exempt from Commission Regulation), Canceling Franchise, and Requiring Customer Notice
W-952, Sub 3 (12-23-97)

MAM Water and Sewer Corporation - Order Approving Transfer of Water and Sewer Utility Systems in Hickory Downs, Devonshire Manor, Five Oaks, and Baker's Mill Subdivisions in Durham County to the City of Durham (Owner Exempt from Regulation), Canceling Franchises, and Closing Docket
W-772, Sub 3 (10-14-97)

Mercer Environmental Corp - Order Closing Docket in the Matter of Application to Transfer the Franchise to Provide Water Utility Service in Kenwood, Oak Ridge, Regalwood/Windsor, White Oak Estates, and Montclair/Walnut Creek Subdivisions, and Belleauwoods, Piney Green, Eastwood, Hickory Hills and Hillcrest Mobile Home Parks in Onslow County to Onslow County Water Department (Owner Exempt from Regulation)
W-198, Sub 33 (05-28-97)

Northwestern Woods Well System; Mr. Lawrence Litaker, dba - Order Approving Transfer of Water Utility System Serving Cabarrus Northwest Woods Subdivision, Cabarrus County, to the Cabarrus Northwest Woods Owners Association, Inc. (Owner Exempt from Commission Regulation)
W-860, Sub 1 (08-12-97)

River Dell Utilities, Inc. - Order Approving Stock Transfer of 102 Shares from Kelly White Finch to Rebecca Flowers Finch
W-949, Sub 5 (05-14-97) Order Closing Dockets (10-15-97)

River Run Utilities, Inc. - Recommended Order Allowing Transfer of Sewer Utility System Serving the River Run Shopping Center in Brunswick County to Southeast Brunswick Sanitary District (Owner Exempt from Regulation)
W-853, Sub 6 (03-18-97) W-853, Sub 6 & W-853, Sub 5 Order Closing Dockets (09-22-97)

Rivercreek Utility Company; Ronnie G. Stroud, dba - Order Approving Transfer of Water Utility System Serving Rivercreek Subdivision in Pitt County to Stokes Regional Water Corporation (Owner Exempt from Regulation) and Requiring Customer Notice
W-930, Sub 2 (04-23-97)

Rock Barn Properties, Inc. - Order Approving Bond, Approving Transfer of Sewer Utility Service in Rock Barn Subdivision in Catawba County, and Releasing Bond
W-1092 (11-18-97)

Scotsdale Water and Sewer, Inc. - Order Approving Transfer of the Water Utility System Serving Duchess Forest Subdivision in Columbus County to the Town of Brunswick (Owner Exempt from Regulation)
W-883, Sub 30 (05-16-97)

Southern Water Service, Inc. - Order Approving Bond, Granting Transfer of Water Utility Service in Cotesworth Downs and Huntdell Subdivisions in Wake County from Cotesworth Downs Utilities, Inc., Approving Rates, and Releasing Bond
W-1094 (12-30-97)

Spring Hill Water Corporation - Order Approving Transfer of Water Utility Systems in Spring Hill and Carriage Farms Subdivisions in Scotland County to Scotland County (Owner Exempt from Regulation), Canceling Franchises, and Closing Docket
W-247, Sub 3 (10-14-97)

WATER AND SEWER - SECURITIES

Heater Utilities, Inc.; Brookwood Water Corporation - Order Approving Loan
W-274, Sub 155; W-177, Sub 44 (06-18-97)

Intracoastal Utilities, Inc. - Recommended Order Approving Transfer of Stock
W-986, Sub 2 (06-25-97)

LaGrange Waterworks Corporation; Brookwood Water Corporation; Heater Utilities, Inc. - Order Approving Transfer of All Common Stock of LaGrange Waterworks Corporation to Heater Utilities, Inc.
W-200, Sub 35; W-177, Sub 43 (07-02-97) Order Denying Motions (08-29-97)(Chairman Jo Anne Sanford concurs.)

North Topsail Water and Sewer, Inc. - Order Allowing the Use of Funds from Escrow Account for Construction of New Pump Station on Topsail Island
W-754, Sub 19 (01-29-97)

North Topsail Water and Sewer, Inc. - Order Allowing Company to use Funds from Escrow Account
W-754, Sub 12; W-754, Sub 17; W-754, Sub 19 (05-28-97)

North Topsail Water and Sewer, Inc. - Order Allowing Company to Use Funds from Escrow Account
W-754, Sub 12; W-754, Sub 17; W-754, Sub 19 (12-17-97)

North Topsail Water and Sewer, Inc. - Order Establishing New Escrow Account for Profits
W-754, Sub 25 (07-15-97)

River Dell Utilities, Inc. - Order Approving Stock Transfer
W-949, Sub 6 (08-12-97) Order Closing Dockets (10-15-97)

WATER AND SEWER - TARIFFS

Bald Head Island Utilities, Inc. - Order Approving Tariff Revision of Additional Water Utility Service Connection Charges
W-798, Sub 7 (08-19-97)

CWS Systems, Inc. - Order Approving Tariff Revision to Change Billing Frequency to Monthly
W-778, Sub 31 (12-30-97)

CWS Systems, Inc. - Order Approving Tariff Revision to Increase Rates for Sewer Utility Service for Increased Cost of Bulk Sewage Treatment in Fairfiled Mountains Development in Rutherford County
W-778, Sub 43 (12-17-97)

Carolina Water Service, Inc. of North Carolina - Order Interpreting Rules and Denying Request to Change Billing Frequency for Water and Sewer Utility Service in All of Its Service Areas from Bi-Monthly to Monthly
W-354, Sub 184 (09-08-97) Order Approving Tariff Revision and Requiring Notice (10-14-97) Order Approving Tariff Revision and Requiring Notice (12-10-97)

Cross-State Development Company, Inc. - Order Approving Tariff Amendment to Authorize Change to Billing Frequency
W-408, Sub 6 (06-04-97)

Eno Industrial Sewer Facility - Recommended Order Granting Tariff Amendment to Collect the Costs of Connecting to the City of Durham from the Customers in the Eno Industrial Park in Durham County
W-763, Sub 2 (07-03-97)

ORDERS AND DECISIONS LISTED

Fox Run Water Company, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Associated with EPA Water Testing Requirements and Permit Fees
W-959, Sub 3 (01-29-97)

Goss Utility Company - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Associated with EPA Water Testing Requirements
W-457, Sub 13 (01-22-97)

Mid South Water Systems, Inc.; Surry Water Company, Inc.; H.C. Huffman Water Systems, Inc. - Order Approving Refund Plan for Overcollection of EPA Testing Surcharges for the Hensley Systems
W-720, Sub 134; W-314, Sub 30; W-95, Sub 17 (02-04-97)

Mid South Water Systems, Inc.; Surry Water Company, Inc.; H.C. Huffman Water Systems, Inc. - Order Approving Refund Plan, Excluding Hensley Systems, for Overcollection of EPA Testing Surcharges
W-720, Sub 134; W-314, Sub 30; W-95, Sub 17 (03-26-97)

Pineview Water System; John Gensinger, dba - Order Approving Tariff Revision to Increase Rates for Water Utility Service Due to Increased Expenses Associated with EPA Water Testing Requirements and Permit Fees
W-549, Sub 6 (01-22-97)

Rivercreek Utility Company; Ronnie G. Stroud, dba - Order Approving Tariff Revision to Terminate the EPA Testing Surcharge Approved by Order of August 3, 1994
W-930, Sub 1 (02-18-97)

Triple H Development, Inc. - Order Approving Tariff Revision to Increase Rates for Water and Sewer Utility Service Due to Increased Expenses Related to Purchased Water and Sewer Services in Buncombe County
W-1068, Sub 1 (04-10-97)

West Wilson Water Corporation - Order Approving Tariff Revision to Increase Rates for Increased Purchased Water Costs
W-781, Sub 26 (08-19-97)

WATER AND SEWER - Tariff Revisions to Delete References to Gross-Up on Contributions in Aid of Construction

Company	Docket No.	Date
Alpha Utilities, Inc.	W-862, Sub 22	01-22-97
Baytree Waterfront Properties, Inc.	W-938, Sub 1	01-22-97
Bear Den Acres Development, Inc.	W-1040, Sub 3	01-24-97
Beau Rivage Plantation, Inc.	W-971, Sub 1	01-22-97
Bright Leaf Landing Corporation	W-994, Sub 2	01-22-97
Brookwood Water Corporation	W-177, Sub 41	01-22-97
CWS Systems, Inc.	W-778, Sub 30	01-22-97

Cape Fear Utilities, Inc.	W-279, Sub 30	01-22-97
Carolina Blythe Utility Company	W-503, Sub 8	01-22-97
Carolina Trace Utilities, Inc.	W-1013, Sub 3	01-24-97
Environmental Maintenance Systems, Inc.	W-1054, Sub 4	01-24-97
Etowah Sewer Company	W-933, Sub 1	01-22-97
Farm Water Works; Van Harris Realty, Inc., dba	W-844, Sub 3	01-22-97
Grandfather Golf and Country Club Utility, Inc.	W-755, Sub 3	01-22-97
Hart Water Systems, Inc.	W-739, Sub 5	01-22-97
Honeycutt, Wayne M., Water Systems	W-472, Sub 9	01-22-97
Huffman Water Systems, Inc.	W-95, Sub 20	01-24-97
HydroLogic, Inc.	W-988, Sub 14	01-22-97
Jefferson Landing, Inc.	W-1019, Sub 1	01-24-97
KRJ Utilities Company	W-1075, Sub 1	01-24-97
Kings Grant Water Company	W-250, Sub 10	01-22-97
LaGrange Waterworks Corporation	W-200, Sub 32	01-22-97
Laurel Hill Water Company	W-67, Sub 11	01-22-97
Lincoln Water Works, Inc.	W-335, Sub 7	01-24-97
M-I Utility Corporation	W-952, Sub 2	01-22-97
Mid South Water Systems, Inc.	W-720, Sub 162	01-24-97
Mobile Hills Estates Water System	W-224, Sub 14	01-22-97
Overhills Water Company, Inc.	W-175, Sub 11	01-22-97
Porters Neck Company, Inc.	W-1059, Sub 1	01-24-97
Quality Water Supplies, Inc.	W-225, Sub 24	01-22-97
River Dell Utilities, Inc.	W-949, Sub 2	01-22-97
Rivercreek Utility Company; Ronnie G. Stroud, dba	W-930, Sub 3	01-22-97
Rolling Springs Water Company, Inc.	W-313, Sub 5	01-22-97
Sapphire Lakes Utility Company	W-941, Sub 4	01-22-97
Scotsdale Water & Sewer, Inc.	W-883, Sub 29	01-22-97
Surry Water Company, Inc.	W-314, Sub 33	01-24-97
Transylvania Utilities, Inc.	W-1012, Sub 3	01-24-97
Trent Utilities, Inc.	W-1020, Sub 1	01-24-97
Water Resource Management, Inc.	W-1073, Sub 1	01-24-97
Whitewood Properties, Inc.	W-1004, Sub 3	01-24-97
Woodlake Water and Sewer Company, Inc.	W-1029, Sub 1	01-24-97

WATER AND SEWER - TEMPORARY OPERATING AUTHORITY

Carolina Water Service, Inc., of North Carolina - Order Granting Temporary Operating Authority to Furnish Water Utility Service in Buffalo Creek Subdivision, Phase I, in Johnston County, and Approving Interim Rates
W-354, Sub 159 (04-25-97)

Carolina Water Service, Inc. - Order Approving Bond, Granting Temporary Operating Authority to Furnish Water and Sewer Utility Service in Matthews Commons Subdivision in Mecklenburg County, and Approving Interim Rates
W-354, Sub 161 (07-24-97)

D&S Properties - Order Approving Bond, Granting Temporary Operating Authority to Furnish Water and Sewer Utility Service in Crestview Estates Mobile Home Park in Henderson County, Approving Interim Rates, and Scheduling Hearing
W-1096 (11-25-97)

Jones, J. W. - Order Canceling Water Utility Temporary Operating Authority for Hedgewood Circle Subdivision in Gaston County
W-422, Sub 4 (04-09-97)

Mid South Water Systems, Inc. - Order Approving Bond, Granting Temporary Operating Authority to Provide Water Utility Service in Harbor Club Subdivision in Mecklenburg County, and Granting Interim Rates
W-720, Sub 84 (12-17-97)

Mid South Water Systems, Inc. - Order Approving Bond, Granting Temporary Operating Authority to Provide Sewer Utility Service in Governors Island Subdivision in Lincoln County, Approving Interim Rates, and Scheduling Hearing
W-720, Sub 159 (07-24-97)

Mid South Water Systems, Inc. - Order Approving Bond, Granting Temporary Operating Authority to Provide Water Utility Service in Harbor View Subdivision in Iredell County, and Approving Interim Rates
W-720, Sub 172 (09-09-97)

Mountain View Mobile Home Park, LLC - Order Granting Temporary Operating Authority to Provide Water and Sewer Utility Service at Mountain View Mobile Home Park in Buncombe County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-1089 (06-13-97) Recommended Order Approving New Interim Rates (10-15-97)

Sugarloaf Utility, Inc. - Order Granting Temporary Operating Authority to Furnish Sewer Utility Service in Certain Areas of Atlantic Beach Including Atlantic Station Shopping Center and Days Inn Suites in Carteret County and Interim Rates
W-840, Sub 1 (04-15-97)

Sun-Tech Water Corporation - Order Granting Temporary Authority to Furnish Water Utility Service in Kings Grant Subdivision in Catawba County and Approving Rates
W-1088 (06-18-97)

Surry Water Company, Inc. - Order Approving Irrevocable Letter of Credit, Granting Temporary Operating Authority to Furnish Water Utility Service in Allen Woods Village Subdivision in Surry County, and Approving Interim Rates
W-314, Sub 32 (07-09-97)

WATER AND SEWER - MISCELLANEOUS

Bogue Banks Water Corporation - Order Granting Application for Deregulation
W-371, Sub 7 (09-16-97)

ORDERS AND DECISIONS LISTED

Britley Utilities, Inc. and Carolina Water Service, Inc. Of North Carolina - Order Approving Merger and Closing Dockets
W-1051, Sub 1; W-354, Sub 163 (01-23-97)

CWS Systems, Inc. - Order Approving Refund Plan
W-778, Sub 26 (07-29-97)

Coastal Plains Utility Company - Order Restricting Water Use and Requiring Customer Notice
W-215, Sub 12 (08-29-97) Order Rescinding Water Use Restrictions and Requiring Customer Notice (09-04-97)

Crosby Utilities, Inc. - Order Approving Refund Plan
W-992, Sub 3 (10-15-97)

Hydraulics, Ltd. - Order Determining Regulatory Treatment of Gain on Sale of Facilities
W-218, Sub 96 (06-30-97)

M-I Utility Corporation - Order Closing Docket in Investigation of Collection of Taxes Related to Contributions in Aid of Construction
W-952, Sub 1 (12-19-97)

Page, Don S. - Memorandum of Decision Regarding Penalties
W-1061 (02-24-97)

Thompson, Donald O. - Order Settling Record on Appeal
W-1024, Sub 1 (07-16-97) Order Dismissing Appeal (10-28-97)

Transylvania Utilities, Inc. - Order Approving Refund Plan
W-1012, Sub 2 (07-29-97)