EIGHTY-EIGHTH REPORT

OF THE

NORTH CAROLINA

UTILITIES COMMISSION

ORDERS AND DECISIONS

ISSUED FROM
JANUARY 1, 1998 THROUGH DECEMBER 31, 1998

EIGHTY-EIGHTH REPORT
of the
NORTH CAROLINA UTILITIES COMMISSION

ORDERS AND DECISIONS

Issued from

January 1, 1998, through December 31, 1998

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.

*Commissioner Allyson K. Duncan resigned April 30, 1998.

LETTER OF TRANSMITTAL

December 31, 1998

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, 1998, we hereby present for your consideration the report of the Commission's decisions for the 12-month period beginning January 1, 1998, and ending December 31, 1998.

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

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DOCKET NO. M-100, SUB 28A
DOCKET NO. M-100, SUB 61A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Natural Gas and Electric Utility Seasonal	)	FINAL ORDER
Customer Deposit Requirements and	)	AMENDING RULES
Termination Procedures	)	

BY THE COMMISSION: On May 19, 1998, the Commission issued its Preliminary Order Amending Rules in these dockets amending Commission Rules R12-10 and R12-11. The Commission provided for further comments to be filed on whether the revised Rules attached to the Preliminary Order accurately reflect the decisions discussed therein and whether unintended conflicts or inconsistencies arise from the revised Rules. No further comments have been filed in response to this provision.

On its own motion, the Commission finds good cause to make one clarification to the revised Rules. Revised Rules R12-10(l) and R12-11(p) provide that residential gas and electric service "shall not be terminated on Fridays, on weekends, on holidays, or on days before holidays." In order to eliminate any confusion as to the exact holidays to which these provisions apply, the Commission finds good cause to clarify the provisions to the effect that such service "shall not be terminated on Fridays, on weekends, on state or federal holidays, or on days before state or federal holidays." This clarification has been incorporated into Appendix A attached hereto.

The Commission finds good cause to amend Commission Rules R12-10 and R12-11 as set forth in Appendix A attached hereto effective as of the date of this Final Order.

IT IS, THEREFORE, ORDERED that the Commission adopts amended Rules R12-10 and R12-11 as set forth in Appendix A attached hereto effective as of this date.

ISSUED BY ORDER OF THE COMMISSION.
This the _18th_ day of June, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Rule R12-1O. Disconnection of residential customer's natural gas service.

(a) The date after which the bill is due, or the past due after date, shall be disclosed in the bill and shall not be less than twenty-five (25) days after the billing date. Payment within this twenty-five day period will either maintain or count toward establishment of the customer's credit with the utility.

(b) For purposes of this rule, payment shall be defined as delivery of the amount due to a company business office or designated payment agency during regular business hours by 5:00 p.m. on the twenty-fifth (25th) day, unless such day is a Saturday, Sunday, or legal holiday in which event the last day for payment runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Those natural gas customers from whom deposits are required under the provisions of Commission Rules R12-2 or R12-3 and who receive their largest bills seasonally (such as customers who use natural gas for heating) may be considered seasonal customers in determining the amount of deposit under Rule R12-4. The deposits collectible from such customers shall not exceed one-third of the estimated charge for service for the season involved. For purposes of this provision the heating season shall be the calendar months October through March.

(d) Each gas utility shall file tariffs with the Commission to impose charges, not to exceed the charges allowed by G.S. 25-3-506, for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

(e) Each gas utility, through its meter reader, office, or designated payment agency is authorized to collect payment by cash or check for bills past due and in arrears, and for current bills once the meter reader has left the office with a list of customers whose service is to be disconnected, unless the day on which the meter reader has left the office with such list is prior to the third day preceding the past due date of the current bill of any customer whose service is to be disconnected, in which case the utility is authorized only to collect payment for bills past due and in arrears.

"Current bill" is defined as a bill rendered but not past due. "Bill in arrears" is defined as a bill rendered and past due.

(f) Each gas utility operating under the jurisdiction of the North Carolina Utilities Commission shall revise its billing procedures to conform to the following approximate schedule with respect to all customers:

Approximate Billing Cycle Day	*Standard Procedure*
1	Service begins.
30	Meter read.
35	Bill mailed.
60	Meter read for second month's service.
65	Bill marked showing charge for second month's service and arrears separately; if arrears is shown on bill, notice enclosed in conformity with subsection (h) of this rule also stating: "Arrears must be paid within 10 days after billing date to avoid disconnection of service. CONTACT THE UTILITY IMMEDIATELY TO DISCUSS CREDIT ARRANGEMENTS IF FULL PAYMENT IS NOT POSSIBLE. NO OTHER NOTICE WILL BE MAILED."
75	Review of accounts to determine whether customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
76	Field representative visits home to notify customer, receive payment or defer disconnection in accordance with Rule R12-10(i)(2), make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnect

service. Customer has immediate recourse to the utility for reconnection action.

(g) No disconnects will be made prior to their being personally reviewed and ordered by a supervisor.

(h) Gas service to a residential customer shall not be terminated for nonpayment of a delinquent account until the utility has given such customer at least 10 days' written notice that his service is subject to termination. This notice of proposed termination shall, at a minimum, contain the following information:

(1) A clear explanation of the reasons which underlie the proposed termination.

(2) The date of the proposed termination, which shall not be less than 10 days from the date of issuance of such notice.

(3) A statement advising the customer that gas service will not be terminated if, prior to the proposed termination date, the customer is able to establish that he is unable to pay his account in full and he agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for gas usage which is reasonably projected to occur during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage.

(4) Statements advising the customer that he should first contact the utility with any questions he may have regarding his bill and that in cases of dispute, a proposed termination action may thereafter be appealed informally to 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 by writing the Public Staff-North Carolina Utilities Commission, Consumer Services Division, P.O. Box 29520, Raleigh, North Carolina 27626-0520.

(5) A statement advising the customer that he may desire to call his local social service agency to determine what federal, state, or private assistance may be available.

(6) With respect to bills rendered between November 1 and March 31 of every year and in conformity with the policy considerations expressed by Congress in the Public Utility Regulatory Policies Act (PURPA) of 1978, the notice of proposed termination shall also contain a statement that no termination shall take place without the express approval of the Commission if the customer can establish *all* of the following:

(a) That a member of the customer's household is either certifiably handicapped or elderly (65 years of age or older), or both.

(b) That the customer is unable to pay for such service in full or in accordance with subsection (h)(3) of this rule.

(c) That the household is certified by the local social service office which administers the Energy Crisis Assistance Program or other similar programs as being eligible (whether funds are then available or not) to receive assistance under such pro-grams.

(i) Personal Contact Prior to Termination.

(1) At least 24 hours prior to a proposed service termination, the utility shall, in good faith, attempt to contact a customer to whom a written disconnect notice has been mailed (as well as any third party who may have been designated by the customer to receive notice pursuant to subsection (j) of this rule), either by telephone or by visit to the customer's premises. The purpose of this personal contact shall be to attempt to personally inform the customer and his designated representative that termination of service is imminent, and to fully explain all alternatives to termination which may be available to the customer under this rule.

(2) Immediately prior to the actual termination of service, the utility's representative shall attempt to personally contact the customer on the premises. At that time, the utility's representative shall either receive payment from the customer, or postpone termination for another 24 hours if the customer is prepared to pay but the utility has determined that its representatives should not be required to accept payments from customers on the premises; make satisfactory credit arrangements; agree to postpone termination during the period November 1 to March 31 if the customer qualifies for postponement under subsection (h)(6) of this rule; or, in the absence of any of the arrangements or circumstances listed above, terminate service. If personal contact cannot be made by the utility, a notice indicating that service has been terminated shall be left in a conspicuous place at the residence where such service was terminated. Such notice shall specify that the customer may have immediate recourse to the utility in order to arrange for reconnection of service.

(3) The utility shall fully document its efforts under this subsection to personally contact the customer and any designated third party representative.

(j) Each gas utility shall offer its residential customers the opportunity to designate a third party to receive a copy of any proposed termination notice which may be mailed to the customer. Each residential customer shall be given notification of this option at the time service is initiated and at least once annually thereafter. Notice of the availability of this option shall be given in writing, either by mailing a copy of such notice as a bill insert or by means of a separate mailing, to all residential customers. Such notice shall clearly indicate that this duplicate notification process will not obligate the third party to pay the customer's bill.

(k) Informal Appeal of Termination Action.

(1) Any residential customer may informally appeal the decision of a utility to terminate service by notifying the Consumer Services Division of the Public Staff-North Carolina Utilities Commission. Such notification may be made by the customer either in person, in writing, or by telephone.

(2) Upon receipt of any such appeal, the Consumer Services Division of the Public Staff shall immediately notify the utility that such an in-formal appeal as been filed. If service has not been terminated as of the time an appeal is filed, the utility shall not terminate the customer's service without securing express approval from the Commission or its designated representative. If service has already been terminated by the time the customer files his appeal with the Public Staff, the Commission may order the utility to restore service

upon such terms as are deemed just and reasonable pending resolution of the appeal.

(3) If the matter cannot be resolved informally, the customer shall then have the right to file a formal complaint with the Commission pursuant to Rule R1-9 and to request a hearing thereon.

(l) Residential gas service shall not be terminated on Fridays, on weekends, on state or federal holidays, or on days before state or federal holidays. If a disconnection occurs, the customer shall have immediate recourse to the utility regardless of the time of day.

(m) Each gas utility shall establish an internal procedure whereby the utility will endeavor to identify by a special code a customer whose household is known to have an individual residing therein who is either chronically or seriously ill, handicapped, or on a life support system. The purpose of assigning such code shall be to identify that account for careful handling whenever service to such account becomes subject to termination as a result of nonpayment of a delinquent bill.

(n) Nothing in this rule shall preclude a natural gas utility from exercising reasonable discretion in waiving or extending the times provided herein pertaining to termination of service, particularly when such waiver or extension would result in the prevention of undue hardship in those cases where termination of service would be especially dangerous to health or where the customer or a member of the customer's household is elderly or handicapped.

Rule R12-11. Disconnection of residential customer's electric service.

(a) The date after which the 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. Payment within this twenty-five day period will either maintain or count toward improvement of the customer's credit code classification. Payment of a bill after the specified due date could result in the lowering of a customer's credit code relating to one which permits the utility to disconnect on an earlier date.

(b) For purposes of this rule, payment shall be defined as delivery of the amount due to a company business office or designated payment agency during regular business hours by 5:00 p.m. on the twenty-fifth (25th) day, unless such day is a Saturday, Sunday, or legal holiday in which event the last day for payment runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

(c) Those electric customers from whom deposits are required under the provisions of Commission Rules R12-2 or R12-3 and who receive their largest bills seasonally (such as customers who use electricity for heating) may be considered seasonal customers in determining the amount of deposit under Rule R12-4. The deposits collectible from such customers shall not exceed one-half (½) of the estimated charge for service for the season involved. For purposes of this provision the heating season shall be the calendar months October through March.

(d) Each electric utility shall file tariffs with the Commission to impose charges, not to exceed the charges allowed by G.S. 25-3-506, for checks tendered on a customer's account and returned for insufficient funds. This charge shall apply regardless of when the check is tendered.

(e) Each electric utility, through its meter reader, office, or designated payment agency is authorized to collect payment by cash or check for bills past due and in arrears, and for current bills once the meter reader has left the office with a list of customers whose service is to be disconnected, unless the day on which the meter reader has left the office with such list is prior to the third day preceding the past due date of the current bill of any customer whose service is to be disconnected, in which case the utility is authorized only to collect payment for bills past due and in arrears.

"Current bill" is defined as a bill rendered but not past due. "Bill in arrears" is defined as a bill rendered and past due.

(f) Each electric utility operating under the jurisdiction of the North Carolina Utilities Commission shall immediately revise, where necessary, its billing procedures to conform to the following approximate schedules:

A. Customers beyond their first twelve months of service with "good credit established."

Approximate Billing Cycle Day	*Standard Procedure*
1	Meter read.
5	Bill mailed.
31	Meter read.
35	Second bill mailed, showing 1-month prior account balance and current bill.
61	Meter read.
65	Third bill mailed with a reminder notice.
79	Disconnect notices prepared in conformity with subsection (l) of this rule are reviewed by the utility before mailing to customers. Seven days allowed to make credit arrangements.
89	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
91	Meter read and the field representative makes the effort to notify the customer, receive payment or defer disconnection in accordance with Rule R12-11(m)(2), make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the utility for reconnection action.

B. All customers within their first twelve months of service and customers beyond their first twelve months of service with "good credit not established" will have delinquency started on the 35th rather than the 65th day. The billing schedule will then be approximately as follows:

Approximate Billing Cycle Day	*Standard Procedure*
1	Meter read.
5	Bill mailed.
31	Meter read.

35	Second bill mailed, showing 1-month prior account balance and current bill, and with a reminder notice.
49	Disconnect notices prepared in conformity with subsection (l) of this rule are reviewed by the utility before mailing to customers. Seven days allowed to make credit arrangements.
59	Review of accounts to determine if customer has taken necessary action to avoid disconnection. Supervisory approval given to final disconnect orders.
61	Meter read and the field representative makes the effort to notify the customer, receive payment or defer disconnection in accordance with Rule R12-11(m)(2), make satisfactory credit arrangements, agree to defer action because of death or illness, or disconnects. Field representative may require payment of all past due portions of bill, consistent with the rules set forth above. Customer has immediate recourse to the utility for reconnection action.

(g) The delinquency procedures for these customers will be as described above. This procedure ensures that no disconnect proceeding will be instituted prior to issuance of a second month's bill.

(h) No disconnects will be made prior to their being personally reviewed and ordered by a supervisor.

(i) The disconnect notice to the customer will state that the utility can be contacted within a 7-day period to discuss credit arrangements if payment of the bill is not possible.

(j) Each electric utility shall submit its system of residential customer credit code classification to the Commission for approval. With regard further to the classifications "good credit established" and "good credit not established," no customer shall be classified at a level below "good credit not established."

(k) Following approval by the Commission, each electric utility using a system of credit codes to classify its customers shall advise each customer of the method by which the code operates, the customer's present classification in the credit code, and at any time when a customer's classification changes.

(l) Electric service to a residential customer shall not be terminated for nonpayment of a delinquent account until the utility has given such customer at least 10 days' written notice that his service is subject to termination. This notice of proposed termination shall, at a minimum, contain the following information:

(1) A clear explanation of the reasons which underlie the proposed termination.

(2) The date of the proposed termination, which shall not be less than 10 days from the date of issuance of such notice.

(3) A statement advising the customer that electric service will not be terminated if, prior to the proposed termination date, the customer is able to establish that he is unable to pay his account in full and he agrees to enter into a reasonable installment agreement with the utility designed to bring the account into balance not later than six months from the date of such agreement. Approved finance charges will apply to the balance in arrears. This installment agreement shall encompass both the sum of the outstanding balance and also the estimated charges for electric usage which is reasonably projected to occur

during the period of the agreement. Estimated charges shall be based upon an analysis of the customer's past usage.

(4) Statements advising the customer that he should first contact the utility with any questions he may have regarding his bill and that in cases of dispute, a proposed termination action may thereafter be appealed informally to 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 by writing the Public Staff-North Carolina Utilities Commission, Consumer Services Division, P.O. Box 29520, Raleigh, North Carolina 27626-0520.

(5) A statement advising the customer that he may desire to call his local social service agency to determine what federal, state, or private assistance may be available.

(6) With respect to bills rendered between November 1 and March 31 of every year and in conformity with the policy considerations expressed by Congress in the Public Utility Regulatory Policies Act (PURPA) of 1978, the notice of proposed termination shall also contain a statement that no termination shall take place without the express approval of the Commission if the customer can establish *all* of the following:

(a) That a member of the customer's household is either handicapped or elderly (65 years of age or older), or both.

(b) That the customer is unable to pay for such service in full or in accordance with subsection (l)(3) of this rule.

(c) That the household is certified by the local social service office which administers the Energy Crisis Assistance Program or other similar programs as being eligible (whether funds are then available or not) to receive assistance under such programs.

(m) Personal Contact Prior to Termination.

(1) At least 24 hours prior to a proposed service termination, the utility shall, in good faith, attempt to contact a customer to whom a written disconnect notice has been mailed (as well as any third party who may have been designated by the customer to receive notice pursuant to subsection (n) of this rule), either by telephone or by visit to the customer's premises. The purpose of this personal contact shall be to attempt to personally inform the customer and his designated representative that termination of service is imminent, and to fully explain all alternatives to termination which may be available to the customer under this rule.

(2) Immediately prior to the actual termination of service, the utility's representative shall attempt to personally contact the customer on the premises. At that time, the utility's representative shall either receive payment from the customer, or postpone termination for another 24 hours if the customer is prepared to pay but the utility has determined that its representatives should not be required to accept payments from customers on the premises; make satisfactory credit arrangements; agree to postpone termination during the period November 1 to March 31 if the customer qualifies for postponement under subsection (l)(6) of this rule; or, in the

absence of any of the arrangements or circumstances listed above, terminate service. If personal contact cannot be made by the utility, a notice indicating that service has been terminated shall be left in a conspicuous place at the residence where such service was terminated. Such notice shall specify that the customer may have immediate recourse to the utility in order to arrange for reconnection of service.

(3) The utility shall fully document its efforts under this subsection to personally contact the customer and any designated third party representative.

(n) Each electric utility shall offer its residential customers the opportunity to designate a third party to receive a copy of any proposed termination notice which may be mailed to the customer. Each residential customer shall be given notification of this option at the time service is initiated and at least once annually thereafter. Notice of the availability of this option shall be given in writing, either by mailing a copy of such notice as a bill insert or by means of a separate mailing, to all residential customers. Such notice shall clearly indicate that this duplicate notification process will not obligate the third party to pay the customer's bill.

(o) Informal Appeal of Termination Action.

(1) Any residential customer may informally appeal the decision of a utility to terminate service by notifying the Consumer Services Division of the Public Staff-North Carolina Utilities Commission. Such notification may be made by the customer either in person, in writing, or by telephone.

(2) Upon receipt of any such appeal, the Consumer Services Division of the Public Staff shall immediately notify the utility that such an informal appeal has been filed. If service has not been terminated as of the time an appeal is filed, the utility shall not terminate the customer's service without securing express approval from the Com- mission or its designated representative. If service has already been terminated by the time the customer files his appeal with the Public Staff, the Commission may order the utility to restore service upon such terms as are deemed just and reasonable pending resolution of the appeal.

(3) If the matter cannot be resolved informally, the customer shall then have the right to file a formal complaint with the Commission pursuant to Rule R1-9 and to request a hearing thereon.

(p) Residential electric service shall not be terminated on Fridays, on weekends, on state or federal holidays, or on days before state or federal holidays. If a disconnection occurs, the customer shall have immediate recourse to the utility regardless of the time of day.

(q) Each electric utility shall establish an internal procedure whereby the utility will endeavor to identify by a special code a customer whose household is known to have an individual residing therein who is either chronically or seriously ill, handicapped, or on a life support system. The purpose of assigning such code shall be to identify that account for careful handling whenever service to such account becomes subject to termination as a result of nonpayment of a delinquent bill.

(r) Nothing in this rule shall preclude an electric utility from exercising reasonable discretion in waiving or extending the times provided herein pertaining to termination of service, particularly when such waiver or extension would result in the prevention of undue hardship in those cases where termination of service would be especially dangerous to health or where the customer or a member of the customer's household is elderly or handicapped.

DOCKET NO. M-100, SUB 126

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
The Year 2000 Computer Issue) ORDER REQUIRING UTILITIES TO SUBMIT RESPONSES CONCERNING THE YEAR 2000 COMPUTER ISSUE

BY THE COMMISSION: Many computers still use the old six-digit dating system, which does not go beyond the year 1999. When the internal clocks of those computers reach midnight on December 31, 1999, the majority will reset to January 1, 1900. Furthermore, the year 2000 is a leap year, and not all computers are programmed to recognize February 29, 2000. Unless this situation is properly addressed, it could have very serious consequences for any date-sensitive transaction. Since most public utilities rely on computers for operational and billing requirements, both they and their customers would be affected. On April 27, 1998, at the Commission's Regular Staff Conference, the Public Staff expressed concern that the North Carolina jurisdictional utilities anticipate and adequately address the Year 2000 computer issue. The Public Staff recommended that the Commission issue an order requiring utilities to complete a Year 2000 survey so that the Commission can assess how utilities are addressing the Year 2000 issue.

The Commission is aware that some of the larger utilities have already undertaken to solve this problem by installing new equipment and software. While the Commission views the Year 2000 issue as a managerial problem and its solution as a managerial decision, the Commission is concerned about the adequacy and reasonableness of such solutions. Accordingly, the Commission concludes that each utility, except for non-automated collect payphone providers, shall complete the attached survey, file it with the Commission, and mail copies to the Public Staff and the Attorney General no later than July 1, 1998.

IT IS ,THEREFORE, ORDERED as follows:

1. That each utility, except for non-automated collect payphone providers, complete the attached survey and file its responses on or before, July 1, 1998, with the following:

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

And provide copies to:

Public Staff - NC Utilities Commission
Attn: Legal Division
Post Office Box 29520
Raleigh, North Carolina 27626-0520

Attorney General Michael F. Easly
Department of Justice
Attn: Linda Cox
Post Office Box 629
Raleigh, North Carolina 27602

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of April, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

YEAR 2000 ISSUE SURVEY
Docket No. M-100, Sub 126

Please complete and sign certification at end of survey. Use additional paper if necessary. You need to file only the original with the Chief Clerk, and mail copies to the Public Staff and the Attorney General as specified in the Order.

Company Information: **Please indicate the appropriate contact person**

Company Name:____
Address:____
Type of utility (gas, water, electric, phone, etc.) ____________________
Who is responsible for addressing the Year 2000 problem in your Company?
Name:____
Title:____
Phone:____
Fax:____
E-Mail Address:____

1. Will your company's operations be affected by the January 1, 2000 transition?
   a) Yes b) No
   If no, why will your company's operation not be affected by the Year 2000 computer problem?

2. Will all software on small and large computer systems be Year 2000 compliant?

3. Will all small and large computer hardware systems be Year 2000 compliant?

4. Does your company have a Year 2000 compliance plan?
   a) Yes b) No
   If yes, describe generally your company's Year 2000 compliance plan?
   If no, why does your company not have a Year 2000 compliance plan?

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5. Please provide on an annual basis the funds spent or expected to be spent to become Year 2000 compliant?

1993__________	1994__________	1995__________	1996__________
1997__________	1998__________	1999__________	2000__________
2001__________	2002__________	2003__________	2004__________

6. When did you begin your effort to become Year 2000 compliant and what is your estimated completion date for your compliance plan?

7. Does your company have a contingency plan if it is not Year 2000 compliant by December 31, 1999?

   a) Yes b) No

   If yes, what is your contingency plan?
   If no, why does your company not have a contingency plan?

9. If your company provides utility service to more than 20,000 customers, please answer whether your operations are or will be Year 2000 compliant for the following items:

a.	____ a) Yes ____b) No	From now until January 1, 2000, systems will correctly process data containing dates before January 1, 2000.
b.	____ a) Yes ____b) No	If no, then by what date?____________________
c.	____ a) Yes ____b) No	From now until January 1, 2000, systems will correctly process data containing dates after December 31, 2000
d.	____ a) Yes ____b) No	From January 1, 2000, systems will correctly process data containing dates before January 1, 2000.
e.	____ a) Yes ____b) No	From January 1, 2000, systems will correctly process data containing dates after December 31, 1999.
f.	____ a) Yes ____b) No	From now until January 2000, systems will correctly process data containing dates after December 31, 1999.
g.	____ a) Yes ____b) No	Arithmetic operations performed will recognize that the year 2000 has 366 days.
h.	____ a) Yes ____b) No	Systems will be able to correctly handle the date 01/01/01.
i.	____ a) Yes ____b) No	Systems will be able to recognize the year 2000 as a leap year.
j.	____ a) Yes ____b) No	February 29, 2000 is recognized as a valid date.
k.	____ a) Yes ____b) No	September 9, 1999 (9/9/99) is recognized as a valid date.
l.	____ a) Yes ____b) No	Julian date 00060 is recognized as February 29, 2000.
m.	____ a) Yes ____b) No	Julian date 00366 is recognized as December 31, 2000.
n.	____ a) Yes ____b) No	Binary date 36584 is recognized as February 29, 2000.

o. Does your company's Year 2000 plan include processes for the following: (please check all that apply)

____ 1) A systems inventory and assessment
____ 2) An equipment inventory and assessment
____ 3) Corrective actions
____ 4) Testing

p. Have you determined if your suppliers and vendors are Year 2000 compliant? If no, why not? If yes and your suppliers and vendors are not Year 2000 compliant, what negative impact can this have on your provision of utility service?

Management Representation

By signing below I certify that the representations made herein are true, correct and accurate to the best of my knowledge and belief. I also certify that copies of this survey have been mailed to the Public Staff and the Attorney General.

Signature of Responsible Party	______________________
Name/Title (please print)	______________________
Date:	______________________
Phone Number:	(______)________________

DOCKET NO. M-100, SUB 126

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Year 2000 Computer Issue	))))	ORDER REQUIRING ELECTRIC MEMBERSHIP CORPORATIONS TO SUBMIT RESPONSES CONCERNING THE YEAR 2000 COMPUTER ISSUE

BY THE CHAIR: On April 28, 1998, the Commission issued an Order in this docket requiring all utilities, except for non-automated collect payphone providers, to complete the Year 2000 Issues survey attached thereto. Completed surveys were required to be filed with the Commission on or before July 1, 1998, with copies to be provided to the Public Staff and to the Attorney General.

Under G.S. 62-42, the Commission is charged with ensuring the provision of reasonably adequate service by public utilities, including electric membership corporations. The risks posed by the failure to properly address the Year 2000 issue could threaten the adequacy of public utility service.

As stated in the April 28, 1998, Order, while the Commission views the Year 2000 issue as a managerial problem and its solution as a managerial decision, the Commission is concerned about the adequacy and reasonableness of such solutions. Accordingly, the Chair concludes that each electric membership corporation shall also complete the attached survey[1], file it with the Commission, and mail copies to the Public Staff and the Attorney General no later than September 4, 1998.

IT IS, THEREFORE, ORDERED as follows:

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[1]See page 11 for Year 2000 Issue Survey

1. That each electric membership corporation complete the attached survey and file its responses on or before September 4, 1998, as follows:

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

And provide copies to:

Public Staff - NC Utilities Commission
Attn: Legal Division
Post Office Box 29520
Raleigh, North Carolina 27626-0520

Attorney General Michael F. Easley
Department of Justice
Attn: Linda Cox
Post Office Box 629
Raleigh, North Carolina 27602

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of July, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. M-100, SUB 126

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of The Year 2000 Computer Issue	))	FURTHER ORDER CONCERNING THE YEAR 2000 COMPUTER ISSUE

BY THE COMMISSION: Many computers still use the old six-digit dating system, which does not go beyond the year 1999. When the internal clocks of those computers reach midnight on December 31, 1999, the majority will reset to January 1, 1900. Furthermore, the year 2000 is a leap year, and not all computers are programmed to recognize February 29, 2000. Unless this situation is properly addressed, it could have very serious consequences for any date-sensitive transaction. Since most public utilities rely on computers for operational and billing requirements, both they and their customers would be affected.

GENERAL ORDERS - GENERAL

On April 27, 1998, at the Commission's Regular Staff Conference, the Public Staff expressed concern that the North Carolina jurisdictional utilities should anticipate and adequately address the Year 2000 (Y2K) computer issue. The Public Staff recommended that the Commission issue an order requiring utilities to complete a Year 2000 survey so that the Commission can assess how utilities are addressing the Year 2000 issue. On April 28, 1998, the Commission issued an Order requiring all regulated utilities to complete a Year 2000 survey, file it with the Commission, and mail copies to the Public Staff and the Attorney General, no later than July 1, 1998.

On September 29, 1998, the Public Staff filed its Initial Report to the North Carolina Utilities Commission on the Year 2000 Analysis of Utilities Regulated in North Carolina. In its report, the Public Staff details: (1) its monitoring of utilities' Y2K compliance plans, (2) its assessment of how utilities are addressing the Year 2000 issue, 3) its plans for following up with utilities, and (4) its recommendations to the Commission. On October 5, 1998, at the Commission's Regular Staff Conference, the Public Staff recommended that the Commission issue to all regulated utilities an order incorporating the recommendations in the Public Staff's report. The Public Staff further stated that the State's major utilities and the three largest water and sewer companies were provided a copy of the report before it was filed with the Commission and none of the utilities objected to any of the Public Staff's recommendations.

After reviewing the Public Staff's Initial Report to the North Carolina Utilities Commission on the Year 2000 Analysis of Utilities Regulated in North Carolina, the Commission concurs with the Public Staff's recommendations:

1. Nothing in any Commission Order or any communication from the Public Staff relieves the management of any utility from the responsibility of taking such action as is necessary to achieve a successful Year 2000 result.

2. All major utilities regulated by the Commission should (for purposes of this Order, the term "major utilities" shall include Duke Energy Corporation, Carolina Power & Light Company, Virginia Electric and Power Company d/b/a North Carolina Power, North Carolina Natural Gas Corporation, Public Service Gas Company of North Carolina, Inc., Piedmont Natural Gas, Inc., Sprint Communications Company, L.P., Carolina Telephone & Telegraph Company, Central Telephone Company, GTE South Incorporated, BellSouth Telecommunications, Inc., AT&T Communications of the Southern States, Inc., MCI Telecommunications Corporation, and ALLTEL Carolina, Inc.):

    a. Have a Year 2000 committee that reports at least to a senior vice president;
    b. Have a commitment to spend the dollars reasonably necessary to achieve a successful Year 2000 effort;
    c. Report regularly to their boards of directors on progress made in becoming Year 2000 ready or compliant;
    d. Exchange information with similar utilities in a comprehensive and inclusive manner and regularly on state, regional, and national levels to the extent reasonably possible; and
    e. File with the Commission, and mail to the Public Staff and the Attorney General, a copy of any substantive and substantial report on Year 2000 issues that it files with

any federal or state agency or department until January 1, 2001. The Clerk of the Commission is directed to set up in this docket separate folders for each of the major utilities into which this information will be placed. When companies submit this information they should include this docket number.

3. All utilities shall have all their critical computer, computer software, telephones and telephone systems, faxes, copiers, vehicles and equipment checked for Year 2000 compliance, and remediate or replace when necessary for operations.

4. All utilities shall access the Public Staff's Year 2000 web site on the Internet and study the information contained therein to determine additional places to look for Year 2000 problems. That site is located at <http://www.pubstaff.commerce. state.nc.us>.

5. All major utilities shall have a Year 2000 web site by January 1, 1999, and all other companies with the resources are encouraged to do so. As utilities establish Y2K pages on the Internet, they should inform the Public Staff, and the Public Staff will provide a link to that page from its own Year 2000 web site. Those utilities should also provide a link to the Public Staff web site. All companies are urged to keep their customers informed as to their progress in reaching Year 2000 compliance. Companies should consider bill inserts, advertisements, news releases and other means to disseminate Year 2000 information. All major utilities are ordered to keep the Commission, the Public Staff and the Attorney General informed of their Year 2000 educational efforts. The Clerk of the Commission is directed to set up separate folders for each of the major utilities into which this information will be placed. When companies submit this information they should include this docket number.

6. All companies with sufficient resources are strongly encouraged to hire qualified Year 2000 consultants at least as an independent assessment of the procedures that the utility has developed in its Year 2000 compliance effort. All utilities are urged to share information about consultants.

7. Electric Membership Corporations should, in addition to carefully reviewing the Public Staff's informational letter, also look for embedded chips in the following areas: energy supply metering, environmental monitoring equipment, global positioning systems, load dispatch and remote switchyard breaker controls, monitoring and signaling systems, multi-loop control and monitoring, panel mounted devices, programmable logic controls (PLCs) and embedded date sensitive controls, real time control systems, remote terminal units, single loop controllers, smart instrumentation, substation equipment, SCADA systems and test equipment.

8. All companies that received an informational letter from the Public Staff should review and give serious consideration to the recommendations in that letter. Those informational letters are on the Public Staff's web site.

9. All utilities should cooperate fully with the Public Staff as it monitors Year 2000 compliance progress, requests information, requests meetings, and requests site visits. Utilities are directed to invite the Public Staff to Year 2000 forums in which a Public Staff presence is appropriate.

10. All companies that have not returned their surveys should do so by filing a completed survey with the Commission, and mailing a copy to the Public Staff and the Attorney General, within 15 days of the date of this Order. A copy of the Year 2000 survey is attached to this Order[1]. The Commission finds that the failure to send in a survey constitutes a direct violation of a Commission Order.

11. Should any regulated utility fail to provide adequate service because of Year 2000 related problems, the Commission will first look to that utility's adherence to its Orders in this docket in determining if penalties should be enforced against that utility.

IT IS, THEREFORE, SO ORDERED.
ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of October, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

[1]See page 11 for the Year 2000 Issue Survey

DOCKET NO E-100, SUB 78A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Investigation of Emerging Issues) ORDER ADOPTING REVISED RULES
in Electric Industry Restructuring)

BY THE COMMISSION: On March 26, 1998, the Commission issued an Order in this docket preliminarily adopting revised rules to streamline the Integrated Resource Planning (IRP) process. The Commission repealed Rules R8-56 through R8-59 and revised Rule R8-60. The revised rules require utilities to file an annual report containing a ten-year forecast of loads and generating capability and certain other information in place of the previous requirement of an Integrated Resource Plan filed every three years with a Short Term Action Plan and Updates to the Integrated Resource Plan filed annually. The Commission also made changes to Rule R8-61 concerning the filing of applications for certificates of public convenience and necessity for generating facilities over 300 MW. The Commission sought additional comments from the parties to this docket on two issues: First, are the revised rules consistent with the applicable statutes, G.S. 62-110.1(c) and G.S. 62-2(3a)? Second, are the revised rules likely to cause undue harm to any party? Comments on these two issues were received on or before April 9, 1998, from Carolina Power & Light Company (CP&L), Duke Power Company (Duke), North Carolina Power (NC Power), the Public Staff, and Southern Environmental Law Center (SELC).

CP&L stated that the Commission's preliminary new IRP rules completely satisfy the information requirements set forth in G.S. 62-110.1 and accomplish the purposes of G.S. 62-2. CP&L also stated that the proposed rules are fair to all interested parties, noting that interested parties will have an opportunity to comment upon the utilities' filings and to request an evidentiary hearing. If such a request is denied, parties will have three other opportunities to challenge proposed utility actions or plans, including participation in generation or transmission certification proceedings, participation in a general rate case when a utility seeks to include the costs of a facility in its rates, and the filing of a complaint pursuant to G.S. 62-73. CP&L supports the Commission's permanent adoption of revised Rules R8-60 and R8-61.

Duke stated its belief that the rules preliminarily adopted by the Commission are consistent with Chapter 62 of the General Statutes, that the rules will not cause undue harm to Duke, and that Duke does not believe the rules should cause undue harm to any party to this proceeding. Duke suggested two changes to clarify Rule R8-60. First, Duke proposed to change R8-60(10) to read as follows:

(10) A list of wholesale purchased power commitments reflected in the plan.

Second, Duke proposed to change R8-60(11) to read as follows:

(11) A list of wholesale power sales commitments reflected in the plan.

In each case, Duke suggested that the word "wholesale" be added to the preliminary Rule R8-60. The Commission accepts these clarifying changes recommended by Duke and has incorporated these changes in the new Rules finally adopted herein. The changes clarify the Commission's original intent.

Duke also suggested that the Commission clarify its intentions regarding the scheduling of the hearing for public comments. The Commission intends to schedule a hearing for the public after comments and reply comments have been received from parties. The preliminary Rule R8-60(d) provides that the public hearing shall be set at a time and place designated by the Commission, and it requires no change. This flexibility will allow the Commission to schedule each proceeding as appropriate.

NC Power stated in its comments that the annual report required of utilities by the new rules provides the Commission with sufficient information on an annual basis for the Commission to meet its responsibilities under G.S. 62-110.1(c) and G.S. 62-2(3a). NC Power expressed concerns about the confidentiality of the information it is required to file, noting that new Rule R8-60 states that a utility may designate information as confidential and such information will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings under seal and nondisclosure agreements. However, NC Power noted that it is unaware of any Commission rule, procedure or applicable orders dealing with filings under seal and nondisclosure agreements and it asked the Commission to provide additional guidance. NC Power proposed that both Rule R8-60 and Rule R8-61 provide that a utility may refuse to release information to a third party but would have the burden of showing that the release of specified information would place it at a competitive disadvantage upon the filing of a motion to compel by any aggrieved party.

Although there is no specific Commission rule dealing with discovery or confidential filings, the Commission deals with these matters in numerous proceedings and contexts, and the Commission has developed its own practices for handling these issues. NC Power has itself followed such practices in past proceedings or participated in proceedings in which they were invoked. The practices are based in part on guidance from the Rules of Civil Procedure and in part on applicable statutes, such as G.S. 132-1.2 and G.S. 66-152(3) dealing with the handling of trade secrets. The Commission finds it unnecessary to spell out these practices in detail in the current rule. It would also be ill-advised since the practices will no doubt evolve as the competitive market place for electric generation evolves. As in the past, specific disputes will be handled on a case-by-case basis by Commission order.

SELC stated in its comments that the Commission's preliminary revisions to its IRP rules go too far in the direction of loosening the requirements on utilities and are not justified by the pace of change in the industry. SELC supports, for the most part, the proposed modifications initially proposed by the Public Staff. SELC believes that the rules preliminarily adopted by the Commission do not allow the Commission to fulfill its statutory duties and will greatly curb opportunities for meaningful public participation and input into the IRP process. SELC stated that the proposed rules do not sufficiently protect the public interest in utility resource planning, and they should be modified.

The Public Staff stated its belief that certain aspects of the preliminary rules conflict with existing statutes and are likely to cause undue harm, and the Public Staff recommended either change or clarification. First, the Public Staff pointed out that utilities have to file much less information under the preliminary new rules. Under the new rules, utilities do not have to verify that they reviewed various supply side options, that they considered a reasonable number of non-supply side options or that the ones implemented are cost effective or cost justified, that they conducted any sensitivity analysis, or that the final package is cost effective and cost justified. Without this information, the Public Staff doubts that the Commission can conduct the analysis or prepare the report required by statute. The Public Staff believes that the requirements of G.S. 62-110.1(c) are far broader than the utilities' comments indicate and that the narrow focus of the preliminary rules is particularly inappropriate at a time of transition, when the Commission needs greater knowledge, not less.

Second, the Public Staff stated that it has obligations in the IRP process pursuant to G.S. 62-15(d)(2),(3), and (6), that preliminary Rule R8-60 cuts the time for the Public Staff to meet these obligations from four months to 30 days, and that this is not enough time. In its initial comments and proposed rules, the Public Staff trimmed the four-month review period to three months, which it considered the bare minimum amount of time it must have to investigate the utilities' plans. The Public Staff maintained that any shorter time frame will make it impossible for it to investigate the filings and submit recommendations to the Commission. The Public Staff stated that the Commission must decide if it can meet its statutory obligations without the benefit of the Public Staff's independent review of the utilities' filings. The Public Staff stated that it may simply file its data requests with the Commission and request that the answers be filed with the Commission as well. The Public Staff stated that if it is left with insufficient time to conduct an investigation, the using and consuming public may suffer undue harm.

Third, the Public Staff objected to the Commission's elimination of the prefiling requirement in preliminary Rule R8-61. The Commission's intent in removing the prefiling requirement was to shorten the construction process by expediting review. The Public Staff noted that it is not possible to compress the time required for its investigation and analysis concerning the issuance of a certificate and that eliminating the prefiling requirement will therefore not speed review. Further, according to the Public Staff, CP&L had noted in its comments that the prefiling requirement does not apply to unregulated entities and therefore places CP&L and other utilities at a disadvantage. The Public Staff's interpretation, however, is that the prefiling requirement does apply to all persons seeking a certificate, not just utilities.

The Commission has carefully considered the Public Staff's comments. In response to the Public Staff's concern that the preliminary new rules are inconsistent with Chapter 62, the Commission notes that G.S. 62-110.1(c) requires the Commission to

> develop, publicize, and keep current an analysis of the long-range needs for expansion of facilities for the generation of electricity in North Carolina, including its estimate of the probable future growth of the use of electricity, the probable needed generating reserves, the extent, size, mix and general location of generating plants and arrangements for pooling power to the extent not regulated by the Federal Power Commission and other arrangements with other utilities and energy suppliers to achieve maximum efficiencies for the people of North Carolina, and shall consider such analysis in acting upon any petition by any utility for construction.

To meet its responsibilities under this statute, the Commission must consider likely increases in electricity demand and the type and number of generating units or other resources necessary to meet the projected load. The purpose of gathering this information, in addition to its use in preparing a report to the Governor and General Assembly, is to help inform the Commission in its decisions on applications for certificates of public convenience and necessity. The rules preliminarily adopted by the Commission require the utilities to submit, and allow others to respond to:

- forecasts of demand;
- descriptions of the methods used to prepare the forecast;
- generating capability and reserve margins for each year;
- lists of existing generating plants and generating plants under construction, planned, or proposed;
- list of transmission lines and facilities under construction or planned;
- demand-side options reflected in the plan;
- wholesale purchase commitments and wholesale sale commitments reflected in the plan.

This information, together with the comments of the intervenors, should be sufficient for the Commission to determine if the forecasts and plans filed by the utilities are reasonable and to meet its responsibilities under G.S. 62-110.1(c).

The other statute cited by the Public Staff, G.S. 62-2(3a), declares a number of State policies, including:

- to promote adequate, reliable service to all of the citizens and residents of this State;
- to assure that resources necessary to meet future growth include the entire spectrum of demand-side management options;
- to assure that facilities necessary to meet future growth can be financed on reasonable terms;
- to foster the continued service of public utilities on a well-planned and coordinated basis that is consistent with the level of energy needed for the protection of public health and safety and for the promotion of the general welfare;
- to seek to adjust the rate of growth of regulated energy supply facilities serving the State to the policy requirements of statewide development; and
- to cooperate with other states and with the federal government in promoting and coordinating interstate and intrastate public utility service and reliability of public utility energy supply.

Carrying out these policies is part of the overall work of the Commission and is not limited to decisions in IRP proceedings. The Commission and the parties have had experience with the current IRP process, and the Commission noted in its Order of September 26, 1997, the dissatisfaction of the parties with the current process and the suggestions, including suggestions from the Public Staff's witness, to streamline the process. Several parties, in fact, stated that the IRP process is actually counterproductive and should be eliminated by the General Assembly. Having studied the comments of all the parties, the Commission believes that the rules it is adopting, as amended herein, will allow it to carry out the policies of the State and to meet its responsibilities under G.S. 62-2(3a).

The Commission believes that the Public Staff has submitted new information with respect to the schedule set forth in the Commission's preliminary Rule R8-60 and its likely impact. The schedule in the preliminary rule gave the Public Staff and other intervenors 30 days to file comments or reports after the utilities file their annual reports. The intent was to streamline the IRP process by having the Public Staff submit its data requests and begin its analysis while the utilities were preparing their reports, rather than waiting for the reports to be filed before beginning an investigation. Based on its comments, however, the Public Staff does not favor this approach. Given the Public Staff's understanding of its statutory responsibilities, as reflected in its comments, the Commission concludes that it should revise its preliminary Rule R8-60 to allow intervenors 90 days from the time that annual reports are filed by utilities to file comments or reports. This is consistent with the initial proposal of the Public Staff. A 90-day schedule will streamline the current process while still allowing the Public Staff and intervenors sufficient time to investigate and participate meaningfully in the process.

As discussed above, the Commission is of the opinion that the filing requirements in the preliminary rule are sufficient for purposes of meeting its responsibilities under the statutes. However, the Commission notes that, with the extension of time from 30 days to 90 days for the Public Staff and other intervenors to file their own reports or their evaluations of the utilities' reports, intervenors who believe that additional information is needed will have this time within which to conduct discovery of relevant matters beyond the filing requirements of the rule.

The Commission also finds persuasive the Public Staff's concerns with respect to the schedule in the Commission's preliminary Rule R8-61. The Public Staff comments that the certification period cannot be reduced because the Public Staff requires approximately six months from the time that information is provided by an applicant to complete its own investigation and report. If the prefiling is eliminated, the Public Staff comments that it will need the same time after the application is filed, and thus, the time to construct a facility from the point when a utility or other person is ready to file the required information cannot be reduced by changing the rule. The Commission has decided to reinstate the 120-day prefiling requirement in Rule R8-61. In doing so, the Commission finds that it should address the issue raised by CP&L and clarify the wording in Rule R8-61 to indicate that prefiling is required of all persons applying for a certificate of public convenience and necessity for a generating facility with a capacity of 300 MW or more, not only utilities. The new Rule R8-61 is intended to implement the certificate statute, G.S. 62-110.1(a). Since the statute applies to public utilities <u>and other persons</u>, it is appropriate that the rule be just as broad.

The Commission has incorporated the changes discussed above into new revised Rule R8-60 and Rule R8-61, which are attached hereto as Appendix A and adopted.

IT IS, THEREFORE, ORDERED that the Commission adopts the new revised Rule R8-60 and Rule R8-61 relating to resource planning, as set forth in Appendix A attached hereto, effective as of the date of this Order.

ISSUED BY ORDER OF THE COMMISSION.
This the <u>29th</u> day of <u>April</u>, 1998

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Docket No. E-100, Sub 78A

Article 11.
Resource Planning

Rules R8-56 through R8-59 are repealed.

Rule R8-60 is rewritten as follows:

Rule R8-60. Annual report

(a) *General.* The Commission is required by G.S. 62-110.1(c) to consult with the utilities in North Carolina and with other state and federal agencies having relevant information in analyzing the long-range needs for expansion of electric generating facilities in North Carolina. The Public Staff is required by G.S. 62-15(d) to assist the Commission in analyzing the long-range needs for expansion of electric generating facilities pursuant to G.S. 62-110.1.

(b) *Applicability.* This rule is applicable to Carolina Power & Light Company, Duke Energy Corporation, d/b/a Duke Power Company, Nantahala Power and Light Company, Virginia Electric and Power Company, d/b/a North Carolina Power, and the North Carolina Electric Membership Corporation.

(c) *Annual Report.* By September 1 of each year, each utility shall furnish the Commission with an annual report of its resource plan containing a ten-year forecast of loads and generating capacity. An updated report shall be filed within thirty (30) days after any significant revision to the forecast. The report filed by each utility shall describe all generating facilities and known transmission facilities with operating voltage of 161 kV or more which, in the judgment of the utility, will be required to supply system demands during the forecast period. The report shall cover the 10-year period next succeeding the date of said report and shall include the following:

(1) A tabulation of summer and winter peak loads, annual energy forecast, generating capability, and reserve margins for each year, and a description of the methods and assumptions used by the utility to prepare its forecast;

(2) A list of existing plants in service with capacity, plant type, and location;

(3) A list of generating units under construction or planned at plant locations for which property has been acquired, for which certificates have been received, or for which applications have been filed with location, capacity, plant type, and proposed date of operation included;

(4) A list of proposed generating units at locations not known with capacity, plant type, and date of operation included to the extent known;

(5) A list of units to be retired from service with location, capacity and expected date of retirement from the system;

(6) A list of units for which there are specific plans for life extension, refurbishment or upgrading. The reporting utility shall also provide the expected (or actual) date removed from service, general location, capacity rating upon return to service, expected return to service date, and a general description of work to be performed;

(7) A list of transmission lines and other associated facilities (161 kV or over) which are under construction or for which there are specific plans including the capacity and voltage levels, location, and schedules for completion and operation;

(8) A list of any generation and associated transmission facilities under construction which have delays of over six months in the previously reported in-service dates and the major causes of such delays. Upon request from the Commission Staff, the reporting utility shall supply a statement of the economic impact of such delays;

(9) A list of demand-side options reflected in the resource plan;

(10) A list of wholesale purchase power commitments reflected in the resource plan; and

(11) A list of wholesale power sales commitments reflected in the resource plan.

If a utility considers certain information and data to be confidential, it may designate it as confidential in its filing, and such information and data will be treated pursuant to applicable Commission rules, procedures, and orders dealing with filings under seal and nondisclosure agreements.

(d) *Review.* Within 90 days after the filing of each utility's annual report, the Public Staff or any other intervenor may file a report of its own as to any utility or may file an evaluation of or comments on the reports filed by the utilities, or both. The Public Staff or any intervenor may identify any issue which that party believes should be the subject of an evidentiary hearing. Fourteen days after the filing of these initial comments, the parties may file reply comments addressing any substantive or procedural issue raised by any other party. A hearing to address issues raised by the Public Staff or other intervenors may be scheduled at the discretion of the Commission. The scope of any such hearing shall be limited to such issues as identified by the Commission. One or more hearings to receive testimony from the public, as required by law, shall be set at a time and place designated by the Commission.

Rule R8-61 is rewritten as follows:

Rule R8-61. Preliminary plans and certificates of public convenience and necessity for construction of electric generation and related transmission facilities in North Carolina.

(a) Information to be filed 120 or more days before the filing of an application, by a utility or other person, for a certificate of public convenience and necessity for generating facilities with capacity of 300 MW or more shall include the following:

(1) Available site information (including maps and description), preliminary estimates of initial and ultimate development, justification for the adoption of the site selected, and general information describing the other locations considered;

(2) As appropriate, preliminary information concerning geological, aesthetic, ecological, meteorological, seismic, water supply, population and general load center data to the extent known;

(3) A statement of the need for the facility including information on loads and generating capability;

(4) A description of investigations completed, in progress, or proposed involving the subject site;

(5) A statement of existing or proposed plans known to applicant of federal, state, local governmental and private entities for other developments at or adjacent to the proposed site;

(6) A statement of existing or proposed environmental evaluation program to meet the applicable air and water quality standards;

(7) A brief general description of practicable transmission line routes emanating from the site;

(8) A list of all agencies from which approvals will be sought covering various aspects of any generation facility constructed on the site and the title and nature of such approvals.

(9) A statement of estimated cost information, including plans and related transmission capital cost (initial core costs for nuclear units); all operating expenses by categories, including fuel costs and total generating cost per net kWh at plant; and information concerning capacity factor, heat rate, and plant service life. Furnish comparative cost including related transmission cost of other final alternatives considered; and

(10) A schedule showing the anticipated beginning dates for construction, testing, and commercial operation of the generating facility.

(b) In filing an application for a certificate of public convenience and necessity pursuant to G.S. 62-110.1 (a) in order to construct a generating facility, a utility shall include the following:

(1) The most recent annual report (as defined in Rule R8-60) of the utility plus any proposals by the utility to update said report;

(2) Testimony specifically indicating the extent to which the proposed construction conforms to the utility's most recent annual report (as defined in Rule R8-60); and

(3) Testimony supporting any utility proposals to update its most recent annual report (as defined in Rule R8-60).

(c) Procedures for obtaining the certificate of public convenience and necessity shall be as stated in the General Statutes.

The introductory paragraph of Rule R8-62(p) is rewritten as follows:

Rule R8-62(p):

(p) Plans for the construction of transmission lines in North Carolina (161 kV and above) shall be incorporated in filings made pursuant to Commission Rule R8-60. In addition, each public utility or person covered by this rule shall provide the following information on an annual basis no later than September 1:

DOCKET NO. E-100, SUB 78A

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Investigation of Emerging Issues in Electric	)	ORDER AMENDING
Industry Restructuring	)	COMMISSION RULE R8-60(b)

BY THE COMMISSION: On April 29, 1998, the Commission issued its Order Adopting Revised Rules in this docket establishing new Commission Rules for electric resource planning. The applicability section of the new Rules, Rule R8-60(b), provides that the Rules apply to "Carolina Power & Light Company, Duke Energy Corporation, d/b/a Duke Power Company, Nantahala Power and Light Company, Virginia Electric and Power Company, d/b/a North Carolina Power, and the North Carolina Electric Membership Corporation." Nantahala Power and Light Company (Nantahala) was named because its merger with Duke Energy Corporation (Duke), though approved by this Commission, had not been finalized at that time.

On August 3, 1998, Duke filed a letter with the Commission in Docket Nos. E-7, Sub 614 and E-13, Sub 178, advising that the merger was complete on that date and that Nantahala was now a part of Duke's electric operations.

The Commission finds good cause to delete the phrase "Nantahala Power and Light Company," from Commission Rule R8-60(b).

IT IS, THEREFORE, ORDERED that Commission Rule R8-60(b) is hereby amended to read as follows:

> (b) *Applicability.* This rule is applicable to Carolina Power & Light Company, Duke Energy Corporation, d/b/a Duke Power Company, Virginia Electric and Power Company, d/b/a North Carolina Power, and the North Carolina Electric Membership Corporation.

ISSUED BY ORDER OF THE COMMISSION
This the 11th day of August, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 72

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

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

BY THE COMMISSION: On September 28, 1998, the Public Staff filed a Petition to Relax Regulations Regarding Long Distance Service Provided by Resellers. The Public Staff included a copy of a proposed new application form.

In its Petition, the Public Staff cited as authority language in G.S. 62-110(b) allowing the reduction or elimination of regulation for competitive long distance s ervices if this is in the public interest. The Public Staff distinguished between the two types of long distance service providers: facilities-based carriers and resellers. Facilities-based carriers own and operate transmission facilities which may be used alone to provide nonswitched services or in conjunction with switching equipment to create a long distance network for the provision of switched services to individual customers as well as resellers. The reseller category includes (1) providers who do not own any network or switching facilities and only resell (switchless resellers) and (2) providers who own switching equipment but not transmission facilities and connect the necessary transmission facilities, which are obtained from facilities-based carriers, to the switch in order to produce a complete switched service (switched resellers).

Under the current regulatory regime, switchless resellers do not have to file tariffs and do not undergo a public hearing prior to certification, but do have to submit extensive documentation prior to approval. Switched resellers are required to file tariffs and must undergo a public hearing prior to certification, as well as submit extensive documentation. Such documentation includes submission of articles of incorporation or partnership agreements, certificates of authority from the Secretary of State, a description of business structure, a showing of financial and technical ability, and a plan showing how the reseller will determine its North Carolina jurisdictional revenues.

In its Petition, the Public Staff recommended that both switched and switchless reseller applicants utilize the same application form and be subject to the same certification process. Among other changes, both switched and switchless resellers would no longer have to include information to verify the financial and technical capabilities of the company or submit various corporate or partnership documents and a plan for determining the intrastate jurisdictional revenues. Switched resellers would no longer have to file tariffs, and the application process would be streamlined because hearings would no longer be required except in those cases where an interested party shows good cause.

All resellers would continue to be subject to various laws and regulations, including but not limited to transfers, abandonments of service, penalties, nondiscrimination, the regulatory fee, customer deposits, and notification of customers of the increase of rates or discontinuance of service.

The Public Staff did recommend that language regarding the usage rates for operator-assisted calls be included in the proposed application for both switchless and switched resellers. This would not impose a new requirement on switched resellers and should not adversely affect switchless resellers. With regard to the classification of currently certificated interexchange carriers, the Public Staff recommended that all interexchange carriers be required to file an affidavit stating whether or not they are facilities-based as defined in the Public Staff's Petition, noting that tariffs on file for interexchange carriers which are not facilities-based could then be canceled if the Petition is approved.

By Order dated October 7, 1998, the Commission requested comments and reply comments on the Public Staff's Petition. The Commission also requested that interested parties file Proposed Orders no later than December 17, 1998, summarizing all material comments and reply comments and providing a final Proposed Application Form.

Comments were filed by the Attorney General and The Telecommunications Resellers Association. Both of these parties recommended that the Commission adopt the changes proposed by the Public Staff. No reply comments were filed.

Based on the foregoing the Commission finds and concludes that relaxing the regulation of resellers in the manner set out in the Public Staff's Petition is in the public interest and that the Public Staff's proposals should be adopted.

IT IS, THEREFORE, ORDERED as follows:

1. That the application form attached as Appendix A is adopted for use by all resellers of long distance service.

2. That hearings on applications for certification filed by resellers will be held only upon a showing of good cause by an interested party.

3. That all interexchange carriers which currently have tariffs on file with the Commission shall file affidavits by no later than Monday, March 1, 1999, stating whether or not they are facilities-based as defined in this Order. Tariffs for non-facilities-based interexchange carriers will then be canceled.

4. That the Chief Clerk send a copy of this Order to all interexchange carriers and to all persons with applications pending to provide intrastate interexchange telecommunications services. All applicants seeking reseller authority may use Appendix A as an application form.

ISSUED BY ORDER OF THE COMMISSION.
This the 23rd day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OFFER LONG DISTANCE TELECOMMUNICATIONS SERVICE BY A RESELLER

To Be Completed by Chief Clerk

DOCKET NO. P-_______, SUB ____

Filing Fee received $ ________

Note: To apply for a Certificate, Applicant must submit a filing fee of $250.00 and the typed original and 10 copies of this document to the Commission at the following address:

Chief Clerk
North Carolina Utilities Commission
Post Office Box 29510
Raleigh, North Carolina 27626-0510

The application must be properly completed and correctly verified. If it is not, a copy of the application will be returned to the Applicant, and the application will not be further processed. If the Applicant wishes to continue with the application, a correct application must be resubmitted with a new filing fee. The original filing fee will not be returned.

APPLICANT

____
(NAME)

____
(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

____
(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

Yes [ ] No [ ] Does the Applicant own, lease, or operate transmission facilities (whether within North Carolina or not) which will be used to complete intrastate calls in North Carolina?

Yes [ ] No [ ] Has the Applicant provided in the past or is the Applicant currently providing intrastate long distance service in North Carolina?

If the answer to the above question is yes, attach a detailed explanation.

Yes [ ] No [ ] Does the Applicant intend to operate under an assumed name?

If the answer to the above question is yes, provide the assumed name or names on an attached sheet.

Special Provisions Applicable To Long Distance Carriers Intending To Offer Alternative Operator Services (AOS)

The Commission has stated that an AOS provider "specializes in the business of offering operator services to transient venues. The 'customer of the AOS is not the end-user, but what is called a 'traffic aggregator'--i.e., a payphone provider, a hotel, motel, hospital, or like establishment serving the traveling public." Both the AOS provider and the contracting party have an interest in keeping the rates charged to the end user high, and there is an inherent problem in the transient venue with adequate customer notice and choice. In previous cases, the Commission has concluded that calls made from aggregator locations by end users who are not customers of the long distance carrier should be considered AOS-type calls. If the long distance carrier's intrastate minutes of use from these types of calls exceed fifty (50%) of its total intrastate minutes of use, then the long distance carrier should be classified as an AOS provider. (See Order issued July 25, 1994, in Docket No. P-316) The Commission, in its October 21, 1988, Order in Docket No. P-100, Sub 101, concluded that long distance carriers classified as AOS providers would not be certified.

Yes [ ] No [ ] Does the Applicant intend to provide operator assisted calls?

Yes [ ] No [ ] Does the Applicant intend to complete intrastate calls originating at aggregator locations?

_________% If the answer to the above question is yes, what is the amount of usage the Applicant estimates it will have from intrastate AOS-type calls expressed as a percentage of total intrastate usage?

GENERAL ORDERS - TELEPHONE

COMMISSION CONTACTS

FOR: GENERAL REGULATORY MATTERS

(NAME- PRINTED OR TYPED)

(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

(TELEPHONE NUMBER) (FACSIMILE NUMBER)

FOR: COMPLAINTS

(NAME- PRINTED OR TYPED)

(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

(TELEPHONE NUMBER) (FACSIMILE NUMBER)

FOR: REGULATORY FEE PAYMENT

(NAME- PRINTED OR TYPED)

(PHYSICAL ADDRESS - STREET, SUITE NUMBER, CITY, STATE, ZIP)

(MAILING ADDRESS - IF DIFFERENT FROM ABOVE)

(TELEPHONE NUMBER) (FACSIMILE NUMBER)

CERTIFICATION

The undersigned certifies to the North Carolina Utilities Commission as follows:

1. That the Applicant, as a reseller, neither owns, leases, nor operates transmission facilities which are used to complete North Carolina intrastate calls.

2. That if the Applicant purchases or enters into a lease agreement for transmission facilities which will be used to complete intrastate calls in the State of North Carolina, the Applicant will file a petition to amend its Certificate of Public Convenience and Necessity.

3. That the Applicant complies with the requirements concerning the solicitation of customers as provided in Subpart K of Part 64 of the Federal Communications Commission's (FCC) Rules and Regulations.

4. That, if the Applicant provides operator services, it complies with the requirements concerning the provision of operator services to end users at aggregator locations provided in Subpart G of Part 64 of the FCC's Rules and Regulations.

5. That the Applicant has reviewed the following North Carolina General Statutes and Commission Rules and Regulations; and that the Applicant acknowledges that it is subject to such North Carolina General Statutes and Commission Rules and Regulations:

G.S. 62-111(a)	G.S. 62-115	G.S. 62-117
G.S. 62-118(a)	G.S. 62-140	G.S. 62-302
G.S. 62-310(a)	G.S. 62-311	
Commission Rules R12-1 through R12-9		Commission Rule R15-1

6. That the Applicant agrees to maintain its books and records in accordance with generally accepted accounting principles.

7. That the Applicant agrees to notify its affected customers, by direct mail or bill insert, regarding any increase in rates, regardless of whether other rates are reduced, at least fourteen (14) days in advanced of the effective date of the increase.

8. That the Applicant agrees to notify its affected customers, by direct mail or bill insert, at least fourteen (14) days in advance of the discontinuance of any service offering.

9. That the Appilcant agrees to impose usage rates for operator assisted calls no higher than the usage rates for comparable calls of its basic long distance service.

10. That if the Applicant intends to operate under a name other than the exact name

(Certification continued on next page)
(Certification continued from previous page)

that appears on its articles of incorporation, partnership agreements, or a name other than its real name, that the name has been certified according to G.S. 66-68.

11. That the Applicant agrees to notify the North Carolina Utilities Commission, of any change in its (1) address, either physical or mailing; (2) Commission Contacts; or (3) name under which it does business (d/b/a) within thirty (30) days of the effective date of any such change by mailing a notice of such change to the following address:

Chief Clerk
North Carolina Utilities Commission
Post Office Box 29510
Raleigh, North Carolina 27626-0510

12. That the Applicant understands that falsification or failure to disclose any required information in the application may be grounds for denial or revocation of any certificate.

______________________________	______________________________
(SIGNATURE)	(TITLE)
______________________________	______________________________
(NAME - PRINTED OR TYPED)	(DATE)

VERIFICATION

STATE OF ____________________ COUNTY OF ____________________

The above-named ______________________________, personally appeared before me this day and, being first duly sworn, says that the facts stated in the foregoing application and any exhibits, documents, and statements thereto attached are true as he verily believes.

WITNESS my hand and notarial seal, this ______ day of ______________, 19____.

My Commission Expires: _______________

____
Signature of Notary Public

____
Name of Notary Public - Typed or Printed

Note to Notary: See verification requirements under "Completing the Application"

COMPLETING THE APPLICATION

1. This application is to be used to apply for a Certificate of Public Convenience and Necessity from the North Carolina Utilities Commission which, when granted, will authorize the holder to provide intrastate long distance service as a reseller. By definition, a reseller neither owns, leases, nor operates transmission facilities which are used to complete intrastate calls in the State of North Carolina. Applications for authority to provide other types of long distance service must be filed in accordance with other Commission regulations.

2. The spaces in the shaded block on page 1 will be completed by the Chief Clerk when the application is received at the Commission's offices. The remainder of the application is to be completed by the Applicant and verified before a notary public.

3. The name of the Applicant must be the real name, as distinguished from a trade name or d/b/a, of the individual, the partnership, or the corporation applying for certification.

4. If the Applicant intends to operate under a name other than the exact name that appears on the articles of incorporation, partnership agreements, or a name other than its real name, this must be a name that has been certified according to G.S. 66-68.

5. Signature. This block is for the signature of the applicant's responsible party. It is to be the individual or sole proprietor, one of the general partners, or a management official employed by the corporation. Be sure to specify the title of the management official.

6. Verification. The name of the person who completes and signs the application must be typed or printed by the notary in the space provided in the verification. The notary's name must be typed or printed below the notary's seal. The verification must be affixed to the original and each of the ten copies.

DOCKET NO. P-100, SUB 84a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter Of		
Amendments to Regulations	)	ORDER REGARDING PUBLIC
Applicable to Payphone Service	)	INTEREST PAYPHONES

BY THE COMMISSION: On January 30, 1998, the Commission issued an Order Outlining Issues in Docket No. P-100, Sub 133g concerning universal service stating, among other points, that the issue of public interest payphones (PIPs) would be addressed by the Commission in Docket No. P-100, Sub 84a.

By Order dated February 18, 1998, the Chair established the timetable for comments (April 2, 1998), reply comments (April 16, 1998), and proposed orders (April 30, 1998) to be filed in the docket for the parties to address whether PIPs are necessary in North Carolina. The Order also stated that if the Commission finds after those filings that PIPs are necessary, then a subsequent round of comments and reply comments would be sought as to the appropriate terms and conditions for PIPs.

BACKGROUND

Section 276(b)(2) of the Telecommunications Act of 1996 (the Act or TA96) instructed the Federal Communications Commission (FCC) to determine whether "public interest payphones, which are provided in the interest of public health, safety, and welfare, in locations where there would not otherwise be a payphone" should be maintained.

The FCC addressed the issue of PIPs in its September 20, 1996, Order in CC Docket No. 96-128 (Payphone Order), especially Paragraphs 264 through 286. The FCC in its Order at Paragraph 285 directed each state to evaluate whether it needs to take any measures to ensure the existence of PIPs. If a PIP program is found to be necessary by a state, the FCC left it to the discretion of the individual states as to how to fund a PIP program so long as the funding mechanism fully and equitably distributes the cost of such a program and does not involve the use of subsidies prohibited by Section 276(b)(1)(B) of the Act (Paragraph 285). States have until September 20, 1998, to determine the need for PIPs and to adopt an appropriate funding mechanism.

Paragraph 282 of the FCC's Payphone Order outlines the definition of PIPs adopted by the FCC, as follows:

> "a payphone which (1) fulfills a public policy objective in health, safety, or public welfare, (2) is not provided for a location provider with an existing contract for the provision of a payphone, and (3) would not otherwise exist as a result of the operation of the competitive marketplace."

INITIAL COMMENTS

Initial comments were filed on April 2, 1998 by ALLTEL Carolina, Inc. (ALLTEL), AT&T Communications of the Southern States, Inc. (AT&T), BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central), GTE South Incorporated (GTE), Lexcom Telephone Company (LEXCOM), the North Carolina Payphone Association (NCPA), and the Public Staff.

ALLTEL - ALLTEL maintained in its initial comments that the marketplace should first be allowed to work in North Carolina before any determination is made as to the need for PIPs. ALLTEL also recommended that the Commission fund any PIP program through the state universal service fund. ALLTEL commented that there is currently no perceived need for the designation of public interest payphones.

AT&T - AT&T recommended in its initial comments that the Commission request that industry members identify those payphones which they believe meet the requirements for PIPs. AT&T suggested that the Commission follow the FCC's lead in suggesting a narrowly tailored definition of the public interest to determine what payphones, if any, are deserving of PIP status.

BELLSOUTH - BellSouth concluded in its initial comments that a PIP program may not be needed in North Carolina because there is currently a small base of PIPs, and the competitive market seems to be providing needed telephones. However, BellSouth suggested that if the Commission decides to initiate a PIP program, the funding should come from either all payphone service providers, the location provider, or some apportionment of responsibility among all payphone service providers.

CAROLINA/CENTRAL - Carolina/Central stated in their initial comments that the Companies are not aware of any public need for payphone service that is not currently being met within their respective service territories. Carolina/Central believe that the proliferation of public payphones at various types of locations throughout the State, together with other factors such as continuing growth of cellular phone service, ensures that telephone service to meet the needs of the public will continue to be readily available in the future.

GTE - GTE stated in its initial comments that it is not necessary nor is it in the public interest to establish a PIP program in North Carolina. GTE maintained that it currently has twenty payphones in North Carolina that would meet the FCC's definition of a PIP. Additionally, GTE believes that the emergence and development of competition in the payphone marketplace has further expanded the availability of such service to the public.

LEXCOM - LEXCOM stated in its initial comments that it is of the opinion that if payphones are going to be a competitive business, there is no longer a need for government intervention and/or regulation. LEXCOM added that a PIP program would require re-regulation of the recently deregulated payphone industry.

NCPA - The NCPA recommended in its initial comments that the Commission issue an Order determining that the implementation of a program to provide explicit support for PIPs is not necessary at this time in North Carolina.

PUBLIC STAFF - The Public Staff indicated in its initial comments that it does not believe that a PIP program is necessary in North Carolina. The Public Staff maintained that the normal operation of the payphone marketplace has made payphones reasonably available throughout the State. The Public Staff recommended that the Commission conclude that the public interest does not necessitate the establishment of a PIP program in North Carolina.

REPLY COMMENTS

Reply comments were filed on April 16, 1998 by AT&T, the NCPA, and the Public Staff.

AT&T - AT&T stated in its reply comments that the Commission should determine that it is premature to establish a PIP program at this time. AT&T further stated that it is in agreement with the other parties who have stated that it is premature for the Commission to establish a PIP program at this time and that the Commission should defer consideration of funding mechanisms for PIPs until it is determined that a PIP program is needed.

NCPA - The NCPA recommended in its reply comments that the Commission issue an Order determining that it is not necessary to implement a PIP program in North Carolina at this time. The NCPA noted that it limited its reply comments to the question of whether public interest payphones are necessary in this State and that if the Commission determines that there is a demonstrated need to institute a program to support PIPs, the NCPA requests the opportunity to submit comments regarding the administration of such a program.

PUBLIC STAFF - The Public Staff stated in its reply comments that it believes that the payphone marketplace and alternatives to payphone service are already adequate to meet the communications needs of the North Carolina public. The Public Staff also pointed out that most of the participants in this docket emphasized in their initial comments that it is likely that the payphone marketplace will continue to expand in response to recent provisions of the FCC's Report and Order, as Payphone Service Providers (PSPs) deploy payphones into many locations that were previously unprofitable, including locations that might qualify for PIPs under the FCC's criteria. The Public Staff concluded that it would be inappropriate for the Commission to intervene in this ongoing process by creating a complex and burdensome PIP program for which there is no apparent need. The Public Staff also recommended that the Commission conclude that the public interest in North Carolina does not necessitate the establishment of a PIP program.

PROPOSED ORDERS

Proposed orders were filed on April 30, 1998 by AT&T and the Public Staff. BellSouth filed its proposed order on May 6, 1998.

AT&T - AT&T recommended in its proposed order that the Commission issue an Order stating that no PIP program be established in North Carolina at this time. AT&T stated that there is no evidence to suggest that the existing supply of payphones is not meeting the needs of the public, that the payphone marketplace is already providing an adequate supply of payphones throughout North Carolina, and that the ongoing deployment of payphones and the growth in cellular service are likely to ensure that the telecommunications needs of the public will continue to be met in the future. Finally, AT&T recommended that the Commission's Order state that the docket be closed.

BELLSOUTH - BellSouth concluded in its proposed order that there is no evidence suggesting that the existing supply of payphones is not meeting the needs of the public. BellSouth also stated that the evolving payphone marketplace will likely ensure that the telecommunications needs of the public will continue to be met in the future. BellSouth concluded that the Commission should find that no PIP program needs to be established in North Carolina at this time.

PUBLIC STAFF - The Public Staff indicated in its proposed order that each party to this docket asserted that the establishment of a PIP program was unnecessary or premature and that this view was even shared by the four local exchange companies (LECs) which believed they were currently operating payphones that met the FCC's PIP criteria. Finally, the Public Staff recommended that the Commission conclude that in response to Part 64.1330(c) of the Code of Federal Regulations, it is not necessary or in the public interest to establish a PIP program in North Carolina.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

Based on the foregoing and the entire record in this proceeding, the Commission concludes that a PIP program is not necessary in North Carolina at this point in time.

Payphone local coin rates were deregulated by the FCC in 1997. Although competitive private payphone providers have been authorized for a number of years and the number both of providers and of payphones has proliferated, the newly restructured competitive payphone market has only been operational for approximately six months. As noted by several parties, the restructuring and deregulation of the payphone industry will expand the availability of payphone service to the public. Moreover, as commented by several parties, the increased subscription to cellular services lessens the public need for a PIP program.

The Commission notes that no party presented any evidence to suggest that a PIP program is necessary in North Carolina at this time to ensure that the public has adequate and appropriate access to public telephones. The parties unanimously agreed that a PIP program in North Carolina at this time would be premature and inappropriate.

The Commission concludes that at this time a PIP program is not necessary in North Carolina, although the issue of a PIP program may be considered by the Commission in the future if clear evidence of a need for such a program should arise.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of May, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 84a

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Amendments to Regulations	)	ORDER GRANTING PUBLIC
Applicable to Payphone Service	)	STAFF'S MOTION CONCERNING
	)	RECENT NUMBERING CHANGES

BY THE COMMISSION: On May 14, 1998, the Public Staff filed a Motion with the Commission requesting that the Commission issue an Order (1) amending Rules R13 to reflect generic requirements for toll free (8XX) numbers; (2) reflecting the FCC's extension of the transition period from 10xxx to 101xxxx carrier access codes until at least September 1, 1998; and (3) reminding all payphone service providers (PSPs) of their obligation to ensure that their payphones are programed or arranged to complete calls to all new exchange prefixes, toll free numbers, and area codes.

The Public Staff stated that on April 4, 1998, a new toll free number, 877, was introduced in response to the approaching exhaust of 800 and 888 numbers. The Public Staff stated that 877 is one of a series of planned toll free "8XX" numbers, where "X" can represent any number from 2 through 9, or 0. The Public Staff stated that the 877 numbers are expected to exhaust within two to three years, after which time the toll free numbers 866, 855, 844, 833, and 822 will sequentially be deployed. Currently, Commission Rules R13-5(m), R13-6(d), and R13-9(h) reference 1-800 numbers and 1-888 numbers, however do not reference the new 877 toll free numbers or the other anticipated 8XX numbers. The Public Staff recommended that the Commission amend Rules R13-5(m), R13-6(d), and R13-9(h) to remove any reference to 1-800 and 1-888 numbers and replace them with toll free 8XX to recognize the new and anticipated toll free 1-8XX numbers.

Additionally, the Public Staff noted that North Carolina currently has six area codes, three of which have been introduced within the last few months. 336 was introduced on December 15, 1997 with permissive dialing ending on June 15, 1998. 252 was introduced on March 22, 1998 with

By Order entered in this docket on February 19, 1998, the Chair authorized the parties to file proposed Orders and briefs, as well as supplemental information regarding the status of Fresh Look in other states, not later than Friday, March 20, 1998. Proposed Orders, briefs, and/or additional comments were thereafter filed in this docket by the following parties: Sprint/Carolina/Central; GTE South; ICG/KMC; Time Warner; CUCA; and BellSouth/LEXCOM/North State. The parties generally reiterated the positions previously set forth in their written comments and at the oral argument, as well as the status of Fresh Look in other states.

INITIAL COMMENTS

BELLSOUTH: BellSouth states that the Fresh Look proposal would require massive intervention by the Commission into private contracts between public utilities and their customers and that Chapter 62 does not confer such "Draconian" authority upon the Commission. Under rules of statutory construction, BellSouth takes the position that, by enacting G.S. 62-110(f1), the North Carolina General Assembly did not intend for the Commission to have the power to abrogate contracts between telecommunications public utilities and their customers. BellSouth further asserts that the Fresh Look proposal is antithetical to House Bill 161 and contrary to the clear public policy of the State of North Carolina favoring less regulation of price-regulated utilities, as opposed to more regulation of, and intervention in, the emerging competitive marketplace by the Commission. BellSouth notes that the Commission has determined that its CSAs should be available for resale by CLPs. Furthermore, BellSouth takes the position that Fresh Look is not about adjusting rates, but is about abrogating contracts, which is a matter far beyond the issue of the Commission having the authority to review a rate. BellSouth states that, pursuant to its price regulation plan, the Commission no longer even approves the rates in CSAs; it merely receives CSAs as information. According to BellSouth, the issue is not whether the Commission has the authority to review a specific rate in a CSA, but whether the Commission has the statutory authority to abrogate valid binding contracts, a far more serious matter. BellSouth also raises constitutional concerns arising out of Article 1, Section 10 of the United States Constitution, wherein the states are prohibited from passing laws impairing the obligations of contracts.

CUCA: CUCA states that the extent of the Commission's power to approve the proposed Fresh Look procedures hinges upon its authority to regulate, revise, or terminate contracts between utilities and individual customers providing specific rates, terms, and conditions of service. Citing G.S. 62-130(a) and (d) and 62-136(a), CUCA asserts that the Commission clearly has the right to alter a "rate", including CSAs, in light of changed conditions. CUCA states that nothing in the language of the price regulation plans which the Commission has approved for certain LECs, including BellSouth, prevents approval of the pending Fresh Look proposal or prohibits such contract modifications. To the contrary, CUCA takes the position that the plans themselves seem to permit Commission modification of relevant plan provisions, that the plans generally provide for Commission review and modification for a number of reasons, and that the plan provisions appear to permit adoption of Fresh Look rules if deemed appropriate by the Commission. CUCA further states that, in approving the price regulation plans, the Commission expressly reserved the authority to modify those plans based upon changing circumstances and the public interest. CUCA also cites language in G.S. 62-133.5 and G.S. 62-73 in support of its position that the Commission can authorize Fresh Look procedures to the extent necessary to remedy any anticompetitive LEC activities.

KMC further state that contract service arrangements (CSAs) between incumbent LECs (ILECs) and their large customers constitute "rates" as that term is defined in G.S. 62-3 and that the Commission has the statutory authority to prohibit or restrict CSA provisions concerning termination liability. ICG and KMC assert that Fresh Look will promote the public interest by enhancing development of a competitive market in North Carolina for local exchange telecommunications services and will, by removing a barrier to competition, help mitigate the anticompetitive effect of extended LEC contracts with customers entered into before the advent of competition.

By Order entered in this docket on October 6, 1997, the Commission requested comments from interested parties on the jurisdictional issues raised by the ICG/KMC petition concerning whether the Commission in fact possesses the necessary statutory authority to adopt and implement Fresh Look rules. The Commission requested that initial comments be filed not later than Monday, October 27, 1997, and requested that reply comments be filed not later than Friday, November 14, 1997.

Initial comments in response to the Fresh Look petition were filed by the following parties: BellSouth Telecommunications, Inc. (BellSouth); Carolina Utility Customers Association, Inc. (CUCA); DeltaCom, Inc. (DeltaCom); GTE South Incorporated (GTE South); LCI International Telecom Corp. (LCI); LEXCOM Telephone, Inc. (LEXCOM); MCI Telecommunications Corporation/MCImetro Access Transmission Services, Inc. (MCI); North State Telephone Company (North State); Sprint Communications Company L.P. (Sprint); Carolina Telephone and Telegraph Company (Carolina); Central Telephone Company (Central); and Time Warner Communications of North Carolina, L.P. (Time Warner).

Reply comments were filed by the following parties: BellSouth; CUCA; GTE South; ICG/KMC; MCI; North State; Sprint/Carolina/Central; and Time Warner.

By Order dated December 3, 1997, the Commission requested the Public Staff and the Attorney General to file comments reflecting their views concerning whether the Commission possesses the necessary statutory authority to adopt and implement Fresh Look rules. As requested, the Public Staff and the Attorney General filed their comments on Tuesday, December 23, 1997.

On December 23, 1997, ICG and KMC filed a motion in this docket whereby the Commission was requested to schedule an oral argument to consider the jurisdictional issues raised by their Fresh Look proposal. On January 21, 1998, Time Warner filed comments in support of the motion for oral argument filed by ICG and KMC.

By Order dated January 23, 1998, the Chair found good cause to schedule an oral argument for Monday, February 16, 1998, to consider the jurisdictional issues raised by the ICG/KMC Fresh Look petition. The parties who filed comments regarding this issue, including the Public Staff and the Attorney General, were requested to participate in the oral argument. The oral argument was convened as scheduled before the Full Commission, with all interested parties present and participating.

On February 11, 1998, BellSouth filed a supplemental brief addressing the constitutional implications of the Fresh Look petition and the initial and reply comments filed by the parties.

VIDEO RELAY INTERPRETING (VRI)

VRI is a videoconferencing application for computers with a video system. The American Sign Language (ASL) user dials the relay center and a certified interpreter appears on the user's computer. The ASL user communicates to the interpreter through the video while the interpreter dials out to the hearing party and relays the call in ASL. If the ASL user wants to make a VRI call and does not know where to go for VRI, call the Relay Services Administration Office at 1-800-205-9914 (TTY) or 1-800-999-5737 (Voice).

For more information, call the TRS Customer Service Center.

TTY/TDD	1-800-735-0533 or
Voice	1-800-735-0341

PUBLIC TELEPHONE CALLS USING RELAY SERVICES

People who use relay services to make long distance calls on pay telephones may pay for these calls with a calling card. A Calling card allows you to have calls billed to your telephone or to your card account. Calling cards may be used at coin telephones as well as any other telephone. The calls are billed at the same rate as long distance calling card calls that do not use relay services.

Local calls through a relay service from a pay telephone are free of charge.

DOCKET NO. P-100 SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Local Exchange and Local Exchange Access Telecommunications Competition	)	ORDER DISMISSING FRESH
	)	LOOK PETITION ON
	)	JURISDICTIONAL GROUNDS

BY THE COMMISSION: On September 16, 1997, ICG Telecom Group, Inc. (ICG) and KMC Telecom, Inc. (KMC) filed a petition in this docket whereby the Commission was requested to amend Commission Rule R17 to include so-called "Fresh Look" requirements. According to the petition:

> "Fresh Look will provide customers of incumbent local exchange companies ('LECs') a one-time opportunity to opt out of extended contracts with LECs entered into in a monopoly environment so as to avail themselves of competitive alternatives now offered by competing local providers ('CLPs'). To make this Fresh Look opportunity meaningful, termination liabilities in such contracts should either be canceled or substantially limited. . ."

In their petition, ICG and KMC state that G.S. 62-110(f1) authorizes the Commission to adopt Fresh Look requirements pursuant to the rulemaking authority conferred by that statute. ICG and

APPENDIX C

DIRECTORY SECTION

TELECOMMUNICATIONS RELAY SERVICE (TRS)

Telecommunications Relay Service is a dual party relay service which allows telephone communication between a hearing/speaking person and a person with a hearing/speech disability who uses a Telecommunication Device (TDD/TTY). Specially trained Communication Assistants (CA) relay conversations simultaneously between the TDD/TTY user and the speaking party, and confidentiality is assured:

Calls may be placed 24 hours a day, 7 days a week, including holidays.

TDD/TTY Users Dial	1-800-735-2962
Voice Users Dial	1-800-735-8262

There are no restrictions on the length or number of calls placed by relay users. Also, there are no additional fees or charges for local calls. Expanded local and long distance calls are billed at reduced rates.

When calling the relay center, give the CA the number you would like to reach. They will connect the hearing person on a voice phone and the hearing/speech disabled person a telecommunication device (TDD/TTY). The CA types the conversation on the TDD/TTY to one person, while speaking to the other person on a voice phone.

When receiving a call from the relay center, the CA will provide a brief explanation of the service if the person has not previously used TRS. Requests for a male/female CA are honored if the caller states such a preference.

Voice/Hearing Carryover (VCO/HCO) is also available upon request. VCO gives the hearing disabled person, who is able to speak, the ability to talk directly to the caller. HCO gives a speech disabled person, who can hear, the ability to listen to the caller.

For PC users using the relay service, dial 1-888-762-2724 (RNC-ASCII) with the software setting as shown below:

- 300-1200 baud
- 8 bit
- No parity
- 1 stop bit
- Half Duplex

APPENDIX A

YEARLY BILL INSERT/MESSAGE

TELECOMMUNICATIONS RELAY SERVICE (TRS) is available for dual party relay service which allows communication between a hearing/speaking person and a hearing/speech disabled person using a TDD/TTY. TRS is available 24 hours a day, 7 days a week and is accessible from any telephone. TDD/TTY users dial 1-800-735-2962. Voice users dial 1-800-735-8262. When calling give the Assistant the telephone number you wish to reach and they will connect your call. **Conversations will be relayed and will be kept confidential.**

For more information on TRS, you may call the Relay Customer Service Center at 1-800-735-0533 (TTY/TDD) or 1-800-735-0341 (Voice) or the Division of Services for the Deaf and the Hard of Hearing at 1-800-205-9914 (TTY/TDD) or 1-800-999-5737 (Voice).

APPENDIX B

DIRECTORY CONTENTS

CUSTOMER GUIDE: This section contains basic information you'll need in order to do business with local service providers.

**Denotes revision for this page.

DOCKET NO. P-100, SUB 110

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	ORDER REQUIRING
Telecommunications Relay Service	)	CONSUMER EDUCATION

BY THE COMMISSION: On June 2, 1998, the Public Staff filed a Motion for Order to require local exchange companies (LECs) and to request telephone membership corporations (TMCs) to publish the following regarding the Telecommunications Relay Service (TRS):

1. A new standardized listing entry for each telephone directory's table of contents/customer guide index;

2. A new standardized explanation of the service for the customer guide/call guide section of each telephone book; and

3. A new standardized bill insert/message to be inserted once a year to explain the service.

In support of this motion, the Public Staff showed the following:

By Order dated December 20, 1994, the Commission required standardized entries regarding the TRS program as requested above. Since that date the information has changed because of new services. Because of that, the Public Staff requested that representatives of Carolina Telephone and Telegraph Company, Central Telephone Company, GTE South, Inc., and BellSouth Telecommunications, Inc., communicate with Linda Nelson of the TRS program and draft new entries. Those Companies responded immediately and in a timely manner furnished the new entries that were attached to the Public Staff Motion. Based upon the fact that there were virtually no substantive comments from the companies and TMCs when requested in 1994, the Companies mentioned above have informed the Public Staff that they do not believe it is necessary for these changes to be published for comment. The Public Staff agrees.

Therefore, the Public Staff recommended that the Commission issue an Order requiring all local exchange companies and requesting all TMCs to include the index and informational language in all future telephone directories, and send each telephone customer the informational bill insert/message once each year, as set forth in the attachment to its motion.

After careful consideration, the Commission concludes that good cause exists to issue an Order as recommended by the Public Staff to require all LECs and request all TMCs to send each telephone customer the informational bill insert/message once a year as set out in Appendix A and to publish in all future telephone directories the index and informational language set out in Appendix B and Appendix C.

IT IS, THEREFORE, SO ORDERED.
ISSUED BY ORDER OF THE COMMISSION.
This the 9th day of June, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(2) That all PSPs in North Carolina must ensure that their payphones are capable of completing calls to all active prefixes, area codes, and 8XX numbers in compliance with Commission Rule R13-5(g).

(3) That a copy of this Order shall be served on all PSPs in North Carolina.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of May, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

ATTACHMENT A

CHAPTER 13
Provision of Pay Telephone Service

Rule R13-5(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~~ toll free 1-8XX numbers, or 950-xxxx. The requirement for 10xxx-0+ and 10xxx-0- access will ~~end on January 1, 1998~~ remain in effect until September 1, 1998, or the dialing sequences are disallowed by the FCC, whichever is later. Access through 10xxx-1+, 101xxxx-1+, 10xxx-011+, or 101xxxx-011+ is not required.

Rule R13-6(d). Shall be arranged or programmed to allow only 0+ collect calls for local, intraLATA toll, and interLATA toll calls and to block all other calls including, but not limited to, local direct calls, credit card calls, third number calls, 1+ sent-paid calls, 0+ sent-paid calls, 0- sent-paid calls, 0- calls, ~~800 calls, 888~~ toll free 8XX 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.

Rule R13-9(h). *~~800 and 888~~ 8XX (Toll Free Number) Calls.* The end user of a PSP instrument may not be charged for the carriage and completion of any ~~800 or 888~~ 8XX (toll free number) call.

permissive dialing ending on September 21, 1998. Finally, 828 was introduced on March 22, 1998 with permissive dialing ending on October 5, 1998. The Public Staff recommended that the Commission advise providers that they need to immediately ensure that their payphones are programmed or arranged to complete calls to all working prefixes in those area codes and, during the permissive dialing periods, allow end users to complete calls to exchanges that are changing their area code using either the old or new area code.

The Public Staff further stated in its Motion that in early April, 1998, the Public Staff conducted field tests and found that certain payphones in the Charlotte area were unable to complete calls to the new 877 numbers, to the three new area codes, or to certain working exchange prefixes. Commission Rule R13-5(g) states, "All PSP instruments must be capable of completing local and long distance calls; provided, however, that sent-paid international calling capability may be blocked."

Finally, the Public Staff noted in its Motion that on October 7, 1997, the Commission amended Rule R13-5(m) to eliminate the state requirement for 10xxx-0+ and 10xxx-0- access effective January 1, 1998. The change was made in response to rules which the FCC adopted on April 7, 1997, in CC Docket No. 92-237, requiring that callers be allowed to access carriers using either 10xxx or 101xxxx access codes during a transition period which extended through December 31, 1997. However, on October 22, 1997, the FCC issued an order on reconsideration which extended this transition period through June 30, 1998. The Public Staff noted that it is possible that the FCC may extend the period even further. The Public Staff recommended that Rule R13-5(m) be updated to reflect this revised requirement by replacing the phrase "end on January 1, 1998" with "remain in effect until September 1, 1998, or the dialing sequences are disallowed by the FCC, whichever is later."

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission has reviewed the Public Staff's Motion and finds its recommendations reasonable and appropriate. Therefore, the Commission will amend Commission Rules R13-5(m), R13-6(d), and R13-9(h) as shown on Attachment A to this Order.

Further, the Commission reminds all PSPs in North Carolina that Commission Rule R13-5(g) specifically states that, "All PSP instruments must be capable of completing local and long distance calls; provided, however, that sent-paid international calling capability may be blocked". Therefore, Commission Rule R13-5(g) requires that all PSPs must ensure that their payphones are capable of completing calls to all active prefixes, area codes, and 8XX numbers.

The Commission also concludes that it is appropriate to serve all PSPs in North Carolina with a copy of this Order.

IT IS, THEREFORE, ORDERED as follows:

(1) That Commission Rules R13-5(m), R13-6(d), and R13-9(h) are amended as shown on Attachment A to this Order.

DELTACOM: DeltaCom agrees with and supports the position of ICG and KMC that the Commission has the appropriate statutory and regulatory authority to consider the proposed Fresh Look requirements. DeltaCom urges the Commission to consider and approve the implementation of Fresh Look requirements in order to assure the creation of a "level playing field" between the incumbent LECs and the CLPs. According to DeltaCom, a "level playing field" is necessary for effective competition to take place in the provision of local exchange and exchange access services. If the ILECs are permitted to tie up the largest and best consumer accounts for many years into the future, an effective, truly competitive market will be thwarted.

GTE SOUTH: GTE South asserts that the Fresh Look petition should be denied because (1) the Commission does not have statutory jurisdiction to terminate existing contracts; (2) termination of existing contracts is prohibited by the United States Constitution; (3) it is not necessary to terminate the contracts, because they are available for resale by CLPs to those customers; and (4) termination of existing contracts would only serve to advance the private interests of the petitioners and would further exacerbate GTE South's obligations with respect to universal service.

LCI: LCI takes the position that applicable North Carolina general statutes grant the Commission broad rulemaking authority over regulated utilities and that, in the process of facilitating competitive local exchange services, the Commission may adopt rules that modify and supersede rates, terms, and conditions in private utility contracts without violating the constitutional private right of contract. LCI supports the jurisdictional arguments set forth by ICG and KMC in their Fresh Look petition.

LEXCOM: Citing G.S. 62-3(24) and G.S. 62-110(f1) in particular, LEXCOM asserts that the provisions in the Public Utilities Act relied upon by ICG and KMC do not authorize the Commission to adopt rules making valid and binding contracts between ILECs and their customers for public utility service unilaterally voidable at the customer's option without regard to any termination restrictions or provisions contained in those contracts. LEXCOM states that such a result would be particularly inequitable where ILEC customers have already received the negotiated benefits of those contracts for months or years. That being the case, LEXCOM takes the position that the proposed Fresh Look requirements cannot be enacted.

MCI: MCI takes the position that the Commission has the jurisdiction to adopt and implement Fresh Look rules. According to MCI, Section 253 of the Telecommunications Act of 1996 (TA96) requires states to remove barriers to entry by CLPs. Existing CSAs constitute a barrier to CLP entry in contravention of TA96, and the Commission can eliminate such barrier through the enactment of Fresh Look rules. MCI cites actions taken by the FCC, the Ohio Public Utilities Commission, and three other states who have initiated Fresh Look proceedings in support of its contention that there is ample precedent to support the Commission's authority to adopt and implement Fresh Look rules. MCI further asserts that Fresh Look does not constitute interference with private contracts, citing Utilities Commission v. Virginia Electric and Power Company, 285 N.C. 398 (1974) (VEPCO) and the definition of the term "rate" set forth in G.S. 62-3(24).

NORTH STATE: North State contends that the Commission does not possess the express or implicit authority to abrogate lawful and executory contracts on a wholesale basis as requested by ICG and KMC. North State states that ICG and KMC do not contend that the rates contained in the subject contracts between ILECs and their customers are unjust or unreasonable, discriminatory or otherwise unlawful. According to North State, ICG and KMC, at best, make an unsupported claim in their petition that such contracts are "anticompetitive." North State takes the position that the Commission's general authority to adjust contracted rates does not extend to abrogating contracts, which are otherwise lawful, just, and reasonable, for the benefit of competitors in order to allow the competitors to have access to those customers. Nor are there any decisions of the North Carolina appellate courts which suggest that the Commission has such authority. Likewise, G.S. 62-110(f1) does not provide authority, express or implied, for the Commission to set aside lawful contracts between LECs and their customers. North State asserts that there is simply no basis upon which to contend that G.S. 62-110(f1) authorizes the Commission to grant the relief requested by ICG and KMC. North State also takes the position that the abrogation of existing contracts will violate the federal and state constitutional rights of ILECs, including the right to due process and freedom of contract. In sum, North State is of the opinion that the form of relief requested by ICG and KMC is beyond the power of the Commission to grant.

SPRINT/CAROLINA/CENTRAL: Sprint, Carolina, and Central take the position, in joint comments, that the Commission's general statutory powers include authority, consistent with the public interest, to implement the proposed Fresh Look rules. According to Sprint, Carolina, and Central, failure to implement Fresh Look rules would not be in the public interest as BellSouth would be able to impede local competition by enforcing termination liability provisions of its CSAs and, as a result, development of competition in the local exchange market would be unduly delayed. CSAs are rates which are subject to the jurisdiction of the Commission. While the Commission may not individually approve each and every CSA, CSAs are filed with the Commission for informational purposes. Accordingly, the Commission retains jurisdiction over the terms and conditions of CSAs and may modify such terms and conditions in the same manner as any other rate, term or condition. The exercise of such jurisdiction by the Commission is not an unconstitutional impairment of contract.

TIME WARNER: Time Warner takes the position that the Commission has jurisdiction, pursuant to both G.S. 62-110(f1) and its general rulemaking authority, to amend Rule R17 to include one-time-only Fresh Look requirements. The North Carolina General Assembly has delegated the power to the Commission to regulate public utilities and to adopt rules to that end. According to Time Warner, it is well-established that the Commission's authority encompasses the terms, including rates, set in individual contracts between public utilities and their customers, insofar as those terms affect the rates and service of the utility. So long as the Commission acts for the public interest, its intervention in such contracts is authorized by statute and passes constitutional muster. In sum, the public interest, as determined by the Commission, supersedes private contracts. Furthermore, Time Warner states that CSAs normally contain language which acknowledges the overarching power and oversight authority of the Commission with respect to the service provided for in the contract. According to Time Warner, it is precisely because long-term CSAs will frustrate the advent of true competition in local telephone markets that the Commission has not only the authority, but also the duty, to act in the public interest by adopting and implementing Fresh Look requirements.

REPLY AND SUPPLEMENTAL COMMENTS

BELLSOUTH: BellSouth states that the parties who support the adoption of Fresh Look rules cite statutes and rules in support of their position which apply to the Commission's authority to set and determine rates. Those statutes and cases do not, however, constitute the explicit grant of statutory authority necessary to support Commission intervention into private, statutorily-authorized contracts between telecommunications public utilities and their customers. If the General Assembly had intended for the Commission to have the authority to abrogate the very contracts that it authorized through the passage of G.S. 62-134(j) in 1989, the legislature would certainly have included that authority in G.S. 62-134(j) in 1989, or more recently in G.S. 62-133.5 (f), which restated and revised G.S. 62-134(j) in 1995. The General Assembly did not include that specific authority at either time and has not seen fit to do so since. In the absence of clear statutory language granting the Commission explicit authority, especially in light of the 1989 and 1995 enactments relating to contracts between telecommunications public utilities and their customers, BellSouth submits that the General Assembly did not intend for the Commission to have the authority urged upon it by ICG, KMC, and others. BellSouth states that, in recent years, especially with respect to telecommunications public utilities, the General Assembly has moved away from Commission intervention of the sort advocated by the Fresh Look petitioners.

In its supplemental brief, BellSouth asserts that the Commission cannot act to deprive any citizen of its constitutional rights and that it would be unconstitutional for the Commission, in its legislative capacity, to adopt a rule which would abrogate existing ILEC contracts with their customers. BellSouth argues that the adoption of a Fresh Look requirement by the Commission would be unconstitutional under the United States Constitution because it would violate (1) the Contract Clause since it would substantially impair a contractual obligation in a manner not justified as reasonable and necessary to achieve an important public purpose and (2) the Fifth Amendment since it would constitute an unconstitutional taking of property without just compensation. BellSouth notes that there is no provision in the proposed Fresh Look requirements for the destruction of CLPs' extended contracts in order to allow the ILECs to enjoy the same benefit as CLPs and to compete for their customers. BellSouth also takes the position that adoption of a Fresh Look requirement pursuant to G.S. 62-110(f1) would violate the North Carolina Constitution's inhibition against delegating legislative authority unless "adequate guiding standards to govern the exercise of this delegated authority" are contained in the statute. BellSouth states that a close examination of G.S. 62-110(f1) reveals that it is devoid of any mention of, or reference to, a Fresh Look requirement and that it does not address, even by implication, the authority of the Commission to abrogate existing contracts. In addition, BellSouth asserts that adoption of a Fresh Look requirement would violate the "Law of the Land Clause" of the North Carolina Constitution, which provides protections to citizens which are similar to those found in the federal Constitution such as substantive due process, equal protection, retroactive interference with vested rights, and the taking of private property for public use, and the "Exclusive Emoluments Clause" of the state Constitution.

CUCA: In its reply comments, CUCA concedes that no specific provision in the Public Utilities Act expressly authorizes adoption of the proposed Fresh Look opportunity. However, CUCA further states that such fact, standing alone, does not establish that Fresh Look is unlawful. According to CUCA, several provisions of the Public Utilities Act give the Commission ample authority to adjust rates in order to account for changed circumstances and that those statutory provisions are clearly sufficient to authorize adoption of the proposed Fresh Look opportunity in spite of the absence of any direct reference to such concept anywhere in Chapter 62 of the North Carolina General Statutes. CUCA takes the position that Fresh Look is completely consistent with G.S. 62-133.5 and the price regulation plans which the Commission has approved for certain LECs. The fact that the substitution of price regulation for traditional rate of return regulation may have reduced the Commission's jurisdiction over contracts between utilities and other entities does not affect the Commission's jurisdiction over contracts between utilities and their customers. The General Assembly's decision to withdraw regulatory control over certain utility contracts in a price regulation environment has absolutely no bearing upon the lawfulness of the proposed Fresh Look opportunity. CUCA also asserts that the Commission has ample authority under G.S. 62-110(fl) to adopt any rule which would further the "public interest" by facilitating the development of effective competition for local telecommunications services in North Carolina. As a result, G.S. 62-110(fl) does not stand as an obstacle to approval of the proposed Fresh Look opportunity. CUCA states that the Commission should reject the constitutional arguments raised by several parties in opposition to Fresh Look. According to CUCA, the fact that all contracts are subject to existing laws and the fact that the Commission had ample authority to alter CSAs at all relevant times, adoption of the proposed Fresh Look opportunity would not alter the terms of any existing contract or create any risk of monetary loss that did not exist when any particular CSA was initially approved. Furthermore, even if Fresh Look implicates any constitutional concern which the Commission is allowed to consider, that fact would merely require the Commission to make a "public interest" determination instead of justifying summary rejection of the ICG/KMC proposal.

GTE SOUTH: GTE South takes the position that proper statutory construction of G.S. 62-110(fl) does not support Commission jurisdiction to authorize termination of existing contracts. The Commission's power to "carry out" the provisions of that section is limited to "carrying out" the specific powers enumerated. None of those powers grant the Commission the power to terminate existing contracts. GTE South states that CSAs were generally only entered into as a response to activities by competitors and that the customers generally had alternative suppliers from which to choose. The customers chose, in many instances, GTE South. Thus, the fundamental premise that customers have been denied a choice is simply wrong. GTE South recognizes that the constitutional prohibition against impairment of contracts is not absolute, that it is subject to the police power of the state, and that rates in an existing contract can be ordered changed. According to GTE South, none of the parties in favor of Fresh Look have shown that the termination of existing contracts is required to satisfy and protect the public interest, which is a precondition to impairment of the obligation of contracts as discussed by the North Carolina Supreme Court in Utilities Commission v. Virginia Electric and Power Company, 285 N.C. 398 (1974). GTE South asserts that the petitioners here argue for termination in order to advance, not a public purpose, but their own private, revenue-increasing interests and that such a purpose is clearly not a valid exercise of the state's police power. GTE South also argues that since TA96 requires that state regulations concerning universal service be "specific, predictable and sufficient," it would be extremely unfair and inequitable for the Commission to require the termination of contracts, the revenues from which may help GTE South meet its universal service obligations, until such time as the FCC and this Commission have adopted regulations requiring that GTE South's universal service obligation be supported by "specific, predictable and sufficient mechanisms."

ICG/KMC: ICG and KMC assert that the Commission has the authority to adopt Fresh Look rules under both its general rulemaking authority and the specific provisions of G.S. 62-110(fl) which grants general authority for the Commission to implement local exchange competition in a manner consistent with the public interest. ICG and KMC state that the proposed Fresh Look rules would allow customers, at their election, to terminate extended contracts entered into in a monopoly environment and to be relieved of termination penalties. Customers who choose to stay with ILECs would be entitled to do so, and such contracts would be unaffected by the proposed Fresh Look rules. Fresh Look should be viewed as an opportunity for customer choice, rather than a mandatory canceling of all contracts. Furthermore, the Commission can, through its rulemaking and ratemaking powers, regulate the terms of utility contracts. ICG and KMC further state that policy matters concerning universal service obligations are not relevant to the question of the Commission's statutory authority to implement Fresh Look rules. The statutory amendment which changed regulation of affiliated contracts should not be read to imply that the General Assembly intended to lessen the Commission's authority to regulate CSAs between public utilities and their customers. If the legislature has intended to limit Commission authority to regulate CSAs upon the commencement of local exchange competition, it could easily have done so. No such provision or amendment was adopted. ICG and KMC further assert that Fresh Look would not be complex to implement and that rules could be implemented in an orderly and businesslike fashion. Meaningful competition for local exchange and local exchange access services did not exist at the time the CSAs in question were signed. ICG and KMC assert that the proposed Fresh Look rules would further the public purpose of bringing local competition to North Carolina and that it is ultimately the Commission's duty to determine how the public interest will be served.

MCI: MCI states that the ICG/KMC petition does not seek to apply Fresh Look rules to all customers and LECs; the petition seeks to apply Fresh Look rules only to those contracts with terms of six months or more. Furthermore, while Fresh Look may be applied to many long-term CSAs, that does not necessarily mean that all of those agreements will be terminated. It would be up to the customer to decide if a competitor could offer a better deal. According to MCI, Fresh Look rules will enhance the development of the competitive local exchange market and benefit those customers who entered into extended contracts with LECs before the local exchange market was even permitted to become competitive. These customers should be permitted to enjoy the benefits of competition. The argument that termination of contracts under Fresh Look would "unlawfully affect" a LEC's universal service obligation is irrelevant and exceeds the jurisdictional inquiry which the Commission has undertaken.

NORTH STATE: North State contends that the arguments advanced by the CLPs regarding Fresh Look would, if accepted, push the Commission well beyond any reasonable or constitutionally permissible exercise of its legislative authority and, therefore, must be rejected. North State asserts that the Commission's authority over the rates charged by North Carolina public utilities does not constitute plenary authority to abrogate large numbers of freely negotiated and otherwise lawful contracts between ILECs and their commercial customers without a hearing, an examination of these contracts, the right to cross-examination, and a determination that they are unjust and unreasonable and the public interest requires that they be voided. Any suggestion that the Commission can arbitrarily conclude that existing CSAs are uniformly and intrinsically "anticompetitive" and can summarily void those agreements on that basis would be directly contrary to the constitutional and statutory limitations on the Commission's authority. Substantive and procedural due process as well as the inherent limits on the Commission's statutory authority prohibit the relief sought by the petitioners and supported by the CLPs. North State further asserts that Congress, the FCC, and the North Carolina General Assembly each had the opportunity to impose Fresh Look requirements on the competitive local telephone markets in the context of implementing local competition, but did not do so. None of the implementing instructions or rulemaking authority provided by those bodies to the North Carolina Utilities Commission authorize the Commission to impose Fresh Look requirements and the glaring absence of any such intent that existing CSAs be abrogated in connection with the implementation of local telephone competition conclusively establishes that such action has not been authorized.

SPRINT/CAROLINA/CENTRAL: Sprint, Carolina, and Central assert that G.S. 62-110(f1)(vi) authorizes the Commission, in implementing local exchange competition in North Carolina, to "carry out such provisions in a manner consistent with the public interest. . ." There is no defined limitation in that statute on the definition of "public interest" such that Fresh Look is excluded. Nor have the opponents of Fresh Look cited any statutory provision that excludes Fresh Look from the Commission's broad general authority to regulate utilities and implement local exchange competition. The Commission clearly has the authority to adopt Fresh Look rules and regulations pursuant to its general rulemaking authority and its specific authority under G.S. 62-110(f1).

TIME WARNER: Time Warner asserts that the Commission has jurisdiction, both pursuant to multiple statutory grounds, including G.S. 62-30, G.S. 62-31, G.S. 62-110(f1), and G.S. 62-130, and well-established case law, to amend Rule R17 to include Fresh Look requirements. Time Warner states that, because Carolina and Central are parties to CSAs, their position that the Commission retains jurisdiction over CSA terms is particularly compelling. The General Assembly is well aware that the Commission's delegated authority embraces the power to supersede rates established in private contracts for the public good. Furthermore, the General Assembly need not have granted the Commission specific authority to adopt Fresh Look requirements, either in House Bill 161 or any other law, in order for the Commission to exercise its well-settled general regulatory authority over public utilities. According to Time Warner, it is irrelevant that the CSAs in question are otherwise lawful or antedate the Commission's actions. The Commission possesses the power to supersede rates previously established by private contract between utilities and their customers and this power to supersede private rates necessarily includes the power to supersede the contracts by which such rates were established. So long as the Commission reasonably determines that Fresh Look requirements are in the public interest, Commission intervention in such contracts presents no constitutional or other legal infirmities. To the contrary, the Commission has a public duty to prohibit public utilities from evading the Commission's regulatory reach by entering into long-term contracts with customers. The Commission can accomplish this duty by implementing Fresh Look requirements.

PUBLIC STAFF: The Public Staff takes the position that the Commission lacks the statutory authority to adopt and implement Fresh Look rules. The Public Staff states that the sole basis given by ICG and KMC for requesting the Commission to adopt Fresh Look rules is that the Commission is obligated by Statute (House Bill 161, TA96, or both) to facilitate the opening of certain local exchange markets to competition. According to the Public Staff, ICG and KMC have made no showing that the contracts to which the rules would apply are unjust, unreasonable, or otherwise unlawful either individually or as a class, whether entered into before or after the onset of competition. Insofar as those contracts were approved by the Commission or entered into pursuant to authorized tariffs, they are prima facie just and reasonable under G.S. 62-132. Thus, the Public Staff states that the Commission has no implicit authority to retract its approval. Nor have ICG and KMC cited any express authority granted to the Commission to abrogate contracts for which approval is no longer required. Price regulation plans which have been approved by the Commission provide that CSAs must only be filed for information. Furthermore, G.S. 62-110(f1) deals with the certification of CLPs and authorizes the Commission to adopt rules for six purposes, the last and broadest being to carry out the provisions of that subsection. Such rulemaking authority falls short of the authority necessary to grant the relief requested.

ATTORNEY GENERAL: The Attorney General asserts that CSAs are subject to the Commission's broad general jurisdiction and authority to regulate public utilities and that North Carolina courts have consistently held that the Commission has the authority to abrogate private contracts. The Attorney General further states that, by their own terms, CSAs provide that the Commission may alter them since they provide that contractual provisions which are found to be "invalid, illegal, or unenforceable" under an applicable statute, regulatory requirement or rule of law are severable from the whole. Notwithstanding the contrary position taken by BellSouth, the Attorney General asserts that North Carolina legislation permitting price caps does not alter the Commission's jurisdiction to implement Fresh Look rules and that if the General Assembly had intended such a major reduction in the Commission's power in passing the price regulation statute, it could have said so specifically. The Attorney General also points out that the Commission itself, when modifying and approving price regulation plans, specifically provided that it could, pursuant to G.S. 62-80, review and modify the price regulation plans for a number of reasons, including keeping the plans "consistent with the public interest." According to the Attorney General, it is clear that the Commission's authority to change or abrogate private contracts made prior to a regulatory change is bounded by a determination that a Fresh Look window would be in the public interest. The Attorney General suggests that, if the Commission desires to exercise its jurisdiction to approve Fresh Look requirements, it do so with all procedural safeguards.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The jurisdictional issues raised by the Fresh Look petition are novel, complex, and difficult. The primary basis set forth by the proponents in support of their request for the Commission to adopt Fresh Look rules is that the Commission is obligated by statute (House Bill 161, TA96, or both) to facilitate the opening of certain local exchange markets to competition. Nevertheless, the Commission is of the opinion that the better legal analysis is that put forth by the opponents of Fresh Look, particularly the straightforward position advocated by the Public Staff, that the Commission lacks the statutory authority necessary to adopt and implement Fresh Look rules. In addition, the Commission agrees with the assertions of the Fresh Look opponents that: (1) Congress, the FCC and the North Carolina General Assembly have each had the opportunity to impose Fresh Look requirements on the competitive local telephone markets in the context of implementing local competition, but have not elected do so; and (2) the statutes and case law cited by the Fresh Look proponents, including G.S. 62-110(f1) and the VEPCO case, do not constitute the clear grant of authority necessary to justify and support Commission intervention into statutorily-authorized, valid, and binding contracts between ILECs and their customers.

In fact, the enactment of G.S. 62-133.5(g) as part of House Bill 161 tends to prove the opposite of what the Fresh Look proponents assert. Prior to the enactment of House Bill 161, the Commission had broad authority over contracts between telephone utilities and their customers, including the authority to approve or disapprove the rates, terms, and conditions of such contracts, in whole or in part, and to approve tariffs governing such contracts, as in the case of special assembly or CSAs. G.S. 62-130, 62-131, and 62-132. The Commission also had the authority pursuant to G.S. 62-136 to alter or amend the rates, terms, and conditions of such contracts upon complaint and a showing that they are unjust, unreasonable, or otherwise unlawful. However, G.S. 62-133.5(g) provides that the provisions of these statutes no longer apply to those LECs subject to price regulation. Moreover, not only does G.S. 62-133.5(f) require the Commission to permit LECs to offer competitive services pursuant to contract, the approved price plans provide that such contracts need only be filed for information. These are not the actions of a General Assembly intent on conferring or mandating Fresh Look authority on the Commission.

The proponents of Fresh Look have made no showing that the contracts to which the proposed rules would apply are unjust, unreasonable, or otherwise unlawful either individually or as a class, whether entered into before or after the onset of competition. Furthermore, there has been no allegation by the proponents that such contracts are noncompensatory in nature. To the contrary, CSAs are valid, freely-negotiated, lawful, and binding contracts between ILECs and their customers which are authorized by statute, tariffs, and price regulation plans for use in competitive markets. It is likely that customers have already received the negotiated benefits of such contracts for months or even years. Insofar as those contracts were either approved by the Commission or entered into pursuant to authorized tariffs, they are prima facie just and reasonable under G.S. 62-132. That being the case, it necessarily follows that the Commission lacks authority to either retract its explicit prior approval or otherwise abrogate valid, binding contracts.

In addition, the proponents of Fresh Look have cited no express authority granted to the Commission to abrogate contracts for which approval is no longer required. Price regulation plans which have been approved by the Commission provide that CSAs must only be filed for information. These contracts are also available for resale by CLPs pursuant to Commission-approved interconnection agreements.

While G.S. 62-110(f1) deals with the certification of CLPs and authorizes the Commission to adopt rules for six purposes, the last and broadest being to carry out the provisions of that subsection in a manner consistent with the public interest, such rulemaking authority falls short of the jurisdiction necessary to grant the relief requested.

Nor are there are any decisions of the North Carolina appellate courts which definitively support the proponents' contention that the Commission possesses the authority necessary to adopt Fresh Look requirements which have the effect of authorizing abrogation of contracts which are otherwise just, reasonable, and lawful, even if the ultimate goal is to facilitate and promote local service competition.

The actions of the FCC and other state commissions with regard to Fresh Look, while informative, are not determinative of the jurisdictional question now before this Commission. It is notable that the states which have considered Fresh Look to date are split in their results.

Accordingly, under the circumstances and also in consideration of the constitutional issues raised by the parties, the Commission concludes that it lacks the necessary jurisdiction and authority to adopt and implement Fresh Look rules in North Carolina. Therefore, the Commission finds good cause to dismiss the Fresh Look petition for all of the reasons set forth above.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of May, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt dissents.
Commissioner Robert V. Owens, Jr., did not participate in this decision.
Commissioner Allyson K. Duncan resigned from the Commission effective May 1, 1998, and did not participate in this decision.

DOCKET NO. P-100, SUB 133

COMMISSIONER JUDY HUNT, DISSENTING: The Commission's decision that it lacks jurisdiction even to consider the issue presented shuts the door on any analysis of merit or public purpose as well as any acknowledgment that the Telecommunications Act of 1996 exists.

There is abundant authority supporting the Commission's jurisdiction to consider the merits of this case.[1] This authority is found in court decisions, in past orders of this body, and in the inherent authority of this Commission – especially its inherent responsibility to consider the evolving changes in the regulated/deregulated world brought about by the Telecommunications Act.

The precedent set by this order is far-reaching. A limitation on this Commission's scope of authority should not come from within but only from clearly applicable governing law. The Commission should not erect fictitious barriers to access to its doors. To the contrary, in the exercise of both judicial and quasi-judicial authority, the Commission should hear the merits of the matter.

The arguments by the Public Staff that the Commission should not take a "fresh look" at the contracts were in fact based on the merits that the Public Staff considered the contracts just and reasonable.

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[1]See, In re BellSouth Telecommunications, Incorporated, NCUC Docket No. P-55, Sub 1013, North Carolina Utilities Commission, Eighty-Sixth Report; Order and Decisions 570,611 (1996) ("Bell Price Cap Order"); State ex rel Utilities Commission v. Virginia Electric Power Company, 285 N.C. 298,206 S.E.,2d 283 (1974).; Exxon Corporation v Eagerton, 462 U.S. 176,103 S. Ct. 2296, 76 L.Ed.2d 497 (1983) (regulatory authority over contracts is fairly settled throughout the country, where the Court pointed out that to rule otherwise would be to allow parties to "obtain immunity from State regulation by making private contractual arrangements," 462 U.S. at 190); N.C. Gen. Stat. 62-133.5 ("price cap statute"); N.C. Gen. Stat. 62-30, 31, 32;

The Commission requested comments from the parties only on jurisdictional issues, yet it considered comments on the merits in deciding it did not have jurisdiction.

In conclusion, the Commission should adopt the position argued by the Attorney General: the Commission has jurisdiction to consider "fresh look" amendments, as clearly demonstrated in the statues and case law, as well as by a common sense understanding of the inherent authority of the Commission in these circumstances.

/s/Judy Hunt
Judy Hunt, Commissioner

DOCKET NO. P-100, SUB 133

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	ORDER REGARDING
Local Exchange and Exchange Access	)	TIMING OF
Telecommunications Competition	)	ARBITRATIONS

BY THE COMMISSION: On September 2, 1998, Intermedia Communications, Inc. (Intermedia) filed a Notice of Potential Arbitration wherein Intermedia stated that "[b]y memorandum agreement dated August 5, 1998, BellSouth and Intermedia agreed to extend the arbitration window for their current negotiations to September 18 through October 13, 1998."

On October 12, 1998, the Chair issued an Order asking the parties to clarify by what authority they were extending the arbitration window, since the Telecommunications Act of 1996 (TA96) is silent on the authority to extend the time.

On October 19, 1998, Intermedia and BellSouth filed a Joint Response. The parties stated that "numerous parties have agreed to modify commencement dates for negotiations." Thus, instead of varying the time periods set out in TA96, "the parties by agreement change the date on which those periods start." The purpose, they said, is to allow good faith negotiations to continue. The parties went on to state that they have now modified the commencement date to June 13, 1998, creating a new arbitration window from October 26, 1998 through November 20, 1998, leaving the Commission potentially until March 15, 1999, to resolve any issues that might be brought for arbitration. This was apparently intended to supplant the "existing" but now expired September 18th through October 13th arbitration window, which itself was an agreed-upon extension.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

While the Commission applauds any legitimate efforts the parties might undertake to reach satisfactory agreements between themselves and avoid the burden and expense of arbitration proceedings, the Commission believes that the method that the parties have chosen is not consistent with TA96 or Commission requirements. The Commission advises Intermedia that since its first negotiation cycle has expired and no timely request for arbitration has been made, it may reinitiate the process by making another interconnection request and filing notice of same with the Commission, the arbitration window for which would be 135 to 160 days from the date of the request.

Section 252(b)(1) of TA96 states in relevant part:

> During the period from the 135th to the 160th day (inclusive) after the date on which the incumbent receives a request for negotiation under this section, the carrier or any other party to the negotiation may petition a State commission to arbitrate any open issues.

On April 15, 1996, in Docket No. P-100, Sub 133, the Commission issued an Order Requiring Notification of Interconnection Requests and Setting Out Procedure Regarding Prefiled Testimony Prior to Arbitration. Ordering Paragraph No. 1 of that Order requires that the party requesting negotiation for the purposes of interconnection must make such request of the other party in writing and <u>provide a copy of this request to the Commission within five days of having made the request showing clearly the date on which the request was made</u>." (Emphasis added).

The plain language of Section 252(b)(1) is that the "window of opportunity" for requesting arbitration is to follow from the occurrence of a certain act--i.e., the incumbent having received a request for negotiation. This starts the clock running for the first cycle. The parties cannot simply decide that this certain act did not occur and say that the request was submitted at another time. This is especially true inasmuch as the Commission has required that those requesting interconnection negotiations must inform the Commission of when the original request was made. Although it does not appear that Intermedia has done so in this case, the requirement still stands. Thus, having set the arbitration window for September 18th through October 13th (itself of dubious propriety), the parties cannot later shift the arbitration window to October 26th through November 20th through the device of shifting the request-for-negotiation date.

Parties are, of course, to be encouraged to settle their differences through negotiation. For example, if they are unable to reach agreement within the time frame set out in TA96 but wish to continue negotiations, they can reinitiate negotiations after the first cycle has expired and so start the clock again. If they can reach an agreement within the next cycle and before the "window of opportunity" for arbitration, then this is well and good, and nothing prohibits them from doing so. The only constraint goes to timing for arbitration: if arbitration is needed for the second or any subsequent cycle, the requesting party will have to wait until that "window of opportunity" rolls around. This is not necessarily bad, because it allows more time for negotiation.

For the reasons set out above, the Commission therefore concludes that Intermedia and BellSouth cannot by mutual agreement change the date on which a request for negotiation has been previously made, thereby altering the arbitration time window.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 4th date of November, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt did not participate in this decision.

DOCKET NO. P-100, SUB 133b

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Establishment of Universal Support	)	ORDER ADOPTING
Mechanisms Pursuant to Section 254	)	FORWARD-LOOKING ECONOMIC
of the Telecommunications Act of 1996	)	COST MODEL AND INPUTS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Tuesday, February 3, 1998, Wednesday, February 4, 1998, Thursday, February 5, 1998, Friday, February 6, 1998, Monday, February 9, 1998, and Tuesday, February 10, 1998

BEFORE: Commissioner Allyson K. Duncan, Presiding, Chairman Jo Anne Sanford, and Commissioners Ralph A. Hunt, Judy Hunt, William R. Pittman, and J. Richard Conder

APPEARANCES:

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For Carolina Telephone and Telegraph Company and Central Telephone Company:

Dwight W. Allen, Vice President/External Affairs and General Counsel, and Robert Carl Voigt, Senior Attorney, Carolina Telephone and Telegraph Company and Central Telephone Company, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, and Robert B. Cauthen, Jr., Staff Attorney, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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

BY THE COMMISSION: On May 8, 1997, the Federal Communications Commission (FCC) released a Report and Order in CC Docket No. 96-45 (Universal Service Order or USO) in response to Section 254 of the Telecommunications Act of 1996 (the Act). In this Order, the FCC asked the states to elect, by August 15, 1997, whether they would conduct their own forward-looking economic cost (FLEC) studies for the purpose of determining federal universal service support for nonrural eligible carriers' rural, insular, and high cost areas. In Paragraph 250 of the USO, the FCC prescribed the following ten criteria which a state-conducted study must meet in order to be approved for use in calculating federal universal service support:

1. The technology assumed in the study or model must be the least-cost, most-efficient, and reasonable technology for providing the supported services that is currently being deployed. The model must include the incumbent local exchange companies' (ILECs') wire centers as the center of the loop network; the outside plant should terminate at the ILECs' current wire centers. The loop design should not impede the provision of advanced services. Wire center line counts should equal actual ILEC wire center line counts. Average loop length should reflect the ILECs' actual average loop length.

2. Any network function or element, such as loop, switching, transport, or signaling, necessary to produce supported services must have an associated cost.

3. Only long-run, forward-looking economic costs may be included. The long-run period must be long enough that all costs may be treated as variable and avoidable. The costs must not be the embedded cost of the facilities, functions, or elements. The study or model must be based on an examination of the current cost of purchasing facilities and equipment rather than list prices.

4. The rate of return must be either the authorized federal rate of return on interstate services, currently 11.25%, or the state's prescribed rate of return for intrastate services.

5. Economic lives and future net salvage percentages used in calculating depreciation expense must be within the FCC-authorized range.

6. The cost study or model must estimate the cost of providing service for all businesses and households within a geographic area, including the provision of multi-line business services, special access, private lines, and multiple residential lines.

7. A reasonable allocation of joint and common costs must be assigned to the cost of supported services.

8. The cost study or model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment. All underlying data should be verifiable, engineering assumptions reasonable, and outputs plausible.

9. The cost study or model must include the capability to examine and modify the critical assumptions and engineering principles.

10. The cost study or model must deaverage support calculations to the wire center serving area level at least and, if feasible, to even smaller areas such as Census Block Group, Census Block, or grid cell.

The FCC also stated that the study must be the same study that is used by the state to determine intrastate universal service support levels pursuant to Section 254(f) of the Act.

On August 12, 1997, the Commission issued an Order electing to conduct its own FLEC study for submission to the FCC and notifying the FCC of its election. The Commission also adopted a timetable, which was modified by subsequent Orders, for developing North Carolina FLEC studies. The timetable included dates for filing proposed studies, supporting testimony and documentation, and for holding evidentiary hearings.

Proposed cost studies were filed by Carolina Telephone and Telegraph Company and Central Telephone Company (collectively, Carolina/Central), BellSouth Telecommunications, Inc. (BellSouth), and GTE South Incorporated (GTE), using Version 2.5/2.6 of the Benchmark Cost Proxy Model (BCPM); and by AT&T Communications of the Southern States, Inc. (AT&T) and MCI Telecommunications Corporation (MCI) jointly, using Release 4.0 of the Hatfield Model (HM). Carolina/Central and BellSouth updated their studies using BCPM 3.1, GTE updated its study using BCPM 3.0, and AT&T/MCI updated their study using HM 5.0.

The matter came on for hearing on February 3, 1998. AT&T and MCI jointly sponsored HM 5.0 and presented the direct and supplemental direct testimony of Don J. Wood and the rebuttal testimony of John C. Klick. AT&T also presented the direct and rebuttal testimony of Joseph Gillan; the direct, supplemental direct, and rebuttal testimony of James W. Wells, Jr.; and the rebuttal testimony of Art Lema. BellSouth and Carolina/Central jointly sponsored BCPM 3.1 and presented the direct, supplemental direct, and rebuttal testimony of Dr. Robert M. Bowman; the direct and supplemental direct testimony of Dr. Brian K. Staihr; and the direct and rebuttal testimony of Dr. Kevin Duffy-Deno. BellSouth also presented the direct testimony of Alphonso J. Varner and the direct and rebuttal testimony of D. Daonne Caldwell. Carolina/Central presented the direct and supplemental direct testimony of C. Steve Parrott and Marcus H. Potter. BellSouth presented the rebuttal testimony of Jamshed K. Madan, Michael D. Dirmeier, and David C. Newton (Georgetown Consulting Group). GTE presented the direct, supplemental direct, and rebuttal testimony of Dr. Mark S. Calnon and the direct, supplemental direct, and rebuttal testimony of Terence D. Robinson. GTE also presented the rebuttal testimony of Dr. Timothy J. Tardiff and Robert P. Cellupica. The Public Staff presented the revised testimony of John T. Garrison, Jr. The North Carolina Cable Telecommunications Association (NCCTA) presented the direct and rebuttal testimony of William J. Barta. Neither the Public Staff nor NCCTA sponsored a cost study.

The testimony of the following witnesses was entered into the record by stipulation: John I. Hirshleifer, direct and rebuttal (AT&T); Richard B. Lee, direct and rebuttal (AT&T); Dr. David L. Kaserman, direct (AT&T); G. David Cunningham, rebuttal (BellSouth); Dr. Randall S. Billingsley, rebuttal (BellSouth); Anthony J. Flesch, rebuttal (GTE); Gregory D. Jacobson, rebuttal (GTE); Jerome C. Weinert, rebuttal (Carolina/Central); John R. Hinton, direct (Public Staff); and Royster M. Tucker, III, direct (North State Telephone Company).

On February 27, 1998, the FCC released a Public Notice setting forth the information it needs to determine whether a state's cost study complies with the ten criteria prescribed in its Universal Service Order and the format in which this information should be presented.

Based on a careful consideration of the entire record in this matter, the Commission now makes the following

FINDINGS OF FACT

1. It is appropriate to conduct separate cost studies to determine the forward-looking economic cost of providing universal service in the respective service territories of Carolina/Central, BellSouth, and GTE in North Carolina.

2. The BCPM 3.1 is the appropriate model to use in determining the forward-looking economic cost of providing universal service for Carolina/Central, BellSouth, and GTE in North Carolina.

3. Except as modified below, the user adjustable inputs and parameters proposed by Carolina/Central are appropriate for use in the FLEC study for their service territories.

4. Except as modified below, the user adjustable inputs and parameters proposed by BellSouth are appropriate for use in the FLEC study for its service territory.

5. The following user adjustable inputs and parameters for GTE's plant investment should be modified:

a. Outside plant material and installation costs
b. Support ratios
c. Switching inputs
d. Cable sizing factors

6. The following user adjustable inputs for GTE's expenses should be modified:

a. Per line expenses: Network Support, General Support, Other Property Plant, Network Operations, Marketing, Services, Executive and Planning, and General and Administrative
b. Percentage of investment expenses: Poles, Aerial Fiber Cable, Buried Fiber Cable

7. Expense inputs for Information Origination/Termination should be excluded from the FLEC studies of all three ILECs.

8. Structure sharing percentage inputs of each ILEC should be revised to reflect structure sharing percentages that fall midway between each ILEC's proposed percentages and the percentages proposed by AT&T/MCI as inputs into the HM 5.0.

9. The FLEC study inputs of each ILEC should include actual access line data for each wire center.

10. The prescribed cost of capital for intrastate services in North Carolina which is reasonable and appropriate for use in determining the forward-looking economic costs associated with providing universal service is 9.94%, based on the following capital structure and cost rates:

Component	Ratio	Cost Rate	Weighted Cost Rate
Long-term debt	42%	7.38%	3.10%
Common equity	58%	11.80%	6.84%
Total	100%		9.94%

11. The appropriate economic lives and future net salvage percentages for calculating depreciation rates for use in the FLEC studies are those that are within the FCC-authorized range.

12. The appropriate input value for distribution pairs per residential housing unit for use in the FLEC studies is 1.4.

13. The appropriate tax rates and regulatory fee rate for use in the FLEC studies are as follows: federal income tax rate, 35%; state income tax rate, 6.9%; gross receipts tax rate, 3.22%; regulatory fee, 0.09%.

14. Revised FLEC studies conducted in accordance with the provisions and requirements of this Order will be in compliance with the FCC's ten criteria.

GENERAL ORDERS - TELEPHONE

DISCUSSION OF EVIDENCE AND CONCLUSIONS

PART NO. 1: OVERVIEW

This proceeding was instituted to enable the Commission to adopt a FLEC study or studies acceptable to the FCC for the purpose of determining federal universal service support. The ILECs expressed concern that if the FCC bases its determination of federal support on costs that are not representative of costs in North Carolina (i.e., on costs that are understated), there will be an additional burden on the intrastate universal service fund.

It is anticipated that the ILECs, who are currently the universal service providers in their franchised areas, will be the principal recipients from the universal service fund. They have asserted that setting the cost too low will jeopardize service quality at affordable rates. The ILECs have sponsored company-specific studies using the BCPM which, they say, represent the reasonable forward-looking costs that an efficient provider of universal service would incur in their respective areas. The competitors, who will be contributors to the universal service fund, have asserted that setting the cost too high will thwart competition. AT&T and MCI have sponsored a study using the Hatfield Model which, they say, represents the costs that a least-cost, most-efficient provider would incur in providing universal service in a competitive environment.

The Commission has given substantial weight to testimony from ILEC witnesses regarding their companies' forward-looking costs. The Commission is persuaded, both by the evidence presented and by its own investigation, that the ILECs' networks employ efficient technology and good engineering practices. They also provide reliable service throughout the State. The Commission is therefore inclined to accept the ILECs' proposed user adjustable inputs where they are forward looking and reasonable. The question then becomes whether the Commission should also accept the ILECs' proposed model or whether another model would better accomplish our purpose.

PART NO. 2: MODEL SELECTION

2(a): MODEL SELECTION (CUSTOMER LOCATION / NETWORK DESIGN)

POSITIONS OF PARTIES

BELLSOUTH: The BCPM 3.1's road-based, customer-location methodology is superior to Hatfield 5.0's and, therefore, more accurately estimates the cost of providing universal service in North Carolina. In addition, the BCPM 3.1's network design is superior to HM 5.0's because it follows industry-accepted design standards; builds a network that reaches all customers — existing and potential; makes advanced services as available to rural customers as they are to urban customers; and builds a high quality network over which urban and rural North Carolinians can actually talk.

CAROLINA/CENTRAL: The BCPM 3.1 relies on the reasonable assumption that the great majority of customers, both business and residential, will be located along roads. In addition, the BCPM 3.1 more accurately estimates loop length, and accordingly provides an accurate and realistic estimate of loop cost (the most costly component of the serving network).

GTE: The BCPM platform provides a better basis for a universal service calculation than does the Hatfield Model. The BCPM's network architecture is developed by locating telephone plant along roads, streets, and avenues — where most customers can be expected to live and where telecommunications facilities are currently placed. BCPM conforms to all applicable engineering and design standards, and its switching module reflects "actual ILEC switching purchases."

GTE has proposed that BCPM be chosen on an interim basis, and that it be populated with GTE company-specific inputs. GTE's cost model (Integrated Cost Model or ICM) has been filed with the Commission in Docket No. P-100, Sub 133d, relating to the pricing of unbundled network elements (UNEs), but ICM could not be modified for universal service purposes in time for consideration here. GTE indicates that work on ICM for universal service continues, and that it intends to submit ICM to the Commission at a later date.

AT&T: The Hatfield Model is more accurate than the BCPM in locating customers and estimating the costs of building a network to them. Hatfield 5.0 locates the customers (many within 50 feet of their actual location) and uses modeling assumptions that result in the use of the least-cost material and equipment required to engineer a high quality network. Where data is available — for approximately 70-75% of customers — the Hatfield Model uses the actual location of the customer. The remaining customers are included at the census block level. In addition, the Hatfield Model develops costs based on the total demand for network elements, including loops, switching, and interoffice transport. By designing a forward-looking network based on total demand, the Hatfield Model properly includes economies of scale.

MCI: The Hatfield 5.0 is superior to BCPM 3.1 for purposes of customer location. While geocoding is currently not available for all customers, it does provide locations for 64% of the customers in North Carolina, and the ability to geocode addresses will only improve in the future.

NCCTA: The NCCTA believes that either of the basic platforms of the Hatfield and BCPM models will serve the purposes for which they are intended and that either model could be recommended to the FCC consistent with the FCC's requirements.

ATTORNEY GENERAL: The differences between BCPM 3.1 and Hatfield 5.0 appear de minimis, and either the BCPM or the Hatfield Model would be acceptable to use in this docket if the input values provided to the models are cost appropriate. By the evidence presented in this docket, Hatfield 5.0 does not appear to calculate significantly different route miles from the route miles calculated by the BCPM which does not use geocoding.

PUBLIC STAFF: The BCPM 3.1 is more reasonable, more accessible, and more appropriate than the Hatfield Model for determining the forward-looking economic cost of providing universal service in North Carolina. The BCPM method of locating customers is more appropriate than the Hatfield method for FLEC study purposes. Once the Hatfield Model establishes clusters based on geocoded data, it disregards the data when it places customers throughout the clusters and actually models the facilities.

MAJOR DIFFERENCES BETWEEN BCPM AND HATFIELD

The major differences in the model platforms appear to be in the areas of customer location and network design. A more detailed description of each of these areas, based on the positions of the proponents of each model, follows.

A. CUSTOMER LOCATION:

BCPM

According to the proponents of the BCPM model, the BCPM 3.1 relies on publicly available wire center boundary data obtained from Business Location Research (BLR). A BCPM 3.1 customer location algorithm then partitions the area of a wire center into "microgrids," roughly 1,500 feet by 1,700 feet in size (0.09 square miles). Thus, each Census Block within the serving wire center is overlaid with microgrids, unless the entire Census Block falls within a single microgrid.

In the rural areas of the wire center, the allocation of customer locations is based upon the road network, the location of which is known in every Census Block. Proponents of the BCPM model state that the BCPM 3.1 uses data on the road network obtained from TIGER/Line files (Topologically Integrated Geographic Encoding and Referencing) from the U.S. Census Bureau. In dense urban areas, Census Blocks may be smaller than the microgrid, and the assignment of customer data along the road network is not required. Because the Census Block road network is known with certainty and because people tend to live along roads, proponents of the BCPM model state that the BCPM 3.1 apportions Census Block housing units to micrograds based on the share of the Census Block's road mileage that occurs in a given micrograd.

These micrograds are then aggregated into telephone engineering Carrier Service Areas (CSAs) and Distribution Areas (DAs) as appropriate. These are referred to as "ultimate grids." The maximum size of an ultimate grid is constrained to approximately 12,000 feet by 14,000 feet (roughly six square miles) to comport with engineering guidelines. BCPM proponents state the BCPM 3.1 does not assume that customers are uniformly distributed within each ultimate grid. Rather, each ultimate grid is divided into four distribution quadrants, each of which may contain a distribution area. The latitude and longitude coordinates of the distribution quadrants are determined by first establishing the road centroid of the ultimate grid. The distribution quadrants are centered on this road centroid. For those distribution quadrants that do not have any customers assigned to them, no distribution area is designed within the distribution quadrants, thus ensuring that plant is not "built" in nonpopulated areas.

HATFIELD

Proponents of the Hatfield Model contended that the Hatfield 5.0 is at least as accurate as the BCPM for locating one-third of North Carolina consumers and more accurate than the BCPM in locating two-thirds of consumers. The proponents of the Hatfield Model further stated that the Hatfield 5.0 accurately locates customers (precisely locating a large percentage of all households to within fifty feet of actual locations), identifies clusters of households as real-world neighborhoods or groupings, and builds a network to these neighborhoods using the same engineering practices, efficiencies, and technologies available to network designers in the real world. In order to accomplish this task, Hatfield 5.0 uses a process known as "geocoding." Simply defined, "geocoding" means matching customers with their addresses and locating those addresses by latitude and longitude.

The Hatfield proponents further explained that the geocoding process is performed by a company called PNR Associates (PNR) which makes use of mailing lists from Metromail, a mass mailing firm, employed by many businesses for advertising purposes. PNR also obtains business addresses from Dun and Bradstreet. PNR then goes to the U.S. Geological Survey TIGER database to determine the latitude and longitude of the street addresses. At that point, PNR uses a mathematical formula to determine where people are "clustered" or, in other words, where the towns and neighborhoods are located. For modeling purposes, a rectangle is overlaid over the cluster, and this defines the serving area. Customers are then assigned to a wire center.

Proponents of the Hatfield Model state that the Hatfield 5.0 assumes that customer locations for which geocoding data currently does not exist are distributed evenly along the perimeter of the Census Block. The Proponents of the Hatfield 5.0 believe that this is an appropriate assumption because: (1) Census Blocks often are bounded by roads, and (2) placing customers at the outer limits of the Census Blocks is a conservative approach which tends to overstate required distribution plant. Therefore, even though the amount of plant required may be slightly overstated, there will be enough plant to ensure that the network will reach all of the customers.

B. NETWORK DESIGN:

BCPM

The proponents of the BCPM explained that the great majority of the costs of providing universal service are the costs of constructing and maintaining the loop network. The loop network consists of the facilities from the central office switching center to the customer's premise. The loop includes feeder cable, distribution cable, Feeder Distribution Interfaces (FDIs), distribution terminals, drop wire, and a Network Interface Device (NID) at the customer's premise. The facilities between the switching center and the terminal at the customer's premise are typically divided into feeder and distribution cable plant. Feeder facilities are the facilities between the switching center and the FDI. A FDI is generally the demarcation point between feeder and distribution facilities. Distribution facilities begin at the FDI and end at the NID or at a building terminal. A distribution terminal (drop terminal) is used to terminate drop wire and connect the drop wire to the distribution cable. Drop wire connects the distribution cable to the network device located at the customer's premises. A sound cost proxy model must design a network that includes all the loop cost elements necessarily incurred in providing customers with the capability of placing and receiving telephone calls. BellSouth and Carolina/Central witness Bowman referenced AT&T's Outside Plant Engineering Handbook (August 1994) which generally limits copper loops beyond the Digital Loop Carrier Remote Terminal (DLC) to 12,000 feet for quality service. Witness Bowman stated that the BCPM 3.1 followed this engineering practice in its network design by using larger 24-gauge cable beyond 11,100 feet and replacing standard channel unit cards with extended range line cards beyond 13,600 feet.

Witness Bowman stated that the use of these standard channel unit cards, combined with the distance of the loop past the DLC, results in an unacceptable decibel loss on the loop. To provide an adequate grade of service using standard channel unit cards, the maximum copper loop length from the DLC to the customer for buried cable should not exceed 12,000 feet of 26-gauge cable and 14,800 feet of 24-gauge cable. If aerial plant is used, the decibel loss increases and, therefore, the maximum copper loop lengths would be less than 12,000 feet on 26-gauge cable and less than 14,800 feet on 24-gauge cable.

Proponents of the BCPM 3.1 explained that it builds to all housing units, regardless of whether they are occupied or currently have phone service. BCPM proponents contended that as the carrier of last resort, the incumbent local exchange company must stand ready to serve all housing units.

HATFIELD

The proponents of the Hatfield Model explained that it designs facilities to neighborhoods the way an engineer would design these facilities. After customers are located, the Hatfield 5.0 identifies customers that can be served together logically, such as customers located in the same neighborhood or town, subject to any technological constraints. The model builds feeder facilities to these locations and defines carrier serving areas, where possible, to include the identified groupings. Within each neighborhood, Hatfield 5.0 designs distribution facilities using the efficient rectangular lots favored by real-world real estate developers. For outlying customers served by roads, Hatfield 5.0 actually builds the distribution along the roads to serve the customers.

The proponents of the Hatfield Model stated that it utilizes the same least cost, most-efficient technologies that ILECs currently are deploying, including next generation digital loop carrier systems, digital switching, fiber rings for interoffice transport, and signaling system 7. For parts of the network in which the choice of efficient technologies may be different under different conditions, the model contains alternative solutions and chooses efficient technologies the way real engineers make choices. For example, one choice an engineer must make in designing a telephone network is how much copper versus fiber feeder to use. Copper, being a semi-precious metal, is expensive while fiber is relatively cheap. However, fiber feeder requires installation of expensive DLC equipment. Therefore, while it is not cost effective to use fiber feeder for short distances, at some point it becomes less costly to use fiber with the DLC electronics rather than the expensive copper. Proponents of the Hatfield Model stated that in order to determine the most cost effective solution, Hatfield 5.0 compares costs of copper and fiber for every feeder loop segment and chooses the most efficient alternative.

Proponents of the Hatfield Model contended that the universal service network which the Hatfield Model designs is fully capable of accommodating the next generation of advanced services, including low cost, high speed digital subscriber line services expected to be available later this year. The Hatfield Model makes these capabilities available, in part, by the modeling of T-1 technologies in place of coarse-gauge cable and load coils utilized in embedded networks to permit extended copper loop lengths. Thus, even the longest loops (those over 18,000 feet) can accommodate advanced services including Integrated Services Digital Network (ISDN) and other high speed data applications. The Hatfield Model proponents stated that, further, Hatfield 5.0 conducts tests of the outside plant facilities that it models to ensure that the transmission parameters necessary to permit accommodation of advanced services are not exceeded.

Hatfield Model proponents stated that the Hatfield 5.0 develops costs based on the total demand for network elements, including loops, switching, and interoffice transport. Total demand includes the demand created by residence (first and additional lines), business (single and multi-line), public (coin), and special access services. Hatfield 5.0 builds only to customers that currently have telephone service. The proponents of the HM argued that universal service support should not include the potential cost of serving customers that currently do not have service.

DISCUSSION

As noted above, two cost proxy models have been presented to the Commission for consideration, as well as various sets of cost inputs to those models. The BCPM sponsored by Carolina/Central and BellSouth (and adopted by GTE on an interim basis) is a model that has been developed by BellSouth, INDETEC International, Sprint, and US West. The Hatfield Model has been developed by HAI Consulting, Inc., for AT&T and MCI.

The BCPM bases its customer location on the assumption that households and businesses typically are located near roads and centering the distribution quadrant of the DA at the center of the roads establishes network facilities closer to where customers are located. The Hatfield Model uses geocoding which means matching customers with their addresses and locating those addresses by latitude and longitude. The location of customers will then determine the cost of cable, switches, and other facilities necessary to implement a least cost, forward-looking network.

The BCPM 3.1 network was designed by using large 24-gauge cable beyond 11,100 feet and replacing standard channel unit cards with extended range line cards beyond 13,600 feet. The Hatfield 5.0 models with T-1 technologies in place of coarse-gauge cable and load coils utilized in embedded networks to permit extended copper loop lengths. Thus, even the longest loops (those over 18,000 feet) can accommodate advanced services including ISDN and other high speed data applications.

In reviewing the cost model selection issue, the Commission notes that neither the Attorney General nor the NCCTA recommended one model over the other in their Briefs, but seemed to agree that either of the models may be acceptable. The Attorney General indicated that evidence before the Commission supports the opinions of the witnesses that the models are converging. The Attorney General also mentioned that when BellSouth's panel of Georgetown Consulting witnesses Madan, Dirmeier, and Newton fed BellSouth-derived inputs into the Hatfield Model, they got results very similar to those obtained by BellSouth's BCPM. Similarly, when AT&T/MCI witness Klick compared the cabling that each model calculated, the total route miles were very close (41,398 total route miles for Hatfield 5.0; 42,822 total route miles for BCPM 3.1, a difference of about 3%). The NCCTA commented that, driven by FCC-mandated criteria and FCC-sponsored technical discussions, it appears that the model platforms are becoming more similar and one would expect that, over time, the platform distinctions will become even less significant.

In its Proposed Order, the Public Staff endorsed adoption of the BCPM 3.1 rather than the Hatfield Model, asserting that BCPM 3.1 is more reasonable, more accessible, and more appropriate for use in determining the forward-looking economic cost of providing universal service in North Carolina. In arriving at its recommendation, the Public Staff discussed the strengths and weaknesses of both models.

Customer location is unquestionably an important part of the modeling process, and the Commission agrees with the Public Staff's analysis on the following points regarding the value of geocoding as it currently exists in the Hatfield Model. For instance, the Public Staff stated that, first of all, geocoding is only as accurate as the underlying addresses. Not only is it possible that some street addresses are inaccurate, it is a fact that other addresses are not street addresses at all. The Public Staff pointed out that, according to witness Wood's testimony, only about two-thirds of customers in North Carolina are geocodable, and the most geocodable locations are in suburban areas. Other areas tend to be difficult to geocode because of the presence of post office boxes in urban areas and rural route numbers in rural areas. The Public Staff further noted that BellSouth and Carolina/Central witness Duffy-Deno pointed out that little is likely to be gained in terms of cost estimation from geocoding in urban areas, while accurate location in rural areas is critical. Thus, whatever the virtues of geocoding, they fail to manifest themselves where they are needed most. The Public Staff stated that it believes the BCPM method of locating customers is more appropriate than the Hatfield method for FLEC study purposes. The Public Staff stated that this conclusion is bolstered by the fact that, once the Hatfield Model establishes clusters based on geocoded data, it disregards the data when it places customers throughout the clusters and actually models the facilities. The Public Staff agreed with witness Duffy-Deno's testimony that "a sound cost proxy model should reasonably reflect the locations of customers, especially in rural high cost areas . . . [and] should reasonably reflect the telecommunications structures and facilities needed to serve customers in their locations."

The Public Staff further noted that there was considerable debate over the use of extended range line cards and how much power loss occurs over copper facilities. The BCPM developers believe that good engineering design limits the length of copper beyond the DLC to 12,000 feet, and that after 13,000 feet an extended range line card should be used. The Hatfield developers take a different approach, assuming that a copper loop will work out to 17,600 feet before an extended range line card is needed. The Public Staff noted that it is not clear whether costs for those line cards have been included in the model and, if not, whether they would drive the overall loop cost above that produced by the BCPM.

In its Proposed Order, the Public Staff also noted that the models build to different numbers of housing units; Hatfield to current customers and BCPM to all housing units. The Hatfield proponents, the competing local providers (CLPs), maintain that universal service funding should be based only on the cost of serving customers who have telephones. BCPM proponents, the ILECs, point out that as carriers of last resort they have the obligation to serve all who apply for service. Here again, the Commission agrees with the Public Staff that the BCPM assumption is correct and that a forward-looking cost study should include all housing units.

The Commission believes that both models have considerable merit, with each having strengths and weaknesses. However, the Commission believes that the arguments advanced by the

Public Staff tip the balance in favor of the BCPM. In particular, the Commission has concerns regarding the geocoding method used by the Hatfield Model 5.0 and believes that the customer location methodology used by the BCPM is more appropriate and better suited to the rural areas of North Carolina where it would be expected that many of the high cost areas are located.

CONCLUSIONS

The Commission concludes that the BCPM 3.1 is more reasonable, more accessible, and more appropriate than the Hatfield Model for determining the forward-looking economic cost of providing universal service in North Carolina. The Commission further concludes that the Carolina/Central version of the BCPM 3.1, which is the only version that is capable of producing results below the wire center level, should be used by BellSouth, GTE, and Carolina/Central in determining the forward-looking economic cost of providing universal service in North Carolina.

2(b): DATA VERIFICATION / PREPROCESSING INFORMATION

POSITIONS OF PARTIES

BELLSOUTH: Citing FCC Criterion No. 8 that models should be open and verifiable, BellSouth argued that the Commission lacks meaningful access to the preprocessing information embedded in HM 5.0, especially that information related to clusters and clustering algorithms. PNR apparently considers geocoded locations to be proprietary; and even if geocoded information and clustering algorithms could be obtained, the annual licensing cost is approximately $2.6 million. Thus, HM 5.0 cannot be adequately verified.

CAROLINA/CENTRAL: Carolina/Central did not address this specific issue in their Brief or Proposed Order.

GTE: GTE echoed the position of BellSouth, stressing that the geocoding data was deemed proprietary to PNR's data vendors, was derived from 12 different databases and five independent models or algorithms, and costs $2.6 million annually.

AT&T: AT&T did not address this specific issue in its Brief or Proposed Order.

MCI: MCI contended that, while both models contain preprocessing information that has not been made completely available, HM 5.0 provides more readily available information than BCPM 3.1. Furthermore, the Commission can verify the information involved in the HM 5.0 preprocessing aspect of customer location through a request to Hatfield proponents or to PNR. There should be no cost for that type of demonstration. The licensing and user fees are to obtain the underlying database and all the software that goes along with the Metromail database. The $2.6 million figure is for nationwide geocoding information as well as training. MCI also pointed out that BCPM proponents had not provided all the missing utility header and functions necessary to run the BCPM preprocessor and that BCPM 3.1 has feeder and subfeeder calculations in the processor that cannot be evaluated.

NCCTA: The NCCTA did not address this specific issue in its Brief.

ATTORNEY GENERAL: The Attorney General did not address this specific issue in his Brief.

PUBLIC STAFF: The Public Staff did not address this specific issue. However, the Public Staff stated that BCPM 3.1 complies with the FCC's ten criteria, with the possible exception of the first one.

DISCUSSION

FCC Criterion No. 8 reads:

> "The cost study or model and all underlying data, formulae, computations, and software associated with the model must be available to all interested parties for review and comment. All underlying data should be verifiable, engineering assumptions reasonable, and outputs plausible."

The size and complexity of HM 5.0 and BCPM 3.1 are such that an exhaustive assessment of their openness and verifiability is likely to be problematical. Although BellSouth and GTE have raised some legitimate concerns, MCI has pointed out that preprocessing assumptions are common to both models and that the Commission would have access to verification of the preprocessing aspect of customer location through a request to Hatfield proponents or PNR at no cost. In any event, MCI also pointed out that the $2.6 million figure was a comprehensive nationwide figure. Thus, both models appear to be reasonably open and verifiable.

CONCLUSIONS

The Commission concludes that both HM 5.0 and BCPM 3.1 satisfy FCC Criterion No. 8.

PART NO. 3: INPUTS

3(a): DEFAULT INPUTS / CURRENT AND HISTORICAL COSTS / IMPACT OF COMPETITION

POSITIONS OF PARTIES

BELLSOUTH: BellSouth's inputs to BCPM 3.1 reflect the costs of currently available technologies. BellSouth's inputs do not reflect embedded costs.

CAROLINA/CENTRAL: Although historical costs should not be considered determinative of the issue, an ILEC's current costs provide the best information available as a starting point in estimating costs on a go-forward basis.

GTE: GTE contended that the methodology used in the Best of Breed survey to develop BCPM's default input values is far superior to the "pick and choose" approach of Hatfield 5.0. GTE contended that its specific categories of inputs for cost of capital, depreciation lives, structure sharing, structure mix and fill factors and GTE's ARMIS data are far superior to the default inputs in HM 5.0, and are also better than BCPM's default inputs because they are GTE specific.

AT&T: Hatfield 5.0 inputs adjusted for North Carolina should be used rather than company-specific inputs. The inputs sponsored by BellSouth, GTE, and Carolina/Central in this proceeding fail to address the impact of competition on the local exchange market and represent embedded costs rather than the cost an efficient provider would expect to incur.

MCI: Hatfield 5.0 inputs are the appropriate inputs for use in the cost proxy models submitted to the FCC. Hatfield 5.0 is designed to accurately estimate the cost an efficient carrier would incur to provide service in the geographic area being studied.

NCCTA: The sponsors of both models have failed to substantiate the basis of their inputs to the models and have failed to validate their model results through real-world comparisons. In many instances, the use of company-specific inputs is the best way to approximate the forward-looking costs of constructing a network. However, the use of existing cost information is inherently a backward-looking approach and, therefore, carries with it the danger that inappropriate (i.e., embedded or nonforward looking) costs will be utilized.

ATTORNEY GENERAL: The Attorney General recommended that the Commission require the BCPM proponents to submit model results using the BCPM defaults as inputs and compare those results with the Hatfield results and the company-specific results already submitted in this docket. The Attorney General recommended that the Commission then choose specific inputs that are cost appropriate in each case, confident that such cost appropriate inputs will fall somewhere between the input values advocated by the proponents of the two models.

PUBLIC STAFF: The ILECs' networks employ efficient technology and good engineering practices. The Commission should accept the ILECs' proposed user adjustable inputs where they are forward looking and reasonable. The Public Staff recommended modifications in some proposed ILEC inputs where it found that they were not forward looking and reasonable.

DISCUSSION

The Commission's goal is to determine inputs that would accurately reflect long-run, forward-looking economic costs, as required by the FCC. Either method of determining these costs, using current costs as the base, as proposed by BellSouth and Carolina/Central, or default values based on fresh estimates of the costs of network construction and operation, can be superior, depending on the care with which each is developed. The proposals of BellSouth and Carolina/Central deserve careful consideration because they represent verifiable and current costs of well-engineered networks that have provided a high quality of service. Examining current costs is certainly a reasonable first step in determining forward-looking costs. AT&T and MCI, however, pointed out plausible reasons why these proposed costs might be too high, given changes in the industry. First, ILECs have plans to become more efficient. These efficiency improvements are not reflected in the cost inputs, according to AT&T and MCI. Second, competition can be expected to spur additional innovation, efficiency improvements, and cost cutting not currently reflected in the proposals filed by the ILECs. While these are plausible scenarios, their true impact is speculative and thus demands that a very secure foundation of cause, mechanism, and potential effect be put in place. AT&T and MCI have not put in place a sufficient foundation for the Commission to accept their proposals. The Public Staff recommended the acceptance of the ILECs' proposed user adjustable inputs where they are forward-looking and reasonable. The Public Staff has also recommended adjustments to some costs proposed by the ILECs, and these recommendations are discussed under other issues.

CONCLUSIONS

The Commission concludes that company-specific inputs, where they are forward looking and reasonable, should be used in lieu of default values.

3(b): EXPENSE INPUTS

POSITIONS OF PARTIES

BELLSOUTH: The expense inputs used in BellSouth's exhibit are correct.

CAROLINA/CENTRAL: The expense inputs used in Carolina/Central's exhibit are correct.

GTE: The expense inputs used in GTE's exhibit are correct.

AT&T: Inputs should represent the Commission's best judgment as to the forward-looking costs of the most efficient technology that could be used to interconnect customers with existing wire center locations.

MCI: Hatfield 5.0 inputs are the appropriate inputs for use in the cost proxy models submitted to the FCC.

NCCTA: The NCCTA did not address the adjustments proposed by the Public Staff with specificity in its Brief. NCCTA did state that it is not clear whether the BCPM's estimate of operating expenses allegedly required to support universal service includes categories of expenses that are incurred mainly to provide competitive and/or discretionary services.

ATTORNEY GENERAL: The Attorney General addressed expense inputs in general in his Brief, but did not discuss the Public Staff's proposed adjustments with specificity.

PUBLIC STAFF: In its Proposed Order, the Public Staff recommended certain adjustments to expense inputs. More specifically, the Public Staff recommended that expense inputs for Information Origination/Termination should be excluded from the FLEC studies of all three ILECs and that the following user adjustable inputs for GTE's expenses should be modified:

a. Per line expenses: Network Support, General Support, Other Property Plant, Network Operations, Marketing, Services, Executive and Planning, and General and Administrative.

b. Percentage of investment expenses: Poles, Aerial Fiber Cable, and Buried Fiber Cable.

DISCUSSION

The BCPM uses inputs for determining operating expenses on either a per line basis or as a percentage of the investment for the related expense. In some cases, the BCPM permits the use of either type of input for a particular expense. The per line expense inputs for all three ILECs include amounts for expenses recorded in Account 6310 (Information Origination/Termination) of the Uniform System of Accounts (USOA). The BCPM, however, does not include any investment associated with these expenses. Part 32 of the FCC's rules defines the amounts to be recorded in Account 6310 as expenses associated with investments in station apparatus, large private branch exchanges, public telephone terminal equipment, and other terminal equipment. The Commission agrees with the Public Staff that these are not investments or expenses that should be included as universal service costs.

The remaining adjustments, as proposed by the Public Staff, concern only GTE.

The record shows that GTE's proposed per line expenses are typically higher than the expenses proposed by either BellSouth or Carolina/Central. GTE's per line amounts are based on a calculation of the universal service expense associated with its 1996 expenses. These amounts are then divided by the number of access lines to obtain the desired per line expense amount. GTE's workpapers indicate that it used 321,139 access lines to calculate expenses on a per line basis. However, according to its 1996 Annual Report, GTE had 366,794 access lines in service in North Carolina. The Commission agrees with the Public Staff that GTE's proposed per line expenses are overstated and should be adjusted to reflect the higher number of access lines.

In addition, the Commission concurs with the position taken by the Public Staff that the per line amount for GTE's General Support expense should be adjusted to reflect the change in investment support associated with the account discussed above. This adjustment is accomplished by a pro rata reduction in the expense associated with Furniture and Office Equipment investments.

Another adjustment recommended by the Public Staff, which the Commission finds to be necessary, reasonable and appropriate, concerns Services expenses attributable to universal service. GTE has proposed a per line amount of $2.44 compared to BellSouth's $0.46 and Carolina/Central's $0.73. GTE's workpapers indicate that a 73.4% factor was used but failed to state a basis for this factor. The workpapers filed by BellSouth indicate that an allocation factor of 11.78% was used based on the allocation of common line costs to this expense. Since the Services expenses per access line according to the Annual Reports filed by BellSouth, GTE, and Carolina/Central for the years 1994 through 1996 are relatively equal, it appears that the difference in the per line expense amounts is attributable to the discrepancy in the allocation factors. The Commission agrees with the Public Staff that the 73.4% factor used by GTE represents an unreasonably high allocation of Services expenses to universal service. Therefore, given the similarities between the operating conditions of GTE and Carolina/Central, the Commission concludes that the per line expense amount used by Carolina/Central is a reasonable amount for use in GTE's service area.

With respect to the expense percentage of investment inputs, the Commission concurs with the position taken by the Public Staff that three of the inputs proposed by GTE reflect unreasonable assumptions. First, the Poles expense reflecting 9.07% of the Poles investment is unusually large compared to GTE's historical Poles expense, which, according to its Annual Reports ranged from 1.10% to 2.20% of the associated poles investment. Thus, the Commission believes that the Poles expense amount used by Carolina/Central represents a more reasonable amount of Poles expense for GTE.

The other two inputs for GTE that the Public Staff argued should be adjusted concern the Aerial Fiber Cable and Buried Fiber Cable expense inputs. Unlike BellSouth and Carolina/Central, GTE did not differentiate between copper and fiber cable expenses. BellSouth and Carolina/Central, however, proposed much lower expense factors for fiber cable than for copper cable. GTE's existing Aerial Cable and Buried Cable consists mostly of copper, according to its 1996 Annual Report. The overall Aerial Cable and Buried Cable expense factors therefore appear to be appropriate for copper cable, while overstating the expense cost associated with fiber cable. Because of the operating similarities between GTE and Carolina/Central, the Commission agrees with the Public Staff that the relationship between Carolina/Central's copper and fiber cable expenses provides a reasonable method for adjusting GTE's fiber cable expenses. Thus, GTE's Aerial Fiber Cable expense input should be adjusted to reflect the same relationship with GTE's Aerial Copper Cable that exists between Carolina/Central's Aerial Fiber Cable and its Aerial Copper Cable. Likewise, GTE's Buried Fiber Cable expense input should be adjusted to reflect the same relationship with GTE's Buried Copper Cable that exists between Carolina/Central's Buried Fiber Cable and its Buried Copper Cable.

CONCLUSIONS

The Commission concludes that, for the reasons set forth above, the expense input adjustments proposed by the Public Staff are reasonable and appropriate and that BellSouth, GTE, and Carolina/Central should make the appropriate revisions to their cost studies.

3(c): WIRE CENTER LINE COUNTS

POSITIONS OF PARTIES

BELLSOUTH: BellSouth filed its Proposed Order, Brief, and three Attachments on March 10, 1998. In Attachment 3, BellSouth presented its updated BCPM output to reflect that the number of lines by wire center have been adjusted to match the 4044 report (station development report), which is filed monthly with the Commission, based upon recommendations from the Public Staff.

CAROLINA/CENTRAL: Carolina/Central's FLEC study reflected the actual line count for each wire center. During cross-examination, Public Staff witness Garrison testified that he had found some errors in the line counts, but he agreed that Carolina/Central's revised data files on the actual access line inputs appear to be correct.

GTE: GTE did not address this issue with specificity in its Proposed Order or Brief.

AT&T: AT&T did not address this issue with specificity in its Proposed Order or Brief.

MCI: MCI stated that line counts at the wire center are estimated by HM 5.0 based on demographic data. The current release of the model has the capability to normalize residents and business line counts at the wire center level if this data is provided by the ILEC.

NCCTA: The NCCTA concurred with the Public Staff that the Commission should adopt a FLEC study which includes actual access line data for each wire center.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff recommended that the FLEC study inputs of all of the ILECs should include actual access line data for each wire center. In its Proposed Order, the Public Staff stated that none of the studies initially submitted by the parties were based on the ILEC's actual wire center line counts on file with the Commission. However, the Public Staff stated that Carolina/Central had now provided corrected information in this regard.

DISCUSSION

Public Staff witness Garrison testified that one of the crucial inputs to all of the FLEC studies is the number of access lines for each geographic area. This input goes toward determining the efficiencies that can be gained by serving a specific area as well as the total costs that would be incurred in serving the area. Witness Garrison stated that, ideally, the Commission should require access line inputs to be the actual line counts for the geographic area for which costs are being calculated — whether grid, Census Block, or Census Block Group — but that none of the ILECs to his knowledge maintain access line counts below the wire center level. Thus, the Public Staff recommended that the FLEC study inputs of all of the ILECs should include actual access line data for each wire center. The Public Staff stated, in its Proposed Order, that none of the studies initially submitted by the parties are based on the ILECs' actual wire center line counts on file with the Commission. However, the Public Staff stated that Carolina/Central had now provided corrected information in this regard.

The positions set forth in the Proposed Orders and/or Briefs of BellSouth, Carolina/Central, and NCCTA, as noted above, support the Public Staff's position that actual wire center line counts should be used. BellSouth and Carolina/Central have now made revisions to reflect actual access line data for each wire center based upon recommendations from the Public Staff. However, GTE's inputs need to be revised to reflect actual access line data for each wire center in North Carolina.

CONCLUSIONS

The Public Staff's recommendation would be consistent with FCC Criterion No. 1 which states in part that ". . .[w]ire center line counts should equal actual ILEC wire center line counts. . . ." The Commission concludes that the Public Staff's recommendation requiring that the FLEC study inputs of all of the ILECs include actual access line data for each wire center is appropriate.

3(d): MATERIAL, INSTALLATION, AND LABOR COSTS / LOADING FACTORS

POSITIONS OF PARTIES

BELLSOUTH: BellSouth used current material prices, labor costs, and contractor costs that are adjusted by Telephone Plant Indices (TPIs) (inflation in certain accounts) to reflect 1997-1999 costs and do not reflect embedded costs.

CAROLINA/CENTRAL: Carolina/Central reflected the cost of cable and material actually used in provisioning cable facilities in the areas served by the Companies in North Carolina. The cost inputs were either derived from accounting records or were based on actual construction activity during 1996.

GTE: GTE reflected the default values of the BCPM 3.0 for material and installation to determine outside plant investment which are based on national average prices net of any discounts. GTE did not address this issue with specificity in its Proposed Order or Brief.

AT&T: AT&T adjusted the labor portion of the installation costs to reflect North Carolina wages, the terrain factors specific to each Census Block Group in North Carolina, and the customer and wire center locations to make them specific to North Carolina. The input values used are not the lowest prices attainable and are not an average of any prices.

MCI: MCI did not address this issue with specificity in its Proposed Order. MCI co-sponsored the HM 5.0 with AT&T.

NCCTA: The NCCTA recommended that the Commission determine whether the BCPM inputs for installation times and labor rates reflect historical experience (i.e., embedded costs) or are indicative of the forward-looking operations of an efficient carrier in a competitive market. The installation times and labor rates assumed in the HM are lower than those used in the BCPM.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff recommended that the Commission conclude that it is appropriate to require GTE in its FLEC study to use the inputs developed by Carolina/Central for its North Carolina service area instead of the BCPM 3.0 default values for loop fixed costs, structures (base cost, cost adjustment, and installation cost), and material and installation costs for handholes, manholes, adder, and conduit.

DISCUSSION

According to the Public Staff, in its Proposed Order, default values for material and installation (which GTE applied in its study) are not state specific and do not have a direct relationship to North Carolina service area costs. The Public Staff argued that state specific costs for material and installation costs as developed by both BellSouth and Carolina/Central which are based on the Companies' experience of operating in North Carolina are superior to default values. The

Public Staff advocated that one of the main purposes of a state adopting its own FLEC model for submission to the FCC is to ensure that state specific inputs are reflected when possible. In this instant case, evidence was presented by both BellSouth and Carolina/Central of state specific costs for material and installation. The Public Staff maintained that GTE and Carolina/Central have similar aspects such as substantial purchasing power, similar demographic characteristics, and comparable access lines per exchange. Therefore, the Public Staff stated that it is reasonable for the Commission to require GTE to reflect those state specific costs as represented by Carolina/Central for materials and labor in GTE's FLEC study.

GTE asserted in its summary of input differences filed March 10, 1998, that the Company views the default values as a reasonable representation of its costs until such time as it can develop the necessary company-specific inputs for North Carolina.

Carolina/Central stated in their Proposed Order that the cable material prices and construction costs included in the BCPM 3.1 reflect the ILECs' cost of cable and material actually used in provisioning cable facilities in the areas served by those Companies in North Carolina. Carolina/Central stated that the HM national default inputs were developed for nationwide application by a small group of engineers paid by AT&T and MCI. Carolina/Central argued that the national default inputs used in the HM are inferior to the actual costs reflected by the ILECs.

AT&T stated, in its Proposed Order, that BellSouth contacted no outside vendors to solicit price quotes to be used in its model and, therefore, does not know what prices are obtainable in the current market. Additionally, AT&T stated that BellSouth's contractor installation costs do not take into account current market prices for such installation but rather uses "averages" of contracts of varying ages. Concerning material costs, AT&T asserted, in its Proposed Order, that BellSouth's conduit and manhole costs are significantly higher than costs available in the market, with conduit costs also being significantly higher than the BCPM default prices derived from ILEC data.

Material loading factors are applied to material costs in order to determine the installed investment. According to AT&T's Proposed Order, BellSouth's methodology is to calculate a ratio of these associated expenses to its nonexempt (major) material investments for 1995, and then multiply this ratio by the direct cable material cost. AT&T asserted that the loading factors tremendously inflate BellSouth's material price inputs and are the most insidious contributor to the overstatement of costs reflected in BellSouth's installed material prices. AT&T further stated that the loading factors are based on BellSouth employee work times and exempt material usage recorded in a monopoly environment; therefore, the loading factors are unadjusted for the forward-looking assumptions contained in BellSouth's own cost studies.

Additionally, AT&T witness Wells, in rebuttal testimony, argued that BellSouth's outside plant loadings are not forward looking and instead attempt to recover the costs of BellSouth's past methods of operations. Witness Wells asserted that many of BellSouth's loadings have been developed based on BellSouth's embedded investment and its 1995 costs and investments. Further, witness Wells expressed concern with BellSouth's cost modeling methodology of its loadings. Witness Wells stated that BellSouth applies a material loading factor to the inflated direct material cost for copper and fiber cables in its outside plant Field Reporting Codes (FRC). BellSouth calculates a ratio of these associated expenses to its nonexempt (i.e., major) material investments for the year 1995, and then multiplies this ratio by the direct cable material cost. Witness Wells argued that BellSouth's material loading factors for cable are a large contributor to the total loop investment. Witness Wells recommended that the material factors ratios be reduced to a ratio of 1.5, which is consistent with the HM's assumptions.

The Commission concurs with the recommendation and justification advocated by the Public Staff in its Proposed Order to require GTE to reflect those state specific costs as represented by Carolina/Central for materials and labor in GTE's FLEC study.

CONCLUSIONS

The Commission concludes that North Carolina specific data is the most forward-looking and reasonable and is thus superior to default inputs. Therefore, the Commission orders GTE to reflect Carolina/Central's state specific costs for material and installation costs for loop fixed costs, structures (base cost, cost adjustment, and installation cost), and material and installation costs for handholes, manholes, adder, and conduit in GTE's FLEC study.

3(e): SUPPORT RATIOS

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not address this issue with specificity in its Proposed Order or Brief. BellSouth supported the BCPM and used BellSouth-specific support investment ratios for input into BCPM using forward-looking projected assets.

CAROLINA/CENTRAL: Carolina/Central did not address this issue with specificity in their Proposed Order or Brief. Carolina/Central support the BCPM and the North Carolina-specific inputs developed for use therein.

GTE: GTE did not address this issue with specificity in its Proposed Order or Brief. GTE supports the BCPM and the North Carolina-specific inputs developed for use therein.

AT&T: AT&T did not address this issue with specificity in its Proposed Order or Brief.

MCI: MCI did not address this issue with specificity in its Proposed Order.

NCCTA: The NCCTA did not address this issue with specificity in its Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The record indicates that the support ratios proposed by GTE for the Furniture and Office Support accounts are substantially higher than those proposed by BellSouth and Carolina/Central. The Public Staff recommended that the support ratio inputs into the BCPM 3.1 for the calculation of GTE's Furniture and Office Support investments should be those proposed by Carolina/Central.

DISCUSSION

The BCPM 3.1 does not directly determine the investments associated with the support accounts. Instead, support ratios are calculated separately and then applied to the total plant investment, excluding land and buildings, developed by the BCPM in order to produce an investment level for each of the support plant categories. The record indicates that the support ratios proposed by GTE for the Furniture and Office Support accounts are substantially higher than those proposed by BellSouth and Carolina/Central: more than six times higher for Furniture investment and more than four times higher for Office Support investment. The Public Staff stated, in its Proposed Order, that it could not rationalize such a disparity and therefore recommended that the support ratio inputs into the BCPM 3.1 for the calculation of GTE's Furniture and Office Support investments should be those proposed by Carolina/Central. The following table shows the ILEC's support ratios proposed for Furniture investment and Office Support investment:

ILEC	Furniture	Office Support
BellSouth	0.125%	0.281%
Carolina/Central	0.209%	0.576%
GTE	1.255%	2.519%

In consideration of the similarities between GTE and Carolina/Central, such as both having substantial purchasing power, similar demographic characteristics, having 65.6%-GTE and 67.2%-Carolina/Central of their respective exchanges serving less than 5,000 access lines, and having 93.8%-GTE and 93.5%-Carolina/Central of their respective exchanges serving less than 20,000 access lines, the Commission believes that the Public Staff's proposal is reasonable.

CONCLUSIONS

The Commission adopts the Public Staff's recommendation in this regard. The Commission concludes that the support ratio inputs into the BCPM 3.1 for the calculation of GTE's Furniture and Office Support investment should be those proposed by Carolina/Central which are 0.209% and 0.576%, respectively.

3(f): STRUCTURE SHARING

POSITIONS OF PARTIES

BELLSOUTH: BellSouth reflected structure sharing percentages of 1% for conduit (1% paid for by carrier other than BellSouth); 0% for buried feeder; 1% for buried distribution; 63.87% for poles; 0% for anchors and guys; and 1% for manholes. Buried and underground sharing percentages are based upon BellSouth's engineers' experience and expertise.

CAROLINA/CENTRAL: Carolina/Central reflected default structure sharing percentages based on the actual experience of ILECs under such sharing arrangements of 0%-20% for conduit; 0%-15% for buried feeder; 0%-20% for buried distribution; 50% for poles; 0% for anchors and guys; and 0%-25% for manholes. Carolina/Central used default inputs based on the actual experience of the ILECs to give a realistic estimate of the cost savings that can be realized through such sharing arrangements.

GTE: GTE reflected a structure sharing percentage of 44% for aerial support structures; 7% for buried feeder and distribution cable; and 0% for conduit based on the Company's actual operating experience as well as the expertise of its engineers.

AT&T: AT&T reflected a structure sharing percentage of 67% for buried distribution cable; 60% for buried feeder cable; 67% for conduit; 50%-75% for poles; and 50%-75% for guys and anchors. AT&T argued that increased competitive pressures will increase ILEC structure sharing and that the structure sharing assumptions made by the ILECs do not reflect a forward-looking network.

MCI: MCI did not address this issue with specificity in its Proposed Order. MCI co-sponsored the HM 5.0 with AT&T.

NCCTA: The NCCTA recommended that the Commission assign a user input value for structure sharing in each model that is more representative of forward-looking conditions. The BCPM sponsors' absolute reliance on current practice is not reflective of a forward-looking and efficient cost analysis. However, it is doubtful whether the degree of structure sharing envisioned by the HM sponsors will materialize immediately or even in the near future.

ATTORNEY GENERAL: The Attorney General recommended in his Brief that the Commission adopt structure sharing amounts that fall midway within the range bounded by the testimony of the two sides (ILECs and AT&T/MCI).

PUBLIC STAFF: The Public Staff did not address this issue with specificity in its Proposed Order.

DISCUSSION

Structure sharing refers to the allocation of costs from the ILEC to other providers that may share space on the ILEC's structures including poles, conduits, cable, and manholes. The parties presented various percentages for structure sharing: the ILECs with lower structure sharing percentages and AT&T/MCI with higher structure sharing percentages.

BellSouth witness Caldwell stated in rebuttal testimony that BellSouth's structure sharing projections included in the BCPM 3.1 reflect actual arrangements between BellSouth and other parties in North Carolina. Witness Caldwell asserted that BellSouth shares structures when possible and that BellSouth's inputs for structure sharing are appropriate.

According to BellSouth's Proposed Order, AT&T (HM 5.0) assumes that an ILEC will share buried support structures for distribution cable with other companies one-third of the time. BellSouth asserted that the sharing factor was developed by the Hatfield input team, and that the input team's validation process did not reveal a single telephone company in North America that had achieved a 33% sharing factor.

During the hearing, on redirect, BellSouth witnesses Madan, Dirmeier, and Newton testified that the structure sharing percentages used in the HM were not national inputs but "simply an assertion". The BellSouth witnesses also stated that the HM assertion has no backup.

Carolina/Central stated, in their Proposed Order, that the actual experience of the ILECs under such sharing arrangements has been factored into the BCPM 3.1 to provide a realistic estimate of the cost savings that can be realized through such sharing arrangements. Carolina/Central criticized the HM which uses projected structure sharing based on predicted competitive pressures for the ILECs to engage in more structure sharing arrangements. Carolina/Central stated that AT&T witness Wells on cross-examination admitted that some of the structure sharing assumptions incorporated into the HM have not been achieved by any other telecommunications carrier providing local service anywhere in North America. Carolina/Central argued that the HM uses inputs for structure sharing that were developed by a small group of engineers that were paid by AT&T. Carolina/Central argued that the structure sharing inputs that were developed by engineers responsible for the actual placement of telecommunications facilities in North Carolina are superior to those inputs used in the HM.

AT&T witness Wells stated in his rebuttal testimony that for aerial structure sharing, the HM shows considerably more structure sharing in the urban area than in the rural area because the HM postulates that in the future, there will be more utilities to share with in the urban area than in the rural area. Witness Wells stated that the ILECs have input less structure sharing in the urban area than the rural area and that the ILECs have provided no supporting documentation to explain the ILECs reverse modeling logic. For underground feeder conduit structure sharing, witness Wells stated that "the ILECs' viewpoint in regards to minimal or zero structure sharing is totally unreasonable for a least-cost, most-efficient, forward-looking model". Witness Wells argued that in a competitive environment, telephone companies will seek ways to lower their costs by structure sharing with other utilities. Witness Wells argued that there will also be additional utilities in the market during competition with which the ILECs could structure share.

NCCTA witness Barta testified during cross-examination by the Attorney General that he finds merits in blending the inputs from both the BCPM and the HM to come up with a form of hybrid inputs.

The Attorney General noted in his Brief that the ILECs did a fair amount of sharing of aerial plant (poles), however, the input values they put into sharing buried and underground structures was minimal. The Attorney General also noted that BellSouth witness Caldwell testified that BellSouth intended to look into structure sharing in the future, and BellSouth will try to share as much as possible. Additionally, Carolina/Central witness Potter testified that as competitors enter the market, more underground facilities would be shared. The Attorney General also commented that the ILECs were firm in their opinion that because the FCC requires that FLEC models duplicate current wire centers ("scorched node"), it is too late to reasonably expect that any appreciable amount of structure sharing will occur. The Attorney General concluded in his Brief that both sides appear to have unrealistic structure sharing percentages, and recommended that the Commission adopt percentages that fall midway within the range recommended by both the ILECs and AT&T/MCI.

The Commission believes that the structure sharing percentages recommended by both the ILECs and AT&T/MCI are unreasonable. The Commission finds that the ILECs' position concerning the scorched node approach does not fully support the structure sharing percentages advocated by the ILECs. Additionally, the percentages reflected by AT&T/MCI are certainly too aggressive and have not been achieved by any telecommunications carrier in North America. Therefore, the Commission believes that it would be reasonable and appropriate to reflect structure sharing percentages that fall between the percentages advocated by the ILECs and AT&T/MCI to capture a realistic, future-looking amount of structure sharing.

CONCLUSIONS

The Commission concludes that the ILECs should be required to input structure sharing percentages into their cost models that fall midway between their proposed percentages and the percentages proposed by AT&T/MCI in the HM 5.0 Model.

3(g): STRUCTURE MIX

POSITIONS OF PARTIES

BELLSOUTH: BellSouth argued in its Proposed Order and Brief that the HM 5.0 does not place telephone poles as a part of the model's aerial structure in the two highest density zones.

CAROLINA/CENTRAL: Carolina/Central used structure mix percentages based on an analysis of existing Carolina/Central facilities in North Carolina. However, this issue was not addressed with specificity in their Proposed Order or Brief.

GTE: GTE reflected its actual plant mix in North Carolina.

AT&T: AT&T reflected structure mix percentages based on the density zone (lines per square mile), soil conditions, and size and number of cables required.

MCI: MCI did not address this issue with specificity in its Proposed Order. MCI co-sponsored the HM 5.0 with AT&T.

NCCTA: The NCCTA did not address this issue with specificity in its Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff did not address this issue with specificity in its Proposed Order.

DISCUSSION

Structure mix represents the percentage of aerial, buried, and underground cable for distribution cable, cooper feeder cable, and fiber feeder cable. The ILECs used structure mix percentages that are based on the Companies' experience of operating in North Carolina. AT&T and MCI used the HM inputs that are based on the recommendation of the Hatfield Inputs Group.

Structure mix is input based on distribution plant, copper plant, and fiber plant. Additionally, structure mix is input based on soil conditions (normal, soft, or hard) and density of area.

During cross-examination by AT&T, BellSouth witnesses Madan, Dirmeier, and Newton confirmed that BellSouth's structure mix percentages are based on the BellSouth-North Carolina loop sample reconfigured to reflect forward-looking technology in a scorched-node approach.

Based on the evidence of record in this proceeding, the Commission finds the structure mix percentages used by the ILECs reasonable and appropriate.

CONCLUSIONS

The Commission concludes that the structure mix percentages used by BellSouth, Carolina/Central, and GTE are reasonable and appropriate for use in this proceeding.

3(h): FILL FACTORS / DENSITY CABLE SIZING FACTORS

POSITIONS OF PARTIES

BELLSOUTH: BellSouth utilized fill factors based on projected actual utilization rates specific to BellSouth facilities in North Carolina. No BellSouth data is available to provide varying fill factors by density zone. BellSouth used cable sizing factors in BCPM to produce actual fill levels approximately equal to BellSouth's projected fill levels for copper cable. These factors are used to determine the appropriate cable sizes to be deployed.

CAROLINA/CENTRAL: Carolina/Central reflected fill factors that are based on projected utilization rates specific for Carolina/Central's operations in North Carolina. The projected rates used reflect the anticipated growth rate of the area served, the spare capacity necessary to comply with the service obligations mandated by the Commission, and the economic placement and sizing of cable facilities.

GTE: Cost studies should reflect an average level of utilization for distribution and feeder for the specific company conducting the study. GTE's feeder and distribution-cable fill factors of 65% and 40%, respectively, represent the upper bounds for average fills for these types of investment.

AT&T: AT&T recommended that the HM default inputs be used. AT&T stated that the cables sized by the fill factors in HM 5.0 have sufficient spare capacity to accommodate reasonable administration, maintenance, defective pair, and customer churn requirements.

MCI: MCI did not address this issue with specificity in its Proposed Order. MCI recommended that the HM default inputs be used.

NCCTA: The NCCTA stated that the appropriate fill or cable sizing factors used by the Commission in the cost proxy model should balance current and expected demand levels for the supported universal services as well as accommodate the requirements for administrative and modular related spare capacity over the economic life of the feeder and distribution facilities.

ATTORNEY GENERAL: The Attorney General stated that the costs of some excess plant is needed, but in this instance, input values for distribution plant utilization, which are closer to the HM inputs than the GTE or BellSouth inputs, may be appropriate inputs to use.

PUBLIC STAFF: The Public Staff stated that there was a significant difference between GTE's cable-sizing factors and those of BellSouth and Carolina/Central, especially with regard to distribution. The Public Staff recommended that the appropriate cable sizing factors for GTE should be 69% for feeder and 65% for distribution.

DISCUSSION

BellSouth witness Caldwell testified that in developing the cost of the network, BCPM requires a cable sizing factor which, along with standard cable sizes and number of distribution pairs per housing unit [Part No. 3(i)] determines cable requirements. BellSouth used North Carolina specific cable sizing factors consistent with BellSouth engineering guidelines to determine cable sizes. BellSouth's inputs for cable sizing factors are designed to produce an actual utilization equal to BellSouth's projection of actual fill, based on experience over time, for North Carolina. BellSouth argued that its projections of actual fill are the appropriate utilization levels which should be used to determine universal service costs since BellSouth's utilization levels represent a realistic view of efficient utilization of telephone plant.

Average fill rates must be considered in order to ensure full recovery of the costs of cable, including spare. BellSouth stated that its cable fill percentages have not changed significantly in the past and are not projected to change in the future. Therefore, one would expect forward-looking cable fill percentages to be maintained at the same level as current fill percentages.

Carolina/Central reflected fill factors that are based on projected utilization rates specific for Carolina/Central operations in North Carolina. The projected rates used reflect the anticipated growth rate of the area served, the spare capacity necessary to comply with the service obligations mandated by the Commission, and the economic placement and sizing of cable facilities.

GTE reflected fill factors that are based on an average level of utilization for distribution and feeder cable. GTE used feeder and distribution cable sizing factors that represented the upper bounds for average fills for these types of investment.

AT&T and MCI recommended that the HM default inputs be used. AT&T stated that the cables sized by the fill factors in HM 5.0 have sufficient spare capacity to accommodate reasonable administration, maintenance, defective pair, and customer churn requirements.

AT&T argued that the BCPM proponents are using actual or average utilization which is based on the inefficiencies of the embedded network and backward looking engineering guidelines.

It is AT&T's opinion that the BCPM, by using actual cable utilization as the cable sizing factor, grossly overstates cable sizing requirements. AT&T stated that BellSouth's fill factors are inflated, for example, by its use of 25-pair distribution cable, regardless of the number of customers served using those pairs, although 6, 12, and 18-pair cable sizes are available. Additionally, AT&T stated that GTE has incorrectly utilized its average distribution utilization as the fill factor in BCPM.

On cross-examination by AT&T, BellSouth witness Caldwell testified that the smallest cable size BellSouth deploys is a 25-pair cable which is related to "inventorying and just having the facilities there". She also stated that the cost of cable as you go from 18 to 25-pair is not significant.

The Attorney General observed that while it is true that a well-managed telecommunications company will install excess cable in the ground to save costs when new customers are added later, it is equally true that forward-looking economic cost studies must use reasonable assumptions when calculating the costs for universal service support. The Attorney General agreed that the costs of some excess plant or spare capacity is certainly needed in a FLEC study to reflect the need for maintenance and repair of distribution plant. However, the Attorney General stated that in this instance, input values for distribution plant utilization which are closer to the HM inputs than the GTE or BellSouth inputs may be the appropriate inputs to use.

The NCCTA stated that the appropriate fill or cable sizing factors used by the Commission in the cost proxy model should balance current and expected demand levels for the supported universal services as well as accommodate the requirements for administrative and modular related spare capacity over the economic life of the feeder and distribution facilities.

The cable sizing factors used in the BCPM are derived to produce the utilization ratios that the ILECs currently experience and believe are reasonable on a forward-looking basis. The following table shows the ILECs' cable sizing factor inputs along with the BCPM default values and the HM default values:

ILEC / MODEL	Feeder	Distribution
BellSouth	73.1%	66.7%
Carolina/Central	69%	85%
GTE	65%	40%
BCPM Default (based on density zone)	75% - 85%	40% - 80%
HM Default (based on density zone)	65% - 80%	50% - 75%

All three ILECs represented to the Commission that their inputs are correct. In its Proposed Order, the Public Staff stated that the record contains no justification, however, for the significant difference between GTE's cable sizing factors and those of the others. Concluding that GTE's factors should be adjusted upward to more reasonable levels, the Public Staff determined that GTE's feeder cable sizing factor should be comparable to Carolina/Central's, given the relative densities of their service territories, and that GTE's cable sizing factor for distribution should be somewhat lower than its factor for feeder. (Carolina/Central's cable sizing factor for distribution, while higher, is near the upper end of the default range.) The Public Staff recommended that the appropriate cable sizing factors for GTE should be 69% for feeder and 65% for distribution.

Considering the relative densities of GTE's and Carolina/Central's service territories and the range of cable sizing factors for feeder and distribution cable, the Commission believes that the Public Staff's proposal is reasonable.

CONCLUSIONS

The Commission adopts the Public Staff's recommendation in this regard. The Commission concludes that the appropriate cable sizing factors for GTE are 69% for feeder and 65% for distribution.

3(i): DISTRIBUTION PAIRS PER RESIDENTIAL HOUSING UNIT

POSITIONS OF PARTIES

BELLSOUTH: BellSouth used a factor of 1.6 in its FLEC study filed in this proceeding.

CAROLINA/CENTRAL: Carolina/Central used the BCPM default value of 2.0 pairs per housing unit.

GTE: GTE used the BCPM default value of 2.0 pairs per housing unit.

AT&T: AT&T recommended that the BCPM 3.1 input value for distribution pairs per residential housing unit be reduced to conform to BellSouth's policy based on 1.4 to 1.6 pairs per house or living unit.

MCI: MCI did not address this issue with specificity in its Proposed Order.

NCCTA: The NCCTA did not address this issue with specificity in its Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff recommended that an input value higher than 1.4 is not justified for residential locations.

DISCUSSION

The model input value for average number of distribution pairs per residential housing unit affects the engineering and sizing of outside cable plant to connect subscribers to wire center switching equipment. AT&T witness Wells testified that BellSouth currently designs its distribution plant based on 1.4 to 1.6 pairs per house or living unit and has used a factor of 1.6 in the study filed in this proceeding. Witness Wells recommended that the BCPM 3.1 input value for distribution pairs per residential housing unit be reduced to conform to BellSouth's policy. He also recommended that

Carolina/Central and GTE, both of which used the BCPM default value of 2.0 pairs per housing unit in their studies, make a commensurate reduction.

The Commission agrees with the position taken by the Public Staff in its Proposed Order that no explanation can be found in the record for the differences between the input values used by the ILECs in their studies. Calculations based on BCPM summary report data show the ratios of the number of residential lines in service to the total number of households served were 1.02 for Central, 1.09 for Carolina, and 1.12 for GTE and BellSouth, well below the proposed 1.6 to 2.0 factors. In light of these ratios, the Commission concurs with the Public Staff that a factor of 1.4 appears to be entirely reasonable for determining the forward-looking costs of all of the ILECs. Furthermore, it is worth remembering that the BCPM models a network to serve all housing units whether or not they currently have telephone service. Applying a 1.4 factor to 100% of all housing units when statewide penetration rates are around 93% results in an effective factor of 1.5. Even if penetration rates improve to 97% with the promotion of Lifeline and Link-Up programs, the effective factor would be 1.44.

CONCLUSIONS

The Commission concludes that an input value higher than 1.4 is not justified for residential locations and that BellSouth, GTE, and Carolina/Central should adjust this input value accordingly in each of their respective studies.

3(i): SWITCHING

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not address this issue with specificity in its Proposed Order or Brief. BellSouth supports the BCPM and used North Carolina-specific switch costs.

CAROLINA/CENTRAL: Carolina/Central did not address this issue with specificity in their Proposed Order or Brief. Carolina/Central support the BCPM and used North Carolina-specific switch costs.

GTE: GTE did not address this issue with specificity in its Proposed Order or Brief. GTE used the BCPM default inputs for switch costs.

AT&T: AT&T did not address this issue with specificity in its Proposed Order or Brief.

MCI: MCI did not address this issue with specificity in its Proposed Order.

NCCTA: The NCCTA did not address this issue with specificity in its Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff recommended that Carolina/Central's proposed inputs to the Switching Discount Factor Table should be used by GTE as its inputs to the BCPM 3.1, rather than the default values used by GTE. Additionally, for switch related investments, the Public Staff recommended that Carolina/Central's proposed inputs for land loading, building loading, and the common equipment/power factors should be used by GTE, rather than the default values.

DISCUSSION

GTE used the BCPM 3.0 default values as the inputs to the Switching Discount Factor Table used in calculating the level of switching investment needed to provide universal service. A comparison of the default values to the service area specific values used by Carolina/Central reveals that the default percentages are lower. The discount percentages should be representative of the actual vendor discounts applied when switching equipment is purchased by GTE. Because of certain similarities, the Public Staff believes that GTE should be able to purchase switching equipment at discounts comparable to those received by Carolina/Central. Therefore, the Public Staff concluded that Carolina/Central's proposed inputs to the Switching Discount Factor Table should be used by GTE as its inputs to the BCPM 3.1.

GTE also proposed the BCPM 3.0 default values as the inputs for determining additional switch related investments. The Public Staff also recommended that GTE should use the inputs developed by Carolina/Central for land loading, building loading, and the common equipment/power factor.

The ILECs' Switching Discount Factor Tables for switch costs were provided by BellSouth and Carolina/Central as proprietary information. Accordingly, the switching discount factors are not shown in this Order.

The following table shows the ILECs' inputs for land loading, building loading, and the common equipment/power factor inputs for determining additional switch related investments:

ILEC	LAND LOADING	BUILDING LOADING	COMMON EQUIP./ POWER FACTOR
BellSouth	0.0119	0.1607	0.0874
Carolina/Central	0.0128	0.1479	0.0476
GTE	0.0117	0.0738	0.0682

In consideration of the similarities between GTE and Carolina/Central, such as both having substantial purchasing power, similar demographic characteristics, having 65.6%-GTE and 67.2%-Carolina/Central of their respective exchanges serving less than 5,000 access lines, and having 93.8%-GTE and 93.5%-Carolina/Central of their respective exchanges serving less than 20,000 access lines, and considering that GTE used default values rather than developing North Carolina-specific inputs in this regard, the Commission believes that the Public Staff's proposal is reasonable.

CONCLUSIONS

The Commission adopts the Public Staff's recommendation in this regard. The Commission concludes that Carolina/Central's proposed inputs to the Switching Discount Factor Table should be used by GTE as its inputs to the BCPM 3.1 and that GTE should use the inputs developed by Carolina/Central of 0.0128 for land loading, 0.1479 for building loading, and 0.0476 for the common equipment/power factor.

3(k): DEPRECIATION

POSITIONS OF PARTIES

BELLSOUTH: BellSouth reflected estimated lives and salvage values that represent BellSouth's expected economic lives for newly placed plant, instead of FCC prescribed lives. Lives were last prescribed by the FCC for North Carolina in 1995 and are much too long, particularly for technology-sensitive accounts.

CAROLINA/CENTRAL: Carolina/Central stated that the depreciation lives and salvage estimates prescribed by the FCC for embedded assets deployed in a monopoly environment are inappropriate for a FLEC study. Carolina/Central reflected the economic life for some network assets such as cable, switching equipment, and conduit taken from estimates developed by Technology Futures, Inc. (TFI). Where the projected life approved by the North Carolina Utilities Commission was within the range projected by TFI, the life estimate authorized by the North Carolina Utilities Commission was used.

GTE: GTE proposed the use of GTE's economic depreciation lives as model inputs. These lives reflect the physical life of the associated assets, as well as the changes in market value due to changing demand conditions and technology and are the same lives used on its financial books.

AT&T: AT&T recommended that the Commission find that the projected lives most recently prescribed by the FCC for BellSouth North Carolina and GTE North Carolina are the most realistic, specific estimates of economic lives. Further, AT&T recommended that the Commission find that the ILECs' book lives are inappropriate for use in calculating universal service costs.

MCI: MCI reflected the lives and salvage values prescribed by the FCC for BellSouth-North Carolina in 1995 and GTE-North Carolina in 1996 and nationwide averages of FCC prescriptions for Carolina/Central.

NCCTA: The NCCTA recommended that the Commission reject BellSouth's, Carolina/Central's, and GTE's proposal to apply economic lives outside of the FCC's prescribed range and substitute in their place economic lives and net salvage percentages within the FCC-authorized range.

ATTORNEY GENERAL: The Attorney General took no position on what depreciation inputs are appropriate to adopt in this proceeding. The Attorney General suggested that if the FCC defaults are used for cost of capital, then the FCC defaults should also be used for depreciation.

PUBLIC STAFF: The Public Staff recommended that the ILECs be allowed to select any inputs that are within the FCC's prescribed range for economic lives and salvage values. For buildings, in which no range exists, the ILECs may use their proposed inputs.

DISCUSSION

Paragraph 250 of the FCC's USO outlines the ten criteria a FLEC study must meet in order to be used to determine the cost of universal service for a particular state. Criterion No. 5 states:

> "Economic lives and future net salvage percentages used in calculating depreciation expense must be within the FCC-authorized range...We intend shortly to issue a notice of proposed rule making to further examine the Commission's depreciation rules."

BellSouth witness Caldwell stated in direct testimony that there appears to be a conflict in the FCC guidelines. Witness Caldwell stated that the FCC's USO requires studies to be based on forward-looking economic costs, however, the FCC-authorized range of lives are clearly not forward-looking economic lives.

However, BellSouth witness Caldwell stated in rebuttal testimony that BellSouth did not file the supporting depreciation studies to document its recommended projected lives and future net salvage values.

Carolina/Central stated, in their Proposed Order, that the North Carolina Utilities Commission has traditionally allowed depreciation rates higher than those authorized by the FCC. Carolina/Central argued that because of this, North Carolina enjoys one of the most modern telecommunications infrastructures anywhere in the nation. The Companies' stated that they have included in the recommended BCPM cost study the life and salvage estimates for network assets that reflect the greater technological obsolescence that will result in the future from an increasingly competitive market. The BCPM, the Companies' argued, incorporates a depreciation policy that encourages investment in new technology.

GTE asserted in its summary of input differences that the FCC's depreciation lives and net salvage values should not be considered as they are not forward-looking, because they are based on Orders by the FCC issued prior to the passage of the Telecommunications Act.

AT&T, in its Proposed Order, argued that the FCC rates are realistic and unbiased toward any party to the proceeding. AT&T stated that the FCC has been tracking technology changes since the early 1980's, and the collective experience of the FCC in determining appropriate rates is well-established. AT&T also stated, in its Proposed Order, that a comparison of the FCC-prescribed North Carolina lives to the historic lives that BellSouth and GTE attached to their testimony confirms that the FCC has shortened lives considerably to reflect rapidly changing technology. AT&T stated that BellSouth used lives based on the "book lives" BellSouth utilizes for public reporting purposes which are based on Generally Accepted Accounting Principles (GAAP). GAAP, AT&T argued, requires ILECs to err on the side of shorter lives to eliminate any possibility that BellSouth could overstate the value of its assets to stockholders.

The Attorney General recommended that if the FCC's default depreciation rates are used, then the FCC's default for cost of capital should also be used.

Public Staff witness Garrison presented a schedule in the record of evidence in this proceeding which outlines the projected lives and future net salvage values supported by BellSouth, GTE, and Carolina/Central versus the projected lives and future net salvage values prescribed by the FCC (Exhibit No. JTG-5 - Revised, Pages 1-2 as attached to revised direct testimony of witness Garrison). In its Proposed Order, the Public Staff advocated that the Commission has no choice but to require depreciation rate inputs that are within the FCC's range for purposes of the FLEC studies that will be submitted to the FCC.

Based on the FCC's criterion, in order for any FLEC study submitted by the North Carolina Utilities Commission to be adopted by the FCC, the economic lives and salvage values must be within the FCC-authorized range. Therefore, based on the USO, the rates proposed by the ILECs must be revised to fall within the FCC-authorized range.

CONCLUSIONS

The Commission concludes that it is appropriate to require the ILECs to select economic lives and future net salvage percentages that are within the FCC-authorized range in order to comply with FCC Criterion No. 5 of the FCC's prescribed ten, cost-study criteria. For buildings, in which no range exists, the Commission concludes that the ILECs may use their proposed inputs.

3(l): SHARED AND COMMON COSTS

POSITIONS OF PARTIES

BELLSOUTH: In BCPM 3.1, BellSouth assigned a portion of certain general expense categories to universal service by using ARMIS data to develop relationships of expenses assigned to common line and local switching relative to the Company's total regulated expenses. This provides a much more appropriate method of assignment of these expenses than does a ratio based on revenues.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Brief or Proposed Order.

GTE: GTE defers to BellSouth and Sprint, developers of the BCPM.

AT&T: The Commission should reject BellSouth's shared and common cost factors because these factors reflect costs incurred in BellSouth's embedded network, do not comport with least-cost, forward-looking principles, and do not make appropriate forward-looking adjustments for even known efficiencies which BellSouth intends to incorporate in its operations going forward. The Hatfield Model, sponsored by AT&T, systematically assigns "joint and common" costs to the services and/or network elements being studied. Expenses that traditionally (and incorrectly) have been treated as fixed overhead expenses have been assigned directly as variable expenses in proportion to investments or line counts as appropriate.

MCI: Hatfield 5.0 systematically assigns so-called "joint and common" costs to the services and/or network elements being studied.

NCCTA: The NCCTA did not specifically address this issue in its Brief.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Brief.

PUBLIC STAFF: The Public Staff recommended downward adjustments to GTE's expenses, including allocation of costs to universal service.

DISCUSSION

One of the FCC criteria for approval of a state-conducted cost study is that a reasonable allocation of joint and common costs must be assigned to the cost of supported services. BellSouth presented its discussion of its assignment of general expenses in the Supplemental Direct Testimony of witness Caldwell. Witness Caldwell testified that the total expenses filed in the BCPM 3.1 study have not changed from those filed in the BCPM 2.5 study. Also, plant-specific expenses expressed as a percentage of investment have not changed. However, the portion of the general expenses (expressed as an expense per line per month in BCPM) assigned to universal service has changed. In previous BCPM filings, BellSouth assigned a portion of expenses to universal service based on a ratio of Basic Local Service Revenues to Total Operating Revenues. In order to better attribute an appropriate portion of these expense accounts to universal service, this ratio based on revenues is no longer used. In BCPM 3.1, BellSouth used ARMIS cost data to assign expenses to universal service. The expense accounts affected include Network Support, General Support, Other Property and Plant Equipment, Network Operations, Marketing, Services, Executive and Planning, and General and Administrative. BellSouth assigned a portion of these general expense categories to universal service by using ARMIS data to develop relationships of expenses assigned to common line and local switching relative to the Company's total regulated expenses. Witness Caldwell testified that this provides a much more appropriate method of assignment of these expenses than does a ratio based on revenues.

AT&T maintained that the joint and common costs proposed by BellSouth are too high and do not reflect possible improvements and efficiencies. AT&T's points were made through rebuttal testimony of witness Lerma. Witness Lerma stated that the Commission should not rely on the method by which BellSouth, GTE, and Carolina/Central have calculated the operating expenses reflected in basic cost per line for two reasons. First, the operating expense inputs are based largely on historic costs and are not reflective of competitive costs. Second, the factors used to calculate the basic service portion of total operating expenses are overstated and are not adequately supported or proven to be reasonable. With regard to his second point, witness Lerma noted that BellSouth has changed its methodology. In earlier versions of BCPM, BellSouth had used a factor of 38%, which represented basic local service revenues as a percent of total revenues. In the current version, BellSouth used individual factors for the various costs that are not documented or supported. Witness Lerma objected to BellSouth using new factors that result in higher costs. He recommended that if the Commission adopts BCPM it should use the 38% factor that represented basic local service as a percent of total revenue, the methodology that BellSouth had used previously.

Witness Lerma stated that his recommended input changes would not fix all the problems with the operating expense inputs to the BCPM model, and he recommended that the Commission adopt the Hatfield Model as supported by AT&T and MCI.

With respect to GTE, the Public Staff's Proposed Order includes an adjustment in Services expenses attributable to universal service. This adjustment is discussed in Part No. 3(b), Expense Inputs.

CONCLUSIONS

The Commission has previously concluded that the company-specific inputs submitted by the ILECs should be used where they are forward-looking and reasonable. This appears to be the case for BellSouth and Carolina/Central with respect to the costs considered in this issue. The Public Staff has not suggested adjustments for BellSouth and Carolina/Central, and the Commission does not find persuasive witness Lerma's testimony that BellSouth should revert to its previous methodology for calculating operating costs attributable to basic local service. The testimony of BellSouth witness Caldwell is more credible on this issue.

3(m): TAX RATES

POSITIONS OF PARTIES

BELLSOUTH: BellSouth reflected the following tax rates: federal income tax rate of 35%; state income tax rate of 7.5% (updated from 7.75%); and gross receipts tax rate of 3.19%. Tax rates were not discussed with specificity in BellSouth's Proposed Order or Brief.

CAROLINA/CENTRAL: Carolina/Central reflected the following tax rates: federal income tax rate of 35%; and state income tax rate of 6.9% (updated from 7.5%). Tax rates were not discussed with specificity in Carolina/Central's Proposed Order or Brief.

GTE: GTE reflected the following tax rates: federal income tax rate of 35%; and state income tax rate of 7.5% (updated from 7.75%). Tax rates were not discussed with specificity in GTE's Proposed Order or Brief.

AT&T: AT&T reflected the following tax rates: combined federal income tax rate and state income tax rate of 39.25%; and gross receipts and ad valorem rate of 5%. Tax rates were not discussed with specificity in AT&T's Proposed Order or Brief.

MCI: MCI did not address this issue with specificity in its Proposed Order. MCI co-sponsored the HM 5.0 with AT&T.

NCCTA: The NCCTA did not address this issue with specificity in its Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff recommended the following tax rates: federal income tax rate of 35%; state income tax rate of 6.90%; gross receipts tax rate of 3.22%; and regulatory fee rate of 0.09%.

DISCUSSION

BellSouth reflected a state income tax rate of 7.5% (compared to the rate of 7.75% originally used) in its revised cost study filed with its Proposed Order and Brief. BellSouth witness Caldwell stated in rebuttal testimony that BellSouth does not agree that the appropriate state income tax factor to be used is 6.9% as recommended by Public Staff witness Garrison. Witness Caldwell stated that the 6.9% rate is not scheduled to be effective until the year 2000, and the BellSouth cost study reflects state income tax cost expectations for the period 1997-1999.

In rebuttal testimony, BellSouth witness Caldwell stated that BellSouth had used a composite tax factor for gross receipts of 3.19% that includes both the gross receipts tax rate of 3.22% and a regulatory fee rate of 0.085%. Witness Caldwell stated that BellSouth's 3.19% factor results from combining actual gross receipts tax paid and the regulatory fee applied to the appropriate percentage of revenue.

In revised testimony, Public Staff witness Garrison stated that the North Carolina corporate income tax rate is set at 7.25% for the 1998 calendar year; however, that the rate will decrease to 6.9% for the year beginning January 1, 2000. Witness Garrison also testified that the federal corporate income tax rate is currently set at a maximum of 35% for taxable income exceeding $18,333,333. In its Proposed Order, the Public Staff recommended the use of the current gross receipts tax rate of 3.22% for telecommunications companies and the current regulatory fee rate of 0.09%.

The Commission notes that funding from the universal service fund being decided in this case will not begin until January 1, 1999, which is only one year prior to the 6.9% state income tax rate becoming effective. Additionally, the Commission believes that it is reasonable to include in a forward-looking cost study the known state income tax rate that will be applied in the year 2000 and possibly forward.

Current state statute reflects the following state income tax rates: 1997 - 7.5%; 1998 - 7.25%; 1999 - 7.00%; and 2000 - 6.90%.

The Commission further notes that the current gross receipts tax rate for telecommunications companies in North Carolina is 3.22%. Additionally, the Commission notes that the current regulatory fee rate of 0.09% became effective on July 1, 1997, and will be effective until at least June 30, 1999. Finally, the Commission notes that no party disputes the use of the 35% federal income tax rate.

CONCLUSIONS

The Commission concludes that the appropriate tax rates and regulatory fee rate to be used in the cost models are as follows: federal income tax rate of 35%; state income tax rate of 6.90%; gross receipts tax rate of 3.22%; and regulatory fee rate of 0.09%.

3(n): COST OF CAPITAL

POSITIONS OF PARTIES

BELLSOUTH: BellSouth stated that it used the FCC's recommended overall cost of capital of 11.25% but used its own capital structure components.

CAROLINA/CENTRAL: Carolina/Central stated that the FCC-authorized interstate overall rate of return of 11.25% is appropriate and was included in the model inputs.

GTE: GTE utilized a risk-adjusted cost of capital of 13.12% that is based on the weighted average cost of capital for companies included in the Standard & Poor's 500.

AT&T: AT&T requested that the Commission determine the appropriate cost of capital for ILECs in North Carolina and proposed an overall cost of capital of 9.43% for BellSouth, 9.53% for Sprint, and 9.60% for GTE.

MCI: MCI adopted the cost of capital recommendations made by AT&T.

NCCTA: The NCCTA recommended that the Commission adopt a capital structure and cost of capital for use in the universal service cost proxy model that recognizes the ILECs' network economies of scale and scope and the fact that there is no meaningful competition for basic local exchange service from facilities-based providers at this time. On a forward-looking basis, the weighted average cost of capital is likely to be closer to that endorsed in the Hatfield Model rather than the assumptions made in the BCPM.

ATTORNEY GENERAL: The Attorney General deferred to the cost of capital calculated by the Public Staff as the amount to use for the cost of capital input to the FLEC study.

PUBLIC STAFF: The Public Staff recommended that the forward-looking overall cost of capital associated with providing universal service in North Carolina is 9.94% based on a capital structure consisting of 58% common equity and 42% debt, a cost of debt of 7.38%, and a cost of common equity of 11.80%.

DISCUSSION

The FCC's Overall Rate of Return

The FCC's fourth criterion which a state-conducted study must meet in order to be approved for use in calculating federal universal service support concerns the rate of return on investment or cost of capital used in a state's FLEC study. According to Paragraph 250 of the FCC's Universal Service Order:

> (4) The rate of return must be either the authorized federal rate of return on interstate services, currently 11.25%, or the state's prescribed rate of return for intrastate services. We conclude that the current federal rate of return is a reasonable rate of return by which to determine forward looking costs. We realize that, with the passage of the 1996 Act, the level of local service competition may increase, and that this competition might increase the ILECs cost of capital. There are other factors, however, that may mitigate or offset any potential increase in the cost of capital associated with additional competition. For example, until facilities-based competition occurs, the impact of competition on the ILECs risks associated with the supported services will be minimal because the ILECs facilities will still be used by competitors using either resale or purchasing access to the ILECs unbundled network elements. In addition, the cost of debt has decreased since we last set the authorized rate of return. The reduction in the cost of borrowing caused the Common Carrier Bureau to institute a preliminary inquiry as to whether the currently authorized federal rate of return is too high, given the current marketplace cost of equity and debt. We will re-evaluate the cost of capital as needed to ensure that it accurately reflects the market situation for carriers.

The 11.25% overall rate of return was authorized by the FCC's Order in CC Docket No. 89-624, adopted on September 19, 1990, for the interstate access services of local exchange carriers. The 11.25% overall rate of return was based on the FCC's findings that the embedded cost of debt was 8.8%, the capital structure ratios consisted of 55.8% equity and 44.2% debt, and the range of reasonable estimates of the LEC interstate access cost of equity was 12.5% to 13.5%. Using these findings, the FCC calculated that a range of reasonable estimates of the overall cost of capital equaled 10.85% to 11.4%. After consideration of evidence concerning factors such as the condition and future of the telecommunications infrastructure and the state of competition in the interstate access market, the FCC concluded that an 11.25% overall rate of return was appropriate.

Evidence in this Proceeding

BellSouth and Carolina/Central witness Stailr testified that the BCPM 3.1 submitted by these parties used the prescribed federal overall cost of capital listed in the FCC's Universal Service Order of 11.25%. These parties stated that the FCC reiterated their position on rate of return in the FCC's February 27, 1998, Public Notice in which FCC Criterion No. 4 stated that "the rate of return should be either the authorized federal rate of return on interstate services, currently 11.25%, or the state's prescribed rate of return for intrastate services." BellSouth and Carolina/Central stated that since they are not rate-of-return regulated in North Carolina, these parties utilized the FCC's recommended rate of return of 11.25%.

After examining the BellSouth and the Carolina/Central FLEC studies submitted in this proceeding for compliance with the FCC's fourth criterion, Public Staff witness Garrison testified that the inputs used by BellSouth and by Carolina/Central use costs of capital and a capital structure which produce the FCC's overall prescribed interstate rate of return. However, witness Garrison pointed out that BellSouth's and Sprint's costs of capital and capital structure do not match those adopted by the FCC in FCC Docket No. 89-624. With respect to GTE's FLEC study, he testified that the costs of capital and capital structure used by GTE do not produce the FCC's prescribed rate of return, and therefore, GTE would not meet this criterion unless the Commission adopted GTE's proposed costs of capital and capital structure on an intrastate basis.

In rebuttal, BellSouth witness Caldwell testified that BellSouth's study is based on BellSouth's own forward-looking capital structure, cost of debt, and cost of equity as supported by the testimony of BellSouth witness Billingsley. She explained that while BellSouth accepts the use of the FCC's overall recommended cost of capital, BellSouth appropriately used its own capital structure components. It was her testimony that since the FCC's prescribed capital structure is at a nationwide level, it would not be appropriate for use by BellSouth in the FLEC cost study. According to workpapers filed in this docket on January 16, 1998, which show BellSouth's inputs, BellSouth used a capital structure consisting of 60% equity and 40% debt, a cost of debt of 8.0%, and a return of equity of 13.4% in the FLEC cost study which it submitted in this proceeding.

BellSouth rebuttal witness Billingsley used three approaches to determine BellSouth's cost of equity. In the first approach, he applied a quarterly Discounted Cash Flow (DCF) model, which included an adjustment to account for flotation costs, to a group of 20 comparable risk companies. A cluster analysis based on dimensions of the financial and operating risk of BellSouth was used to identify the comparable risk companies. Based on his DCF analysis, witness Billingsley determined a cost of equity of 15.23% to 15.24%. In the second approach, he used a Capital Asset Pricing Model (CAPM) applied to the same comparable group of firms. The CAPM approach indicated a cost of equity of 14.66% to 14.80%. Finally, he conducted a risk premium analysis which indicated a cost of equity for the Standard & Poor's (S&P) 500 between 14.15% to 14.96%. From these approaches, witness Billingsley concluded that the cost of equity to BellSouth is within 14.66% to 15.24%.

BellSouth rebuttal witness Billingsley also evaluated the reasonableness of BellSouth's use of an overall cost of capital of 11.25% in its FLEC cost study using two tests. One test used BellSouth's actual capital structure at December 31, 1997, which consisted of 57.14% equity and 42.86% debt, BellSouth's embedded cost of debt of 6.36%, and an overall cost of capital of 11.25%. Using these parameters, he calculated an implied cost of equity equal to 14.91%. The other test used an equity ratio of 60% and a debt ratio of 40%, his own estimate of BellSouth's forward-looking cost of debt under current market conditions which equaled 6.90%, and the 11.25% overall cost of capital. Using this second set of parameters, witness Billingsley calculated an implied cost of equity equal to 14.15%. Since the 14.91% and 14.15% implied costs of equity calculated from these two tests were each below or within the cost of equity range of 14.66% to 15.24% as determined using the three approaches discussed above, witness Billingsley concluded that BellSouth's use of an 11.25% overall cost of capital was reasonable.

Carolina/Central witness Potter testified that the FCC authorized interstate overall rate of return of 11.25% was included in its FLEC study model. According to workpapers filed in this docket by Carolina/Central on January 20, 1998, which show the Carolina/Central inputs, Carolina/Central used a capital structure consisting of 62.9% equity and 37.1% debt, a cost of debt of 6.4% and a return on equity of 14.1% in the FLEC cost study which they submitted in this proceeding.

GTE witness Robinson testified that GTE used a risk-adjusted, forward-looking overall rate of return of 13.12%. He explained that a risk-adjusted rate of return is needed and that GTE's investors faced increased risk due to several factors. Such factors included: the prospect of increased competition and attendant loss of market share; the uncertainty surrounding prices for resale services and unbundled network elements; the magnitude of implementation costs and whether such costs will be recovered; the loss of geographical diversification of regulatory risk due to the simultaneity of arbitration proceedings among the states; and the possibility that prudently made historical investments will not be recovered.

In rebuttal, GTE witness Jacobson presented testimony to support the capital structure and overall weighted average cost of capital used in GTE's cost studies in this proceeding. To determine the cost of equity for GTE, witness Jacobson employed a quarterly DCF model, which included a 5% flotation cost adjustment, applied to the S&P Industrials. Based on his DCF analysis, he recommended a cost of equity for GTE of 14.68%. He also testified that the cost of debt in GTE's cost study was based on the average yield for newly-issued "A"-rated Industrial Bonds as reported in the July 1997 issue of Moody's Bond Record which equaled 7.64%. Finally, witness Jacobson recommended a capital structure for GTE consisting of 77.82% equity and 22.18% debt. This capital structure was calculated using the average of the market-based values of equity and the book value of debt for the S&P Industrials.

AT&T and MCI witness Wood testified that these parties are requesting that the Commission make a determination regarding the appropriate cost of capital for the ILECs. According to his testimony, the Hatfield Model included the proposed intrastate cost of capital as recommended by AT&T witness Hirshleifer.

AT&T witness Hirshleifer testified on the forward-looking economic cost of capital appropriate for the provision of universal service that should be used for BellSouth, Carolina/Central, and GTE. According to his testimony, 30-year Treasury bond rates have fallen from 9.03% to 6.6% since the FCC prescribed the overall rate of return of 11.25% which implies that the cost of capital has fallen since the 11.25% was determined in 1990. To determine the overall cost of capital, witness Hirshleifer first estimated the current cost of debt for BellSouth, Carolina/Central, and GTE to be 7.06%, 7.19%, and 7.22%, respectively. These estimates were determined by calculating a weighted average cost of the yield-to-maturity of each of these company's outstanding major debt issues as listed in the S&P Bond Guide. Witness Hirshleifer then estimated the cost of equity using a three-stage DCF model applied to a screened group of telephone operating companies from the S&P Industry Survey. He also used a CAPM. Averaging the results of his DCF and CAPM estimates, witness Hirshleifer recommended that the cost of equity for BellSouth, Carolina/Central, and GTE equaled 11.02%, 11.10%, and 11.19%, respectively. Finally, witness Hirshleifer developed a capital structure by averaging the book value and market value weights of equity and debt for the group of comparable companies. This average produced a capital structure consisting of 60% equity and 40% debt. Based on his determinations of the cost of debt, cost of equity, and capital structure, witness Hirshleifer recommended an overall cost of capital of 9.43% for BellSouth, 9.53% for Carolina/Central, and 9.60% for GTE.

Public Staff witness Hinton testified that the 11.25% overall rate of return authorized by the FCC was inappropriate to use for the forward-looking cost of capital in this proceeding. According to his testimony, since the FCC adopted the 11.25% overall rate of return in 1990, yields on 30-year Treasury bonds had declined over 300 basis points, the average annual rate of inflation has fallen over 400 basis points, and investors' expectations of future inflation are currently lower than in 1990. He also testified that the allowed returns on equity for telephone companies have fallen from an average annual rate of 12.9% in 1990 to a rate of 11.6% for the nine months ended September 1997.

To determine the overall cost of capital which he recommended in this proceeding, witness Hinton first determined a forward-looking capital structure by averaging Value Line Investment Survey's projected percentages of common equity for ten publicly traded telephone companies which are primarily involved in providing local exchange telecommunications services. The average projected capital structure consisted of 58% common equity and 42% debt. Witness Hinton testified that such a capital structure was reasonable since this level of debt leverage would allow for an "A" to "AA"-bond rating according to current financial ratio benchmarks published by S&P. Witness Hinton determined the forward-looking cost of debt by calculating a weighted average of the yield-to-maturity for 20 to 40-year debt recently issued by companies in this comparable risk group. This yield data was taken from the S&P Bond Guide and averaged for the last three months as of November 1997 and excluded the yields for noncallable bonds. The cost of debt determined in this manner equaled 7.38%. To determine the cost of equity, witness Hinton applied the annual DCF model to his comparable group of ten telephone companies and another group of companies outside the regulated utility industry that exhibit risk measures similar to the comparable group of ten telecommunications companies. Witness Hinton concluded that the cost of equity from his DCF analysis was 11.8% which was the midpoint of his 11.3% to 12.3% cost of equity range. He also used the CAPM to check the results of his DCF study and concluded that his CAPM analysis indicated that the 11.8% cost of equity determined by his DCF analysis was within reason.

Summary

The following table sets forth the capital structure, cost of debt, cost of equity, and the overall cost of capital from the FCC's Order in Docket No. 89-624 and those percentages recommended or included in the FLEC studies by the various parties to this proceeding.

	FCC	**BellSouth**	**Carolina/ Central**	**GTE**	**AT&T/MCI**	**Public Staff**
Capital Structure %						
Equity	55.8	60	62.9	78.8	60	58
Debt	44.2	40	37.1	22.2	40	42
TOTAL	100	100	100	100	100	100

	FCC	BellSouth	Carolina/ Central	GTE	AT&T/MCI	Public Staff
Cost of Debt %	8.8	8.0	6.4	7.6	7.06%-BellSouth 7.19%-CT&T/Central 7.22%-GTE	7.38
Cost of Equity %	12.5-13.5	13.4	14.1	14.7	11.02%-BellSouth 11.1%-CT&T/Central 11.19%-GTE	11.8
Overall Cost of Capital	11.25	11.25	11.25	13.13	9.43%-BellSouth 9.53%-CT&T/Central 9.60%-GTE	9.94

CONCLUSIONS

The Commission concludes that the FCC's prescribed interstate overall rate of return of 11.25% is not appropriate for purposes of this proceeding. The FCC adopted this overall rate of return in 1990 in Docket No. 89-624. Evidence in the record shows that current interest rates, current inflation rates, and the national average of the allowed returns on equity for telephone companies for the first nine months of 1997 are less than in 1990. Further, this proceeding involves the determination of forward-looking economic costs in the provision of universal service while the FCC's 11.25% overall rate of return was based, in part, on an embedded cost of debt. In addition, the FCC's overall rate of return was specifically based upon its findings that the embedded cost of debt equaled 8.8%, the capital structure ratios consisted of 55.8% equity and 44.2% debt, and the range of reasonable estimates of the LEC interstate access cost of equity was 12.5% to 13.5%. In contrast, although BellSouth and Carolina/Central also employed an overall cost of capital of 11.25%, each of these parties used a cost of debt, capital structure ratios, and a cost of equity which differs from those used as the very basis for the FCC's overall rate of return of 11.25%. While not pointed out by the parties to this proceeding, the Commission notes that the 11.25% overall rate of return proposed by both BellSouth and Carolina/Central would generate a higher cost for universal service than the 11.25% overall rate of return of the FCC. This higher cost would occur because BellSouth and Carolina/Central each used a higher equity ratio and a higher cost of equity than did the FCC. Thus, more income tax dollars would be required.

Having concluded that the FCC's prescribed overall rate of return is inappropriate for the reasons stated above, the Commission must turn to the evidence in the record in this proceeding to establish the State's prescribed rate of return for intrastate services. After careful consideration of the entire record, the Commission concludes that the capital structure, cost of debt, and cost of equity recommended by the Public Staff should be adopted for purposes of this proceeding.

As shown in the previous table, the Public Staff's recommended capital structure consists of 58% equity and 42% debt. This capital structure was determined by averaging the equity ratio projected by Value Line for ten telecommunications companies. In comparison, BellSouth uses a capital structure containing 60% equity, although BellSouth witness Billingsley testified that

BellSouth Telecommunication's actual capital structure at December 31, 1997, contains 57.14% common equity. AT&T's recommended capital structure also contains 60% equity and was based on the average of the book value and market value weights of debt and equity for a group of companies. Carolina/Central used a capital structure which contains 62.9% equity. GTE's recommended capital structure contains 77.8% equity and was based on the market value of equity and the book value of debt of the S&P Industrials.

The cost of debt recommended by the Public Staff equals 7.38%. This debt cost was determined by averaging the yield-to-maturity for recently issued 20 to 40-year long-term debt for ten telecommunications companies as described in more detail above. In comparison, BellSouth used a debt cost of 8.0%, although BellSouth witness Billingsley stated that BellSouth's embedded cost of debt equals 6.36% and also testified that he believed that BellSouth Telecommunications' forward-looking cost of debt is 6.90%. Carolina/Central used a cost of debt of 6.4%. AT&T recommended a separate cost of debt for each ILEC based on the weighted-average cost of the yield-to-maturity of each ILEC's major debt issues. GTE's recommended debt cost of 7.64% was based on the average yield of newly issued "A"-rated Industrial Bonds.

The cost of equity recommended by the Public Staff of 11.8%, which was the center of the range of 11.3% to 12.3%, was based on a DCF for ten telecommunications companies. The return on equity used by BellSouth and Carolina/Central was essentially a "plugged," or mathematically derived, figure given an overall rate of return of 11.25%, the capital structure and debt cost rates used by these companies. As reflected in the preceding table, AT&T recommended a separate cost of equity for each ILEC: 11.02% for BellSouth, 11.10% for Carolina/Central, and 11.19% for GTE. Finally, GTE recommended a 14.7% return on equity based on a DCF for the S&P Industrials.

The Commission believes that the evidence contained in the testimony of the Public Staff with respect to the rate of return issue is the most credible evidence in the record in this proceeding. Therefore, the prescribed cost of capital for intrastate services in North Carolina which is reasonable and appropriate for use in determining the forward-looking economic costs associated with providing universal service is 9.94%, based on the following capital structure and cost rates:

Component	Ratio	Cost Rate	Weighted Cost Rate
Long-term debt	42%	7.38%	3.10%
Common equity	58%	11.80%	6.84%
Total	100%		9.94%

PART NO. 4: OTHER ISSUES

4(a): FCC CRITERIA COMPLIANCE

POSITIONS OF PARTIES

BELLSOUTH: BellSouth contended that BCPM 3.1 meets the FCC's ten criteria.

CAROLINA/CENTRAL: The BCPM model complies with the FCC's ten criteria.

GTE: GTE advocated BCPM on an interim basis, populated with company-specific inputs.

AT&T: AT&T stated that the HM 5.0 meets the FCC's ten criteria.

MCI: MCI stated that the HM 5.0 meets the FCC's ten criteria.

NCCTA: Both HM 5.0 and BCPM 3.1 serve the purpose for which they are intended and meet the FCC requirements; although the NCCTA expressed dubiety concerning the inputs.

ATTORNEY GENERAL: The Attorney General suggested that the differences between BCPM 3.1 and HM 5.0 appear de minimis and either would be acceptable provided the models are cost appropriate.

PUBLIC STAFF: The Public Staff stated that the FLEC studies using BCPM 3.1 with inputs reflecting the reasonable forward-looking costs of Carolina/Central, BellSouth, and GTE are appropriate and comply with all ten of the FCC criteria. The only likely exception is the requirement in the first criterion that average loop length reflect the ILEC's actual average loop length because it cannot be reasonably determined for all classes of service.

DISCUSSION

The Commission believes that there is merit to the proposition that HM 5.0 and BCPM 3.1 are converging and that they are becoming less distinct. Both models appear to meet the FCC's criteria. Therefore, the Commission has selected the model which, on the whole, it believes to be more appropriate. In that regard, the Commission concluded in Part No. 2(a) of this Order that BCPM 3.1 is more reasonable, more accessible, and more appropriate than the Hatfield Model for determining the forward-looking economic cost of providing universal service in North Carolina. Further, the Commission believes that the revised cost studies, as required by this Order, will comply with and meet all ten of the criteria prescribed by the FCC for state-conducted FLEC studies.

CONCLUSIONS

The Commission concludes that the BCPM 3.1 model, conducted in accordance with the provisions of this Order, meets all ten of the USO criteria prescribed by the FCC for state-conducted FLEC studies.

4(b): REVISED STUDIES AND COMPLIANCE FILINGS

The FCC has given detailed instructions to the states regarding the format to be used in submitting their FLEC studies. These instructions, which are available on the World Wide Web at http://www.fcc.gov/ccb/universal_service/welcome.html, include the submission of a text document and two spreadsheets.

In order to complete the task of adopting North Carolina studies and submitting them to the FCC, the Commission hereby directs Carolina/Central, BellSouth, and GTE to rerun their cost studies with company-specific inputs as modified by this Order. The studies should be rerun using Carolina/Central's version of the BCPM 3.1, which is the only version before the Commission that is capable of producing results below the wire center level.

Carolina/Central, BellSouth, and GTE shall file the revised studies in electronic form and in accordance with the text document format and spreadsheet requirements for inputs and outputs set forth in the FCC's Public Notice DA98-217, issued February 27, 1998. Portions of the text document such as Section A.7, supporting information, and Section B, demonstration that the studies fulfill the FCC criteria for state cost studies, may be filed jointly. The revised cost studies, text, and spreadsheets will be subject to review and comment by the Public Staff and any further revisions required by the Commission prior to their submission to the FCC.

4(c): SERVICES INCLUDED IN THE DEFINITION OF UNIVERSAL SERVICE

POSITIONS OF PARTIES

BELLSOUTH: BellSouth stated in its Proposed Order and Brief that the FCC specified a list of basic services as the set of supported services under the Act.

CAROLINA/CENTRAL: Carolina/Central advocated in their Proposed Order and Brief that the Commission should adopt the FCC's list of services to be included in the definition of "universal service".

GTE: GTE stated in its issues matrix that the FCC's defined services should be used, except that the cost of white pages and telephone relay services should also be included.

AT&T: AT&T stated in its Proposed Order that the Commission should find that the FCC's defined services should be included in the calculation of the cost of universal service.

MCI: MCI did not address this issue with specificity in its Proposed Order.

NCCTA: The NCCTA did not address this issue with specificity in its Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff did not address this issue with specificity in its Proposed Order.

DISCUSSION

The issue of the services to be included in the definition of universal service will be addressed by the parties and the Commission in Docket No. P-100, Sub 133g. Direct testimony already filed in Docket No. P-100, Sub 133g, indicates that the parties have addressed that issue in the context of that docket. Carolina/Central included a discussion in their Proposed Order in this instant docket that recommends the Commission find that the services designated by the FCC in Paragraph 56 of the USO be used in the definition of universal service. Carolina/Central also recommended in their Proposed Order that the Commission find that the services defined by the FCC be supported by the North Carolina Universal Service Fund.

CONCLUSIONS

The Commission concludes that the issue of defining services to be included in the definition of universal service will be addressed and decided in the context of Docket No. P-100, Sub 133g.

4(d): COST MODEL FOR INTRASTATE UNIVERSAL SERVICE FUND

POSITIONS OF PARTIES

BELLSOUTH: BellSouth stated in its Proposed Order and Brief that using the same cost model and cost methodology to calculate both the federal and state fund will simplify the state fund calculation.

CAROLINA/CENTRAL: Carolina/Central stated in their Proposed Order and Brief that using the same cost model and cost methodology to calculate both the federal and state fund will simplify the state fund calculation.

GTE: GTE did not address this issue with specificity in its Proposed Order or Brief.

AT&T: AT&T did not address this issue with specificity in its Proposed Order or Brief.

MCI: MCI did not address this issue with specificity in its Proposed Order.

NCCTA: The NCCTA stated that the FCC's USO specifies that if a state cost study is used to determine federal universal service support levels, that state's cost study "must be the same cost study that is used by the state to determine intrastate universal service support levels." The NCCTA also stated that the FCC further reiterated its statements in Public Notice DA 97-2383. The NCCTA stated that the decision in this proceeding will also determine which model must be used for purposes of the state universal service subsidy calculation.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff stated in its Proposed Order that the FCC asserted that a state-conducted cost study must be the same study that is used to determine intrastate universal service support levels pursuant to Section 254(f) of the Act.

DISCUSSION

Issues related to the need for and establishment of an intrastate universal service fund will be addressed by the parties and the Commission in Docket No. P-100, Sub 133g. Carolina/Central included a discussion in their Proposed Order in this instant docket that recommends the Commission state in its Order in this proceeding that using the same cost model and cost methodology to calculate both the federal and state fund will simplify the state fund calculation. Paragraph 251 of the FCC's USO states:

> "In Order for the Commission to accept a state cost study submitted to us for the purposes of calculating federal universal service support, that study **must be the same cost study that is used by the state to determine intrastate universal service support levels** pursuant to 254(e)." [emphasis added]

Additionally, the FCC's Public Notice, DA 97-2383 states, in part:

> "A state cost study that is submitted to determine federal support levels **will not be accepted if a state changes the way that its cost study computes forward-looking cost for its state universal service program.** For example, a state could not alter the study's cost calculations to compute intrastate support, such as by changing the area over which support is calculated, and still expect the study to be used to determine federal support levels." [emphasis added]

The Commission notes that the issues related to the need for and establishment of an intrastate universal service fund will be decided by the Commission in Docket No. P-100, Sub 133g. However, the Commission also notes that the FCC has dictated that a state must use the same cost study to calculate both the federal universal service support and the cost for a state's universal service program.

CONCLUSIONS

The Commission concludes that using the same cost model and cost methodology to calculate both the federal and state fund will simplify the state fund calculation, if such a fund is found necessary.

4(e): MODEL FOR PRICING UNBUNDLED NETWORK ELEMENTS (UNEs)

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not address this issue with specificity in its Proposed Order or Brief.

CAROLINA/CENTRAL: Carolina/Central did not address this issue with specificity in their Proposed Order or Brief.

GTE: GTE did not address this issue with specificity in its Proposed Order or Brief.

AT&T: The Commission should use the same cost studies for pricing UNEs and for determining universal service support subsidies. The HM is the only model that can be used for both purposes.

MCI: The cost proxy model selected by the Commission should consistently be used for pricing UNEs and for determining universal service support. MCI believes that the HM 5.0 is the only model that consistently calculates both.

NCCTA: The NCCTA stated that the costing methodology selected in this proceeding should be consistent with the methodology selected in the UNE proceeding in order to eliminate market dislocations and reduce arbitrage opportunities.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity in his Brief.

PUBLIC STAFF: The Public Staff did not address this issue with specificity in its Proposed Order.

DISCUSSION

AT&T stated that the standard for both pricing of UNEs and determining levels of universal service support is the same: the forward-looking, economic cost of the facilities. AT&T and MCI believe that there is no reason that the same methodology should not apply to both. They recommended approval of the HM for use in both the pricing of UNEs and in determining levels of universal service support. However, on cross-examination, AT&T/MCI witness Gillan testified that in terms of determining what the total cost of universal service is for retail purposes, there would be retail costs associated with such determination that might not necessarily be a part of the UNE cost, such as billing and collection expenses.

By Order issued August 12, 1997, in Docket No. P-100, Sub 133b, the Commission stated that it ". . .believes that it is best at this time to limit the issues in this proceeding to those relevant in deciding on an appropriate FLEC study to be used in determining the cost of universal service in North Carolina." Consistent with that Order and considering the issue raised concerning retail costs, the Commission believes that it would be inappropriate to decide this matter at this time.

CONCLUSIONS

The Commission concludes that it is appropriate to decide the matter of the appropriate cost model for UNE pricing, in Docket No. P-100, Sub 133d, now pending.

IT IS, THEREFORE, ORDERED as follows:

1. That the BCPM 3.1 is the appropriate model to use in determining the forward-looking economic cost of providing universal service for Carolina/Central, BellSouth, and GTE in North Carolina.

2. That Carolina/Central, BellSouth, and GTE shall file revised cost studies, text, and spreadsheets, conducted in accordance with the input provisions and requirements of this Order, no later than Thursday, April 30, 1998.

3. That the Public Staff shall file comments on the revised cost studies, text document, and spreadsheets filed by Carolina/Central, BellSouth, and GTE no later than Friday, May 8, 1998.

ISSUED BY ORDER OF THE COMMISSION.
This the 20th day of April, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Allyson K. Duncan presided during decisionmaking in this docket, but did not participate in the discussion of, or vote on, the issues addressed in this Order.

Commissioner Robert V. Owens, Jr., did not participate.

DOCKET NO. P-100, SUB 133b

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Establishment of Universal Support	)	
Mechanisms Pursuant to Section 254	)	ORDER ON
of the Telecommunications Act of 1996	)	RECONSIDERATION

BY THE COMMISSION: On April 20, 1998, the Commission issued an Order Adopting Forward-Looking Economic Cost (FLEC) Model and Inputs. On April 30, 1998, BellSouth Telecommunications, Inc. (BellSouth), Carolina Telephone and Telegraph Company (Carolina)/Central Telephone Company (Central), and GTE South, Inc. (GTE) (jointly referred to as the incumbent local exchange companies or ILECs) filed their revised FLEC studies as required by the Commission Order.

On May 7, 1998, BellSouth filed its Motion for Reconsideration with the Commission. On May 8, 1998, the Public Staff filed its Comments on the revised FLEC studies. Also on May 8, 1998, AT&T Communications of the Southern States, Inc. (AT&T) filed its Response to BellSouth's Revised Benchmark Cost Proxy Model (BCPM) 3.1 Cost Study which the Commission will treat as a Motion for Reconsideration.

The Commission issued an Order on May 13, 1998 requiring the ILECs to revise their cost studies to reflect the recommendations of the Public Staff as set forth in its May 8, 1998 Comments. On May 14, 1998, GTE filed its Motion for Reconsideration. The Public Staff filed further Comments on May 15, 1998. Carolina/Central, on May 18, 1998, filed their Motion for Reconsideration. The Commission issued an Order on May 19, 1998, soliciting comments and reply comments on the four Motions for Reconsideration that had been filed with the Commission. Comments were filed by the Attorney General, AT&T, BellSouth, the North Carolina Cable Telecommunications Association (NCCTA), and the Public Staff. Reply comments were filed by AT&T and Carolina/Central.

Based upon a careful consideration of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. It is appropriate to deny GTE's Motion for Reconsideration on the issue of expense inputs.

2. It is appropriate to deny GTE's Motion for Reconsideration on the issue of material, installation, and switching.

3. It is appropriate to deny GTE's Motion for Reconsideration on the issue of support ratios.

4. It is appropriate to deny BellSouth's and GTE's Motions for Reconsideration on the issue of structure sharing and require BellSouth and GTE to use the structure sharing percentages proposed by Carolina/Central as inputs into the BCPM 3.1. It is appropriate to grant Carolina/Central's Motion for Reconsideration on the issue of structure sharing.

5. It is appropriate to grant Carolina/Central's Motion for Reconsideration on the issue of the cable sizing factor.

6. It is appropriate to grant AT&T's Motion for Reconsideration and deny GTE's Motion for Reconsideration on the issue of depreciation.

7. It is appropriate to deny GTE's Motion for Reconsideration on the issue of cost of capital.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

FINDING OF FACT NO. 1 - EXPENSE INPUTS

Commission Order: The Commission concluded, in Section 3(b) on page 22 of its Order Adopting FLEC Model and Inputs (hereinafter referred to as Commission Order or FLEC Order) dated April 20, 1998, that the expense input adjustments proposed by the Public Staff were reasonable and appropriate and that GTE should make appropriate revisions to its cost studies as follows:

1. Adjust per line expenses to reflect the number of access lines shown in GTE's 1996 Annual Report (366,794).

2. Adjust GTE's per line amount for General Support expense to reflect the change in investment support.

3. Adjust GTE's per line amount for Services expenses to universal service to reflect the per line expense amount used by Carolina/Central for Services expenses to universal service.

4. Adjust GTE's Poles expense to reflect the Poles expense amount used by Carolina/Central.

5. Adjust GTE's Aerial Fiber Cable expense to reflect the same relationship with GTE's Aerial Copper Cable that exists between Carolina/Central's Aerial Fiber Cable and its Aerial Copper Cable.

6. Adjust GTE's Buried Copper Cable expense input to reflect the same relationship with GTE's Buried Copper Cable that exists between Carolina/Central's Buried Fiber Cable and its Buried Copper Cable.

Motion for Reconsideration:

GTE: In the Commission Order, the Commission adopted the Public Staff's proposal that the number of access lines in service as shown in GTE's 1996 Annual Report (366,794) was the appropriate number of access lines which should be used to obtain the desired per line expense amount. In its Motion for Reconsideration, GTE argued that the Commission's use of 366,794 access lines for calculating per line expenses for GTE overstated the number of access lines and, therefore, understated GTE's per line expenses. GTE contended that the Public Staff's calculation of 325,857 based on access line data for each wire center is the correct number of access lines which should be used for purposes of calculating per line expenses in this docket.

The Commission Order also concluded that certain of the inputs proposed by GTE reflected what appeared to be unreasonable assumptions and adopted the Public Staff's proposal that, given the similarities between the operating conditions of GTE and Carolina/Central, certain expense inputs used by Carolina/Central were reasonable for use in GTE's service area. In its Motion for Reconsideration, GTE contended that it is GTE's cost that must be the basis for calculating the cost of providing service in the Company's serving area in North Carolina and where GTE has provided company-specific inputs, they should be used.

GTE further requested that the Commission reconsider its finding that GTE's cost study included an unreasonably high allocation of Services expenses to universal service. GTE stated that it believes this is in error. GTE argued that the expenses submitted for GTE should be used and, accordingly, the Commission should reconsider its decision with regard to this issue. Use of GTE-specific costs is the only way to ensure that GTE's forward-looking economic costs are calculated correctly, and thereby ensure that the universal service fund is properly sized.

INITIAL COMMENTS

NCCTA: The NCCTA recommended that the Commission deny BellSouth's, GTE's, and Carolina/Central's Motions for Reconsideration in their entirety. The NCCTA argued that the Commission Order reflects careful analysis of a mountain of written and oral evidence and that none of the issues raised by the ILECs in their Motions for Reconsideration raise new evidence or other matters which were not fully debated during the proceeding.

PUBLIC STAFF: The Public Staff stated that it does not agree with GTE's request that the lower number of access lines in service should be used in the determination of the expense inputs that are calculated on a per line basis. The appropriate number of access lines which should be used to determine the expense inputs that are calculated on a per line basis should be the number reflected in GTE's 1996 Annual Report.

The Public Staff further disagreed with GTE's request for reconsideration of the Commission's finding that certain of its cost study inputs should be replaced with inputs derived from Carolina/Central.

REPLY COMMENTS

No party filed Reply Comments on this issue.

DISCUSSION

GTE argued that it will be unable to recover the universal service expense unless the Commission recalculates GTE's per line expenses using the actual access line data for each wire center of 325,857. GTE stated that the 366,794 access lines in service in North Carolina as shown in GTE's Annual Report can be misleading because it includes approximately 40,000 channel equivalents from nonswitched special access lines. These channel equivalents are not the same as a narrowband loop, and they are not relevant for estimating the per line expense calculations discussed here. Including nonswitched special access lines on a channel equivalent basis artificially increases the count of access lines, thereby decreasing the per line costs. Instead, a count of the "physical lines" should be used. GTE explained that nonswitched special access generally refers to DS1 and DS3 connections between high volume long distance end users and long distance carriers. DS1 and DS3 channels are not used to provide access lines for the provision of plain old telephone service (POTS) and they should not be included in the determination of the number of access lines in this proceeding.

GTE contended that inclusion of these channel equivalents in calculating the per line costs will result, for a number of reasons, in a fundamental unfairness to GTE. First, GTE believes that BellSouth uses total physical lines rather than channel equivalents. In addition, GTE is informed and believes that in the case of Carolina/Central, the number of channel equivalents, even if included, would be *de minimis* compared to total physical access lines. GTE stated that including channel equivalents is particularly inequitable to GTE because of the large number of businesses who purchase DS1 and DS3 service in the Research Triangle Park. Further, GTE contended that including channel equivalents in the calculation of the per line expense has the same effect as simply removing expenses from universal service categories and reassigning those expenses to DS1 and DS3 services. This is a clear violation of Section 254 of the Telecommunications Act of 1996 (the Act) since the purpose of Section 254 is to remove implicit subsidies from existing tariffed rates. Moreover, even if it were not an implicit subsidy, GTE could not recover these expenses. The price cap plan currently in effect for GTE precludes a price increase sufficient to recover these additional expenses. GTE requested that the Commission use 325,857 as the correct number of access lines for universal service fund purposes.

GTE contended that the Commission's finding that GTE's cost study included an unreasonably high allocation of Services expenses to universal service is in error. GTE stated that it employed a total service long-run incremental cost (TSLRIC) based allocation methodology for a number of expense accounts, while Carolina/Central largely employed a separations based allocation methodology. Although individual account results would reasonably be expected to vary, in this instance the proper inquiry should be whether total operating expenses - and not single account - properly reflect the costs of providing universal service. The overall per line operating expense of $14.46 for GTE is $2.15 less than the $16.61 found appropriate for Carolina/Central, due in large part to the pick-and-choose cost per line approach included in the Order.

The Public Staff stated that it does not agree that the 325,857 access lines found to be appropriate for determining the network design and investment costs should be used for GTE's expenses. Unlike the other ILECs, GTE proposed no adjustments in its cost study to reflect expenses on a forward-looking basis. Instead, GTE used its 1996 expenses as the basis for expense inputs that are calculated on a per line basis. By using the lower access line count to calculate these per line expense inputs, GTE is essentially advocating the use of historical costs to calculate the expense associated with universal service on a forward-looking basis. The Public Staff stated it found this inappropriate. Using a line count of 366,794 and the 1996 expense levels, as provided in the Commission's Order, results in an adjustment of approximately 11% to the affected 1996 expenses to reflect forward-looking efficiencies.

The Public Staff noted GTE's assertions that the proper inquiry should be whether total operating expenses are appropriate rather than expenses in a single account. Moreover, GTE asserts that where it has provided company-specific inputs, they should be used, because they contain implicit subsidies based on actual costs and the Act requires that implicit subsidies be made explicit. In response to these assertions, the Public Staff stated that there is nothing in the Act that guarantees an ILEC recovery of embedded costs or that prohibits a state commission from reviewing an ILEC's costs for reasonableness, either in the aggregate or by specific account, before using them to determine the costs of an efficient provider in the ILEC's service territory. Because the Commission is required to determine the costs of an efficient provider in an ILEC's service territory, the Public Staff believes that the Commission has an obligation to ascertain the reasonableness of the proposed inputs. Comparing GTE's overall per line operating expense to that found reasonable for the combined operations of Carolina/Central is no more valid than comparing it to BellSouth's, which is $3.80 lower than GTE's.

The Commission finds no merit in GTE's Motion that would support an amendment to the Commission Order in this regard.

CONCLUSIONS

Based upon the Comments submitted by the Public Staff, the Commission concludes that it is appropriate to deny GTE's Motion for Reconsideration regarding this issue.

FINDING OF FACT NO. 2 - MATERIAL, INSTALLATION, AND SWITCHING

Commission Order on Material and Installation: The Commission concluded, in Section 3(d) on page 26 of the FLEC Order, that North Carolina specific data is the most forward-looking and reasonable, and is thus superior to default inputs. Therefore, the Commission ordered GTE to reflect Carolina/Central's state specific costs for material and installation costs for loop fixed costs, structures (base cost, cost adjustment, and installation cost), and material and installation costs for handholes, manholes, adder, and conduit in GTE's FLEC study.

Commission Order on Switching: The Commission adopted, in Section 3(j) on page 39 of the FLEC Order, the Public Staff's recommendation in this regard. The Commission concluded that Carolina/Central's proposed inputs to the Switching Discount Factor Table should be used by GTE as its inputs to the BCPM 3.1 and that GTE should use the inputs developed by Carolina/Central of 0.0128 for land loading, 0.1479 for building loading, and 0.0476 for the common equipment/power factor.

Motion for Reconsideration:

GTE: GTE stated in its Motion for Reconsideration that the Commission Order requires GTE to use Carolina/Central's costs for material and installation, and switching. GTE stated that GTE's cost must be the basis for calculating the cost of providing service in the Company's serving area in North Carolina and where GTE has provided company-specific inputs, they should be used. GTE argued that one principal purpose of regulation is to ensure that the regulated company is given an opportunity to recover its prudently-incurred investment and operating costs plus a reasonable profit. GTE believes that the use of GTE-specific costs is the only way to ensure that GTE's forward-looking economic costs are calculated correctly.

INITIAL COMMENTS

AT&T: AT&T stated in its initial comments that GTE's request for reconsideration of the decision requiring it to modify outside plant material and installation costs, support ratios, switching inputs, and expenses is nothing more that yet another vehicle for GTE to press its anti-competition, make-whole position. AT&T stated that GTE's Motion provides no evidence or even argument that the input values it proposes reflect the costs of an efficient provider in GTE's North Carolina territory. AT&T believes that GTE's argument that anything less than full recovery of costs and maintenance of historic revenue levels constitutes a breach of the regulatory compact, is without merit. Further, AT&T stated that the Commission's determination that forward-looking economic costs be used to calculate the costs of universal service is neither unjust or unreasonable. For these reasons, AT&T argued that the Commission should deny GTE's Motion as to this issue.

NCCTA: The NCCTA recommended that the Commission deny BellSouth's, GTE's, and Carolina/Central's Motions for Reconsideration in their entirety. The NCCTA argued that the Commission Order reflects careful analysis of a mountain of written and oral evidence and that none of the issues raised by the ILECs in their Motions for Reconsideration raise new evidence or other matters which were not fully debated during the proceeding.

REPLY COMMENTS

No Reply Comments were filed on this issue.

DISCUSSION

GTE simply stated in its Motion for Reconsideration that the Commission ordered GTE to use Carolina/Central's costs for material and installation and switching. GTE argued that where GTE has provided company-specific inputs, they should be used. However, the Commission notes that GTE reflected the BCPM 3.1 default values for both material and installation and switching. Therefore, GTE did not itself propose GTE company-specific data in this proceeding for these items.

CONCLUSIONS

The Commission concludes that it is appropriate to deny GTE's Motion for Reconsideration in this regard.

FINDING OF FACT NO. 3 - SUPPORT RATIOS

Commission Order: The Commission concluded, in Section 3(e) on page 28 of the FLEC Order, that it was appropriate to adopt the Public Staff's recommendation in this regard. The Commission concluded that the appropriate support ratios for Furniture investment and Office Support investment were as follows:

ILEC	Furniture	Office Support
BellSouth	0.125%	0.281%
Carolina/Central	0.209%	0.576%
GTE	0.209%	0.576%

These approved factors were the same as the ILECs had proposed with the exception of GTE.

Motion for Reconsideration:

GTE: GTE stated in its Motion for Reconsideration that the Commission ordered GTE to use Carolina/Central's inputs for material and installation, support ratios, switching discounts, and certain other expenses in GTE's revised BCPM 3.1 filing. GTE stated that GTE's cost must be the basis for calculating the cost of providing service in the Company's serving area in North Carolina and where GTE has provided company-specific inputs, they should be used. GTE argued that one principal purpose of regulation is to ensure that the regulated company is given an opportunity to recover its prudently-incurred investment and operating costs plus a reasonable profit. GTE believes that the use of GTE-specific costs is the only way to ensure that GTE's forward-looking economic costs are calculated correctly.

INITIAL COMMENTS

AT&T: AT&T stated in its initial comments that GTE's request for reconsideration of the decision requiring it to modify outside plant material and installation costs, support ratios, switching inputs, and expenses is nothing more that yet another vehicle for GTE to press its anti-competition, make-whole position. AT&T stated that GTE's Motion provides no evidence or even argument that the input values it proposes reflect the costs of an efficient provider in GTE's North Carolina territory. AT&T believes that GTE's argument that anything less than full recovery of costs and maintenance of historic revenue levels constitutes a breach of the regulatory compact, is without merit. Further, AT&T stated that the Commission's determination that forward-looking economic costs be used to calculate the costs of universal service is neither unjust or unreasonable. For these reasons, AT&T argued that the Commission should deny GTE's Motion as to this issue.

NCCTA: The NCCTA recommended that the Commission deny BellSouth's, GTE's, and Carolina/Central's Motions for Reconsideration in their entirety. The NCCTA argued that the Commission Order reflects careful analysis of a mountain of written and oral evidence and that none of the issues raised by the ILECs in their Motions for Reconsideration raise new evidence or other matters which were not fully debated during the proceeding.

PUBLIC STAFF: The Public Staff stated in its initial comments that GTE is requesting that where it has provided company-specific inputs, they should be used because they contain implicit subsidies based on actual costs. The Public Staff remarked that there is nothing in the Act that guarantees an ILEC recovery of embedded costs or that prohibits a state commission from reviewing an ILEC's costs for reasonableness, either in the aggregate or by specific account, before using them to determine the costs of an efficient provider in the ILEC's service territory. The Public Staff did not recommend any changes to the Commission Order in this regard.

REPLY COMMENTS

No party filed Reply Comments on this issue.

DISCUSSION

The Commission Order adopted the Public Staff's recommendation in this regard; i.e., considering the similarities between GTE and Carolina/Central, GTE's support ratios for the calculation of its Furniture and Office Support investments should be the same as those proposed by Carolina/Central which are 0.209% and 0.576%, respectively. The Commission's Order stated:

> ". . .the support ratios proposed by GTE for the Furniture and Office Support investments are substantially higher than those proposed by BellSouth and Carolina/Central: more than six times higher for Furniture investment and more than four times higher for Office Support investment. The Public Staff stated, in its Proposed Order, that it could not rationalize such a disparity and therefore

recommended that the support ratios inputs into the BCPM 3.1 for the calculation of GTE's Furniture and Office Support investments should be those proposed by Carolina/Central. . . ."

The Commission finds no evidence or any argument in GTE's Motion that would support an amendment to the Commission Order in this regard. GTE has made no showing that the input values it proposes reflect the costs of an efficient provider in GTE's North Carolina territory. Thus, GTE's support ratio inputs should remain the same as those previously approved in the Commission Order issued on April 20, 1998.

CONCLUSIONS

The Commission concludes that it is appropriate to deny GTE's Motion for Reconsideration in this regard.

FINDING OF FACT NO. 4 - STRUCTURE SHARING

Commission Order: The Commission concluded, in Section 3(f) on page 31 of the FLEC Order, that the ILECs should be required to input structure sharing percentages into their cost models that fall midway between their proposed percentages and the percentages proposed by AT&T/MCI in the Hatfield Model (HM) 5.0.

Motions for Reconsideration:

BELLSOUTH: BellSouth argued in its Motion for Reconsideration that the Commission had no credible record evidence to support the setting of structure sharing percentages in the manner, and at the level, set forth in the Order. BellSouth stated that the ILECs all advocated a percentage of structure sharing input based upon their respective current actual operating experience and that the source of the structure sharing percentages advocated by the ILECs was clear and that the percentages were based on current reality. BellSouth argued that the Hatfield Model included a projected - or hypothetical - future sharing percentage that was based on nothing more than unsupported conjecture. BellSouth asserted that there was no serious evidentiary challenge to the structure supporting percentages advanced by the various ILECs.

Additionally, BellSouth stated that, "BellSouth believes that all parties would readily agree that the opportunities for sharing will not be equal in all parts in the state. In other words, it is highly unlikely that one or more new entrants will duplicate the entire local network. To the contrary, the greatest likelihood is that future, facilities-based competition will develop in the more densely populated areas because, along with access to greater concentration of ILEC revenues, competing carriers can serve those areas with fewer facilities." BellSouth stated that the inescapable fact is that there is simply no record evidence to quantify the amount of increased structure sharing that may occur in a future competitive environment in any area, either densely populated or sparsely populated and that the Commission should amend the FLEC Order to rely upon only credible evidence regarding structure sharing offered in this manner.

CAROLINA/CENTRAL: Carolina/Central stated in their Motion for Reconsideration that the Commission's decision on structure sharing was inappropriate for three reasons: (1) the "split the difference" methodology adopted by the Commission encourages the parties to take extreme positions rather than realistic positions, not only in this proceeding but in future proceedings; (2) the structure sharing inputs proposed by Carolina/Central are generally higher than those of the other participating ILECs, and are based upon projected, future opportunities for sharing the cost of constructing cable facilities; and (3) the "split the difference" methodology has a prejudicial impact upon Carolina/Central in that it assigns the highest incidence of structure sharing, and the least cost retention to Carolina/Central (in comparison to BellSouth and GTE), despite the fact that Carolina/Central have a higher cost of service than BellSouth and GTE.

GTE: GTE stated in its Motion for Reconsideration that there is no evidence in the record to support the structure sharing percentages required by the Commission Order. GTE asserted that the percentages used by the ILECs are solidly grounded in actual operating experience and are realistic. GTE stated that the percentages advocated by AT&T and MCI Telecommunications Corporation (MCI) are speculative at best and not grounded in actual experience gained from operating local exchange facilities. GTE argued that the Commission has imposed an impossible objective on GTE and that such objectives are wholly unrealistic and impossible to achieve. Finally, GTE concluded that there is no support in the record for such a conclusion, nor is there any discernible logic to arrive at such a conclusion.

AT&T: AT&T stated in its Motion for Reconsideration and Response to BellSouth's Revised BCPM 3.1 Cost Study that the Commission's Order recognized the widely disparate structure sharing ratios proposed by BellSouth and the other parties. AT&T stated that after careful consideration the Commission concluded that BellSouth should be required to establish structure sharing inputs for their cost models that fall midway between those proposed by BellSouth and those proposed by AT&T in the Hatfield Model 5.0.

INITIAL COMMENTS

AT&T: AT&T asserted in its comments that the ILECs' contention that the Commission's decision was not based on evidence of record relies on a faulty premise - that the ILECs' alleged historic structure sharing levels establish as a matter of fact the levels that efficient providers in a competitive market will achieve. AT&T stated that the record is full of evidence that competition will exert pressure on telecommunications carriers to share structure costs where no such pressure existed before. AT&T asserted that the Commission rightfully rejected the ILECs' proposed values as unreasonable and adopted values it believed better reflected the forward-looking environment. AT&T argued that none of the ILECs' Motions, for all their rhetoric, cite a single transcript, piece of testimony and/or document to support the contention that any ILEC or an efficient newcomer ever would tolerate these levels of sharing in a competitive market.

NCCTA: The NCCTA recommended that the Commission deny BellSouth's, GTE's, and Carolina/Central's Motions for Reconsideration in their entirety. The NCCTA argued that the Commission Order reflects careful analysis of a mountain of written and oral evidence and that none of the issues raised by the ILECs in their Motions for Reconsideration raise new evidence or other matters which were not fully debated during the proceeding. The NCCTA argued that the Commission reasonably concluded in its Order that structure sharing would likely increase with competition.

PUBLIC STAFF: The Public Staff stated that the Commission Order presumes that the ILECs will experience increases in structure sharing in the low density rural areas, as well as the high density urban areas of the state, as argued by BellSouth. The Public Staff stated that it believes that this argument has merit. The Public Staff asserted that unlike other user adjustable inputs, opportunities for structure sharing are largely speculative and depend on variables outside the control of the ILECs, namely, the ability and willingness of electric utilities and cable companies to share both existing and new facilities with the ILECs. The Public Staff concluded that while structure sharing can be expected to increase in some rapidly growing areas, it is not likely to occur in the magnitude assumed by the Commission Order for the foreseeable future.

REPLY COMMENTS

CAROLINA/CENTRAL: Carolina/Central stated in their reply comments that the structure sharing inputs included in the BCPM 3.1 by Carolina/Central are, in some cases, substantially greater than those currently or historically realized by Carolina/Central. Carolina/Central asserted that they have included a generous and reasonable level of structure sharing in developing Model inputs that reflect the possibility of greater structure sharing in the future. Carolina/Central argued that they should not be penalized for including a reasonable estimate of the level of cable construction cost sharing by employing a "split the difference" methodology for all four ILECs in determining the structure sharing inputs for the BCPM 3.1. Carolina/Central stated that AT&T's comments in this matter are flawed because they do not acknowledge the regulatory environment applicable to Carolina/Central. Carolina/Central argued that AT&T disregarded the fact that both Carolina and Central have been under price regulation plans since July 1996. Carolina/Central stated that a price regulation plan is not a cost plus regulation methodology and does not limit the benefits that can be realized from cost reductions. Carolina/Central argued that under price regulation, Carolina/Central have substantial incentives to share construction costs to the maximum degree possible. Finally, Carolina/Central pointed out that the Public Staff agreed with Carolina/Central in its comments on several aspects of structure sharing. Carolina/Central continued to believe that the structure sharing assumptions ordered by the Commission are not indicative of any current or projected operating circumstances that could be realized within the operating area of either company.

DISCUSSION

Several parties raised valid points on this issue. Carolina/Central argued that the structure sharing inputs proposed by Carolina/Central are generally higher than those of the other participating ILECs, and are based upon projected future opportunities for sharing the cost of constructing cable facilities. Carolina/Central did propose structure sharing percentages that were higher than the percentages of BellSouth and GTE. Carolina/Central also argued that the "split the difference" methodology has prejudicial impact upon Carolina/Central in that it assigns the highest incidence of structure sharing, and the least cost retention to Carolina/Central (in comparison to BellSouth and GTE), despite the fact that Carolina/Central have a higher cost of service than BellSouth and GTE.

BellSouth's assertion that there is simply no record evidence to quantify the amount of increased structure sharing that may occur in a future competitive environment in any area, either densely populated or sparsely populated, is not a valid point. AT&T and MCI presented structure sharing percentages based on their expert projections, just as the ILECs did. No party can predict the future and, therefore, an absolutely correct forward-looking percentage for structure sharing cannot be known.

The Commission notes that BellSouth itself stated in its Motion that "BellSouth believes that all parties would readily agree that the opportunities for sharing will not be equal in all parts in the state." However, BellSouth did not recommend structure sharing percentages that vary based on density (See Appendix A, Page 2).

The Commission notes that while no new evidence was presented on this issue, the parties have made valid points. The Commission believes that there will be increased structure sharing in the future; the problem is determining the most accurate percentages to use in the models. By analyzing the structure sharing percentages used by the parties, Carolina/Central did propose higher amounts than did BellSouth and GTE. Additionally, Carolina/Central proposed structure sharing percentages that recognized that more of the costs would be borne by parties other than the ILEC at higher density zones, as presented in Appendix A, pages 1 through 3. For feeder conduit and distribution conduit, BellSouth recommended 99% at all density zones; GTE recommended 100% at all density zones; and Carolina/Central recommended varying percentages from 100% to 85% based on density zones with 100% at the 0-5 density zone and 85% at the greater than 10,000 density zone. For buried cable (feeder and distribution) the same pattern holds true: BellSouth recommended 100% for buried feeder and 99% for buried distribution at all density zones; GTE recommended 93% for buried feeder and distribution at all density zones; and Carolina/Central recommended varying percentages from 100% to 85% for buried feeder cable and 100% to 80% for buried distribution cable based on density zones with 100% at the 0-5 density zone and 80% at the greater than 10,000 density zone. The Commission believes that it is appropriate to recognize increased sharing of structure costs in areas of higher density. Therefore, the Commission believes that Carolina/Central's recommended structure sharing percentages are more appropriate since they assume that at higher density zones, greater structure sharing will occur.

The Commission believes that it is reasonable to establish structure sharing percentages based on the percentages presented by Carolina/Central. These percentages are reasonable and recognize increased structure sharing at higher density zones. The Commission believes that these percentages are more reasonable and appropriate to be used in the FLEC studies.

CONCLUSIONS

The Commission concludes that it is appropriate to deny BellSouth's and GTE's Motions for Reconsideration in this regard, and require BellSouth and GTE to use the structure sharing percentages originally proposed by Carolina/Central in their FLEC studies. The Commission also grants Carolina/Central's Motion for Reconsideration in this regard. Therefore, the Commission, through this Order, is amending its FLEC Order issued April 20, 1998, by incorporating a finding that the appropriate structure sharing percentages for BellSouth, Carolina/Central, and GTE are the percentages proposed by Carolina/Central.

FINDING OF FACT NO. 5 - CABLE SIZING FACTORS

Commission Order: The Commission concluded, in Section 3(h) on page 35 of the FLEC Order, that it was appropriate to adopt the Public Staff's recommendation in this regard. The Commission concluded that the appropriate cable sizing factor inputs were as follows:

ILEC	Feeder	Distribution
BellSouth	73.1%	66.7%
Carolina/Central	69%	85%
GTE	69%	65%

These approved factors were the same as the ILECs had proposed with the exception of GTE.

Motion for Reconsideration:

CAROLINA/CENTRAL: Carolina/Central stated in their Motion for Reconsideration that the Commission apparently did not realize that the cable sizing factors are not the sole determinant of the objective cable utilization ratios. Carolina/Central noted that the BCPM uses two user-adjustable inputs to provision the number of distribution cable pairs: (1) distribution pairs per household and (2) cable sizing factors. Carolina/Central requested that the Commission amend its Order to reflect that the appropriate cable sizing factor input for Carolina/Central should be 66% for distribution cable, rather than 85%. The objective of this proposal is to produce a cable utilization ratio for Carolina/Central that is comparable to that of BellSouth and GTE.

INITIAL COMMENTS

AT&T: AT&T stated in its initial comments that Carolina/Central are requesting the Commission to amend its decision and find that an input value higher than 1.4 distribution pairs per household is appropriate. AT&T argued that a higher number is not supported by the evidence in the case and would be inconsistent with residential usage patterns observed in North Carolina. AT&T noted that forward-looking utilization rates should be higher than those in a monopoly environment and that competition produces incentives to manage all costs. Consequently, AT&T asserted that efficient carriers in a competitive market will eliminate excess spare capacity to ensure that the cost of carrying spare capacity will be less than the cost of reinforcing the network, since they, not consumers, will bear the costs of excess spare capacity in a competitive environment. AT&T maintained that without the need to account for these costs through cable sizing factors, the cable sizing factors and utilization rates observed in BCPM should be higher than those observed historically. For these reasons, AT&T argued that the Commission should deny Carolina/Central's Motion as to this issue.

NCCTA: The NCCTA recommended that the Commission deny BellSouth's, GTE's, and Carolina/Central's Motions for Reconsideration in their entirety. The NCCTA argued that the Commission Order reflects careful analysis of a mountain of written and oral evidence and that none of the issues raised by the ILECs in their Motions for Reconsideration raise new evidence or other matters which were not fully debated during the proceeding.

PUBLIC STAFF: The Public Staff stated in its initial comments that Carolina/Central are suggesting that when the Commission adjusted the number of cable pairs per household from 2.0 to 1.4, it should have changed the distribution cable sizing factor from 85% to 66% to achieve a utilization ratio comparable to that for GTE and BellSouth. The Public Staff stated that they believe that Carolina/Central's argument has merit and that there is no basis for a large difference between the utilization ratios of Carolina/Central and those of GTE and BellSouth. The Public Staff advocated that changing the distribution cable sizing factor from 85% to 66% as proposed by Carolina/Central would result in comparable utilization ratios.

REPLY COMMENTS

CAROLINA/CENTRAL: Carolina/Central stated in their reply comments that AT&T's comments completely mischaracterized the relief they were seeking as they did not ask the Commission to reconsider the finding on distribution pairs per household. Instead, Carolina/Central are asking the Commission to reconsider the cable sizing factor for distribution facilities and to adjust the factor from 85% to 66%. Carolina/Central noted that the Public Staff's comments on their Motion for Reconsideration supported their request. Specifically, Carolina/Central stated that the Public Staff commented that there is no basis for the large difference in the cable utilization ratios ordered for Carolina/Central when compared with the utilization ratios ordered for BellSouth and GTE, and that the cable sizing factor reduction proposed by Carolina/Central would produce comparable distribution cable utilization ratios.

DISCUSSION

The Commission Order adopted the Public Staff's original recommendation in this regard; i.e., an 85% cable sizing factor input for distribution facilities was considered appropriate for Carolina/Central and a factor of 1.4 distribution pairs per household was found appropriate for all three ILECs. After considering Carolina/Central's Motion for Reconsideration, the Public Staff is now recommending a change in Carolina/Central's distribution cable sizing factor from 85% to 66% in order to achieve a utilization ratio comparable to that for GTE and BellSouth.

Carolina/Central commented that the reason the cable sizing factor was originally proposed at the very high level of 85% for distribution cable was to compensate for the BCPM default input of 2.0 pairs per household, and thus produce a reasonable cable utilization ratio. The high level of Carolina/Central's distribution cable sizing factor was acknowledged in the Commission Order. Specifically, the FLEC Order stated that "Carolina/Central's cable sizing factor for distribution, while higher, is near the upper end of the default range." The Commission ordered a modification of the GTE feeder cable sizing factor to replicate Carolina/Central's cable sizing factor input for feeder cable, but did not require the same replication for the Carolina/Central cable sizing factor for distribution cable. Instead, the Commission found that 65% was an appropriate cable sizing factor for GTE for distribution.

The Commission agrees with the Public Staff that there is no basis for a large difference between the utilization ratios of Carolina/Central and those of BellSouth and GTE. Changing the distribution cable sizing factor input from 85% to 66%, as proposed by Carolina/Central, will result in comparable utilization ratios.

CONCLUSIONS

The Commission concludes that it is appropriate to grant Carolina/Central's Motion for Reconsideration in this regard. Therefore, the Commission, through this Order, is amending its FLEC Order by incorporating a finding that the appropriate cable sizing factor input for distribution cable for Carolina/Central is 66%.

FINDING OF FACT NO. 6 - DEPRECIATION

Commission Order: The Commission concluded, in Section 3(k) on page 41 of the FLEC Order, that it is appropriate to require the ILECs to select economic lives and future net salvage percentages that are within the Federal Communications Commission (FCC)-authorized ranges in order to comply with Criterion No. 5 of the FCC's prescribed ten cost-study criteria. For buildings, in which no range exists, the Commission concluded that the ILECs may use their proposed inputs.

Motions for Reconsideration:

GTE: GTE stated in its Motion for Reconsideration that it requests the Commission to reconsider its conclusion with respect to depreciation rates and allow the use of economic lives that GTE currently reflects in the financial results presented to investors and others. GTE stated that its depreciation rates are not regulated by the Commission and are, in some cases, higher than the ranges approved by the FCC.

AT&T: AT&T stated in its Motion for Reconsideration that BellSouth adjusted all economic lives and salvage percentage inputs that had previously been within the FCC ranges to the lowest possible inputs permitted in the FCC ranges and that its actions are inconsistent with the spirit, if not the intent, of the Commission Order. AT&T argued that BellSouth made these changes without being directed to do so by the Commission and without expressly bringing these changes to the attention of the Commission or the parties. AT&T asserted that BellSouth's inputs are unsupported by the record in this case and should not be permitted to stand.

INITIAL COMMENTS

BELLSOUTH: BellSouth argued that AT&T's "complaint" that BellSouth's revised economic lives and salvage values violate the spirit, if not the intent, of the FLEC Order is irrelevant. BellSouth stated that the FLEC Order does not give any indication that the revised inputs in question must fall at the top, middle, or bottom of the FCC-authorized ranges. The Commission left the determination of the appropriate economic lives and salvage values, within the FCC-authorized ranges, to the discretion of the ILECs. BellSouth stated that AT&T finds impropriety where none exists and that AT&T's Motion for Reconsideration should be dismissed.

AT&T: AT&T asserted in its comments that the FCC depreciation rates reflect the use of forward-looking technology and are unbiased toward any party. AT&T stated that GTE's Motion for Reconsideration on this issue should be dismissed since GTE's arguments are the same as presented in the hearing in this docket that the FCC rates do not reflect the costs actually incurred by GTE. AT&T concluded that the Commission correctly rejected GTE's reliance on depreciation rates that are too short and recover investment faster than an efficient competitor could in a competitive environment, and, accordingly, the Commission should deny GTE's request to reconsider its adoption of FCC-prescribed lives.

AT&T also asserted in its comments that the Commission should require BellSouth to comply with the FLEC Order, and modify **only** those depreciation lives (and costs) which were not forward-looking; i.e., outside the FCC-authorized ranges. AT&T claimed that BellSouth did not comply with the Commission Order and, instead, performed a wholesale rewrite of all of its proposed depreciation lives with the sole intent of maximizing costs that, ultimately, North Carolina consumers will bear, and without regard for its prior assertions that the "true" economic lives (and resulting costs) of its assets frequently lay elsewhere in the FCC-authorized ranges. AT&T argued that the Commission should require that BellSouth comply with its April 20, 1998, FLEC Order, and modify **only** those depreciation lives (and costs) which were not forward-looking (i.e. outside the FCC-authorized ranges).

NCCTA: The NCCTA recommended that the Commission deny BellSouth's, GTE's, and Carolina/Central's Motions for Reconsideration in their entirety. The NCCTA argued that the Commission Order reflects careful analysis of a mountain of written and oral evidence and that none of the issues raised by the ILECs in their Motions for Reconsideration raise new evidence or other matters which were not fully debated during the proceeding.

PUBLIC STAFF: The Public Staff stated that it believes that the FCC's requirement that depreciation rates must be within established ranges is clear and unequivocal. The Public Staff stated that no amount of evidence in this proceeding as to the economic lives currently used by GTE or any other ILEC alters the FCC's criterion.

REPLY COMMENTS

AT&T: AT&T asserted in its reply comments that BellSouth ignored the spirit and intent of the Commission Order when it selected, with no support, values in virtually every case at the bottom of the FCC ranges. AT&T argued that the net effect of BellSouth's quiet change was to increase BellSouth's universal service cost well beyond what the Commission intended, clearly exceeding the Commission's mandate. AT&T stated that BellSouth did not address the total lack of support offered by BellSouth for changing some of the economic lives and salvage values from BellSouth's original proposal to the lowest possible values in the FCC-prescribed ranges. AT&T asserted that BellSouth has offered no evidence for the quiet reduction nor any defense that its action was ordered by the Commission. AT&T stated that BellSouth's unwillingness to even address this issue speaks louder than words and that BellSouth understands that its actions are at odds with the Commission's intent. AT&T requested that the Commission direct BellSouth to submit a second revised version of BCPM 3.1 in which the inputs for depreciation are no lower than those offered by BellSouth in its cost model offered at the hearing.

DISCUSSION

The objective of the Commission's decision in this regard was to ensure that the economic lives and salvage values used in the FLEC studies would comply with the FCC's Criterion No. 5. The

Commission's FLEC Order does not specifically state that the ILECs should only change those economic lives and salvage values outside of the FCC's prescribed ranges to amounts within the FCC's ranges. However, the Commission agrees with AT&T that BellSouth's revised economic lives and salvage values are not in the spirit of the Commission's Order. Additionally, the Commission notes that its FLEC Order implicitly intended to order the ILECs to **revise only those rates that were not already in the FCC-authorized ranges** to fall within the FCC-authorized ranges.

As Appendix B, Pages 1 through 5 shows, Carolina/Central originally proposed two FLEC studies: (1) Carolina/Central's preferred FLEC study with Carolina/Central's proposed projected lives and future net salvage values; and (2) their FCC-Based FLEC Study with projected lives and future net salvage values that all were at the lowest points of the FCC-authorized ranges. Therefore, when Carolina/Central filed their revised FLEC studies on April 30, 1998, the projected lives and future net salvage values were the same as those previously used as inputs in their FCC-Based FLEC Studies. BellSouth also proposed two FLEC studies: (1) BellSouth's preferred FLEC study with BellSouth's proposed projected lives and future net salvage values; and (2) their FCC-Based FLEC Study with projected lives and future net salvage values that were at varying points of the FCC-authorized ranges and a few outside of the FCC-authorized ranges. When BellSouth filed its revised FLEC study on April 30, 1998, it revised all of the projected lives and future net salvage values to fall at the lowest points of the FCC-authorized ranges. GTE, on the other hand, originally proposed one FLEC study reflecting a mix of projected lives and future net salvage values, some of which were lower than the FCC-authorized ranges, some of which were higher, and some of which fell within the FCC-authorized ranges. When GTE filed its revised FLEC study on April 30, 1998, it revised all of the projected lives and future net salvage values to the lowest possible rates within the FCC-authorized ranges. The Commission notes that with the April 30, 1998 filing of the revised FLEC studies, all parties reflected projected lives and future net salvage values that were at the lowest end of the FCC-authorized ranges.

Additionally, the Commission notes that BellSouth reflected in its April 30, 1998 filing an estimated life of 7.5 years for Special Purpose Vehicles which is outside of the FCC-authorized range of 12 years to 18 years for Special Purpose Vehicles.

Based on the evidence, the Commission finds that it is appropriate to grant AT&T's Motion for Reconsideration in this regard and require BellSouth to re-file its FCC-Based FLEC Study and revise only those projected lives and future net salvage values that were previously outside of the FCC-authorized ranges. The Commission also believes that it is appropriate to require GTE to re-file its FLEC study and revise only those projected lives and future net salvage values that were originally outside of the FCC-authorized ranges. However, with regard to Carolina/Central, the Commission will not require them to revise their projected lives and future net salvage values as filed April 30, 1998 since Carolina/Central did not re-file their FLEC studies with projected lives and future net salvage values that were any different from those used in their original FCC-Based FLEC Studies.

Concerning GTE's Motion for Reconsideration, the Commission notes that GTE did not present any additional evidence to support its Motion. GTE simply is requesting that the Commission re-evaluate the evidence and change its decision to allow GTE to use its proposed economic lives and salvage values. The Commission does not believe that GTE's Motion should be granted because the

Commission fully analyzed all of the evidence on this issue when it made its decision, and no new evidence has been presented on the issue.

CONCLUSIONS

The Commission concludes that it is appropriate to grant AT&T's Motion for Reconsideration in this regard and to include both BellSouth and GTE in the finding in this regard. GTE and BellSouth should re-file their FCC-Based FLEC Studies and revise only those projected lives and future net salvage values that previously were outside of the FCC-authorized ranges to any point within the FCC-authorized ranges. The Commission denies GTE's Motion for Reconsideration in this regard.

FINDING OF FACT NO. 7 - COST OF CAPITAL

Commission Order: In Section 3(n) on pages 46-54 of the FLEC Order, the Commission noted that the FCC required that the cost of capital or rate of return used in a state's FLEC study must be either the authorized federal rate of return on interstate services, currently 11.25%, or the state's prescribed rate of return for intrastate services. After concluding that the FCC's authorized interstate overall rate of return of 11.25% was inappropriate for purposes of this proceeding (for the reasons stated in the FLEC Order), the Commission stated its belief that the evidence contained in the testimony of the Public Staff with respect to the rate of return issue is the most credible evidence in the record in this proceeding. Therefore, the Commission found that the prescribed cost of capital for intrastate services in North Carolina which is reasonable and appropriate for use in determining the forward-looking economic costs associated with providing universal services is 9.94%, based on a capital structure consisting of 58% common equity and 42% long-term debt, a cost of equity equal to 11.80%, and a cost of long-term debt equal to 7.38%.

Motion for Reconsideration:

GTE: GTE argued in its Motion for Reconsideration that the Commission's conclusion that the cost of capital is equal to 9.94%, which is more than 100 basis points lower than the current authorized federal return of 11.25%, is not logical and contrary to sound financial and economic principles presented in this case. GTE contended that it presented substantial evidence that GTE's current cost of capital is well above the current interstate level of 11.25% and persuasive evidence that the cost of capital has increased rather than decreased.

GTE also stated that since the FLEC Order requires the depreciation rates to be within the ranges approved by the FCC, at the very least, the FLEC Order should be consistent and reflect a cost of capital of 11.25% in order to be consistent with the return approved by the FCC in its Universal Service Order.

INITIAL COMMENTS

AT&T: AT&T stated in its initial comments that the Commission rejected the use of the 11.25% rate of return, which was established by the FCC in 1990, because the 11.25% rate was based on historic, embedded costs. AT&T urged the Commission to reject GTE's attempt to recover costs of capital that do not reflect forward-looking economic costs. AT&T also noted that evidence at the hearing demonstrated, and the Commission concluded, that the FCC's cost of capital of 11.25% was inappropriate due to changes in market factors which have occurred since the FCC adopted the 11.25% rate of return such as a 242 basis point decline in Treasury bond rates, lower inflation rates, and lower allowed rates of return on equity for telephone companies. AT&T believes that based on such factors, the Commission properly concluded that the appropriate forward-looking cost of capital is 9.94%.

NCCTA: While NCCTA did not specifically address the cost of capital issue in its initial comments, NCCTA recommended that the Commission deny GTE's Motion for Reconsideration in its entirety because the Commission Order reflects careful analysis of a mountain of evidence and none of the issues raised for reconsideration produce new evidence or other matters which were not fully debated during the proceeding.

PUBLIC STAFF: The Public Staff stated in its initial comments that while the FCC's requirement that depreciation rates be within FCC established ranges is clear and unequivocal, the FCC expressly allowed for the use of a state-prescribed intrastate rate of return and there was substantial evidence to support the Commission's findings as to the forward-looking cost of capital in North Carolina. Therefore, the Public Staff stated that there is no inconsistency with respect to the Commission's findings on depreciation and cost of capital, as argued by GTE.

REPLY COMMENTS

No party filed Reply Comments on this issue.

DISCUSSION

As explained in the Commission Order, evidence in the record shows that current interest rates, current inflation rates, and the national average of the allowed returns on equity for telephone companies for the first nine months of 1997 are less than in 1990 when the FCC adopted the 11.25% overall rate of return. Despite this explanation in the FLEC Order, GTE simply argued in its Motion for Reconsideration that "GTE presented substantial evidence that GTE's current cost of capital is well above the current interstate rate of return of 11.25%" and that "the evidence presented by GTE is persuasive that the cost of capital is increasing rather than decreasing." These statements are the entire substance contained in GTE's Motion for Reconsideration as to why the Commission should authorize a 13.12% rate of return for GTE.

GTE also argued that since the FLEC Order requires depreciation rates to be within the ranges approved by the FCC, the FLEC Order should be consistent and allow the rate of return to be 11.25%. However, as discussed in the FLEC Order and pointed out in the initial comments of the Public Staff, the FCC required that depreciation rates must be within the FCC-authorized ranges, while the rate of return must be either the authorized federal rate of return on interstate services, currently 11.25%, or the state's prescribed rate of return for intrastate services. Thus, the FLEC Order is consistent with the FCC's requirements with respect to depreciation rates and rate of return.

CONCLUSIONS

The Commission concludes that it is appropriate to deny GTE's Motion for Reconsideration on the cost of capital or rate of return issue.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth, Carolina/Central, and GTE shall file revised FLEC studies and spreadsheets reflecting the decisions in this Order no later than July 10, 1998.

2. That the revised FLEC studies filed by BellSouth, Carolina/Central, and GTE are subject to comment and review by the Public Staff with comments being filed no later than five days after the ILECs file their revised FLEC studies.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of July, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Robert V. Owens, Jr. did not participate.

Docket No. P-100, Sub 133b
Structure Sharing Inputs
Analysis of Carolina/Central
Original Position in 1/20/98 Filing

Appendix A
Page 1 of 3

	DENSITIES								
	0-5	6-100	101-200	201-650	651-850	851-2550	2551-5000	5001-10000	> 10001
Normal Structure									
Feeder Conduit	100%	97.50%	95%	92.50%	90%	90%	85%	85%	85%
Distribution Conduit	100%	95%	90%	80%	80%	80%	80%	80%	80%
Buried Feeder Cable	100%	97.50% [1]	95% [1]	92.50% [1]	90%[1]	90%[1]	85%[1]	85%[1]	85% [1]
Buried Distribution Cable	100%	95% [1]	90% [1]	80% [1]	80% [1]	80% [1]	80% [1]	80% [1]	80% [1]
Aerial Feeder Cable									
Poles	50%	50%	50%	50%	50%	50%	50%	50%	50%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	50%	50%	50%	50%	50%	50%	50%	50%	50%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Soft Rock Structure									
Feeder Conduit	100%	97.50%	95%	92.50%	90%	90%	85%	85%	85%
Distribution Conduit	100%	95%	90%	80%	80%	80%	80%	80%	80%
Buried Feeder Cable	100%	97.50% [1]	95% [1]	92.50% [1]	90% [1]	90% [1]	85% [1]	85% [1]	85% [1]
Buried Distribution Cable	100%	95% [1]	90% [1]	80% [1]	80% [1]	80% [1]	80% [1]	80% [1]	80% [1]
Aerial Feeder Cable									
Poles	50%	50%	50%	50%	50%	50%	50%	50%	50%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	50%	50%	50%	50%	50%	50%	50%	50%	50%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Hard Rock Structure									
Feeder Conduit	100%	98%	95%	92.50%	90%	90%	85%	85%	85%
Distribution Conduit	100%	95%	90%	80%	80%	80%	80%	80%	80%
Buried Feeder Cable	100%	97.50% [1]	95% [1]	92.50% [1]	90% [1]	90% [1]	85% [1]	85% [1]	85% [1]
Buried Distribution Cable	100%	95% [1]	90% [1]	80% [1]	80% [1]	80% [1]	80% [1]	80% [1]	80% [1]
Aerial Feeder Cable									
Poles	50%	50%	50%	50%	50%	50%	50%	50%	50%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	50%	50%	50%	50%	50%	50%	50%	50%	50%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%

[1] Percentage is 100% for Plow and Rocky Plow, and percentage presented for all other activities.

Docket No. P-100, Sub 133b
Structure Sharing Inputs
Analysis of BellSouth
Original Position in 1/16/98 Filing

Appendix A
Page 2 of 3

DENSITIES

	0-5	6-100	101-200	201-650	651-850	851-2550	2551-5000	5001-10000	> 10001
Normal Structure									
Feeder Conduit	99%	99%	99%	99%	99%	99%	99%	99%	99%
Distribution Conduit	99%	99%	99%	99%	99%	99%	99%	99%	99%
Buried Feeder Cable	100%	100%	100%	100%	100%	100%	100%	100%	100%
Buried Distribution Cable	99%	99%	99%	99%	99%	99%	99%	99%	99%
Aerial Feeder Cable									
Poles	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Soft Rock Structure									
Feeder Conduit	99%	99%	99%	99%	99%	99%	99%	99%	99%
Distribution Conduit	99%	99%	99%	99%	99%	99%	99%	99%	99%
Buried Feeder Cable	100%	100%	100%	100%	100%	100%	100%	100%	100%
Buried Distribution Cable	99%	99%	99%	99%	99%	99%	99%	99%	99%
Aerial Feeder Cable									
Poles	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%	36.13%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Hard Rock Structure									
Feeder Conduit	99%	99%	99%	99%	99%	99%	99%	99%	99%
Distribution Conduit	99%	99%	99%	99%	99%	99%	99%	99%	99%
Buried Feeder Cable	100%	100%	100%	100%	100%	100%	100%	100%	100%
Buried Distribution Cable	99%	99%	99%	99%	99%	99%	99%	99%	99%
Aerial Feeder Cable									
Poles	36%	36%	36%	36%	36%	36%	36%	36%	36%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	36%	36%	36%	36%	36%	36%	36%	36%	36%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%

Docket No. P-100, Sub 133b
Structure Sharing Inputs
Analysis of GTE South
Original Position in 1/16/98 Filing

DENSITIES

	0-5	6-100	101-200	201-650	651-850	851-2550	2551-5000	5001-10000	>10001
Normal Structure									
Feeder Conduit	100%	100%	100%	100%	100%	100%	100%	100%	100%
Distribution Conduit	100%	100%	100%	100%	100%	100%	100%	100%	100%
Buried Feeder Cable	93%	93%	93%	93%	93%	93%	93%	93%	93%
Buried Distribution Cable	93%	93%	93%	93%	93%	93%	93%	93%	93%
Aerial Feeder Cable									
Poles	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Soft Rock Structure									
Feeder Conduit	100%	100%	100%	100%	100%	100%	100%	100%	100%
Distribution Conduit	100%	100%	100%	100%	100%	100%	100%	100%	100%
Buried Feeder Cable	93%	93%	93%	93%	93%	93%	93%	93%	93%
Buried Distribution Cable	93%	93%	93%	93%	93%	93%	93%	93%	93%
Aerial Feeder Cable									
Poles	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Hard Rock Structure									
Feeder Conduit	100%	100%	100%	100%	100%	100%	100%	100%	100%
Distribution Conduit	100%	100%	100%	100%	100%	100%	100%	100%	100%
Buried Feeder Cable	93%	93%	93%	93%	93%	93%	93%	93%	93%
Buried Distribution Cable	93%	93%	93%	93%	93%	93%	93%	93%	93%
Aerial Feeder Cable									
Poles	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%
Aerial Distribution Cable									
Poles	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%	56.49%
Anchors and Guys	100%	100%	100%	100%	100%	100%	100%	100%	100%

Appendix B
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SUMMARY OF ECONOMIC LIVES AND FUTURE NET SALVAGE PERCENTAGES

	FCC PRESCRIBED RANGES				CAROLINA/CENTRAL			
	Projection Life Range (Yrs.)		Future Net Salvage Range (%)		Carolina/Central BCPM 3.1 Preferred		Carolina/Central FCC-Based	
	Low	High	Low	High	Life (Yrs.)	Salvage (%)	Life (Yrs.)	Salvage (%)
Motor Vehicles	7.50	9.50	10.00	20.00	**6.50**	20.00	7.50	10.00
Aircraft	7.00	10.00	30.00	60.00				
Special Purpose Vehicles	12.00	18.00	0.00	10.00	**6.50**	**20.00**	12.00	0.00
Garage Work Equipment	12.00	18.00	0.00	10.00	**11.00**	**-5.00**	12.00	0.00
Other Work Equipment	12.00	18.00	0.00	10.00	**11.00**	**-5.00**	12.00	0.00
Buildings					31.00	-10.00	30.00	0.00
Furniture	15.00	20.00	0.00	10.00	**14.00**	4.00	15.00	0.00
Office Supplies Equipment	10.00	15.00	0.00	10.00	10.00	3.00	10.00	0.00
Co. Communications Equipment	7.00	10.00	-5.00	10.00				
General Purpose Computers	6.00	8.00	0.00	5.00	6.10	5.00	6.00	0.00
Digital Switching	16.00	18.00	0.00	5.00	**11.00**	**-2.00**	16.00	0.00
Operator Systems - Combined	8.00	12.00	0.00	5.00				
Circuit Equipment - Digital	11.00	13.00	0.00	5.00	11.00	0.00	11.00	0.00
Public Telephones	7.00	10.00	0.00	10.00				
Poles	25.00	35.00	-75.00	-50.00	**14.00**	**-30.00**	25.00	-75.00
Aerial Cable - Metallic	20.00	26.00	-35.00	-10.00	**15.00**	-23.00	20.00	-35.00
Aerial Cable - Non-Metallic	25.00	30.00	-25.00	-10.00	**20.00**	**-7.00**	25.00	-25.00
Underground Cable - Metallic	25.00	30.00	-30.00	-5.00	**15.00**	**-41.00**	25.00	-30.00
Underground Cable - Non-Met	25.00	30.00	-20.00	-5.00	**20.00**	-13.00	25.00	-20.00
Buried Cable - Metallic	20.00	26.00	-10.00	0.00	**18.00**	-7.00	20.00	-10.00
Buried Cable - Non-Metallic	25.00	30.00	-10.00	0.00	**20.00**	-1.00	25.00	-10.00
Intrabuilding Network Cab-Met	20.00	25.00	-30.00	-5.00				
Intrabuilding Net Cab-Non-Met	25.00	30.00	-15.00	0.00				
Conduit Systems	50.00	60.00	-10.00	0.00	**39.70**	**-15.00**	50.00	-10.00

Shadowed amount represents input outside of FCC prescribed range.

SUMMARY OF ECONOMIC LIVES AND FUTURE NET SALVAGE PERCENTAGES
FCC PRESCRIBED RANGES

	Projection Life Range (Yrs.)		Future Net Salvage Range (%)		REVISED 4/30/98 Carolina/Central	
	Low	High	Low	High	Life (Yrs.)	Salvage (%)
Motor Vehicles	7.50	9.50	10.00	20.00	7.50	10.00
Aircraft	7.00	10.00	30.00	60.00		
Special Purpose Vehicles	12.00	18.00	0.00	10.00	12.00	0.00
Garage Work Equipment	12.00	18.00	0.00	10.00	12.00	0.00
Other Work Equipment	12.00	18.00	0.00	10.00	12.00	0.00
Buildings					30.00	0.00
Furniture	15.00	20.00	0.00	10.00	15.00	0.00
Office Supplies Equipment	10.00	15.00	0.00	10.00	10.00	0.00
Co. Communications Equipment	7.00	10.00	-5.00	10.00		
General Purpose Computers	6.00	8.00	0.00	5.00	6.00	0.00
Digital Switching	16.00	18.00	0.00	5.00	16.00	0.00
Operator Systems - Combined	8.00	12.00	0.00	5.00		
Circuit Equipment - Digital	11.00	13.00	0.00	5.00	11.00	0.00
Public Telephones	7.00	10.00	0.00	10.00		
Poles	25.00	35.00	-75.00	-50.00	25.00	-75.00
Aerial Cable - Metallic	20.00	26.00	-35.00	-10.00	20.00	-35.00
Aerial Cable - Non-Metallic	25.00	30.00	-25.00	-10.00	25.00	-25.00
Underground Cable - Metallic	25.00	30.00	-30,00	-5.00	25.00	-30.00
Underground Cable - Non-Met	25.00	30.00	-20.00	-5.00	25.00	-20.00
Buried Cable - Metallic	20.00	26.00	-10.00	0.00	20.00	-10.00
Buried Cable - Non-Metallic	25.00	30.00	-10.00	0.00	25.00	-10.00
Intrabuilding Network Cab-Met	20.00	25.00	-30.00	-5.00		
Intrabuilding Net Cab-Non-Met	25.00	30.00	-15.00	0.00		
Conduit Systems	50.00	60.00	-10.00	0.00	50.00	-10.00

SUMMARY OF ECONOMIC LIVES AND FUTURE NET SALVAGE PERCENTAGES

	FCC PRESCRIBED RANGES				BELLSOUTH			
	Projection Life Range (Yrs.)		Future Net Salvage Range (%)		BellSouth BCPM 3.1 Preferred		BellSouth FCC-Based	
	Low	High	Low	High	Life (Yrs.)	Salvage (%)	Life (Yrs.)	Salvage (%)
Motor Vehicles	7.50	9.50	10.00	20.00	8.10	12.00	8.10	12.00
Aircraft	7.00	10.00	30.00	60.00				
Special Purpose Vehicles	12.00	18.00	0.00	10.00	**7.00**	0.00	12.00	0.00
Garage Work Equipment	12.00	18.00	0.00	10.00	12.00	0.00	12.00	0.00
Other Work Equipment	12.00	18.00	0.00	10.00	16.20	0.00	16.20	0.00
Buildings					45.00	2.69	45.00	2.69
Furniture	15.00	20.00	0.00	10.00	**14.10**	9.00	**14.10**	9.00
Office Supplies Equipment	10.00	15.00	0.00	10.00	11.50	10.00	11.50	10.00
Co. Communications Equipment	7.00	10.00	-5.00	10.00				
General Purpose Computers	6.00	8.00	0.00	5.00	**5.00**	0.00	**5.50**	0.00
Digital Switching	16.00	18.00	0.00	5.00	**10.00**	0.00	**15.50**	0.00
Operator Systems - Combined	8.00	12.00	0.00	5.00				
Circuit Equipment - Digital	11.00	13.00	0.00	5.00	**9.30**	0.00	**10.50**	0.00
Public Telephones	7.00	10.00	0.00	10.00				
Poles	25.00	35.00	-75.00	-50.00	34.00	-61.00	34.00	-61.00
Aerial Cable - Metallic	20.00	26.00	-35.00	-10.00	**14.00**	-14.00	**18.00**	-14.00
Aerial Cable - Non-Metallic	25.00	30.00	-25.00	-10.00	**20.00**	-15.00	25.00	-15.00
Underground Cable - Metallic	25.00	30.00	-30.00	-5.00	**12.00**	-17.00	**24.00**	-17.00
Underground Cable - Non-Met	25.00	30.00	-20.00	-5.00	**20.00**	-15.00	25.00	-15.00
Buried Cable - Metallic	20.00	26.00	-10.00	0.00	**14.00**	-9.00	**18.00**	-9.00
Buried Cable - Non-Metallic	25.00	30.00	-10.00	0.00	**20.00**	-6.00	25.00	-6.00
Intrabuilding Network Cab-Met	20.00	25.00	-30.00	-5.00				
Intrabuilding Net Cab-Non-Met	25.00	30.00	-15.00	0.00				
Conduit Systems	50.00	60.00	-10.00	0.00	59.00	-8.00	59.00	-8.00

Shadowed amount represents input outside of FCC prescribed range.

SUMMARY OF ECONOMIC LIVES AND FUTURE NET SALVAGE PERCENTAGES

	FCC PRESCRIBED RANGES				GTE	
	Projection Life Range (Yrs.)		Future Net Salvage Range (%)		GTE BCPM 3.0	
	Low	High	Low	High	Life (Yrs.)	Salvage (%)
Motor Vehicles	7.50	9.50	10.00	20.00	8.00	20.00
Aircraft	7.00	10.00	30.00	60.00		
Special Purpose Vehicles	12.00	18.00	0.00	10.00	**0.00**	0.00
Garage Work Equipment	12.00	18.00	0.00	10.00	**10.00**	0.00
Other Work Equipment	12.00	18.00	0.00	10.00	**10.00**	0.00
Buildings					30.00	0.00
Furniture	15.00	20.00	0.00	10.00	**10.00**	0.00
Office Supplies Equipment	10.00	15.00	0.00	10.00	10.00	0.00
Co. Communications Equipment	7.00	10.00	-5.00	10.00		
General Purpose Computers	6.00	8.00	0.00	5.00	**5.00**	0.00
Digital Switching	16.00	18.00	0.00	5.00	**10.00**	0.00
Operator Systems - Combined	8.00	12.00	0.00	5.00		
Circuit Equipment - Digital	11.00	13.00	0.00	5.00	**8.00**	0.00
Public Telephones	7.00	10.00	0.00	10.00		
Poles	25.00	35.00	-75.00	-50.00	25.00	-50.00
Aerial Cable - Metallic	20.00	26.00	-35.00	-10.00	**15.00**	-10.00
Aerial Cable - Non-Metallic	25.00	30.00	-25.00	-10.00	**20.00**	**0.00**
Underground Cable - Metallic	25.00	30.00	-30.00	-5.00	**15.00**	-10.00
Underground Cable - Non-Met	25.00	30.00	-20.00	-5.00	**20.00**	**0.00**
Buried Cable - Metallic	20.00	26.00	-10.00	0.00	**15.00**	-10.00
Buried Cable - Non-Metallic	25.00	30.00	-10.00	0.00	**20.00**	0.00
Intrabuilding Net Cab-Met	20.00	25.00	-30.00	-5.00		
Intrabuilding Net Cab-Non-Met	25.00	30.00	-15.00	0.00		
Conduit Systems	50.00	60.00	-10.00	0.00	**40.00**	-10.00

Shadowed amount represents input outside of FCC prescribed range.

SUMMARY OF ECONOMIC LIVES AND FUTURE NET SALVAGE PERCENTAGES

	FCC PRESCRIBED RANGES							
	Projection Life Range (Yrs.)		Future Net Salvage Range (%)		REVISED 4/30/98 BELLSOUTH		REVISED 4/30/98 GTE	
	Low	High	Low	High	Life (Yrs.)	Salvage (%)	Life (Yrs.)	Salvage (%)
Motor Vehicles	7.50	9.50	10.00	20.00	7.50	10.00	7.50	10.00
Aircraft	7.00	10.00	30.00	60.00				
Special Purpose Vehicles	12.00	18.00	0.00	10.00	* 7.50	0.00	12.00	0.00
Garage Work Equipment	12.00	18.00	0.00	10.00	12.00	0.00	12.00	0.00
Other Work Equipment	12.00	18.00	0.00	10.00	12.00	0.00	12.00	0.00
Buildings					45.00	3.00	30.00	0.00
Furniture	15.00	20.00	0.00	10.00	15.00	0.00	15.00	0.00
Office Supplies Equipment	10.00	15.00	0.00	10.00	10.00	0.00	10.00	0.00
Co. Communications Equipment	7.00	10.00	-5.00	10.00				
General Purpose Computers	6.00	8.00	0.00	5.00	6.00	0.00	6.00	0.00
Digital Switching	16.00	18.00	0.00	5.00	16.00	0.00	16.00	0.00
Operator Systems - Combined	8.00	12.00	0.00	5.00				
Circuit Equipment - Digital	11.00	13.00	0.00	5.00	11.00	0.00	11.00	0.00
Public Telephones	7.00	10.00	0.00	10.00				
Poles	25.00	35.00	-75.00	-50.00	25.00	-75.00	25.00	-75.00
Aerial Cable - Metallic	20.00	26.00	-35.00	-10.00	20.00	-35.00	20.00	-35.00
Aerial Cable - Non-Metallic	25.00	30.00	-25.00	-10.00	25.00	-25.00	25.00	-25.00
Underground Cable - Metallic	25.00	30.00	-30.00	-5.00	25.00	-30.00	25.00	-30.00
Underground Cable - Non-Met	25.00	30.00	-20.00	-5.00	25.00	-20.00	25.00	-20.00
Buried Cable - Metallic	20.00	26.00	-10.00	0.00	20.00	-10.00	20.00	-10.00
Buried Cable - Non-Metallic	25.00	30.00	-10.00	0.00	25.00	-10.00	25.00	-10.00
Intrabuilding Network Cab-Met	20.00	25.00	-30.00	-5.00				
Intrabuilding Net Cab-Non-Met	25.00	30.00	-15.00	0.00				
Conduit Systems	50.00	60.00	-10.00	0.00	50.00	-10.00	50.00	-10.00

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Designation of Carriers Eligible for Universal Support	))	ORDER REQUIRING LIFELINE/LINK-UP INFORMATION IN DIRECTORIES

BY THE COMMISSION: On May 22, 1998, the Public Staff requested the Commission to issue an Order requiring all carriers that offer Lifeline and Link-Up service and that issue telephone directories to provide the information attached in Appendix A in their directories at the next possible publication date.

In support of this motion, the Public Staff showed as follows:

1. On December 23, 1997, the Commission issued its final order in Docket No. P-100, Sub 133f, approving Lifeline and Link-Up programs. Thereafter, an Ad Hoc Committee was formed to address ways to increase participation in both programs by low income subscribers. The first meeting was held on February 17, 1998, and other meetings followed. Karen Long of the Attorney General's office is acting as coordinator.

2. Earlier, on December 15, 1997, the Commission issued an Order in Docket No. P-100, Sub 133c, designating eligible telecommunications carriers (ETCs) for receiving universal service support. One of the criteria for ETC designation is that a carrier offer and advertise certain services, including Lifeline and Link-Up. Decretal paragraph 4 of the order reads as follows:

> 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.

3. As part of its work, the Ad Hoc Committee has developed information on Lifeline and Link-Up for inclusion in telephone directories. A copy is attached as Appendix A. The Public Staff believes that this information should be provided uniformly by ETCs. Since some ETCs are not members of the Ad Hoc Committee and did not participate in the development of this information, the Public Staff believes it would be appropriate for the Commission to issue an Order requiring all ETCs that issue a directory to include this information as soon as practicable in accordance with the December 15, 1997, Order.

After careful consideration, the Commission concludes that all ETCs that issue a directory should include the information set out in Appendix A in their directories as soon as practicable in accordance with the December 15, 1997, Order.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the __2nd__ day of June, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

Lifeline and Link-Up Programs

The North Carolina Utilities Commission and the Federal Communications Commission have established two programs to make telephone service more affordable. Under the plans, qualified low-income telephone customers receive a discount on the installation for new service and a discount on monthly local telephone service.

Who Qualifies?
Current recipients of Supplemental Security Income (SSI), Food Stamps or Temporary Assistance for Needy Families also known as Work First (formerly Aid for Families with Dependent Children).

Link-Up
Provides for a discount of 50% of tariffed charges up to $30 for new installations at the subscriber's principal place of residence.

Lifeline Program
Reduces the monthly local telephone bill for low-income customers.

How to Apply for these Programs?

If you do not have service and want to apply for both Link-Up and Lifeline:
- Contact the local telephone company and place an application for service.
- A Link-Up application form will be mailed to you.
- Take the form to the appropriate agency -- either the Department of Social Services or the Social Security Administration -- for approval.
- Once the form is completed by the agency, the agency will mail the form to your serving telephone company.
- Your service will be installed when your telephone company receives the approved form. At that time the credit for Link-Up will be applied and the monthly Lifeline discount will begin. If you request service to be installed before the approved form is received, the service will be provided without the Link-Up credit. Your monthly Lifeline discount will begin only when the approved form has been received.

If you have service and want to apply for the Lifeline Discount:
- Contact the appropriate agency - either the Department of Social Services or the Social Security Administration.
- The Social Services caseworker or the SSA representative will complete the Lifeline form for you and mail it to the local telephone company.
- When the telephone company receives the approved application, the discount for Lifeline will begin.

Call your Social Services Caseworker, your SSA representative
or your local telephone company for more information about these programs.

The Lifeline program is supported by the federal and state universal service support mechanisms.
Link-Up is supported by the federal universal service support mechanism.

DOCKET NO. P-100, SUB 133d

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of General Proceeding to Determine Permanent Pricing for Unbundled Network Elements	)))	ORDER ADOPTING PERMANENT PRICES FOR UNBUNDLED NETWORK ELEMENTS

HEARD IN: Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on March 17 - 20 and March 23 - 27, 1998

BEFORE: Commissioner William R. Pittman, Presiding; and Commissioners J. Richard Conder and Robert V. Owens, Jr.

APPEARANCES:

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.:

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BY THE COMMISSION: This matter is before the North Carolina Utilities Commission (Commission) pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (TA96 or the Act), North Carolina General Statute 62-110(f1), and various Commission Orders.

BACKGROUND

Section 251(c) of TA96 requires each incumbent local exchange carrier (ILEC) to provide interconnection to requesting telecommunications carriers with the ILEC's network and unbundled access to network elements on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of interconnection agreements and Section 252 of the Act. Section 252(b) provides for the arbitration by state regulatory commissions of unresolved issues between ILECs and requesting carriers concerning agreements for interconnection and network elements pursuant to Section 251 of the Act. North Carolina General Statute 62-110(f1) provides for the determination by the Commission of appropriate rates for interconnection between local exchange companies and competing local providers (CLPs).

Pursuant to Section 252(b) of the Act, AT&T Communications of the Southern States, Inc. (AT&T), MCI Telecommunications Corporation (MCI), and Sprint Communications Company, L.P. (Sprint) filed petitions requesting the Commission to arbitrate open issues in negotiations with BellSouth Telecommunications, Inc. (BellSouth) and GTE South Incorporated (GTE). MCI also filed a petition for arbitration with Carolina Telephone and Telegraph Company and Central Telephone Company (Carolina/Central).

After evidentiary hearings, the Commission issued Recommended Arbitration Orders (RAOs) as follows:

Docket No. P-140, Sub 50 (AT&T/BellSouth), December 23, 1996
Docket No. P-141, Sub 29 (MCI/BellSouth), December 23, 1996
Docket No. P-140, Sub 51 (AT&T/GTE), February 4, 1997
Docket No. P-141, Sub 30 (MCI/GTE), February 4, 1997
Docket No. P-294, Sub 8 (Sprint/BellSouth), April 7, 1997
Docket No. P-294, Sub 9 (Sprint/GTE), April 7, 1997
Docket No. P-141, Sub 31 (MCI/Carolina/Central), May 1, 1997

The Commission ruled in the RAOs that prices for unbundled network elements (UNEs) should be established as interim rates subject to true-up at such time as the Commission established permanent rates based on appropriate cost studies. In addition to the arbitrated agreements, the ILECs have entered into negotiated agreements containing interim prices for interconnection and unbundled network elements and/or Most Favored Nation provisions. BellSouth has filed a Statement of Generally Available Terms and Conditions (SGAT) pursuant to Section 252(f) of the Act, which also contains interim prices subject to true-up.

CONSOLIDATED DOCKET

By Order issued September 27, 1997, the Commission consolidated the arbitration dockets and scheduled a hearing on the issue of permanent prices for unbundled network elements. The Commission's decision in this consolidated proceeding will affect all interim prices offered or charged by the ILECs for unbundled network elements.

Pursuant to the Order of September 27, 1997, four ILECs -- BellSouth, Carolina/Central, and GTE -- as well as intervenors AT&T and MCI filed pricing proposals and supporting cost studies. Interventions were filed by Business Telecom, Inc., KMC Telecom, Inc. (KMC), ICG Telecom Group, Inc. (ICG), Interpath Communications, Inc., and Intermedia Communications, Inc. (Intermedia) (collectively referred to as the New Entrants), and the North Carolina Cable Telecommunications Association (NCCTA). The Public Staff and the Attorney General also intervened.

The matter came on for hearing on March 17, 1998. BellSouth presented the testimony of Alphonso J. Varner (direct and rebuttal), William P. Zarakas and Margaret K. Thompson (direct and rebuttal), Wayne Gray (direct), William E. Taylor (direct and rebuttal), David Garfield (direct), Michael E. Dirmeier, Jamshed K. Madan, and David C. Newton (rebuttal), Randall Billingsley (rebuttal), and Eno Landry (rebuttal). Carolina/Central presented the testimony of Michael R. Hunsucker (direct, supplemental direct, and rebuttal), Carl Laemmli (direct and rebuttal), Bill Bollinger (direct, supplemental direct, and rebuttal), Randy G. Farrar (direct and supplemental direct), James D. Dunbar, Jr. (direct and supplemental direct), and Kent W. Dickerson (direct, supplemental direct, and rebuttal). GTE presented the testimony of John P. Blanchard (direct), Vicky Nash Shaw and Rodney Langley (direct and supplemental direct), Terry R. Dye (direct, supplemental direct, and rebuttal), Bert Steele (direct and supplemental direct), Michael J. Doane (direct, supplemental direct, and rebuttal), Gregory D. Jacobson (direct), and Anthony J. Flesch (direct and rebuttal), David E. Drake (rebuttal), Timothy Tardiff (rebuttal), and Robert Cellupica (rebuttal). AT&T presented the testimony of Richard Cabe (direct and rebuttal), Wayne Ellison (direct, supplemental direct, and rebuttal), James W. Wells, Jr. (direct, supplemental direct, and rebuttal), and Catherine Petzinger (rebuttal). AT&T and MCI presented the testimony of Don J. Wood (direct, supplemental direct, and rebuttal), Rick Bissell (direct and rebuttal), Mike Natelli (direct and supplemental direct), Jeffrey A. King (direct, supplemental direct, and rebuttal), Thomas Hyde (rebuttal), Ernest M. Carter (rebuttal), John C. Klick (rebuttal), and Russell G. Heikes (rebuttal). The New Entrants presented the testimony of Carl Jackson (direct and rebuttal), Donald C. Davis (direct and rebuttal), Peter J. Gose (direct and rebuttal), Kenneth P. Solomon (rebuttal), and Robert McMillin (rebuttal). The North Carolina Cable Telecommunications Association (NCCTA) presented the testimony of William J. Barta (direct and rebuttal). Testimony of the following witnesses was entered into the record by stipulation: Walter S.

Reid (direct and rebuttal), Ellis E. Smith (direct), Dorissa C. Redmond (rebuttal), and G. David Cunningham (rebuttal) for BellSouth; Thomas F. Gilbert (rebuttal) and Lawrence K. Vanston (direct) for GTE; James H. Vander Weide for Carolina/Central; Michael R. Baranowski (rebuttal) for MCI; Richard B. Lee (direct and rebuttal) for AT&T/MCI; and John Robert Hinton (direct) for the Public Staff.

During the course of this proceeding, the Commission has taken judicial notice of the record in Docket No. P-100, Sub 133b, regarding the adoption of a model for submission to the FCC to determine the forward-looking economic cost (FLEC) of providing universal service in the North Carolina service territories of BellSouth, GTE, and Carolina/Central. On April 20, 1998, the Commission issued an Order in that docket (hereinafter referred to as the FLEC Docket) finding it appropriate to conduct separate cost studies for each of the ILECs using the Benchmark Cost Proxy Model (BCPM) 3.1 and company-specific user adjustable inputs and parameters with certain modifications. The Commission's findings and conclusions in the FLEC Docket will apply to this docket to the extent possible, recognizing that the ILECs have used different approaches in determining their costs of unbundled network elements.

The Commission, as requested by certain parties to this proceeding, has also taken judicial notice of relevant reports and orders entered by regulatory bodies in other jurisdictions. In addition, during the pendency of this proceeding, relevant pleadings were filed by the parties and various other Orders were entered by the Commission. Those pleadings and Orders, being matters of public record which appear in the Official File for this docket maintained by the Chief Clerk, will not be detailed in the introductory portion of this Order. A glossary of the acronyms referenced in this Order is attached hereto as Appendix A.

WHEREUPON, the Commission now makes the following

FINDINGS OF FACT

1. The appropriate basis for establishing permanent prices for unbundled network elements and interconnection is total element long-run incremental cost (TELRIC) plus a reasonable allocation of joint and common costs, which include a reasonable profit or return.

2. The proposed rate additives to recover historical and/or stranded costs are inconsistent with both the Telecommunications Act of 1996 and current state regulatory policy which is premised on price plan regulation.

3. The proposed interim universal service surcharges are outside the scope of this proceeding.

4. The cost studies presented by the ILECs, with certain modifications and adjustments, are reasonable and appropriate for determining their respective costs of providing unbundled network elements and local interconnection.

5. Bias was introduced into BellSouth's loop sample by virtue of BellSouth's having excluded certain business loops from its study. An adjustment should be made to correct such bias,

and said adjustment should be made in the manner advocated by the Public Staff in its Proposed Order.

6. Carolina/Central should be required to modify their cost studies to reflect their actual loop investment for purposes of developing their unbundled loop costs.

7. The reasonable and appropriate overall costs of capital for use in the cost studies to determine the forward-looking economic costs associated with the provision of unbundled network elements and interconnection equal 9.96% for BellSouth, 10.01% for GTE, and 10.10% for Carolina/Central.

8. The reasonable and appropriate economic lives and future net salvage values for calculating depreciation rates for use in the cost studies are those which were adopted and approved by the Commission in the context of Docket No. P-100, Sub 133b, as shown on Appendix B to this Order.

9. The reasonable and appropriate tax rates and regulatory fee for use in the cost studies are: federal income tax rate, 35%; state income tax rate, 6.9%; and regulatory fee, 0.09%.

10. The recurring and nonrecurring charges proposed by the ILECs should be modified to reflect the changes in the annual cost factors which the Commission has found to be reasonable and appropriate herein.

11. GTE and Carolina/Central should be required to file proposed rates and cost studies for each of the various types of loops and local switching elements identified herein and for access to poles, ducts, and conduits.

12. The drop wire lengths utilized by the ILECs in their cost studies are reasonable and appropriate for purposes of this proceeding.

13. The reasonable and appropriate structure sharing percentages to be used by the ILECs are those that were adopted and approved by the Commission in the context of Docket No. P-100, Sub 133b.

14. The reasonable and appropriate loading factors to be used by the ILECs are those that were adopted and approved by the Commission in the context of Docket No. P-100, Sub 133b.

15. The switching costs proposed by the ILECs, subject to certain modifications and adjustments, are reasonable and appropriate for recovering their respective switching costs associated with providing UNEs and interconnection.

16. The ILECs' proposed shared and common cost factors are reasonable and appropriate and should be adopted.

17. The ILECs' fill factor/utilization ratios including distribution pairs per residential housing unit for use in calculating cable and wire facilities as filed should be adopted with the

exception of necessary adjustments to comply with the Commission Orders issued in the FLEC Docket.

18. BellSouth's assumptions regarding bridge tap, cable size, and tapering should be adopted for use in setting its permanent UNE rates.

19. Vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies, as modified by this Order.

20. BellSouth's recommended copper/fiber crossover of 12,000 feet is reasonable and appropriate.

21. The nonrecurring charges proposed by the ILECs, subject to certain modifications and adjustments, are reasonable and appropriate for recovering their respective nonrecurring costs associated with providing UNEs and interconnection.

22. The reasonable and appropriate fallout rate for use by the ILECs in their calculations of nonrecurring costs is 10%.

23. Nonrecurring costs, as approved herein, associated with the disconnection of the various loops and ports should be recovered through the recurring rates associated with those loops and ports. Such recovery should be accomplished by spreading the discounted costs over the expected life of the installation, which the Commission has determined to be four years. The reasonable and appropriate discount rates are the overall costs of capital adopted for the various ILECs for purposes of this proceeding.

24. GTE's proposal to establish new nonrecurring costs for resale services is outside the scope of this proceeding.

25. The one-time development costs for new operations support systems (OSS) and improvements to existing systems that the ILECs propose to recover through nonrecurring charges should be recovered through recurring rates applicable to users of the OSS.

26. Travel times included by BellSouth in developing nonrecurring costs are not overestimated and should be approved.

27. The collocation charges proposed by the ILECs, as modified, are cost-based, reasonable, and appropriate.

28. BellSouth's proposed application fee for physical collocation is excessive and should be reduced to its current tariffed rate of $3,850.

29. BellSouth should allow CLPs to use wire cages for physical collocation.

30. GTE's revised collocation rates should be adopted, and GTE is required to refile its intrastate tariff and include the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered.

31. While collocation is a legally permissible way for an ILEC to provide access to UNEs, the Commission declines to rule at this point whether there are any other legally permissible or practical ways for the ILECs to provide such access.

32. Proposals for geographical deaveraging of UNE prices are premature and should be rejected for purposes of this proceeding.

33. The ILECs should not be required to combine unbundled network elements for CLPs. The ILECs have adequately answered the CLPs' complaints related to recombination requirements, discrimination, inefficiencies, and Integrated Digital Loop Carrier (IDLC)/Universal Digital Loop Carrier (UDLC) technology, including associated Digital Loop Carrier (DLC) related cost study inputs.

34. The proposals of BellSouth and GTE to apply the unbundled network elements rates for local switching and transport to interconnection are reasonable and appropriate.

35(a). The cost recovery mechanism for service provider number portability (SPNP) or interim number portability (INP) costs advocated by BellSouth, GTE, and Carolina/Central is reasonable and appropriate.

35(b). GTE's proposed rates for INP (specifically remote call forwarding - RCF) are excessive and should be reduced.

36. The rates for UNEs should be excluded from the price plans of the ILECs.

37. The matter of reciprocal and symmetrical compensation is outside the scope of this proceeding.

38. GTE's unspecified recovery mechanism for one-time implementation costs, which may not be appropriately recovered through UNE rates, is outside the scope of this proceeding.

39. Rates to be filed and approved pursuant to this Order will be just, reasonable, nondiscriminatory, and cost-based in accordance with federal and state law.

I. PRICING STANDARD

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Issue: Does TELRIC plus a reasonable allocation of joint and common costs constitute the most appropriate basis for establishing permanent prices for UNEs and interconnection?

POSITIONS OF PARTIES

All of the parties to this proceeding generally agreed and took the position that the appropriate basis for establishing permanent prices for unbundled network elements is TELRIC plus a reasonable allocation of joint and common costs. They disagreed, however, on issues related to selection of the appropriate costing models, model inputs, and recovery of historical and stranded costs through UNE and interconnection rates.

DISCUSSION

Section 252(d) of the Act provides as follows:

> (1) Interconnection and network element charges. -- Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section --
>
> (A) shall be --
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
>
> (ii) nondiscriminatory, and
>
> (B) may include a reasonable profit.

In its First Report and Order in CC Dockets 96-98 and 95-185 (the Interconnection Order), issued August 8, 1996, the Federal Communications Commission (FCC) adopted rules for determining the prices of unbundled network elements pursuant to the Act. The pricing standard prescribed by the FCC is the forward-looking economic cost of the element, which it defined as the total service long-run incremental cost of the network element or TELRIC plus a reasonable allocation of forward-looking common costs. This standard is set out in Section 51.505 of the FCC's Rules. Several parties appealed the Interconnection Order, and on July 18, 1997, the United States Court of Appeals for the Eighth Circuit (Eighth Circuit) issued a decision holding that the FCC lacked jurisdiction to issue the pricing rules and vacating certain of the rules on that ground. This decision is now before the United States Supreme Court. Thus, it is left to state commissions to interpret and apply the pricing standards of the Act for local interconnection and unbundled network elements.

Although the FCC's pricing rules have been vacated, the cost studies presented in this proceeding are referred to as TELRIC studies, and several of the parties urged adherence to TELRIC principles as articulated by the FCC. The parties' differences for the most part were in their TELRIC definitions, their study methodologies and inputs, and their allocations of shared and common costs.

The Commission generally agrees with the FCC's TELRIC principles. Furthermore, as discussed below, we believe that the cost studies presented by the ILECs, with appropriate modifications and input adjustments, follow those principles, are consistent with Section 252(d) of the Act, and are an appropriate basis for determining permanent prices for UNEs.

CONCLUSIONS

The Commission concludes that the most appropriate basis for establishing permanent prices for UNEs and interconnection is TELRIC plus a reasonable allocation of joint and common costs, which include a reasonable profit or return.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: Are rate additives to recover historical or stranded costs consistent with the Act and state regulatory policy?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth took the position that, with respect to loops and ports, pricing which is completely forward-looking will not provide BellSouth the reasonable opportunity to recover its investment in the plant and equipment currently in place which will be used to provide service to customers. Accordingly, BellSouth proposed recovery of a Residual Recovery Requirement (RRR) which is the difference between what BellSouth would recover under a pure TELRIC price of a loop and port and the amount necessary to allow BellSouth to recover all of its embedded investment in the loop and port. BellSouth stated that it was not seeking full recovery of its entire investment in the network through the RRR; application of the RRR is limited to the loop and port. Nothing in TA96 prohibits the consideration or recovery of "embedded," "sunk," "stranded," or "actual" costs. If the Commission fails to provide BellSouth a reasonable opportunity to recover its investment in the loop and port through the price of these elements, the result will be an unconstitutional confiscation of BellSouth's property.

CAROLINA/CENTRAL: No. Carolina/Central stated that their cost studies do not include any historical or embedded costs. By using the most current North Carolina cost data, the Carolina/Central loop studies provide the best predictor of the cost of serving specific geographic markets in the State. The use of 1997 information for local loop cost study investment and labor inputs does not constitute use of embedded costs. To the contrary, because the 1997 costs in question are the costs which are reasonably expected to be experienced in the future, they are in fact forward-looking costs.

GTE: Yes. GTE asserted that under TA96 it is entitled to recover all of its actual costs. Therefore, GTE proposed a Competitive Transition Charge (CTC) to recover any stranded costs it incurs. GTE took the position that the CTC is based on sound economic policy and is also consistent with the long-standing regulatory compact in North Carolina whereby GTE has provided universal service in exchange for the opportunity to earn a fair return on the actual cost of its historical investment. Furthermore, the principle of stranded cost recovery has been accepted in the electric and natural gas industries.

AT&T: No. AT&T took the position that BellSouth's cost studies narrowly focus on recovery of historical costs, thereby ignoring the clear prohibition in TA96 against setting prices for UNEs based on costs which are determined by reference to rate-based proceedings and totally disregarding the negative consequences such approach will have upon local exchange competition in North Carolina. UNE prices should be set at TELRIC plus a reasonable allocation of forward-looking joint and common costs. Recovery of historical costs is contrary to the provisions of both House Bill 161 and TA96 and is neither required nor allowed under either law. A pricing approach which includes recovery of historical costs would allow BellSouth to charge potential competitors for access to its bottleneck facilities at prices based on costs that are higher than the more efficient costs BellSouth will incur in providing competing services to its own customers. This would allow BellSouth to maintain its monopoly control over the local exchange market. Allowing recovery of historical costs for UNEs would completely undermine the text, history, and purposes of TA96. In contrast, prices based on forward-looking costs promote competition and, notwithstanding BellSouth's contrary position, will not undermine the congressional goal of promoting facilities-based competition. BellSouth is simply wrong when it claims that setting UNE prices based on forward-looking costs will discourage efficient investment in facilities. Cost-based UNE rates are absolutely essential to stimulate competition in the near future and to allow competitors to capture enough business so that they can justify investments in their own facilities. In a competitive market, a firm can only recover its forward-looking costs.

MCI: No. MCI took the position that UNE prices should recover efficient economic costs and nothing more. The only acceptable pricing methodology is to set UNE rates equal to the properly calculated forward-looking economic cost plus a reasonable contribution to common cost. Setting UNE rates in excess of this standard would create an unnecessary barrier to local competitive entry in North Carolina.

NCCTA: No. NCCTA asserted that BellSouth's RRR and its position regarding recovery of actual costs and pricing in competitive markets is at odds with the view generally shared among economists and should not be given serious consideration in this proceeding. Forward-looking economic costs best replicate the conditions of competitive markets. In contrast, BellSouth's actual costs represent its historical or embedded costs and not its forward-looking economic costs. To the extent embedded costs reflect any past inefficiencies, prices based upon embedded costs will lead to inappropriate cost recovery and would not be recovered in a competitive market. GTE's proposed CTC is flawed in its methodology, unacceptable in its policy, and should be rejected.

NEW ENTRANTS: No. The New Entrants took the position that BellSouth's RRR and GTE's CTC defy the forward-looking pricing standard set forth in TA96, are contrary to sound economic policy, violate principles of competitive neutrality, and serve as a barrier to entry. Although BellSouth and GTE have attempted to portray these historical or stranded costs as a surcharge or additive separate from TELRIC, the effect of these charges is the same as if the historical or stranded costs were included in the TELRIC calculation. Neither ILEC can point to a single decision allowing a telecommunications firm to recover historical or stranded costs. GTE's reliance upon decisions in the electric and natural gas industries is inappropriate. Regulators in those industries are directed by law to ensure a reasonable rate of return on prudent investments. By contrast, in Section 252(d)(1) of TA96, Congress has mandated that UNE and interconnection rates should be determined "without reference to a rate-of-return or other rate-based proceeding." Numerous state commissions have already ruled that recovery of embedded or stranded costs would be inconsistent with the pricing standard required by TA96. In effect, BellSouth and GTE are requesting this Commission to reject the unanimous authority of the other state commissions and impose historical or embedded costs on CLPs in North Carolina. Their request should be summarily denied.

ATTORNEY GENERAL: No. The Attorney General took the position that the proposals of BellSouth and GTE to include residual recovery in the prices of certain UNEs is prohibited by Section 252(d)(1) of TA96 and are certainly inconsistent with this Commission's adoption of forward-looking costing methodologies for interim costs in the arbitration dockets and for the state universal service fund in Docket No. P-100, Sub 133b, Order Adopting Forward-Looking Economic Cost Model and Inputs (FLEC Docket or FLEC Order). To be consistent with the cost requirements of TA96 and Orders previously entered in arbitration and FLEC dockets, the Commission should not allow requests for residual recovery to be included in the forward-looking costs of UNEs.

PUBLIC STAFF: No. The Public Staff took the position that the proposed rate additives to recover historical or stranded costs are inconsistent with both the Act and state regulatory policy.

DISCUSSION

Both BellSouth and GTE proposed rate additives to recover historical costs. BellSouth used the term "Residual Recovery Requirement" (RRR), while GTE referred to the recovery of stranded costs and proposed a "Competitive Transition Charge" (CTC).

According to BellSouth witness Varner, there are three components to the rate structure: forward-looking economic costs or TELRIC, shared and common costs, and the historical cost additive. Together, these components constitute the actual costs that BellSouth is entitled to recover. Witness Varner asserted that the Act permits rates to contain a profit above costs and therefore anticipates that rates will recover at a minimum the actual costs of the firm, including historical costs. He also asserted that pricing must account for the cost of the element plus the market, regulatory, and competitive conditions that exist.

On cross-examination, BellSouth witness Varner agreed that when the incremental cost of an element goes down, the historical cost additive generally goes up, but stated that they do not tend to offset each other. He added that an adjustment to incremental costs might or might not affect the historical cost additive. BellSouth would run the adjustment through the model and add the two costs together to determine the new actual cost. Witness Varner also stated that the additive was designed to ensure that BellSouth recovers the actual cost of facilities provided during the 1997-1999 period, which matches up with existing interconnection agreements.

BellSouth witness Taylor testified that the economic cost of a network element consists of direct costs, shared fixed costs, and common costs. He stated, however, that TELRIC, as the FCC has defined it, is not the economic cost of an unbundled network element. Since the economic cost, in the FCC's view, includes both the directly attributable TELRIC as well as a reasonable contribution to shared and common costs, TELRIC is only a starting point or price floor. Witness Taylor emphasized the difference between calculation of forward-looking cost and cost recovery or pricing. From a costing perspective, he said, it is inappropriate to include any of the costs that the FCC has ruled out (historical or embedded costs, opportunity costs, universal service subsidies, and retailing costs). But from a pricing perspective, it is appropriate to include some of these costs, except for retailing costs. Witness Taylor also testified in support of historical cost recovery as a matter of fairness and economic justice.

Carolina/Central, in contrast to BellSouth, proposed prices based on TELRIC plus allocations of other direct and common costs. Witness Hunsucker stated that, on a practical level, the costing standards adopted by the FCC both conform to the dictates of the Act and are consistent with economic principles. He further stated that in some cases TELRIC costs could exceed historical or embedded costs, and in other cases TELRIC costs might be below embedded costs. Witness Hunsucker also testified that Carolina/Central included a cost of capital or rate of return in their prices and regard this as profit.

AT&T/MCI witness Wood testified that BellSouth's proposed rates for unbundled network elements are not based on its TELRIC studies. He stated that the RRR has three meanings: one conceptual, one practical, and one strategic. The conceptual meaning is the difference between current costs and forward-looking economic costs. The practical meaning is a "plug" figure that ensures recovery of historical costs and renders cost studies moot. The strategic meaning is to justify inflated and discriminatory rates for local loop and switch port elements. Witness Wood also stated that, in addition to the explicit additive, BellSouth's proposed rates also include both costs associated with the Company's embedded network facilities and shared and common costs associated with its historical operations.

Witness Wood attributed the perception that BellSouth must recover all of its embedded costs in order to remain financially viable to its having operated in a rate-of-return environment, in contrast to companies operating in a competitive environment that have invested in new technologies and written down obsolete assets. He also criticized BellSouth's position as "picking and choosing" among the benefits of alternative regulation and the protections of rate-of-return regulation, citing the conclusion of the Georgia Public Service Commission in a recent universal service investigation, Docket 5825-U, regarding recovery of regulatory assets by BellSouth.

AT&T/MCI witness Cabe cited the Commission's Order approving price regulation for BellSouth, in Docket No. P-55, Sub 1013, in which BellSouth's witness Perl is quoted as saying: "After all, price caps eliminate historic assurances of a fair return on historic cost of capital or even assurances that prudent expense can be recovered." Witness Cabe asserted that ILECs forsake claims to recovery of uneconomic historical costs when they seek and accept alternatives to rate-of-return regulation. He argued that if BellSouth's costing and pricing proposals are adopted, entry and rivalry in the local exchange market will occur only to the extent and at the pace determined by BellSouth.

AT&T witness Ellison also argued that prices based on embedded costs would thwart the expeditious development of competition and stated that the Act clearly forbids consideration of embedded costs in network element rates.

Witnesses for the New Entrants were equally opposed to the historical additive. According to witness Jackson of ICG, BellSouth's position, that it will not be able to recover its investment unless the residual recovery factor is allowed, is flawed. This position, he said, is based on the assumption that there is a finite demand, which is served by the ILECs and will be taken away by the CLPs; in fact, the "pie" is growing rapidly. Intermedia witness Davis argued that prohibition of the use of rate-of-return or other rate-based proceedings effectively bars the Commission from establishing rates based on embedded or fully distributed costs. Furthermore, the nexus between costs and rates has not been subject to Commission scrutiny since the adoption of price regulation, and there is no way to account for historical costs without a rate hearing.

Witnesses Gose and McMillin argued that the inclusion of historical costs in the pricing of UNEs is prohibited by the Act and is also bad policy because it distorts proper pricing of elements, deters entry by more efficient CLPs, and rewards inefficiency on the part of ILECs. Witness Gose criticized BellSouth's use of embedded data to derive loadings for its costing model, saying that it fails to account for any increase in productivity or changes in technology that can reasonably alter how expenses are incurred. Witness McMillin called the historical cost additive a "sleight of hand" proposal, since it starts with TELRIC but results in pricing at historical cost rather than TELRIC. In response to witness Varner's claim that the additive is fair, since CLPs building their own networks would have to incur the same historical costs as BellSouth, witness McMillin asserted that CLPs would have to pay only their own costs and would likely invest in the most efficient technologies. As to whether the failure to include the additive would result in a subsidy from BellSouth's customers to CLPs, he stated that the effect would be no worse than if CLPs provided their own facilities. Furthermore, he asserted that the RRR is not necessary to reflect the difference between theoretical and actual costs as BellSouth's cost estimates are far from theoretical.

Finally, NCCTA witness Barta testified that BellSouth's position regarding recovery of actual costs and pricing in competitive markets is at odds with the view generally shared among economists that prices based on forward-looking costs give appropriate signals to producers and consumers and ensure efficient entry and utilization of infrastructure.

GTE witness Doane testified that GTE and other ILECs will incur stranded costs with the opening of the local phone markets to competition. He defined stranded costs as the current dollar value of prudent investments or rate base recoverable as a result of a change in policy; e.g., the opening of markets into which entry was previously prevented by franchise limitations. These previous expenditures are tied to prior regulatory commitments, including universal service obligations, rate structure requirements, carrier-of-last-resort obligations, and service quality standards. Stranded costs therefore represent investments that would have been uneconomic in the absence of a regulatory commitment that protected the opportunity to earn a fair return on invested capital. In this context, he said, stranded costs can best be understood as a transition payment incurred in introducing competition into a previously regulated industry. For these reasons, witness Doane used the term "stranded costs" and "transition costs" interchangeably.

To ensure that GTE is not denied an opportunity to earn a fair return on the actual cost of its historical investment, witness Doane stated that a CTC must be implemented. This charge would end when GTE recovers its stranded costs and a fair return on those investments. GTE proposes that the CTC be collected through a combination of a line charge on the consumer's bill and a line charge paid by CLPs. GTE proposes to charge a CLP even if it does not use GTE's facilities to serve its customers, under the assumption that the CLP's service is causing by-pass of GTE's facilities. Witness Doane stated that the proposed CTC should be distinguished from GTE's universal service fund (USF) proposal. The amount of GTE's stranded costs and thus the size of the CTC will be affected by how this Commission addresses universal service, but the CTC and USF are designed to achieve different objectives.

Witness Gose challenged the proposed CTC as being somewhat different but having the ultimate result of adding historical costs to the pricing of UNEs. GTE's theory, he said, is that the introduction of competition into the local marketplace will make it impossible for GTE to recover costs of investments made during rate regulation, and the CTC is designed to yield GTE its costs plus a profit. Despite the different terminology, GTE's proposal is just another type of "historical cost additive," as GTE's witness Doane admitted.

Witness Gose further testified that no state regulatory commission has included a historical component in the forward-looking unbundled network element prices that it has established in generic proceedings or in arbitrations. He stated that the "reasonable profit" language in Section 252 of the Act means that prices allow for a reasonable return on the ILEC's invested capital to produce that element.

The Commission has several concerns about the BellSouth and GTE proposals, not the least of which have to do with the statutory authority for this proceeding. Sections 251 and 252 of the Act, in our opinion, cannot reasonably be interpreted to support the ILECs' positions. To the contrary, the Commission agrees with the conclusion of the Georgia Public Service Commission that the "proscription in Section 252(d)(1)(a)(ii) against traditional rate-of-return or rate base methodologies certainly supports, if not mandates, abandoning the traditional methods of establishing rates to recover all embedded costs."[1] The Commission believes that when Congress established pricing standards based on cost determined without regard to rate-of-return or other rate-based proceedings, including a reasonable profit, it did not mean for states to view this as simply a floor or starting point. Such an interpretation would clearly run counter to the procompetitive goals of the Act and perhaps even common sense. Indeed, as advocated by BellSouth and GTE, it would permit the reinstatement of embedded or historical cost recovery, which the ILECs have enjoyed under rate base rate-of-return regulation but which they have foregone by electing price regulation under G.S. 62-133.5. Furthermore, the Commission is not persuaded by arguments that the ILECs must recover historical costs in this manner in order to remain viable. Such claims are not sustainable in today's competitive environment where the forces of competition as well as state and federal law have rendered traditional monopoly guarantees of embedded cost recovery obsolete. Finally, it should be noted that the quantification of the proposed additives necessarily represents the ILECs' and not the Commission's determination of historical costs. A proper determination of such costs would require something akin to a general rate case, which, of course, is no longer permitted.

As discussed more fully in conjunction with the Evidence and Conclusions for Finding of Fact No. 4 below, the Commission believes that the cost studies presented by the ILECs, with certain modifications and adjustments, are the proper basis for pricing UNEs pursuant to the Act. We disagree with assertions that these studies produce theoretical or hypothetical costs, implying that they bear no resemblance to reality. These costs may be forward-looking but they are sufficiently

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[1] Order Establishing Cost-Based Rates, Docket No. 7061-U, decided October 21, 1997, p. 21.

grounded in the ILECs' actual operating conditions and experience to offer a realistic and achievable measure of the costs on which the Act says prices should be based.

CONCLUSIONS

The Commission concludes that the proposed UNE rate additives to recover historical and/or stranded costs are inconsistent with both the Act and current state regulatory policy which is premised on price plan regulation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: Are the proposed interim universal service surcharges outside the scope of this proceeding?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not specifically address this issue in its Proposed Order or Post-Hearing Brief. BellSouth has not proposed an interim universal service surcharge as part of its case in this proceeding.

CAROLINA/CENTRAL: No. Carolina/Central proposed that they be permitted to bill the carrier common line charge (CCLC) and residual interconnection charge (RIC) charges in addition to the TELRIC-based UNE charges for an interim period of time as a transition mechanism. Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: No. GTE took the position that until all implicit subsidies are removed from all services, this Commission must establish an interim universal service support surcharge to permit recovery of the cost of universal service. Such a surcharge will (1) prevent CLPs from cherry-picking high-value customers, thereby preventing the collapse of universal service, and (2) ensure that competitive outcomes are achieved by encouraging the entry of only those CLPs who have lower costs, better quality, or better marketing ability than GTE. GTE proposed a surcharge equal to the difference between its constrained UNE prices and the revenue generated by its average business customer (excluding avoided retailing expenses). GTE's proposed interim surcharge reflects the "subsidy cost" that is essential to support universal service at this time and is required by Sections 252(d)(1) and 254(f) of TA96. Section 252(d)(1) allows GTE to recover all of its costs plus a reasonable profit from the sale of UNEs. Because the cost of providing universal service support is a cost which GTE incurs, it must be reflected in the prices of UNEs, at least until such time as universal service support is funded explicitly. The necessity of such an interim surcharge, and its legitimacy under TA96, was recognized in the Eighth Circuit's recent ruling in Competitive Telecommunications Association v. FCC ("CompTel"), 117 F.3d 753 (Eighth Circuit. 1997).

AT&T: AT&T did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

MCI: Yes. MCI took the position that universal service subsidy and support issues should be addressed in the context of Docket No. P-100, Sub 133g, the Universal Service proceeding, rather than this docket.

NCCTA: Yes. NCCTA pointed out that the Commission has initiated separate proceedings to determine the method by which the costs to provide universal service should be estimated (Docket No. P-100, Sub 133b) and the degree of subsidy required to support such services (Docket No. P-100, Sub 133g). GTE's interim universal service support surcharge is overstated, seriously flawed, and fundamentally at odds with the purpose of the UNE proceeding as well as the universal service reform proceedings established by the Commission.

NEW ENTRANTS: Yes. The New Entrants took the position that GTE's proposed interim universal service surcharge is premised upon misinterpretation of applicable law and dramatically overstates the impact that competitive entry will have on GTE's operations. GTE's reading of the Eighth Circuit's opinion in the CompTel case to require a transitional support mechanism is overly broad and twists the holding of that Court. Citing a recent decision of the Oregon Public Utility Commission as precedent, the New Entrants stated that GTE's proposal should be considered in Docket No. P-100, Sub 133g, where it has in fact been raised by GTE. GTE's proposed interim surcharge is inconsistent with and contrary to principles set forth in TA96 and should not be a precondition to the entry of competition in North Carolina.

ATTORNEY GENERAL: Yes. The Attorney General took the position that proposals to include residual recovery, including an interim universal service surcharge, in the prices of certain UNEs is prohibited by Section 252(d)(1) of TA96 and are certainly inconsistent with this Commission's adoption of forward-looking costing methodologies for interim costs in the arbitration dockets and for the state universal service fund in the FLEC Docket.

PUBLIC STAFF: Yes. The Public Staff took the position that the proposed interim universal service surcharges are outside the scope of this proceeding.

DISCUSSION

In addition to their other rate proposals, GTE and Carolina/Central filed proposals for interim universal service surcharges. Inasmuch as the Commission has before it a comprehensive proceeding to address universal service issues in Docket No. P-100, Sub 133g, the Commission is of the opinion that such surcharges are outside the scope of this proceeding and should be rejected.

CONCLUSIONS

The Commission concludes that the proposed interim universal service surcharges are outside the scope of this proceeding and should be denied.

II. COST STUDIES

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Are the cost studies presented by the ILECs, with certain modifications and adjustments, appropriate for determining their respective costs of providing UNEs and local interconnection?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth has submitted detailed cost studies that comply with all applicable legal standards. These cost studies should be used as the basis for setting prices in these proceedings.

CAROLINA/CENTRAL: No. Carolina/Central's BCPM 3.1 should be adopted for the purpose of determining Carolina/Central's loop investment.

GTE: Yes. GTE urged the adoption of its Integrated Cost Model (ICM) to estimate GTE's forward-looking costs. The ICM reliably estimates GTE's forward-looking costs because it is based on GTE's forward-looking engineering practices and the actual prices charged by GTE's vendors.

AT&T: No. The Commission should adopt rates based upon TELRIC plus a reasonable allocation of forward-looking joint and common costs (TELRIC + JCC). TELRIC + JCC is the best approximation of prices that would exist in a competitive market.

MCI: No. The Hatfield Model (HM) Version 5.0 is currently the appropriate model to use in determining the forward-looking economic cost of recurring rates for UNEs for BellSouth, Carolina/Central, and GTE in North Carolina.

NCCTA: NCCTA does not necessarily have a preference as to the Commission's selection of a cost model, except that NCCTA does not support use of the ICM. NCCTA submitted that the fundamental methodologies of BCPM, Hatfield, and, to some extent, the TELRIC Model, are actually converging as they have been developed and revised. NCCTA recommended that the Commission select only one model for application to all the ILECs in order to avoid potential discrepancies between the models and in order to aid the Commission, the Staff, and the parties in applying and administering the model selected.

NEW ENTRANTS: No. The TELRIC costing methodology analysis provided by witnesses for the New Entrants, AT&T, MCI, and Carolina/Central should be adopted.

ATTORNEY GENERAL: The Attorney General suggested that the Commission calculate the costs of UNEs by using the BCPM Version 3.1 and remove all recovery of residual amounts from unbundled rates.

PUBLIC STAFF: Yes. The Public Staff proposed that costs derived from studies that reflect ILEC-specific characteristics constitute the most appropriate basis for pricing unbundled elements provided they are reasonable, forward looking, and otherwise consistent with the Act. The Public Staff believes that the cost studies filed by the ILECs are appropriate, with certain modifications.

DISCUSSION

Carolina/Central used the BCPM 3.1 for calculating the investment for the local loop but have conducted their own studies for the unbundled network elements, nonrecurring costs, and collocation. GTE presented cost studies using its own model, the ICM, which was developed jointly by GTE and INDETEC International, Inc., one of the developers of the BCPM. BellSouth has conducted its own TELRIC studies using several key models for all of the UNEs as well as nonrecurring costs. Competitors AT&T and MCI sponsored the UNE prices based on the Hatfield Model 5.0, while the New Entrants and the NCCTA sponsored no models or studies of their own. AT&T and MCI also sponsored studies using a Nonrecurring Cost Model (NRCM) and a Collocation Cost Model.

BellSouth stated that the CLPs' recommendations are flawed. The CLPs' cost models, when run with assumptions that bear no relation to the costs BellSouth is expected to incur in North Carolina on a going-forward basis, cannot produce accurate North Carolina specific costs. Rather than according any of BellSouth's judgments with the presumption of reasonableness to which they are entitled, CLPs substitute their own judgments as to what they hope would occur in a hypothetical network instantaneously constructed from scratch. CLPs then maintain that their judgments as to the hypothetical network are better than BellSouth's judgments rooted in reality.

BellSouth stated that it has performed comprehensive cost studies that are forward looking, and it has done so in a manner that will give it the reasonable opportunity to recover the costs it is expected to incur in North Carolina on a going-forward basis. Intervenors, on the other hand, invite the Commission to disregard totally what it will actually cost BellSouth to provide UNEs, interconnection, and collocation.

Carolina/Central stated that it offered the BCPM 3.1 model solely for the purpose of developing the loop investment component of its TELRIC study for pricing the unbundled loop element. Although the BCPM 3.1 is capable of providing costs for many other unbundled network elements, Carolina/Central chose to perform North Carolina-specific TELRIC studies for those UNEs without using the BCPM 3.1. Carolina/Central stated that one of the key features of BCPM 3.1 is its ability to permit user input of state-specific, company-specific data. The data which Carolina/Central used as inputs to the BCPM 3.1 are principally North Carolina-specific, as well as Carolina/Central-specific. This input data reflects the most current information as to material prices for the most technically advanced, commercially available equipment and facilities, as well as similar data for installation costs. The critical input data employed by Carolina/Central are forward-looking and are consistent with the Act's pricing standards.

Carolina/Central stated that the BCPM produces loop investments that assure efficient engineering and design criteria and the deployment of current state-of-the-art loop technology using the Companies' existing wire centers. Carolina/Central witness Dickerson noted that because the BCPM was programmed only to provide loop investment, the cost of equipment to terminate the loop in the central office - i.e., the main distribution frame and protection - were added through a separate study.

GTE contended that because of the state of the record and certain stipulations entered into by the parties, it would be extremely difficult, if not impossible, to apply the Hatfield Model for purposes of estimating GTE's forward-looking costs. First, no party (including MCI) proposed specific prices for GTE based on the Hatfield Model. Second, because AT&T withdrew the only testimony regarding outside plant inputs into the Hatfield Model for GTE, there was essentially no evidence regarding these critical inputs, or their appropriateness, as to GTE.

In addition, GTE contended that the Hatfield Model does not even attempt to model GTE's forward-looking network. Instead, it attempts to model the cost of an imaginary ILEC that builds an entirely new network, essentially from scratch, without regard to the engineering practices GTE will actually employ going forward or to the prices GTE's vendors actually will charge. In doing so, the Hatfield Model simply assumes massive reductions in cost based on alleged future efficiencies that are clearly not attainable in any reasonable planning horizon.

GTE further stated that, by contrast, the ICM is very well suited to determining GTE's forward-looking costs because it is GTE-specific. GTE argued that the evidence showed that ICM is an engineering process model that designs an efficient network using forward-looking technology based on GTE's actual input prices, current engineering practices, and existing wire center locations. ICM bases its estimates not on embedded or historical costs, but rather on the costs GTE would incur if it replaced its network based on GTE's forward-looking practices.

AT&T stated that, by definition, TELRIC + JCC recovers all costs that a competitor, entering the market with efficient, forward-looking systems and operations, would incur. Such rates are consistent with the Act's requirement that this Commission set cost-based prices for UNEs. AT&T further stated that Congress specifically precluded the use of historic costs as the basis for prices for UNEs.

AT&T stated that the fact that the Hatfield Model was not adopted by the Commission in the FLEC Docket does not mean that the Commission should not adopt the Hatfield Model for purposes of setting prices for UNEs in North Carolina. The comparisons being made in this proceeding are quite different from those made in the FLEC Docket. In this proceeding, the Commission should evaluate Hatfield Model 5.0 with "fresh eyes," just as it should use "fresh eyes" to evaluate the historic inputs to BellSouth's cost studies. AT&T's position is that AT&T's witness Wood's testimony in this proceeding should be of sufficient weight this time to "tip the balance" in favor of the Hatfield Model for purposes of setting prices for UNEs in North Carolina.

MCI stated that the Hatfield Model which was jointly sponsored by MCI and AT&T in this proceeding produces recurring rates that are in compliance with sound economic costing principles based on inputs that are highly specific to the operating territories of BellSouth, GTE, and Carolina/Central in North Carolina (but which are appropriately independent of their embedded network and operations).

MCI contended that BellSouth's cost models contain both implicit and explicit embedded costs, and it is not possible to "work backwards" from the BellSouth proposal and successfully remove all embedded costs. MCI also contended that BellSouth's cost model is effectively closed to public inspection. As stated by witness Wood, a person reviewing the model cannot reproduce the results. As a result, it is impossible to test the BellSouth loop model or to conduct a sensitivity analysis of its primary inputs. BellSouth's switching models are similar to its loop model in that they are not open and verifiable. Reportedly this lack of openness is to protect vendor proprietary information and the value of the model to Bellcore for licensing purposes. All calculations and the important inputs and assumptions are completely hidden from the user.

MCI contended that there are numerous problems with Carolina/Central's BCPM model, including problems with the switching, transport, and signaling modules. MCI also pointed out a number of major problem areas of GTE's ICM model. Further, MCI contended that GTE's ICM model is both structurally flawed and fundamentally unsound.

MCI stated that BellSouth's cost model design inherently is historical and therefore violates both the spirit and the letter of the Act. GTE's ICM is a first attempt to create a forward-looking cost model but numerous modeling flaws remain unresolved, rendering this cost model unusable at this time. Both Carolina/Central's BCPM and AT&T/MCI's Hatfield Version 5.0 have been subjected to scrutiny in numerous regulatory proceedings and have been modified and improved substantially over the last two years. While Carolina/Central's BCPM Version 3.1 is a conscientious attempt to provide a vehicle to estimate forward-looking, economic costs, BCPM is less sophisticated than Hatfield Version 5.0 in that it cannot identify the specific location of any end users.

MCI stated that the Hatfield Model sponsored by AT&T and MCI suffers none of the shortcomings of the BellSouth models: (1) its results can be reproduced, (2) all inputs and calculations can be directly reviewed by the user, and (3) complete documentation describing the basis for the model inputs have been provided.

NCCTA witness Barta suggested that once the model is selected, the focus of the Commission's evaluation of the competing models should be on the inputs proposed by the various companies. As to the appropriateness of the inputs in each of the cost models, NCCTA contends that, while certainly relevant, a vast majority of the inputs, regardless of any reasonable adjustment in any direction, will not have any noticeable impact on final prices.

The New Entrants stated that a TELRIC methodology will best emulate the conditions that would be present in a competitive marketplace, allowing CLPs to enter and provide services in an efficient manner and driving all carriers to achieve greater efficiencies to compete in the local exchange market. The New Entrants stated they believe that North Carolina consumers will ultimately benefit from increased efficiency in the competitive market, as the costs of production are minimized and retail prices are driven down nearer to cost.

The New Entrants noted that BellSouth, even though it advocated a historical cost additive, first calculated its forward-looking costs independently to be "consistent with the FCC Order." GTE has also contended that its cost study complies with a TELRIC methodology, even though it would add a stranded cost surcharge and an interim universal service surcharge to the prices of certain elements. Carolina/Central propose to set prices directly at their calculated TELRIC studies plus their calculation of shared and common costs.

The New Entrants stated that in light of the express language of Section 252 of TA96, the promise of increased efficiency in a competitive local exchange market, and the fact that all of the ILECs have attempted to provide TELRIC data with their cost filings, a TELRIC costing methodology should be used to determine the costs, and ultimately the prices, for UNEs and interconnection services.

The Attorney General pointed out that the Commission found, in its FLEC Docket, that the BCPM 3.1 is the appropriate model to use in determining the forward-looking economic cost of providing universal service for Carolina/Central, BellSouth, and GTE in North Carolina. The Attorney General stated that forward-looking economic costing methodologies should be consistent whether the Commission is costing universal service or UNEs. To suggest otherwise is to open up North Carolina markets to arbitrage and skewed competitive results where the carrier of last resort can collect one price from the universal service fund for UNEs used to provide service to high cost areas and another, higher, cost to a competitor leasing UNEs. The Commission has already concluded that the BCPM 3.1 is the appropriate model to use for establishing the cost of universal service. In this proceeding Carolina/Central have advocated use of the BCPM for calculating the cost of the local loop UNE. The Commission has concluded that this model is accessible and reasonable, and its use for costing UNEs is consistent with the Commission's conclusion in the FLEC Docket. The Attorney General would suggest that the Carolina/Central version of the BCPM 3.1 is the appropriate model to use in this proceeding.

In its Proposed Order, the Public Staff noted that, in its FLEC Order the Commission expressed a preference for using the ILEC-proposed model, the BCPM 3.1, and ILEC-specific inputs where they are reasonable and forward-looking, instead of the more generic Hatfield Model 5.0. In that same Order, the Commission found the BCPM 3.1 more reasonable, more accessible, and more appropriate for determining the forward-looking economic cost of providing universal service in North Carolina.

The Public Staff commented that, as in the previous docket, the essential differences among the models and studies presented by the competitors and the ILECs have to do with assumptions related to customer location and network design. The HM is clearly the most theoretical in terms of network reconstruction. While the ILECs claim to have taken a "ground up" approach in their studies, it is clear that they have also assumed existing network configurations and engineering practices. The Public Staff believes that such an approach is entirely reasonable and consistent with Section 252(d) of the Act.

The Public Staff stated that costs derived from studies that reflect ILEC-specific characteristics are the most appropriate basis for pricing unbundled elements provided they are reasonable, forward-looking, and otherwise consistent with the Act. While model consistency between the FLEC studies and TELRIC studies would be preferable, the Public Staff stated they could find nothing in the TELRIC studies other than BellSouth's loop sample and some of the inputs that would cause the Commission to reject them in this proceeding. The Public Staff believes that it is more reasonable to modify the studies presented by the ILECs than to discard these studies in favor of the models presented by AT&T and MCI and then to attempt to adjust those models to make them suitable to North Carolina.

The Commission believes that the ILECs have adequately answered the CLPs' complaints regarding problems with the models/cost studies as discussed above. The Commission agrees with the Public Staff that costs derived from studies that reflect ILEC-specific characteristics are the most appropriate basis for pricing unbundled elements provided they are reasonable, forward looking, and otherwise consistent with the Act. In addition, the Commission agrees with the Public Staff that while model consistency would be preferred between the FLEC studies and TELRIC studies, we find nothing in the TELRIC studies other than the adjustments set forth in this Order that would cause us to reject them in this proceeding. Further, the Commission agrees with the Public Staff's analysis that it would be more reasonable to modify the studies presented by the ILECs than to discard those studies in favor of the models presented by AT&T and MCI and then attempt to adjust those models to make them suitable to North Carolina.

CONCLUSIONS

The Commission concludes that the cost studies proposed by the ILECs, subject to the modifications outlined herein, are reasonable and appropriate and should be adopted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Is BellSouth's loop sample flawed and, if so, should it be corrected for use in determining the cost of the local loop?

POSITIONS OF PARTIES

BELLSOUTH: No. According to BellSouth witness Thompson, BellSouth's Loop Model consists of a database that contains component parts of what BellSouth has identified as a hypothetical representative loop in North Carolina. This loop was developed based on a sample of residence and business loops in this state.

BellSouth witness Smith testified that he developed a sampling process which Theodore Barry & Associates used to identify two sets of 199 sample loops: one consisting of residence loops and one consisting of business loops. Once the sample was developed, each loop in the sample was examined. If the loop, as it then existed, did not represent the most forward-looking, most-efficient technology, the loop was recast so that it did. For instance, if a loop was 15,000 feet long, but was on copper, the feeder portion of the loop was recast to put it on fiber, which is the medium of choice for a loop over 12,000 feet.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their Proposed Order or Post-Hearing Brief.

GTE: GTE did not address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: Yes. AT&T witness Ellison recommended that BellSouth's loop study be rejected, among other reasons, because of the exclusion of business loops other than "small" business lines from the study. Witness Ellison pointed out that the excluded loops are less costly than the types of loops included in BellSouth's sample.

MCI: Yes. MCI argued that BellSouth's loop model inappropriately ignored seven types of loops, which are the least costly types, in its attempt to develop a crude statewide average.

NCCTA: Yes. NCCTA witness Barta, AT&T witnesses Heikes and Ellison, and New Entrants witness McMillin all commented on BellSouth's exclusion from its loop universe of business trunks, ESSX lines, public access lines, entrance facilities, dedicated WATS lines, voice grade private lines, special access lines, data services, and other services. These categories of loops represent a significant percentage of BellSouth's total access lines in North Carolina, and their exclusion from the universe significantly biases the sample because all or virtually all of the excluded loops are business in nature and would be expected to have lower than average cost characteristics.

NEW ENTRANTS: Yes. New Entrants witness McMillin recommended that the weighting of the two loop samples be adjusted to reflect that the demand for the loops will primarily be to serve business customers. He proposed the following weightings for those loops that are affected by the business/residence weighting:

Loop type	Business/Residence Weighting (%)
2-wire, Service Level 1	75/25
2-wire, Service Level 2	100/0
2-wire ISDN	50/50
2-wire ADSL	50/50
2-wire HDSL	50/50

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff, in its Proposed Order, stated that the evidence presented with respect to BellSouth's loop sample, including the relative weighting applied by BellSouth to each type of loop, requires that the Commission make an adjustment to correct the bias introduced by exclusion of certain business loops from the study. According to the Public Staff, the information needed to adjust the model's results to eliminate this bias is contained in the data as of the end of October 1997 provided by BellSouth as a response to AT&T's First Set of Interrogatories, Item No. 24. Although this data is not of the same vintage as the sample, the Public Staff believes that its use will not significantly distort the result.

The Public Staff asserted that, based upon the aforesaid data and the testimony of witnesses Barta and Heikes, the categories excluded from the universe comprise approximately 16.5% of the total access lines. The Public Staff opined that adding the number of access lines in the excluded categories to the number of business access lines and dividing the resulting total business access lines and total residence access lines by the total number of access lines yields an adjusted residence weight of 63.75% and an adjusted business weight of 36.25%. These weights compare to the residence weight of 78.12% and the business weight of 21.88% used by BellSouth for the 2-wire loops listed above. The Public Staff argued that these revised weights should be used in the model for the calculation of the costs for the 2-wire loops.

DISCUSSION

NCCTA witness Barta, AT&T witnesses Heikes and Ellison, and New Entrants witness McMillin all commented on BellSouth's exclusion from its loop universe of business trunks, ESSX lines, public access lines, entrance facilities, dedicated wide area telecommunications services (WATS) lines, voice grade private lines, special access lines, data services, and other services. These categories of loops represent a significant percentage of BellSouth's total access lines in North Carolina, and their exclusion from the universe significantly biases the sample because all or virtually all of the excluded loops are business in nature and would be expected to have lower than average cost characteristics. Additionally, the Public Staff, as indicated above, also takes the position that bias was incorporated into BellSouth's loop sample.

On the other hand, BellSouth asserted that the CLPs' criticism of its loop sample was unfounded. BellSouth argued that the CLPs chose to ignore the fact that the sample was not intended to approximate the cost of "all loops in North Carolina." Rather, according to BellSouth, the sample was intended to approximate the cost of an average loop in North Carolina that a CLP is likely to purchase from BellSouth to serve its residential and business end-user customers.

The Commission is of the opinion that BellSouth's argument that its loop sample is appropriate for purposes of this proceeding is not supported by the weight of the evidence of record.

CONCLUSIONS

The Commission concludes that: (1) bias was introduced into BellSouth's loop sample by virtue of BellSouth's having excluded certain business loops from its study, (2) an adjustment should be made to correct such bias, and (3) said adjustment should be made in the manner advocated by the Public Staff in its Proposed Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: Should Carolina/Central's loop costs reflect capped investment amounts?

POSITIONS OF PARTIES

Carolina/Central and the Public Staff were the only parties to address this issue.

CAROLINA/CENTRAL: Yes. While Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief, their overall position is that the input data they provided to the BCPM 3.1 for loop investment is appropriate.

PUBLIC STAFF: No. The Public Staff, in its Proposed Order, stated that Carolina/Central capped loop investment at $10,000 for purposes of determining their unbundled loop costs and that they offered no justification for doing so. The Public Staff opined that the Commission should direct Carolina/Central to uncap loop investment so as to allow their unbundled loop costs to be based on the actual costs of such investment.

DISCUSSION

As indicated above, the loop investment amounts used by Carolina/Central to determine their unbundled loop costs reflect a cap of $10,000. Carolina/Central do not appear to have offered any explanation as to the rationale underpinning the propriety of imposing such an upper bound. Given the lack of evidence to support the artificial caps, the Commission concludes that unbundled loop costs should reflect uncapped investment amounts so data represent actual loop investment.

CONCLUSIONS

The Commission agrees with the position taken by the Public Staff and concludes that Carolina/Central should be required to modify their cost studies to reflect their actual loop investment for purposes of developing their unbundled loop costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

Issue: What is the appropriate forward-looking costs of capital for use in the UNE cost studies?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth used an overall cost of capital of 11.25% in its cost studies, which is currently the FCC-authorized overall rate of return on interstate access services of local exchange carriers.

CAROLINA/CENTRAL: Carolina/Central also used the current FCC-authorized overall rate of return of 11.25% in their cost studies.

GTE: GTE proposes an overall cost of capital for GTE equal to 13.03%.

AT&T: BellSouth's unsupported cost of capital is neither state-specific nor forward-looking. AT&T proposes an overall cost of capital of 9.43% for BellSouth.

MCI: MCI proposes overall costs of capital equal to 9.43% for BellSouth, 9.60% for GTE, and 9.53% for Carolina/Central.

NCCTA: The overall costs of capital proposed by BellSouth, GTE, and Carolina/Central appears to be overstated. NCCTA proposed adoption of the costs of capital recommended by the Public Staff.

NEW ENTRANTS: The New Entrants recommend that the Commission adopt the Public Staff's proposed costs of capital.

ATTORNEY GENERAL: The Attorney General notes that the Commission has already determined the appropriate cost of capital to use when calculating the forward-looking, long-run economic cost of universal service and believes that the same cost of capital is appropriate for use in determining the forward-looking, long-run economic costs of UNEs. Therefore, the Attorney General recommends an overall cost of capital of 9.94%.

PUBLIC STAFF: The Public Staff recommends that the reasonable and appropriate forward-looking overall cost of capital equals 9.96% for BellSouth, 10.01% for GTE, and 10.10% for Carolina/Central.

DISCUSSION

Section 252(d)(1)(B) of the Act provides that rates for interconnection and unbundled network elements "may include a reasonable profit." Paragraphs 699 through 702 of the FCC's Interconnection Order address this section of the Act and provide the FCC's interpretation and conclusions regarding a reasonable profit. In Paragraph 702, the FCC reached the following conclusion:

> Based on the current record, we conclude that the currently authorized rate of return at the federal or state level is a reasonable starting point for TELRIC calculations, and incumbent LECs bear the burden of demonstrating with specificity that the business risks that they face in providing unbundled network elements and interconnection services would justify a different risk-adjusted cost of capital or depreciation rate. These elements generally are bottleneck, monopoly services that do not now face significant competition. We recognize that incumbent LECs are likely to face increased risks given the overall increases in competition in this industry, which generally might warrant an increased cost of capital, but note that, earlier this year, we instituted a preliminary inquiry as to whether the currently authorized federal 11.25 percent rate of return is too high given the current marketplace cost of equity and debt. On the basis of the current record, we decline to engage in a time-consuming examination to determine a new rate of return, which may well require a detailed proceeding. States may adjust the cost of capital if a party demonstrates to a state commission that either a higher or lower level of cost of capital is warranted, without that commission conducting a "rate-of-return or other rate based proceeding." We note that the risk-adjusted cost of capital need not be uniform for all elements. We intend to re-examine the issue of the appropriate risk-adjusted cost of capital on an ongoing basis, particularly in light of the state commissions' experiences in addressing this issue in specific situations.

The 11.25% overall rate of return referred to above was adopted by the FCC on September 19, 1990, in its Order in CC Docket No. 89-624. The Order in CC Docket No. 89-624 prescribed the authorized, overall rate of return on investment of 11.25% for the interstate access services of local exchange carriers. As described in the FCC's Order in CC Docket No. 89-624, the 11.25% overall rate of return was specifically based upon the FCC's findings that the embedded cost of debt was 8.8%, the appropriate capital structure ratios consisted of 55.8% equity and 44.2% debt, and the range of reasonable estimates of the local exchange carriers' interstate access cost of equity was 12.5% to 13.5%. Using these findings, the FCC calculated that a range of reasonable estimates of the overall cost of capital equaled 10.85% to 11.4%. After consideration of evidence concerning factors such as the condition and future of the telecommunications infrastructure and the state of competition in the interstate access market, the FCC concluded in 1990 that an 11.25% overall rate of return was appropriate. The 11.25% overall rate of return for the interstate access services of the local exchange carriers remains in effect today, but as stated above in Paragraph 702 of its Interconnection Order, the FCC has instituted a preliminary inquiry as to whether the currently authorized 11.25% overall rate of return is too high given the current marketplace cost of equity and debt.

According to the record in this proceeding, BellSouth and Carolina/Central used an 11.25% overall rate of return in their respective cost studies. However, neither BellSouth nor Carolina/Central used the same capital structure, cost of debt, or cost of equity that the FCC found appropriate for use in determining the 11.25% overall rate of return. For example, the record indicates that BellSouth assumed a capital structure consisting of 60% equity and 40% debt, a cost of debt equal to 8.0%, and then using these figures as well as an overall rate of return of 11.25%, BellSouth mathematically derived an equity cost of approximately 13.4%. Likewise, Carolina/Central used a capital structure consisting of approximately 62.9% equity and 37.1% debt, a debt cost of 6.4%, which when combined with an 11.25% overall rate of return, yields a mathematically derived cost of equity equal to approximately 14.10%. BellSouth witness Billingsley and Carolina/Central witness Vander Weide, through rebuttal testimony, provided estimates of the BellSouth and Carolina/Central forward-looking costs of capital which were higher than the 11.25% overall rate of return actually used by these parties in their cost studies. Therefore, these rebuttal witnesses testified that an 11.25% overall rate of return was reasonable and conservative.

Unlike BellSouth and Carolina/Central which used an 11.25% overall rate of return, GTE used a 13.03% overall rate of return in its cost studies. GTE presented the direct and rebuttal testimony of witness Jacobsen in support of the 13.03% overall rate of return. AT&T and MCI presented the testimony of witness Hirschleifer who recommended an overall cost of capital of 9.43% for BellSouth, 9.60% for GTE, and 9.53% for Carolina/Central. The Public Staff presented the testimony of witness Hinton who testified that the appropriate overall cost of capital was 9.96% for BellSouth, 10.01% for GTE, and 10.10% for Carolina/Central.

BellSouth rebuttal witness Billingsley evaluated the reasonableness of the 11.25% overall rate of return used by BellSouth in its cost studies using two tests. One test used BellSouth's actual capital structure at December 31, 1997, which consisted of 57.16% equity and 42.84% debt, BellSouth's embedded cost of debt of 6.36%, and the overall cost of capital of 11.25%. Using these parameters, witness Billingsley calculated an implied cost of equity equal to 14.92%. The other test used an equity ratio of 60% and a debt ratio of 40%, his own estimate of BellSouth's forward-looking cost of debt under current market conditions which equaled 6.75%, and the 11.25% overall cost of capital. Using this second set of parameters, witness Billingsley calculated another implied cost of equity equal to 14.25%.

Witness Billingsley then compared the two implied cost of equity estimates of 14.25% and 14.92%, determined as described above, to the cost of equity which he determined appropriate for BellSouth using three separate approaches or methods.

In the first approach, witness Billingsley applied a quarterly Discounted Cash Flow (DCF) model, which included an adjustment to account for flotation costs, to a group of comparable risk companies. A cluster analysis based on certain dimensions of the financial and operating risk of BellSouth was used to identify the comparable risk companies. His DCF analysis produced a cost of equity estimate of 15.35% to 15.38%. In the second approach, witness Billingsley employed a Capital Asset Pricing Model (CAPM). His CAPM analysis produced a cost of equity estimate of 14.42% to 14.54%. Finally, witness Billingsley used a risk premium approach which indicated a cost of equity estimate for the Standard & Poor's (S&P) 500 between 13.83% to 14.91%. From these three approaches, witness Billingsley concluded that BellSouth's cost of equity was within a range of 14.42% to 15.38%.

Since the two implied cost of equity estimates of 14.25% and 14.92% were within or lower than his estimated range for BellSouth's cost of equity of 14.42% to 15.38%, witness Billingsley testified that BellSouth's use of the 11.25% overall rate of return was both reasonable and conservative.

Carolina/Central rebuttal witness Vander Weide checked the reasonableness of the 11.25% overall cost of capital used by Carolina/Central in their cost studies by providing his appraisal of the overall cost of capital of competitive companies. To determine the overall cost of capital to competitive companies, witness Vander Weide first calculated the average market-based percentages of equity and debt in the capital structures of the S&P Industrials. Witness Vander Weide testified that one of the reasons why he used the average market-based percentages of debt and equity in the capital structures of the S&P Industrials was because Carolina/Central's cost studies are premised on the assumption that the market for interconnection and unbundled network elements, and indeed, all local exchange services, is fully competitive. According to his testimony, the market-based capital structure of the S&P Industrials at December 31, 1996, consisted of 77.82% common equity and 22.18% debt. To measure the cost of debt, witness Vander Weide testified that he used the yield-to-maturity on Moody's A-rated industrial bonds for June 1997, as reported by Moody's Investors Service, which equaled 7.64%. Witness Vander Weide measured the cost of equity by applying a quarterly DCF model, which included an adjustment for flotation costs, to the S&P Industrials. His application of the DCF model to the second and third quartiles of the S&P Industrials resulted in a cost of equity of 14.68%. Based on his recommended capital structure containing 77.82% equity and 22.18% debt, the debt cost rate of 7.64%, and a cost of equity of 14.68%, witness Vander Weide testified that his estimate of the correct overall cost of capital for use in Carolina/Central's cost studies was 13.12%. Since Carolina/Central actually used an 11.25% overall cost of capital in their cost studies, witness Vander Weide concluded that the 11.25% cost of capital was conservative.

GTE witness Jacobsen testified that the overall cost of capital to GTE is 13.03%, based on a capital structure containing 78.86% equity and 21.14% debt, a cost of debt of 7.80%, and a 14.43% cost of equity. Like rebuttal witness Vander Weide for BellSouth, witness Jacobsen believed that an investment in GTE faces the same level of risk as can be represented by the S&P Industrials. Therefore, witness Jacobsen determined the cost of capital for the S&P Industrials as a proxy for GTE. More specifically, witness Jacobsen calculated his recommended capital structure ratios using the market-based percentages of equity and debt for the S&P Industrials. To determine the debt cost of 7.80%, witness Jacobsen testified that he used the yields for newly issued AA-rated Corporate Bonds as reported in the May 1997 issue of Moody's Bond Record. Witness Jacobsen used a DCF model, a CAPM, and a Risk Premium model to measure the cost of equity. His quarterly DCF analysis, which included a flotation cost adjustment, calculated a cost of equity estimate for the S&P Industrials equal to 15.35%. The CAPM analysis, which also used the S&P Industrials, resulted in a cost of equity estimate of 13.61%. Finally, the Risk Premium model produced a 14.33% cost of equity estimate. Witness Jacobsen testified that his 14.43% cost of equity recommendation was based on the average of the results of the three models. Therefore, witness Jacobsen recommended that the 13.03% overall cost of capital as determined using the S&P Industrials was appropriate for GTE to use in its cost studies for unbundled network elements.

AT&T/MCI witness Hirschleifer recommended an overall cost of capital of 9.43% for BellSouth, 9.60% for GTE, and 9.53% for Carolina/Central. His recommended capital structure for BellSouth, GTE, and Carolina/Central consisted of 60% equity and 40% debt. According to his testimony, this capital structure was calculated by averaging the market-based weights of debt and equity and the book value weights of debt and equity for eleven publicly traded and comparable risk telecommunications companies. To determine the cost of debt, witness Hirschleifer testified that he averaged the yield-to-maturity on all outstanding debt issues of BellSouth, GTE, and Sprint as reported in the Standard & Poor's Bond Guide, dated January 1997. The cost of debt measured in this manner was 7.06% for BellSouth, 7.22% for GTE, and 7.19% for Sprint. Witness Hirschleifer applied a three-stage DCF model, which did not include a quarterly dividend or flotation cost adjustment, and a CAPM to determine his recommended cost of equity. The DCF analysis produced a cost of equity estimate equal to 10.99% for BellSouth, 11.06% for GTE, and 11.01% for Carolina/Central. His CAPM produced cost of equity estimates of 11.05% for BellSouth, 11.31% for GTE, and 11.18% for Carolina/Central. By averaging his DCF and CAPM estimates, witness Hirschleifer arrived at his cost of equity recommendations of 11.02% for BellSouth, 11.19% for GTE, and 11.10% for Carolina/Central. His overall cost of capital recommendations, based upon his recommended capital structure and debt and equity costs, are stated above.

Public Staff witness Hinton testified that the 11.25% overall rate of return adopted by the FCC in 1990 was inappropriate to use for the forward-looking cost of capital in this proceeding. According to his testimony, since 1990 when the FCC adopted the 11.25% overall rate of return, the yield on 30-year Treasury bonds has declined over 300 basis points, the average annual rate of inflation has fallen over 400 basis points, and investors' expectations of future inflation are currently lower than in 1990. He also testified that across the nation, allowed returns on equity for telephone companies have fallen from an average annual rate of 12.9% in 1990 to a rate of 11.6% for the nine months ending September 1997. Therefore, witness Hinton testified that the reductions in interest rates and inflation, as well as the lower allowed returns on equity, were indicative that a lower overall rate of return was appropriate.

To determine the overall cost of capital which he recommended in this proceeding, witness Hinton first determined a forward-looking capital structure by averaging Value Line Investment Survey's projected percentages of common equity for the years ending 1997, 1998, and 2000-2002 for ten publicly traded telephone companies that are primarily involved in providing local exchange telecommunications services. The average projected capital structure consisted of 58% common equity and 42% debt. Witness Hinton testified that such a capital structure was reasonable since this level of debt leverage would allow for an "A" to "AA" bond rating according to current financial ratio benchmarks published by S&P. Witness Hinton determined the forward-looking cost of debt by calculating a weighted average of the yield-to-maturity for only the long-term 20 to 40-year debt issued by BellSouth, GTE, Sprint, and their subsidiaries. This yield data was taken from the S&P Bond Guide and averaged for the three months ending November 1997. The cost of debt determined in this manner equaled 7.41% for BellSouth, 7.54% for GTE, and 7.75% for Carolina/Central. To determine the cost of equity, witness Hinton applied the annual DCF model to his comparable group of ten telecommunications companies and another group of companies outside the regulated utility industry that exhibit risk measures similar to the comparable group of ten telecommunications companies. His DCF analysis included no adjustment for quarterly dividend compounding or flotation costs. Witness Hinton concluded that the cost of equity from his DCF analysis was 11.8% which was the midpoint of his 11.3% to 12.3% cost of equity range. He also used the CAPM to check the results of his DCF study and concluded that his CAPM analysis indicated that the 11.8% cost of equity determined by his DCF analysis was reasonable. Based upon his recommended capital structure, costs of debt, and cost of equity, witness Hinton determined an overall cost of capital equal to 9.96% for BellSouth, 10.01% for GTE, and 10.10% for Carolina/Central.

The following table sets forth the capital structure, cost of debt, cost of equity, and the overall cost of capital from the FCC's Order in Docket No. 89-624 and those percentages recommended or included in the UNE cost studies by the various parties to this proceeding.

	FCC	BellSouth	Carolina/ Central	GTE	AT&T/MCI	Public Staff
Capital Structure %						
Equity	55.8	60	62.9	78.86	60	58
Debt	44.2	40	37.1	21.14	40	42
TOTAL	100	100	100	100	100	100
Cost of Debt %	8.8	8.0	6.4	7.8	7.06%-BellSouth 7.22%-GTE 7.19%-CT&T/Central	7.41%-BellSouth 7.54%-GTE 7.75%-CT&T/Central
Cost of Equity %	12.5-13.5	13.4	14.1	14.43	11.02%-BellSouth 11.19%-GTE 11.1%-CT&T/Central	11.8
Overall Cost of Capital	11.25	11.25	11.25	13.03	9.43%-BellSouth 9.60%-GTE 9.53%-CT&T/Central	9.96%-BellSouth 10.01%-GTE 10.10%-CT&T/Central

The Commission concludes that the FCC's prescribed interstate overall rate of return of 11.25% is inappropriate for purposes of this proceeding. Evidence in this record shows that interest rates, rates of inflation and expected inflation, and allowed rates of return on equity for telephone companies are now lower than when the FCC adopted the 11.25% overall rate of return in 1990. Further, this proceeding involves the determination of forward-looking economic costs associated with the provision of UNEs and interconnection, while the FCC's 11.25% overall rate of return was based, in part, on an embedded cost of debt. Finally, the FCC's overall rate of return was specifically based upon its findings that the embedded cost of debt equaled 8.8%, the capital structure consisted of 55.8% equity and 44.2% debt, and the range of reasonable estimates of the LEC interstate access cost of equity was 12.5% to 13.5%. The record in this case indicates that although BellSouth and Carolina/Central used an overall cost of capital of 11.25%, each of these parties used a cost of debt, capital structure ratios, and a cost of equity which are different from those used as the very basis for the FCC's overall rate of return of 11.25%. For these reasons, as well as the existence of other credible evidence in the record supporting a lower return, the Commission concludes that the 11.25% overall rate of return is inappropriate.

After careful consideration of the entire record, the Commission also concludes that the capital structure, cost of debt, and cost of equity recommended by the Public Staff should be adopted for purposes of this proceeding. As shown in the previous table, the Public Staff witness recommended a capital structure consisting of 58% equity and 42% debt and a cost of equity equal to 11.8% for BellSouth, GTE, and Carolina/Central. The cost of debt recommended by the Public Staff equaled 7.41% for BellSouth, 7.54% for GTE, and 7.75% for Carolina/Central. In arriving at these forward-looking cost of capital recommendations, the Public Staff witness used an approach which should generally be more reliable. The comparable risk group consisted of only telecommunications companies, a projected capital structure was used which is clearly more forward-looking, and the DCF model included no quarterly dividend compounding or flotation cost adjustments. In determining the cost of debt, the Public Staff recommendation was based upon only the long-term debt of BellSouth, GTE, Sprint and its subsidiaries and more recent yield data was used. In contrast, some witnesses for other parties tended to rely upon their judgment that the risk to BellSouth, GTE, and Carolina/Central in furnishing unbundled network elements and interconnection is comparable to the risk of industrials in fully competitive business markets. In addition, other witnesses used either historical or older data in calculating the dividend yields and debt costs, gave weight to market values in the recommended capital structures, and their cost of equity estimates were based or influenced by reliance on cluster analysis or industrials in determining comparable risk groups, DCF models which included quarterly compounding or flotation cost adjustments, and other models which are generally not as straightforward in application as the DCF model.

CONCLUSIONS

The Commission believes that the evidence contained in the testimony offered by the Public Staff is the most credible and reliable evidence in the record in this proceeding with respect to the rate of return issue. Therefore, the Commission concludes that the overall costs of capital which are reasonable and appropriate to use in the cost studies to determine the forward-looking economic cost associated with the provision of unbundled network elements and interconnection equal 9.96% for BellSouth, 10.01% for GTE, and 10.10% for Carolina/Central.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: Are the reasonable and appropriate economic lives and future net salvage percentages for calculating depreciation rates for use in the cost studies those that are within the FCC-authorized ranges?

POSITIONS OF PARTIES

BELLSOUTH: No. It is BellSouth's position that its proposed depreciation lives, which are based on BellSouth's 1995 and 1996 Depreciation Studies, are by far the most reasonable and appropriate proposal before the Commission. BellSouth also asserted that under price regulation, BellSouth has the right to set its own depreciation rates. BellSouth argued that no other party to the docket did a similar analysis of plant lives or derived an independent and current assessment of the appropriate lives. BellSouth believes that the FCC-authorized lives are "backwards-looking".

CAROLINA/CENTRAL: No. Carolina/Central stated that they used the Technology Future Incorporated's (TFI's) estimates of the forward-looking economic lives which comply with the Act and the FCC Interconnection Order which envisioned that the UNEs would be priced on the basis of a least-cost, most-efficient technology network. Carolina/Central argued that it would be inappropriate to use economic lives that were established in a historical manner, especially since the Companies are under price regulation and allowed to set their own depreciation rates.

GTE: No. GTE contended that its proposed depreciation rates, which are based on well-established National Association of Regulatory Utility Commissioners (NARUC) factors, are the appropriate depreciation rates to use and reflect the true lives of UNE assets, but after assigning the proper weight to those factors that reflect the significant roles of competition and technological changes in determining an asset's economic life. GTE maintained that the FCC-authorized ranges were developed from lives prescribed in the 1990-1994 time frame and were established prior to the passage of TA96; therefore, GTE stated, the FCC-authorized ranges are outdated and inappropriate for today's telecommunications market.

AT&T: Yes. AT&T asserted that BellSouth's proposed depreciation rates are not state specific, recover BellSouth's investment faster than a competitive market would permit, and are thus discriminatory. AT&T believes that the FCC-authorized rates are forward-looking and are North Carolina specific and should be adopted by the Commission. BellSouth's recommended depreciation lives are significantly shorter than the FCC lives and are based on "book lives" which are governed by the Generally Accepted Accounting Principle (GAAP) of "conservatism" that requires BellSouth to adopt shorter lives.

MCI: Yes. MCI stated that the Hatfield Model uses economic lives and future net salvage percentages prescribed for BellSouth in North Carolina in 1993 by the FCC. MCI asserted that the FCC's projected lives are of a forward-looking nature as confirmed by empirical tests and that those rates are specific to North Carolina. MCI argued that BellSouth is obviously satisfied with the FCC's depreciation lives since the FCC has adopted a streamlined process for the represcription of depreciation rates, and BellSouth has still not chosen to take advantage of its represcription opportunity.

NCCTA: Yes. NCCTA recommended that the Commission order the ILECs to adopt the FCC-prescribed economic lives and future net salvage rates that are more representative of future operating conditions. NCCTA stated that the FCC has prescribed a range of lives for over thirty categories of telecommunications plant on an individual carrier basis. NCCTA argued that the FCC developed its projected depreciation lives based on a detailed analysis that considered the most recent plant retirement patterns, the individual carrier's plans, and the current technological developments and trends. NCCTA argued that the FCC has broad industry experience and expertise and that its depreciation rates are grounded in a comprehensive examination.

NEW ENTRANTS: Yes. The New Entrants stated that the FCC has been prescribing depreciation lives for decades and reviews depreciation studies submitted by the largest ILECs on a triennial basis. The New Entrants maintained that the FCC-authorized lives were developed in the FCC's most recent triennial review (1995) and reflect the increasingly competitive telecommunications marketplace. Additionally, the New Entrants stated that their recommendation is consistent with the Commission's findings in the FLEC Docket. The New Entrants did concede that under their price regulation plans, BellSouth, Carolina/Central, and GTE are allowed to set their own depreciation rates. However, the New Entrants argued that the Commission is required by Section 251 of TA96 to establish cost-based rates for UNEs. Therefore, the New Entrants contended, the Commission must set depreciation rates that are forward-looking and will lend to creating cost-based UNE rates as do the FCC's prescribed lives.

ATTORNEY GENERAL: Yes. The Attorney General recommended that the Commission order the ILECs to use the depreciation rates prescribed by the FCC in order to be consistent with the Commission's decision in Docket No. P-100, Sub 133b (the FLEC Docket). The Attorney General stated that to do otherwise would expose North Carolina telephone users to market imbalances between depreciation costs in providing universal service and depreciation costs in providing UNEs.

PUBLIC STAFF: Yes. The Public Staff recommended that the Commission order the ILECs to reflect economic lives and future net salvage values that are within the FCC-authorized ranges.

DISCUSSION

AT&T/MCI recommended that BellSouth use the lives prescribed by the FCC for interstate depreciation purposes for this proceeding. BellSouth witness Cunningham argued that lives were last prescribed by the FCC in North Carolina in 1995 and that these lives, particularly for the technology-sensitive accounts, are much too long. Witness Cunningham argued that the rates are based on the old regulatory paradigm in which plant lives were artificially lengthened beyond their true economic lives so that the investment in that plant would be recovered in smaller year-to-year increments over a longer period of time. Witness Cunningham also noted that the FCC has acknowledged the need to examine its depreciation practices in today's environment. In fact, witness Cunningham referred to a February 1998 FCC news report listing depreciation as a proposed 1998 review proceeding. Specifically, the report stated: "Depreciation: Consider streamlining or eliminating Commission's methods for prescribing depreciation rates."

AT&T witness Lee referenced several states that have adopted the FCC's prescribed lives for use in TELRIC calculations, including Massachusetts, West Virginia, Wyoming, Ohio, Michigan, Colorado, Maryland, and Louisiana. However, BellSouth witness Cunningham, in rebuttal testimony, stated that Missouri and California have endorsed the use of economic lives similar to those used in BellSouth's cost studies. Witness Cunningham also noted that while Michigan originally ordered the use of the FCC's prescribed depreciation rates, the Michigan Public Service Commission (PSC) modified its earlier decision on reconsideration.

BellSouth witness Cunningham discussed in rebuttal testimony that the BellSouth Depreciation Study uses BellSouth regional lives, however, that BellSouth's life projections do not vary significantly among states. Witness Cunningham stated that BellSouth's lives for the major technology-sensitive accounts are the same in all nine BellSouth states.

New Entrants witness Gose noted in rebuttal testimony that the depreciation lives reflected by GTE cause an overstatement of costs that ultimately inflate the costs of UNEs to CLPs. Witness Gose also noted that rates used by the telecommunications companies under reasonably similar environmental conditions should be the same and that plant should be expected to last about the same amount of time.

New Entrants witness McMillin noted in rebuttal testimony that another reason to use the depreciation rates set by the FCC is that these rates have been thoroughly reviewed and analyzed while the rates proposed by BellSouth are unsupported. Witness McMillin asserted that BellSouth did not provide support for the depreciation rates it used in its cost study. However, on cross-examination by BellSouth attorney Ross, witness McMillin admitted that BellSouth witness Cunningham did submit BellSouth's 4,000 page Depreciation Study. Witness McMillin testified that his concern was that BellSouth only provided the support in rebuttal testimony even though BellSouth knew that depreciation would be investigated in depth in this proceeding.

New Entrants witness Solomon stated in rebuttal testimony that Carolina/Central have not provided any support for their proposed depreciation lives. Witness Solomon also stated that TFI does not provide depreciation lives for all of the plant accounts listed in Carolina/Central's filing. Witness Solomon stated that the lives proposed by TFI are not specific to Carolina/Central. Witness Solomon recommended that the Commission adopt the depreciation rates proposed by AT&T witness Lee who performed a thorough analysis of why the FCC composite depreciation rates are appropriate to apply to Carolina/Central. Witness Solomon explained that the FCC composite rates presented by witness Lee represent the weighted average set of projected depreciation lives from 76 ILEC study areas including Bell Operating Companies (BOCs), Southern New England Telephone (SNET), Cincinnati Bell, and numerous GTE and United Companies.

As indicated above, the Public Staff is of the opinion that the FCC-authorized ranges are sufficiently forward-looking to comply with the principle of economic depreciation rates and that it is appropriate to retain those rates for use in this proceeding consistent with the Commission's FLEC Order. In the FLEC Order, the Commission ordered that the ILECs use economic lives and future net salvage values that are within the FCC-authorized ranges. The Public Staff noted that the Commission is not bound by its decision in the FLEC Docket in the UNE docket and noted that none of the parties have recommended that the Commission use those rates in this proceeding. However, the Public Staff believes that those rates are sufficiently forward-looking.

The Commission has found as discussed in the Evidence and Conclusions for Finding of Fact No. 1 that the cost studies used to determine UNE prices should be based on TELRIC. In the context of the FLEC Docket, the Commission found that the FCC-authorized ranges were forward-looking for purposes of determining the cost of universal service. Therefore, the Commission believes that it is appropriate in this docket to require the parties to use as inputs to the TELRIC cost studies economic lives and future net salvage values that are within the FCC-authorized ranges, consistent with the Commission's Order on Reconsideration in that docket. In the Commission's Order on Reconsideration issued July 2, 1998, in Docket No. P-100, Sub 133b, the Commission required BellSouth and GTE to re-file their FLEC studies and change only those economic lives and future net salvage values that were originally outside of the FCC-authorized ranges. Attached as Appendix B is a spreadsheet with the economic lives and future net salvage values as filed by the ILECs in compliance with the Commission's Order on Reconsideration issued in Docket No. P-100, Sub 133b.

CONCLUSIONS

The Commission concludes that it is reasonable and appropriate to require the ILECs to use the economic lives and future net salvage values which were adopted and approved by the Commission in Docket No. P-100, Sub 133b, as shown on Appendix B attached to this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: Are the following tax rates and regulatory fee rate appropriate for use in the cost studies: federal income tax rate, 35%; state income tax rate, 6.9%; and regulatory fee, 0.09%?

POSITIONS OF PARTIES

BELLSOUTH: No. It is BellSouth's position that the following tax rates and regulatory fee are appropriate for use in the cost studies: federal income tax rate, 35%; state income tax rate, 7.5%; and regulatory fee, 0.09%.

CAROLINA/CENTRAL: No. Carolina/Central acknowledged that the current state income tax rate of 7.5% is scheduled to be reduced to 7.25% in 1998 and to 6.9% in 2000. Carolina/Central reasoned that tax rates which are established by the North Carolina General Assembly are highly subject to change, and using the tax rate for the most recent tax year is reasonable. If the projected tax rate changes actually occur as planned, these changes could be addressed in a future proceeding to revise the pricing of UNEs. Therefore, Carolina/Central believe that the effective state tax rate for 1997 of 7.5% is the most appropriate. No position was stated concerning the appropriate federal income tax rate and the regulatory fee.

GTE: No. It is GTE's position that the following tax rates and regulatory fee are appropriate for use in the cost studies: federal income tax rate, 35%; state income tax rate, 7.75%; and regulatory fee, 0.09%.

AT&T: AT&T did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

MCI: MCI did not specifically address this issue in its Proposed Order.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: Yes. The New Entrants' position is that the appropriate tax rates and regulatory fee for use in the cost studies are: federal income tax rate, 35%; state income tax rate, 6.9%; and regulatory fee, 0.09%.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff's position is that the appropriate tax rates and regulatory fee for use in the cost studies are: federal income tax rate, 35%; state income tax rate, 6.9%; and regulatory fee, 0.09%.

DISCUSSION

As indicated above, the Public Staff and the New Entrants are of the opinion that the appropriate tax rates and regulatory fee for use in the cost studies are: federal income tax rate, 35%; state income tax rate, 6.9%; and regulatory fee, 0.09%.

There was no disagreement among the parties regarding the federal income tax rate, but the rate used for state income tax varied with some proposing 7.75% and others proposing 7.5%. Consistent with the decision in the Commission's FLEC Order in Docket No. P-100, Sub 133b, the appropriate forward-looking state income tax rate is 6.9%. The regulatory fee of 0.09% was undisputed.

The Public Staff was the only party to address the appropriate amount of gross receipts tax, and the Commission notes that BellSouth's model did not include gross receipts tax in its calculations. Considering the services to which gross receipts tax is applied today, the Commission concludes that no gross receipts tax should be paid on revenues received for the provision of UNEs. Under G.S. 105-120, gross receipts tax applies to sales for local exchange service. It is not imposed on charges for access to an interconnection with the local telephone exchange. Since the provision of UNEs is analogous to the provision of access to long distance carriers, no gross receipts tax should apply.

CONCLUSIONS

The Commission concludes that the reasonable and appropriate tax rates and regulatory fee for use in the cost studies are: federal income tax rate, 35%; state income tax rate, 6.9%; and regulatory fee, 0.09%.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Issue: Should the recurring and nonrecurring charges proposed by the ILECs be modified to reflect the changes in the annual cost factors which the Commission has found reasonable herein?

POSITIONS OF PARTIES

The ILECs in this proceeding proposed recurring and nonrecurring charges based upon annual cost factors as set forth in the cost studies. The Public Staff, however, took the position that these recurring and nonrecurring charges should be modified to reflect the changes in the annual cost factors which the Commission determines to be reasonable.

DISCUSSION

The recurring and nonrecurring charges for loops and ports and the other recurring and nonrecurring charges that the ILECs have proposed should be modified to reflect the changes in the annual cost factors which the Commission has found to be reasonable. The Commission anticipates that, to the extent that the nonrecurring charges were calculated to recover capital costs associated with those work functions, the same annual cost factors which the Commission has found appropriate for use in calculating recurring costs, such as the cost of capital, capital structure, depreciation rates, effective tax rates, and any secondary effects of those annual cost factors on shared and common costs and labor rates, will also serve to reduce the nonrecurring charges. These changes will also affect the conversion of the OSS development costs and disconnect costs to recurring rates or adders.

CONCLUSIONS

The Commission concludes that the recurring and nonrecurring charges proposed by the ILECs should be modified to reflect the changes in the annual cost factors which the Commission has found to be reasonable and appropriate herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Issue: Should GTE and Carolina/Central be required to file proposed rates and supporting cost studies for certain types of loops, local switching elements, and access to poles, ducts, and conduits?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

CAROLINA/CENTRAL: No. Carolina/Central stated that there are a number of UNEs for which Carolina/Central have not provided prices. Carolina/Central propose to use individual case basis (ICB) pricing for digital 2-wire loops; digital 4-wire loops; Integrated Services Digital Network (ISDN) loops; DS1 loops; High-Bit Rate Digital Subscriber Line (HDSL) loops; ISDN switching; Centrex switching; Private Branch Exchange (PBX) switching; and DS1 switching. In Exhibit A attached to its Proposed Order, Carolina/Centrals' recommended rate schedule, Carolina/Central listed rates for all these services as "Individual Case Basis."

GTE: GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief. However, Exhibit No. 1 attached to GTE's Proposed Order did not include proposed rates for several of these services.

AT&T: AT&T did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

MCI: MCI did not specifically address this issue in its Proposed Order.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: Yes. Carolina/Central should be required to submit to the Commission cost studies and proposed rates for 2-wire loops, 4-wire digital loops, ISDN loops, DS1 loops or HDSL loops, and for access to poles, ducts, and conduits. GTE should be required to submit cost studies for Asynchronous Digital Subscriber Line (ADSL) and HDSL loops and for access to poles, ducts, and conduits.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff stated that Carolina/Central failed to file rates for several digital loops, ISDN services, and DS1 loops. In comments of the Public Staff filed on July 21, 1998, the Public Staff also stated that Carolina/Central failed to file UNE rates for PBX and Centrex local switching elements. According to the Public Staff, although these services are not available throughout Carolina/Central's service areas, these services are available in many of these Companies' exchanges, and therefore, should be made available in those exchanges to a CLP immediately upon demand. The Public Staff believes that Carolina/Central should file rates and supporting studies for these elements along with their amended rates pursuant to the Commission's Order. The Public Staff did not address the issue of whether Carolina/Central should be required to submit cost studies and proposed rates for access to poles, ducts, and conduits. The Public Staff also did not address the issue of whether GTE should submit cost studies and proposed rates for ADSL and HDSL loops, and for access to poles, ducts, and conduits.

DISCUSSION

Carolina/Central stated that, generally, these services are not widely deployed in Carolina/Central's network; therefore the Companies lack information sufficient to develop generic rates applicable to any requested situation. Accordingly, Carolina/Central propose to develop costing and pricing in response to specific CLP requests for these services. If sufficient demand for these services develops in the future, Carolina/Central will develop and make available generic rates.

GTE did not specifically address pricing for these particular elements in its Proposed Order or Post-Hearing Brief.

With respect to Carolina/Central, New Entrants believe that Carolina/Central's proposal to establish ICB rates for 2-wire or 4-wire digital loops, ISDN loops, DS1 loops, and for access to poles, ducts, and conduits would place CLPs at a competitive disadvantage because of the inherent delay in waiting for an ICB price proposal. According to the Proposed Order of New Entrants, even though Carolina/Central witness Hunsucker testified that prices had not been proposed for these type loops, in part, because there had been no demand for them, Carolina/Central did propose prices for 2-wire and 4-wire analog loops despite the fact that it had not sold any of these loops in North Carolina. ICG witness Jackson testified that not knowing the rate for high-end loops would hamstring CLPs in competing for new business and that Carolina/Central's proposal to customize many of the arrangements would make it impossible as a practical matter for CLPs to do business. New Entrants also stated that BellSouth submitted cost studies and proposed rates for all of the loops discussed above.

With respect to GTE, New Entrants contended that GTE's failure to propose rates for ADSL or HDSL loops and access to poles, ducts, and conduit is also an impediment to competition. New Entrants stated that in response to its discovery, GTE indicated that GTE does not intend to offer ADSL or HDSL services on an unbundled basis, but instead, GTE would provide conditioned 2-wire loops upon request on which CLPs can provision ADSL or HDSL services. GTE's response also stated that prices for conditioning are under development and would be provided once cost studies are completed. New Entrants also cited the testimony of Intermedia witness Davis who testified that GTE's failure to specify rates for essential UNEs is unacceptable because (1) it allows ILECs to delay introduction of rates for these services for many months, (2) it invites a piecemeal approach that may result in discriminatory rates, and (3) it does not allow CLPs to use UNEs capable of supporting data applications to compete against retail services that are tariffed and immediately available to ILECs' customers.

New Entrants recommended that Carolina/Central be required to submit cost studies and proposed rates for 2-wire or 4-wire digital loops, ISDN loops, DS1 loops or HDSL loops and for access to poles, ducts, and conduits consistent with the pricing methodology approved by the Commission in its Order. Until the Commission approves rates for these elements for Carolina/Central, New Entrants requested that BellSouth's Commission approved rates for these elements be adopted subject to true-up. For GTE, New Entrants requested that the Commission require GTE to prepare cost studies for ADSL and HDSL lines. New Entrants also requested that the Commission should open a docket to determine GTE's rates for access to poles, ducts, and conduits, and either AT&T's or BellSouth's rates should be utilized on an interim basis subject to true-up pending determination of final rates for GTE.

CONCLUSIONS

The Commission notes that BellSouth has proposed rates for these services and we cannot find sufficient reasons in the record why GTE and Carolina/Central should not propose specific rates for each of the services listed above. Therefore, the Commission concludes that GTE and Carolina/Central should be required to file proposed rates and cost studies for each of the following services: digital 2-wire loops; digital 4-wire loops; ISDN loops; DS1 loops; HDSL loops; ASDL loops; ISDN switching; Centrex switching; PBX switching; DS1 switching; and access to poles, ducts, and conduits. To the extent Carolina/Central and GTE have not previously filed proposed rates for any of these services in this docket, Carolina/Central and GTE should file proposed rates and cost studies consistent with the pricing methodology approved by the Commission within 30 days of the date of this Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: Are the lengths of the drops proposed by certain ILECs appropriate for purposes of this proceeding?

POSITIONS OF PARTIES

BELLSOUTH: Yes. In making its assumption regarding drop wire length, BellSouth stated that it relied on its own subject matter experts, who applied their knowledge with respect to the areas where they actually provide telephone service. BellSouth argued that the estimates so derived were clearly more reliable than anything provided by the CLPs.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: Yes. GTE contended that the average drop wire length of 241 feet used in its cost study is appropriate given the significant extent to which GTE's service area in North Carolina is rural. That length, according to GTE, is consistent with the data of GTE's subcontractors. GTE stated that, in any event, there is virtually no difference in overall costs that arises from disagreements regarding the length of the drop.

AT&T: No. AT&T takes the position that BellSouth failed to produce sufficient evidence in support of its estimated length of the drop. AT&T argued that BellSouth's estimates are far higher than the national average, even when adjusted to reflect North Carolina-specific access lines per square mile. AT&T stated that its estimates conservatively put the average forward-looking drop wire length at 100 feet.

MCI: MCI did not specifically address this issue in its Proposed Order.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: No. Regarding BellSouth, the New Entrants stated that the 250 foot average drop length developed by BellSouth's subject matter expert was derived by averaging responses of BellSouth managers, who were asked to identify the average drop wire length they usually installed, and also the responses of the BellSouth group that purchases buried drop wire through master contracts. The New Entrants argued that such an approach was substantively inferior to the methodology utilized by its witness McMillin. Witness McMillin recommended halving the 250 foot average drop length proposed by BellSouth. The position of 125 feet for a drop, essentially, was based on a nationwide survey of the Bell Operating Companies conducted in 1983, which determined the average drop length to be 73 feet, adjusted to account for North Carolina being less densely populated that the national average. The New Entrants noted that their proposed 125 foot drop length was 71% higher than the national average. They also argued that BellSouth's methodology did not represent a forward-looking approach. In summary, the New Entrants asserted that BellSouth had failed to conclusively prove that its proposal reflects the actual demographics of its network and that the actual demographics of its network reflect a forward-looking, most efficient network deployment.

Regarding GTE, the New Entrants argued that GTE's approach contained a number of inappropriate assumptions, such as a uniform size and distribution of lots within the grid and equal spacing of residences and businesses throughout the grids. To correct for such alleged improprieties, the New Entrants contended that the cost of materials reflected in GTE's drop costs should be reduced by 20%. Finally, the New Entrants stated that GTE's counsel, while cross-examining its witness Gose, appeared to concede the issue as de minimis since the result of reducing the drop material cost by 20% would only result in an approximate $0.08 reduction in the price of a 2-wire loop.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its Proposed Order.

DISCUSSION

A "drop" is the wire or cable from the ILEC's box to the customer's premises. The cost of the drop is a component of the ILEC's total loop costs. Certain CLPs attacked the BellSouth and GTE loop costs primarily by attacking their assumptions about the length of the drop. Essentially, those CLPs are of the opinion that in actuality the drop lengths are shorter than the drop lengths used by BellSouth and GTE in their cost models.

With respect to BellSouth, the Commission is of the opinion that the weight of the evidence of record supports the position of BellSouth. BellSouth's methodology appears to be more reasonable than the approaches utilized by the opposing CLPs in that it is based on BellSouth's actual experience and thus is more reflective of actual demographics within North Carolina. Moreover, it does not appear to be an unreasonable approach to take in modeling a forward-looking network.

Regarding GTE, the evidence presented does not show that the average drop length used by GTE in its study is unreasonable. The New Entrants provided no credible substantiation for their contention that GTE's drop length is too high. To the extent that studies of Bell Operating Companies are relied upon to estimate average drop lengths for GTE, the evidence of record does not support the appropriateness of doing so, given the rural nature of many of GTE's service areas within North Carolina. No issue was raised in this regard with respect to Carolina/Central.

CONCLUSIONS

The Commission concludes that the drop wire lengths utilized by the ILECs in their cost studies are reasonable and appropriate for purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Issue: Are the ILECs' assumptions regarding structure sharing arrangements appropriate?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth included the effects of structure sharing for poles and conduits through the plant specific expense factor by including net rent (rent revenue less expense). BellSouth argued that it is in its interest to share structure costs when possible because it is the most economic course of action. BellSouth claimed that the HM ignores the practical constraints of structure sharing such as timing and the willing participation of cable and power companies to remove their existing facilities and rebuild their networks simply to share structure with the hypothetical carrier assumed under the HM.

CAROLINA/CENTRAL: Yes. Carolina/Central argued that for TELRIC purposes, the Companies have assumed more structure sharing on a forward-looking basis than is currently being achieved. Carolina/Central stated that an analysis of Carolina/Central's pole sharing arrangements in North Carolina confirms that 58% of the cost of poles is borne by Carolina/Central (and 42% by other entities). However, Carolina/Central have reflected a 50% pole-sharing factor in their TELRIC studies in this proceeding. Carolina/Central's inputs for structure sharing are based on actual experience, where real world issues such as work coordination with other companies, safety concerns with power cables, and available space considerations make significant sharing of buried and underground construction costs unlikely.

GTE: Yes. GTE stated that its run of the ICM takes into account significant structure sharing. GTE pointed out that it is unrealistic to expect high levels of structure sharing of trenches and conduits, but that structure sharing opportunities should increase significantly with poles.

AT&T: AT&T did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

MCI: MCI did not specifically address this issue in its Proposed Order.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: No. The New Entrants argued that GTE's sharing inputs into the ICM 2.12 understate the likely extent of shared use of GTE's facilities on a forward-looking basis and will have the effect of overstating the cost of the facilities by failing to take into account the additional revenue from sharing. The New Entrants proposed to revise GTE's structure sharing percentages and add three additional users on poles, two additional users in trenches, and two users in conduits. The New Entrants also recommended increasing the buried and underground feeder and distribution sharing percentages in the ICM from 0% to 20%.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its Proposed Order.

DISCUSSION

The issue of structure sharing was decided by the Commission in the context of its FLEC Docket in determining the cost of providing universal service in North Carolina. The Commission decided, on reconsideration, that all four ILECs should use the structure sharing inputs recommended by Carolina/Central and that those inputs were appropriately forward-looking. In this docket, there was relatively little evidence in the record on this matter. Neither the Public Staff nor the Attorney General presented a position on this issue. The ILECs all proposed structure sharing percentages based on their own predictions of the amount of sharing that may occur in the future. The competitors all proposed structure sharing percentages which realized significantly more sharing.

The Commission believes that it is appropriate in this docket to require the ILECs to input the structure sharing percentages adopted and approved by the Commission in the FLEC Docket. Those percentages were found to be forward-looking in the FLEC Docket and should apply in this docket as well.

CONCLUSIONS

The Commission concludes that it is reasonable and appropriate to adopt the structure sharing percentages adopted and approved by the Commission in the context of the FLEC Docket to be used by all ILECs in this proceeding to determine the prices of UNEs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Issue: Are the loading factors reflected by the ILECs the appropriate factors to be applied to material prices?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: No. BellSouth's loading factors tremendously inflate its material prices because these factors are deliberately designed to recover labor and exempt material costs incurred at historic levels and are not adjusted for any forward-looking assumptions.

MCI: MCI did not specifically address this issue in its Proposed Order.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: No. The New Entrants argued that both BellSouth's material loadings (which adjust the outside plant material price for labor and other costs) and its telco loadings (which adjust the switch material prices to account for labor and other costs) should be rejected as embedded. The New Entrants argued that BellSouth's loading ratios were based on the ratios during 1995 between BellSouth's expenses in those two categories. The New Entrants recommended that the Commission decrease BellSouth's material and telco loading factors by 7.83% across all accounts to reflect productivity increases. The 7.83% was calculated by assuming a 6.5% productivity factor (which is based on the FCC's Fourth Report and Order in its price cap performance review) and then applying the factor over the three years of BellSouth's study period.

The New Entrants argued that Carolina/Central's cost studies overstate nonrecurring loop rates by failing to incorporate productivity increases in their proposed annual charge factors and common costs. The New Entrants recommended that the Commission reduce Carolina/Central's labor loadings used in their cost studies for calculating nonrecurring loop costs by 4.39% to appropriately reflect productivity increases.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its Proposed Order.

DISCUSSION

There was little evidence presented on the record concerning this issue. Neither the Public Staff nor the Attorney General addressed this issue. The ILECs have proposed loading factors which they believe are appropriate, and the CLPs have presented evidence which they believe indicates that the loading factors used by the ILECs are excessive.

The Commission addressed this issue in the context of its FLEC Docket. The Commission found that GTE reflected default values for material and installation costs and ordered that GTE reflect the North Carolina-specific data for materials and installation recommended by Carolina/Central.

The Commission believes that it is appropriate in this docket to require the four ILECs to input the loading factors adopted and approved by the Commission in the FLEC Docket. Those factors were found to be forward-looking in the FLEC Docket and should apply in this docket as well.

CONCLUSIONS

The Commission concludes that it is reasonable and appropriate to require the ILECs to input the loading factors adopted and approved by the Commission in the FLEC Docket.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Issue: Are the ILECs' proposed switching costs appropriate?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth argued that its proposed switching costs are more reasonable than those proposed by AT&T. For purposes of its cost studies, BellSouth assumed that its forward-looking network would consist of 100% digital switches. BellSouth also assumed that it would deploy a combination of Nortel DMS100 and Lucent Technologies (Lucent) 5E switches, which the CLPs acknowledged represent forward-looking technology. In developing the switching investment associated with these switches, BellSouth used existing contracts with Nortel and Lucent and incorporated the actual discounts from those contracts into the Switching Cost Information System (SCIS) model. BellSouth also took into consideration the costs associated with both the initial placement and growth of a switch.

CAROLINA/CENTRAL: Yes. Carolina/Central believe their TELRIC studies for switching are appropriate for use in this proceeding. Carolina/Central performed TELRIC studies for pricing local switching. The Companies' approach to switch cost development is to apply costs to the cost causer. This is accomplished by using forward-looking technology with actual traffic driving the provisioning per wire center. Carolina/Central's TELRIC studies (using the SCIS model and the Switching Model (SWIM)) use actual wire center-specific traffic to provision switches on a wire center basis. Because call termination costs differ from local switching costs, Carolina/Central have derived separate TELRIC studies for call termination. Carolina/Central have performed TELRIC studies to price tandem switching as a separate UNE. The Companies stated that because the functional elements used in tandem switching are equivalent to local trunk-to-trunk switching, the cost of tandem switching is equal to local trunk-to-trunk switching.

GTE: Yes. GTE stated that its inputs for switching are reasonable and appropriate. GTE asserted that the criticisms made by MCI are not justified. GTE asserted that it is proper for GTE to use melded switch prices based on the cost of both new switches and switch additions. GTE will be required, on a forward-looking basis, to purchase both new switches and additions. GTE is not a new entrant; nor is it capable of correctly sizing all future switch demand, as would be required to efficiently build a new network with only new switches. Moreover, contrary to MCI's claims, GTE does not double-count the cost of vertical features. The cost primitives used for switching in the ICM come from the SCIS model. This is a tested and well respected model, and there is no evidence that it engages in double-counting. GTE reviewed all the cost primitives in the ICM to ensure that, in fact, there is no double-counting.

AT&T: No. AT&T asserted that the Commission should reject BellSouth's proposed TELRIC switch costs because these costs violate several critical TELRIC principles, to the detriment of competition and North Carolina customers. First, BellSouth's switch prices do not reflect the actual discounts BellSouth now experiences and can anticipate in the future in its contracts with switch vendors. Second, BellSouth's cost studies, as discussed above, assume that every digital switch requires additional, expensive equipment to convert an analog signal to a digital signal the switch can use. Efficient competitors, however, will rely heavily on digital loop technologies that will provide digital, not analog, outputs. Finally, BellSouth vastly overstates the costs of vertical features and makes no attempt to prove otherwise.

MCI: No. MCI stated that several problems exist with Carolina/Central's studies. Specifically, MCI remarked as follows: the BCPM is based on local exchange routing guide (LERG) data that represents the existing embedded plant and therefore, does not guarantee an efficient forward-looking design; the BCPM only uses the 5ESS and DMS-100 switch technology, which produce extremely large per line costs for small switches; the BCPM uses regression coefficients to divide investments into "buckets" which are developed outside of the BCPM using proprietary "Audited ILEC Switching Model" which are not documented; and the BCPM assigns start-up costs to the processor.

MCI contended that GTE's ICM is structurally flawed and fundamentally unsound. MCI stated that GTE's "ICM suffers too many shortcomings to reliably produce UNE prices." MCI argued that the ICM overstates UNE costs for switching caused by (1) double counting of processor utilization costs in both switch usage and vertical features, and (2) use of weighted switch discounts that are too low and engineering additives that are too high.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief. However, the NCCTA stated that it does not necessarily have a preference to the Commission's selection of a cost model, except that NCCTA does not support use of the ICM. NCCTA recommended that the Commission should adopt one cost model to be applied to all companies.

NEW ENTRANTS: The New Entrants did not specifically address this issue in their Proposed Orders or Post-Hearing Brief.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: No. The Public Staff stated that the Commission should continue to believe that the costs derived from studies that reflect ILEC-specific characteristics are the most appropriate basis for pricing UNEs provided they are reasonable, forward-looking, and otherwise consistent with the Act. The Public Staff concluded that the ILECs cost studies were appropriate except that they should be modified to reflect the Public Staff's proposed changes in the annual cost factors and vertical features. The Public Staff stated that the vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies, with the modifications and adjustments proposed by the Public Staff.

DISCUSSION

SCIS is a software program developed by Bellcore to determine the central office switching investment required to provide telephone subscribers with services and features. This program was not specifically developed for BellSouth or for TELRIC cost studies. It is widely used by a number of the regional BOCs to determine switching costs. The SCIS model provides long-run, forward-looking costs.

It is BellSouth's opinion, as explained by its witness Taylor, that the assumption embraced by both AT&T witness Petzinger and the Hatfield Model, that BellSouth will "serve new demand only by installing new switches, sized exactly to serve current demand that is unchanging and known with certainty" is unrealistic and only serves to bias "costs downward." BellSouth argued that AT&T witness Petzinger artificially reduced BellSouth's switching costs by ignoring expenses associated with switch growth consistent with her view that in a "scorched node" TELRIC study, only initial switch placement costs should be considered. Further, BellSouth stated that even AT&T's economist, witness Cabe, does not share witness Petzinger's view. According to witness Cabe, in assessing the economic cost of switching, it would not be appropriate to look only at initial placement and ignore the cost of growth associated with a switch. BellSouth considered its switching costs to be more reasonable.

Carolina/Central performed TELRIC studies for pricing local switching. Unbundled local switching elements encompass line side and trunk side functionalities, plus the features, functions, and capabilities of the switch. Carolina/Central's approach to switch cost development is to apply costs to the cost causer. This is accomplished by using forward-looking technology with actual traffic driving the provisioning per wire center. Carolina/Central argued that the features should be considered separate switching subelements in order to provide efficient price points. By not identifying feature costs separately, cross-subsidization takes place between customer classes. To provide the appropriate economic price points and incentives based on cost causation, feature packages should be provisioned as separate switching cost components.

Carolina/Central asserted that unbundled switch prices (port and usage) which use actual cost are appropriate. Unlike the HM 5.0a, which uses national average switch investment data (investment points from BellSouth and GTE investment per line data) as representative of Carolina/Central's investment, and state average subscriber traffic, Carolina/Central's TELRIC study (using the SCIS and SWIM models) uses actual wire center-specific traffic to provision switches on a wire center basis.

Features are those optional services that are provisional in the switch with separate hardware and software components such as custom calling, Custom Local Area Signaling Service (CLASS), and Centrex. Carolina/Central have performed TELRIC studies to separately price these features. The issue of the appropriate pricing of vertical features is subsequently addressed in the Evidence and Conclusions for Finding of Fact No. 19.

Call termination constitutes the termination of traffic between two networks. Because call termination costs differ from local switching costs, Carolina/Central have derived separate TELRIC studies for call termination. There will be separate costs for the local switching component of call termination, as well as the cost of transport from the point of interconnection to the end office or from the point of interconnection to the tandem switch and from the tandem switch to the end office.

Tandem switching is the intermediate connection/switching point between the originating telephone call location and the final destination of the call. The tandem point passes the call along utilizing a trunk-to-trunk connection. Carolina/Central have performed TELRIC studies to price tandem switching as a separate UNE. The Companies state that because the functional elements used in tandem switching are equivalent to local trunk-to-trunk switching, the cost of tandem switching is equal to local trunk-to-trunk switching.

GTE asserted that the evidence of record does not establish the need for any modifications in the switching inputs used by GTE. GTE believes that its use of melded prices is appropriate given the fact that it is not a new entrant and cannot meet switching demand efficiently by purchasing only new switches. The Commission has already concluded that forward-looking cost estimates should be based on the situations faced by real-world ILECs, not by hypothetical new entrants.

GTE asserted that the evidence does not establish that GTE has double-counted the cost of vertical features. The switching module used by GTE relies on Bellcore's SCIS model to develop the cost of vertical features. The SCIS is a tested and well respected model, and there is no evidence that it engages in double-counting. MCI has failed to show that the SCIS double-counts this investment. GTE asserted that the Commission should find that GTE witness Steele's testimony that there is no such double-counting to be credible and reliable.

AT&T argued that the Commission should reject BellSouth's switch costs because they do not comport with TELRIC principles which have been determined to be the appropriate methodology for determining costs under the Act. First, BellSouth's switch prices do not reflect the actual discounts BellSouth now experiences and can anticipate in the future in its contracts with switch vendors. BellSouth's model, for example, uses switch discount inputs which produce prices many times higher than those BellSouth now has available under existing, long term contracts with Lucent. Given even the current level of competition among switch manufacturers, BellSouth's forward-looking switch costs, assuming efficient contracting practices, will approach the competitive prices Lucent offers, whether the ultimate supplier is Lucent, Nortel, or some other vendor. Second, BellSouth's cost studies assume that every digital switch requires additional, expensive equipment to convert an analog signal to a digital signal which the switch can use. In reality, however, AT&T stated that efficient competitors will rely heavily on digital loop technologies that will provide digital, not analog, outputs. AT&T contended that such an assumption is discriminatory and contrary to the Act. Finally, AT&T also argued that BellSouth overstated the cost of vertical features.

MCI noted that several problems exist with Carolina/Central's studies as follows: the BCPM is based on LERG data that represents the existing embedded plant and therefore, does not guarantee an efficient forward-looking design; the BCPM only uses the 5ESS and DMS-100 switch technology, which produce extremely large per line costs for small switches; the BCPM uses regression coefficients to divide investments into "buckets" which are developed outside of the BCPM using proprietary "Audited ILEC Switching Model" which are not documented; and the BCPM assigns start-up costs to the processor.

MCI argued that GTE's ICM overstates UNE costs for switching caused by (1) double counting of processor utilization costs in both switch usage and vertical features, and (2) use of weighted switch discounts that are too low and engineering additives that are too high.

As indicated above, the Public Staff is of the opinion that the Commission should find that the costs derived from studies that reflect ILEC-specific characteristics are the most appropriate basis for pricing UNEs provided they are reasonable, forward-looking, and otherwise consistent with the

Act. The Public Staff concluded that the ILECs' cost studies were appropriate except that they should be modified to reflect the Public Staff's proposed changes in the annual cost factors. Further, the Public Staff also stated that the vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies, with the modifications and adjustments proposed by the Public Staff.

After a review of all relevant evidence, the Commission agrees with the Public Staff that the costs derived from studies that reflect ILEC-specific characteristics are the most appropriate basis for pricing UNEs provided they are reasonable, forward-looking, and otherwise consistent with the Act. The Commission believes that the ILECs' switching studies are more appropriate for use in this proceeding than those proposed by AT&T and MCI.

CONCLUSIONS

The Commission concludes that the ILECs' switching costs are reasonable and appropriate, except that they should be modified to reflect the proposed changes in the annual cost factors and the pricing of vertical features as discussed elsewhere herein.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Issue: **Are the ILECs' proposed shared and common cost factors, including those for shared labor costs, appropriate for use in the UNE cost studies?**

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth noted that the controversy on this issue centered on not whether BellSouth was entitled to recover an appropriate allocation of shared and common costs but rather how much of these costs it should recover. BellSouth argued that its proposal on this issue was reasonable. For example, its common cost factor is 5.30%, compared to the 10.4% factor used by AT&T and MCI. Moreover, BellSouth's proposed shared and common cost factors are already 32% and 31%, respectively, lower than historical levels.

CAROLINA/CENTRAL: Yes. Carolina/Central argued that the record amply demonstrates that their common cost factor of 15%, which would be applied to the TELRIC of each UNE, is reasonable. The criticisms of the CLPs are unpersuasive. For instance, the NCCTA's reduction in the common cost factor is 13.5110% for Carolina and 13.0129% for Central — not that far off from 15%. Furthermore, Carolina/Central believe that they have adequately accounted for productivity increases which they expect to achieve. For example, in the Other Direct and Common Cost Study, the Corporation Operations Expenses, a prime example of a common cost, was reduced 22% for Carolina and 27% for Central. Further reductions are not appropriate.

GTE: Yes. GTE proposed that its TELRICs be marked up by 14.0% to reflect its forward-looking common costs, based on GTE's forward-looking common cost studies showing that GTE's common costs are 14.0% of its total direct costs for wholesale related services. The three exceptions to the fixed allocation approach are (1) UNEs for which wholesale rates already exist in approved tariffs, (2) nonrecurring charges for which no identical wholesale rate currently exists, and (3) vertical features.

AT&T: No. AT&T maintained that the Commission should reject BellSouth's proposed shared and common cost factors because they improperly include historic costs, do not comply with TELRIC principles, and are based on unwarranted assumptions and unsupported cost inputs. Moreover, BellSouth did not adjust its proposed cost factors to account for efficiencies and it improperly allocated recurring costs to nonrecurring costs with respect to shared labor factors.

MCI: No. MCI argued that, with respect to shared and common costs, the Commission should embrace the fundamental premise of the Hatfield Model regarding forward-looking costs and reject BellSouth's studies.

NCCTA: No. NCCTA criticized Carolina/Central's common cost contribution factors as high.

NEW ENTRANTS: The New Entrants stated that the ILECs are entitled to recover an appropriate share of their shared and common costs to the extent that those costs are fairly allocable to the UNE being provided.

ATTORNEY GENERAL: The Attorney General did not specifically address the issue of shared and common costs in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff stated that the parties' differences for the most part lie in their TELRIC definitions, their study methodologies and inputs, and their allocations of shared and common costs. The Public Staff's overall conclusion was that the cost studies presented by the ILECs, with appropriate modifications and input adjustments, are consistent with Section 252(d) of the Act and are the appropriate basis for determining permanent prices for UNEs.

DISCUSSION

No one dissented from the principle that the ILECs should be able to recover shared and common cost factors as part of their UNE rates. The question centered on whether the amounts the ILECs proposed were reasonable. The ILECs argued that their proposed amounts were reasonable; the CLPs argued that they were too high. The Commission concurs with the Public Staff's view that the ILECs' cost studies, subject to modification, are consistent with Section 252(d) of the Act and are thus an appropriate basis for determining permanent UNE prices. This being the case, the Commission believes that the ILECs' shared and common cost factors are appropriate and should be adopted.

CONCLUSIONS

The Commission concludes that the ILECs' shared and common cost factors are reasonable and appropriate and should be adopted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Issue: What are the appropriate fill factors/utilization rates to be employed in pricing UNEs?

POSITIONS OF PARTIES

BELLSOUTH: It is BellSouth's position that the utilization and fill factors proposed by BellSouth should be used in the cost studies.

CAROLINA/CENTRAL: It is Carolina/Central's position that a forward-looking assumption of two pairs per household works in concert with a cable fill factor of 85% to achieve an overall effective distribution cable fill of approximately 47%.

GTE: GTE stated that the ICM, as run by GTE, does not calculate a fill factor. However, the ICM permits users to run the model using the fill factors of their choice. GTE's position is that there is no need to take advantage of this feature and run the model with a particular fill factor. To the extent that a user-selected fill factor is employed, that fill factor should not exceed the fill factors deemed appropriate by this Commission in the FLEC Docket (65% for distribution and 69% for feeder).

AT&T: AT&T contended that the fill factors BellSouth applies to its sample loops are not forward-looking, are not consistent with the principle of cost causation, and permit BellSouth to over-recover in significant amounts.

MCI: MCI believes the Hatfield Model matches current demand and the size of network facilities necessary to serve current demand.

NCCTA: NCCTA stated that a more appropriate fill factor can be approximated using BellSouth data from its Automated Reporting Management Information System (ARMIS) 43-08 report filed with the FCC to project demand related spare capacity.

NEW ENTRANTS: The New Entrants contended that it is reasonable and appropriate to use the following fill factors to cost UNEs:

BellSouth:	75.5% for copper feeder; 63.1% for copper distribution; and 82% for fiber feeder.
Carolina/Central:	85% fill factor for distribution cable which results in an effective fill factor of 71% when 1.2 lines are provisioned for each residence; feeder fill factor of 92.5% for both fiber and copper feeder.
GTE:	80% fill factor.

ATTORNEY GENERAL: The Attorney General noted that this Commission has investigated fill factors in the FLEC Docket and has concluded that when calculating the forward-looking economic cost of universal service, fill factors for feeder cable should be company specific. For BellSouth this means that feeder cable should be 73.1% filled; for GTE, 69%; and for

Carolina/Central, 69%. For distribution cable, the Commission has concluded that the fill factors should be 66.7% for BellSouth, 65% for GTE, and 85% for Carolina/Central. In addition, to be consistent with the FLEC Order, cable fill factors should reflect 1.4 distribution pairs per residential housing unit.

PUBLIC STAFF: The Public Staff stated that Carolina/Central's input value for distribution pairs per residential housing unit for use in calculating cable and wire facilities should be 1.4 to be consistent with the FLEC Order. The Public Staff further stated that GTE's cable sizing factors should be 69% for feeder plant and 65% for distribution plant, consistent with the FLEC Order.

DISCUSSION

BellSouth commented that utilization rates and fill factors mean the same thing. With respect to a facility that can support multiple users, these terms refer to the percentage of the facility's total capacity that is being used. The utilization rates and fill factors are important in cost studies because the cost of a facility is divided among the users. The fewer the users, the higher the cost will be per user. By their very nature, multiple user facilities cannot be increased in one-user increments. If a switch will handle 100 customers and there are 101 customers in the area, the telephone company must install a second switch to serve all of its customers. It cannot merely install 1/100th of a switch to serve the new customer. Accordingly, the installation of equipment must be planned for future growth. Spare capacity, particularly with cables, is also necessary to reduce the cost of repair if some portion of the facility in use goes bad.

BellSouth contended that Paragraph 682 of FCC Interconnection Order CC Docket 96-325 directs that cost studies be based on "a reasonable projection of actual total usage." BellSouth stated that it had complied with this directive and based its calculations on an average utilization level it expects to experience in the future in provisioning network elements and services. There is no reasonable basis to expect that actual utilization rates will change in the future, unless one assumes that BellSouth imprudently over built in the past, and there is absolutely no evidentiary support in the record for such an assumption.

Carolina/Central stated that they are placing second lines to most new residences to recognize growing residential consumer demand for second lines and because it is impossible to perfectly forecast which customers will eventually want second lines. The companies must consider the fact that they must meet all service requests within 5 days. The least cost solution is to place the potential second line, cable pair at the time of initial construction.

Carolina/Central pointed out that the record amply demonstrates that there is a direct correlation between the BCPM 3.1 distribution cable fill factor input and the input for distribution cable pairs per household. Carolina/Central's forward looking assumption of 2 pairs per household works in concert with a cable fill factor of 85% to achieve an overall effective distribution cable fill of approximately 47%. The Companies' witness Dickerson indicated that this forward-looking estimate exceeds the companies' current actual achieved distribution fill of approximately 40%. Recognizing the interdependency of these two model inputs, if an assumption of less than 2 cable pairs per household were used, it would be necessary and appropriate for the Commission to lower the distribution cable fill factor.

GTE argued that the 80% fill factors proposed by the New Entrants are too high. It may be true that ILECs do not consider relief efforts until utilization reaches 85%. However, as the New Entrants' witness Gose conceded on this issue, outside plant engineers typically design plant to avoid, or at least minimize, the need for ever having to engage in relief efforts. This is particularly true with respect to distribution, since adding new distribution capacity is quite costly and disruptive. If relief efforts are considered at 85%, and ILECs seek to avoid having to engage in such relief, it follows that ILECs will not maintain an average fill of 80%.

GTE pointed out that the Commission, in its recent FLEC Docket, endorsed fill factors significantly lower than 80%. Specifically, the Commission endorsed a 65% fill factor for distribution and a 69% fill factor for feeder for GTE. GTE believes that although they do not calculate a specific fill factor, it appears that the analysis of fill implied by GTE's run of the model is not inconsistent with the Commission's findings in the FLEC proceeding.

AT&T contended that the fill factors BellSouth applies to its unbundled loop costs are too low and have the effect of charging CLPs more than the forward-looking costs causally related to these loops. Fill factors are multipliers which increase the investment in transmission facilities that are in use in order to take into account the fact that some spare capacity is needed in those facilities for administrative and maintenance purposes. The greater the spare capacity, the higher the cost.

AT&T further stated that, regardless of efficiency to BellSouth, BellSouth's fill factors assume that CLPs purchasing loops to serve existing future customers will pay the entire costs of this growth capacity for future customers indirectly through the fill factor applied to the cost of these loops, and will pay BellSouth a second time (this time directly) should the CLPs utilize any of the excess capacity. This would impair the CLPs' abilities to compete on a level playing field and would result in over-recovery from North Carolina consumers.

MCI stated that since the Hatfield Model correctly matches current demand and the size of the network facilities necessary to serve the current demand, current ratepayers pay only current costs, and any costs associated with capacity for future growth is held to be recovered from that future growth. The Hatfield Model correctly matches investments and demand and, thus, correctly applies fill factors, although producing conservatively high costs.

MCI also stated that BellSouth, by using the actual fill from its embedded network, has included excess future growth capacity. By applying its existing fill factor, BellSouth is in effect requiring new entrants to pay for BellSouth's investment needed to serve both current and future customers. BellSouth's cost to serve the customers in the future will be paid for by its current competitors. BellSouth will be able to double recover its costs, and a significant barrier to entry will be created.

AT&T/MCI witness Carter addressed the copper feeder fill factor used by BellSouth. Witness Carter explained that utilization excluding anticipated growth, or "fill at relief" is the appropriate fill factor for TELRIC. However, the fill factor used by BellSouth is the embedded copper feeder, which is not appropriate for TELRIC. Witness Carter recommended a "fill at relief" for copper feeder pairs of 90% to 95% based on assigned pairs and 85% to 90% based on working pairs.

NCCTA witness Barta's analysis indicated that the appropriate fill factor for BellSouth's copper distribution facilities is between 37.05% at the time of initial deployment and 74.07% at the end of its economic life. The actual fill is assumed to be evenly distributed over the life of the facilities and is represented by the midpoint of the economic life. The actual fill factor over the life of the distribution facilities is 55.58%.

For Carolina/Central, NCCTA proposed that more appropriate fill factors should be developed that reflect the projected economic life of the facilities and the growth in demand.

NCCTA stated that it is not apparent from GTE's cost study support what forward-looking average fill factors for fiber feeder, copper feeder, and metallic distribution facilities were adopted for the purpose of estimating the TELRIC. If the fill factors used in the ICM are understated (do not reflect forward-looking utilization levels), then the model will configure a network that requires substantially more facilities. As a result, the TELRIC estimates will be higher than necessary.

The New Entrants (in their BellSouth Proposed Order) commented that witnesses for the CLPs argued that BellSouth's proposed fill factors were based solely upon historical experience and ignored forward-looking efficiencies in network management. New Entrant witness McMillin asserted that "BellSouth's utilization rate for copper feeder and distribution largely are based upon historical data that is now approximately two years old." Witness McMillin recommended that the Commission adopt utilization rates that are at the midpoint between BellSouth's proposed rates and the objective utilization rate of 85% for copper facilities and 90% for fiber. These utilization rates are: 75.5% for copper feeder; 63.1% for copper distribution; and 82% for fiber feeder.

The New Entrants (in their Carolina/Central Proposed Order) stated that fill factors reflect the fact that not all cable pairs that are installed produce revenue. This is due to the existence of defective pairs, pairs reserved for administrative use, and pairs installed to accommodate growth in demand. The parties agreed that fill factors and utilization factors are synonymous. New Entrant's witness Solomon testified that fill factors have a dramatic effect on the cost of UNEs. If the total costs associated with an element are divided by a fill factor that is too low, costs will be overstated. Likewise, costs will be understated if a fill factor is used that is too high. The use of forward-looking technology will increase the proportion of installed plant that is in use.

The New Entrants stated that Carolina/Central's recurring loop rates are overstated by modeling unduly low fiber and copper fill factors and that a 92.5% fill factor should be employed for both fiber and copper feeder. It is reasonable to assume a 20% increase in growth in residential access lines on a forward-looking basis and to apply the 85% distribution fill factor included in the BCPM to this access line growth resulting in an effective fill factor of 71% for residential distribution cable. The New Entrants noted that the 20% growth figure is understated due to the fact that the 85% fill factor also allows for additional capacity for growth. The New Entrants stated that it is reasonable to apply the 85% fill factor to the actual number of lines per business in Carolina/Central's territory modeled by the BCPM and that this factor will be sufficient to account for growth, defective pairs, and administrative needs.

The New Entrants (in their GTE Proposed Order) stated that GTE's cost model, the ICM 2.12, does not compute fill factors in a conventional manner, but rather determines them "by the interaction between grid information (line requirements) and program cable sizing logic within the models." As a result, it is "difficult to determine with certainty" what GTE's composite fill factors for feeder and distribution plant are.

The New Entrants believe it would not be logical to extend the fill factors established for GTE in the FLEC Order to address GTE's fill factors in this context. The New Entrants believe that it is reasonable and appropriate to modify the inputs to ICM 2.12 to apply an 80% fill factor to GTE's feeder and distribution plant. The New Entrants stated that they believe GTE's recurring loop rates are overstated by modeling unduly low distribution cable fill factors, and that this factor will be sufficient to account for growth, defective pairs, and administrative needs.

The Attorney General stated that none of the incumbent local telephone companies who submitted cost studies appear to have used forward-looking fill factors when sizing their networks. In fact, all three appear to have submitted studies which include substantial amounts of excess capacity. Incorporating significant amounts of excess capacity in UNEs increases the cost of unbundled elements which in turn could expose ratepayers to claims of stranded cost. If excess capacity is built into the cost of UNEs, the high price of the UNEs can send the wrong price signal to competitors and encourage them to build facilities which uneconomically duplicate the existing network.

The Attorney General further stated that excess capacity places the incumbent LECs at a competitive advantage over other facilities-based carriers who may want to enter the market. For example, an incumbent who installs excess facilities can accommodate growth at no significant increase in costs while competitors who choose to install facilities to compete will have to incur the cost.

The Attorney General contended that a forward-looking, total element long-run incremental costing study should examine the costs necessary to build a network today designed to meet demand in the study period. Accordingly, the capacity used in the study should fit the study period's demand which necessarily should include a small portion of excess capacity to meet maintenance and repair needs and near term growth but not that demand plus long term growth. Using any company's actual fill factors in the forward- looking economic costing study assumes a completely new system which duplicates the substantial excess capacity of the present system. The Attorney General stated he believes that this is inconsistent both with this Commission's FLEC Order and the intent of Congress in passing TA96.

The Public Staff stated that Carolina/Central used the BCPM default value of 2 pairs per household unit to determine the cable and wire facilities and circuit investment in this proceeding and in the FLEC Docket. The Public Staff pointed out that, in the FLEC Order, the Commission noted the ratio of the number of residential lines in service to the total number of households served by Carolina/Central based on the BCPM 3.1 outputs is considerably less: 1.02 for Central and 1.09 for Carolina. The Commission found a factor of 1.4 to be reasonable for determining the forward-looking costs of all the ILECs in that proceeding. Furthermore, the record indicates that BellSouth's current practice of designing plant is based on 1.4 to 1.6 pairs per household unit, which the Public Staff believes to be more reasonable. The Public Staff recommended that the Commission find that Carolina/Central's inputs should be reduced from the 2.0 default value to 1.4 in this proceeding.

The Public Staff noted that there was considerable discussion and disagreement over the appropriate cable sizing factors in the FLEC Docket, and much of it was repeated in this docket. However, the Public Staff stated it is of the opinion that no new evidence has been presented to support any change in GTE's cable sizing factors for feeder and distribution plant from those previously adopted by the Commission in the FLEC Order. In the FLEC Order, the Commission adopted the Public Staff's recommendation that GTE's feeder cable sizing factor should be comparable to Carolina/Central's given the relative densities of their service territories, and that GTE's distribution cable sizing factor should be somewhat lower than the feeder factor. In its cost study, GTE used a feeder cable sizing factor of 65% and a distribution cable sizing factor of 35%, slightly lower than the 40% factor it used in its FLEC study. The Public Staff recommended that both of these cable sizing factors should be adjusted upward, feeder to 69% and distribution to 65%, consistent with the previous decision in the FLEC Docket.

The Commission believes that the ILECs have adequately answered the CLPs' complaints and concerns with respect to the fill factors/utilization ratios except as noted below. The Commission can find no compelling argument or evidence to support a change in either the cable sizing factors for feeder and distribution plant, nor for the input value for distribution pairs per residential housing unit from those previously adopted by the Commission in the FLEC Order.

CONCLUSIONS

The Commission concludes that the ILECs' fill factor/utilization ratios as filed should be adopted with the following exceptions:

1) The reasonable and appropriate input value for distribution pairs per residential housing unit for use in calculating Carolina/Central's cable and wire facilities is 1.4. This is consistent with the Commission's FLEC Order. In addition, to the extent necessary, Carolina/Central's cable sizing factors should be adjusted to be consistent with the factors set out for Carolina/Central in the Commission's FLEC Order on Reconsideration.

2) The reasonable and appropriate cable sizing factors for GTE should be 69% for feeder cable and 65% for distribution cable. This is consistent with the factors set out for GTE in the Commission's FLEC Order. In addition, to the extent necessary, GTE's input value for distribution pairs per residential housing unit should be adjusted to 1.4, to be consistent with the Commission's FLEC Order.

3) To the extent necessary, BellSouth should adjust its utilization and fill factors to comply with the cable sizing factors for feeder cable and distribution cable and distribution pairs per residential housing unit consistent with the factors set out for BellSouth in the Commission's FLEC Order.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

Issue: Should BellSouth's assumptions regarding bridge tap, cable size, and tapering be adopted for use in setting its permanent UNE rates?

POSITIONS OF PARTIES

BellSouth and AT&T were the only parties who specifically addressed this issue.

BELLSOUTH: Yes. BellSouth witness Gray stated that the CLPs assume that their hypothetical network not only has least-cost, most efficient technology, but that it is perfectly managed from a theoretical standpoint. One area where this is particularly evident is with respect to their assumptions on feeder and distribution cables. These cables contain multiple pairs of wires and come in various sizes based on the number of wire pairs they contain. There are a limited number of cable sizes, and some of the more common are 25, 50, and 100 pair cables. When installing cable, it cannot be perfectly sized for the exact number of homes. The telephone company engineers bridge tap into the network and utilize appropriate tapering consistent with reasonable network engineering practices. BellSouth's cost studies were based on reasonable assumptions on cable sizes, bridge tap, and tapering based on the experience of its subject matter experts. Those assumptions should be reflected in the rates the Commission establishes in this proceeding. The Commission should reject the CLPs' assumptions on cable sizes and tapering because they are unrealistic and because the CLPs fail to account for the additional costs which they entail.

AT&T: No. AT&T witness Wells stated that BellSouth's cost study exaggerates copper cable costs by including up to 2,500 feet of either type of bridged tap from its sampled loops after deleting any irregular bridged tap discovered between load coils and repeaters. Even with this 2,500-foot limitation on the amount of bridged tap that is actually deployed in BellSouth's network, the cost impact of this mostly inefficient bridged tap excessively inflates BellSouth's total loop investment in North Carolina. BellSouth witness Gray's example of reasonable "bridged tap" in reality avoids no costs, violates distribution design practice, avoids no training, and precludes potential cost savings that might otherwise be realized from tapering the cable along the main street.

AT&T witness Wells stated there should be zero "pure bridged tap" and minimal "end section" in a forward-looking local loop design. The elimination of "pure bridged tap" from BellSouth's redesign assumptions and the limitation of the single "end section" bridged tap to 2,000 feet in accordance with BellSouth's own directive would substantially lower the percentage of bridged tap copper cable material investment in BellSouth's cost study. If BellSouth were to recast its sampled loops in accordance with this recommendation, witness Wells stated that he would estimate that there would be a 3% reduction in BellSouth's total loop investment. The HM and the BCPM, which is sponsored by BellSouth in the USF Dockets, by comparison have no "pure bridged tap" in their designed loops.

DISCUSSION

No party other than AT&T recommended any adjustment to BellSouth's assumptions regarding bridge tap, cable size, and tapering. BellSouth has presented sufficiently convincing evidence in this matter for the Commission to adopt its assumptions regarding bridge tap, cable size, and tapering for use in setting its permanent UNE rates.

CONCLUSIONS

The Commission concludes that BellSouth's assumptions regarding bridge tap, cable size, and tapering should be adopted for use in setting its permanent UNE rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

Issue: Should vertical features be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies?

POSITIONS OF PARTIES

BELLSOUTH: Yes. It is BellSouth's position that vertical features use switch capacity and should bear their proportionate share of the costs. BellSouth witness Varner sponsored BellSouth's proposed prices for unbundled vertical features. The proposed price for the 2-wire line port without any features is $3.74; for a port with all vertical features, BellSouth has proposed a price of $11.39. In recognition of the fact that over 90% of customers use only 3 features or less, BellSouth also proposed an option that would allow CLPs to purchase a package port and any three features of their choice for $7.23. Additionally, BellSouth has also proposed individual prices for specific vertical features.

CAROLINA/CENTRAL: Yes. Carolina/Central proposed to charge separately for vertical features. Carolina/Central proposed to offer vertical features in three packages: Custom Calling ($0.56 and $0.73, respectively), CLASS ($5.62 and $6.74, respectively), and Centrex ($11.05 and $12.60, respectively). Additionally, Carolina/Central have also proposed individual prices for a few specific vertical features. Carolina/Central argued that feature costs should be applied to feature users. Features should be considered a separate switching subelement in order to provide efficient price points. Not identifying feature costs separately would result in cross-subsidization between customer classes.

GTE: Yes. GTE is proposing to charge separately for vertical features. GTE proposed to offer the basic analog port at $5.48, without any features as an unbundled element and to separately price each vertical feature as an unbundled element.

AT&T: No. AT&T asserted that when a CLP purchases the local switching element at the cost-based rate set by this Commission, it is entitled to receive the vertical features of the switch as part of that cost. The ILECs' use of a separate recurring charge for vertical features is inappropriate and results in over-recovery of vertical features.

MCI: No. MCI agreed with AT&T and argued that there should not be any separate charges for vertical features.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: Yes. The New Entrants did not specifically address this issue in their Proposed Orders or Post-Hearing Brief. However, the New Entrants proposed to charge separately for vertical features as reflected in their recommendations on specific rates for vertical features.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff stated that the vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies, with the modifications and adjustments proposed by the Public Staff.

DISCUSSION

BellSouth, Carolina/Central, GTE, and the New Entrants each proposed to charge separately for vertical features, whereas AT&T and MCI argued that vertical features are part of local switching and should be included in the price of that element.

BellSouth has proposed rates for a long list of vertical features, including recurring charges of $0.10 for call waiting, $1.06 for three-way calling, $0.16 for selective rejection, and $0.16 for multiline hunt service. BellSouth proposes a 2-wire analog port with no features for $3.74 per month, a 2-wire analog port with any three features for $7.23 per month, and a 2-wire analog port with all available features for $11.39 per month.

In rebuttal testimony, BellSouth witness Varner cited the FCC's Interconnection Order concluding that the local switching element includes all vertical features but declining to require further unbundling of the local switch into a basic switching element and independent vertical-feature elements. BellSouth stated that the Interconnection Order allows the states to determine whether vertical switching features should be made available as separate network elements. According to witness Varner, following the decision of the Eighth Circuit and the FCC's Third Order on Reconsideration, BellSouth was required only to offer a port with all compatible features for which it had provided cost studies.

GTE proposed to offer the port without any features as an unbundled element and to price each vertical feature as an unbundled element, based upon the TELRIC plus common costs associated with that feature. Witness Dye cited the Eighth Circuit's view that vertical features qualify as network elements that are subject to the unbundling requirements of the Act. GTE proposed rates for a long list of vertical features, including recurring charges of $0.25 for call waiting, $1.89 for three-way calling, $1.76 for selective call rejection, $3.03 for conference calling (6-way station control), and $10.71 for meet-me conference. GTE proposed rates that were consistent with its pricing approach for other unbundled elements, except that it proposed to price each element whose cost is below $0.25 at $0.25.

Carolina/Central proposed to offer vertical features in three packages: Custom Calling ($0.56 and $0.73, respectively), CLASS ($5.62 and $6.74, respectively), and Centrex ($11.05 and $12.60, respectively). Carolina/Central proposed rates for just a limited list of individual vertical features, including recurring charges of $2.18 and $2.60, respectively, for three-way calling; $2.54 and $2.74, respectively, for conference calling (6-way station control); $19.50 and $22.15, respectively, for meet-me conference; and $0.13 and $0.18, respectively, for multi hunt service. Carolina/Central witness Bollinger noted that the FCC gave the state commissions the opportunity to determine if vertical features should be made available as separate network elements. Carolina/Central's cost studies reflect significant costs for provisioning vertical features, and witness Bollinger pointed out that inclusion of vertical features in the port or local switching elements would obligate all CLPs to pay for features on each line, whether or not they are needed on that line. He further stated that including vertical features in the local switching element will cause subsidizing of more expensive features like business-related Centrex features by the rates paid by subscribers of less expensive residential features.

AT&T and MCI argued that the CLPs should not be allowed to over-recover processing costs associated with setting up vertical-features capability through a recurring charge based on a per feature cost for vertical features. In acquiring the ability to offer vertical services, a CLP is leasing all the features and functions of the switch, including the individual vertical services. According to AT&T, BellSouth has allocated a "getting started" cost, or form of fixed, up-front overhead to the traffic sensitive minute of use element for vertical features, a practice which AT&T argues violates cost causation principles. AT&T stated that these "getting started" costs do not vary with the number of features ordered by a CLP. Instead, they are driven by the computer processing time necessary to set-up the features in the switch. AT&T asserted that as long as the switch has adequate capacity, there will not be additional investments when a CLP adds a feature.

Further, AT&T stated that Section 153(29) of the Act defines "network element" as not only the "facility or equipment" used in providing telecommunications services, but also the "features, functions, and capabilities that are provided by means of such facility or equipment." In its regulations, the FCC defined "local switching capability network element" to include, among other things, "all...features that the switch is capable of providing, including but not limited to custom calling [and] custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch." See FCC Rule 51.391(c)(1)(i)(C)(2). Thus, AT&T and MCI believe that when a CLP purchases the local switching element at the cost-based rate set by this Commission, it is entitled to receive the vertical features of the switch as part of that cost.

AT&T and MCI claimed that the costs of all of the features are included in the port price they are advocating. However, BellSouth argued that this claim is flawed because it ignores the basic principle of cost-causation and ignores the requirement that the cost studies should be based on the total output of service. According to BellSouth, this ensures that costs for elements which use the network are treated consistently. SCIS uses capacity cost methodology. BellSouth argued that vertical features use switch capacity and should bear their proportionate share of the costs. Further, BellSouth contended that AT&T/MCI witness Petzinger ignored right-to-use fees and other costs associated with vertical features that are not included in the initial switch placement, even though she acknowledged on cross-examination that such costs exist and should be accounted for. It is BellSouth's position that AT&T and MCI cannot simply ignore these costs in order to receive vertical features for free. BellSouth noted that in its July 18, 1997, Order, the Eighth Circuit recognized that vertical features that are provided through the switching hardware and software qualify as separate network elements. (Iowa Utilities Board v. FCC, 120 F.3d at 809-10). BellSouth argued that this view comports with the costing methodology it is proposing, which calculates the costs associated with each separate feature.

AT&T witness Ellison argued that the Commission decided the issue of whether vertical features are part of the switch/port element when the Commission ruled in the arbitration cases that the local switching element includes all vertical features, functions, and capabilities that are provided by means of the facility or equipment. AT&T referenced the BellSouth/MCI Recommended Arbitration Order in Docket No. P-141, Sub 29, issued on December 23, 1996, in support of its position.

The Public Staff stated that, in the arbitration cases, the issue was not whether to unbundle vertical features from the switch and to price them separately as unbundled elements, but whether such features should be available only on a resale basis, as BellSouth proposed in the arbitration proceedings. The Commission concluded in the arbitration proceedings that the provision of vertical features as part of the local switching element was clearly required by the Act, which defines "network element" as "a facility or equipment used in the provision of telecommunications service," including "features, functions, and capabilities that are provided by means of such facility or equipment." (See 47 U.S.C.A. Section 53(29)). In the arbitration proceedings, the Commission agreed with the FCC that the availability of vertical switching features through resale does not remove such features from the definition of network element.

The Public Staff stated that neither the Act nor the Interconnection Order, however, prohibits further unbundling of the local switch, as the ILECs now propose. The Public Staff argued that the vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies, with the modifications and adjustments proposed by the Public Staff. The Public Staff stated in its Proposed Order that based on the cost models filed in this docket, it is clear that there are significant costs involved in the provision of vertical features which are distinguishable from port and switching costs. According to the Public Staff, the provisioning of some features requires significant investment as well as software, and some of the associated costs should be recovered from the CLPs.

The Public Staff recognized two alternatives. One alternative, following the approach of the Recommended Arbitration Orders, is to factor the total cost of the features into the port rates or the usage rates for switching. However, the Public Staff noted that this would require a CLP to pay for features it does not need to meet its customers' requirements. The other alternative, which the Public Staff now believes is more appropriate, is to price the features individually so that the rate for each element supports the rate for that feature. Such treatment recognizes that there are costs associated with provisioning vertical features in the switch, as compared with basic switch functions.

Previously, the Commission has established interim prices for UNEs in seven separate arbitration proceedings. In all of the arbitration proceedings the Commission issued Recommended Arbitration Orders, with the last such Order being issued on May 1, 1997, in Docket No. P-141, Sub 31. The Commission also issued further Orders in each arbitration proceeding ruling on objections, comments, unresolved issues, and composite agreements, with the last such Order being issued on July 3, 1997, in Docket No. P-141, Sub 30. As indicated above, AT&T argued that the Commission decided the issue of whether vertical features are part of the switch/port element when the

Commission ruled in the arbitration cases that the local switching element includes all vertical features, functions, and capabilities that are provided by means of the facility or equipment.

Subsequently, on July 18, 1997, the Eighth Circuit issued a decision in Iowa Utilities Board v. FCC, 120 F.3d 753 (Eighth Circuit, 1997). Therein, the Eighth Circuit recognized that vertical features that are provided through the switching hardware and software qualify as separate network elements. Specifically, in Part G.1(a) of its decision, the Eighth Circuit stated as follows:

> ". . . We believe that operator services and directory assistance qualify as features, functions, or capabilities that are provided by facilities and equipment that are used in the provision of telecommunications services. The commercial offering of phone services to the public and the specific transmission of phone calls between locations implicates the use of operator services and directory assistance. Likewise, caller I.D., call waiting, and call forwarding are vertical 'features' that are provided through the switching hardware and software that are also used to transmit calls across phone lines. Thus, they qualify as network elements as well."
>
> ". . . The petitioners argue that these features are actually finished services and that the legislative history and structure of the Act suggest that 'services' were not meant to be unbundled but rather sold to the requesting carrier for resale under subsection 251(c)(4). . . . Simply because these capabilities can be labeled as 'services' does not convince us that they were not intended to be unbundled as network elements. While subsection 251(c)(4) does not provide for the resale of telecommunications services, it does not establish resale as the exclusive means through which a competing carrier may gain access to such services. . . . Regarding the features presently at issue, as explained above, these aspects of telecommunications satisfy the definition of 'network element'; consequently, they are subject to the unbundling requirements of subsection 251(c)(3)."

The Commission believes that the Eighth Circuit's decision supports the ILECs' proposals to price the vertical features as individual network elements. The Commission agrees with the ILECs, the New Entrants, and the Public Staff that it is now appropriate to allow separate prices for each individual feature so that the rate for each element supports the rate for that feature. This treatment recognizes that there are costs associated with provisioning vertical features in the switch, as compared with basic switch functions. The evidence in the record established that many vertical features require specialized hardware and the payment of right-to-use fees. The Commission believes that these costs should be borne by the customer using the vertical features.

The Public Staff stated that each feature that the ILEC offers to its own subscribers on an individual feature basis should also be made available as an individual unbundled element. The Commission agrees. This avoids inefficiency and distorted pricing signals and is consistent with the overall approach of unbundling services to allow the CLP to purchase only what is needed. This approach, as recommended by the Public Staff, will require Carolina/Central to develop and file additional vertical features to supplement the packages and limited features that they proposed in this case. Further, like other unbundled element rates, each ILEC's proposed prices of the individual vertical features and the prices for combinations of ports and features must be modified to reflect the direct and indirect effects of the changes in the annual cost factors discussed previously herein.

Additionally, the Commission also considers GTE's proposal to apply a minimum price of $0.25 to any individual feature to be unreasonable. BellSouth has proposed a price on a vertical feature as low as $0.01 and Carolina/Central have proposed a price on a vertical feature as low as $0.04. The Commission finds no credible supporting evidence to allow GTE to apply a minimum price of $0.25 on its vertical features.

CONCLUSIONS

The Commission concludes that the vertical features should be unbundled and priced separately from the local switch based on costs determined by the ILECs' studies, with the modifications and adjustments proposed herein. Each feature that the ILEC offers to its own subscribers on an individual feature basis should also be made available as an individual unbundled element. This approach will require Carolina/Central to develop and file additional vertical features to supplement the packages and limited features that they proposed in this case. Further, like other unbundled element rates, each ILEC's proposed prices of the individual vertical features and the prices for combinations of ports and features must be modified to reflect the direct and indirect effects of the changes in the annual cost factors discussed previously herein. Additionally, the Commission also rejects GTE's proposal to apply a minimum price of $0.25 to any individual feature rate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

Issue: Is BellSouth's recommended copper/fiber crossover appropriate?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth's position is that a 12,000 foot crossover from copper to fiber in the loop design employs a forward-looking technology and is appropriate.

CAROLINA/CENTRAL: Carolina/Central did not address this issue in their Proposed Order or Post-Hearing Brief.

GTE: GTE did not address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: No. BellSouth's use of 12,000 feet of total loop length as the point at which copper feeder is replaced with fiber feeder is arbitrary and necessarily results in an overstatement or understatement of loop costs. Fiber feeder is far cheaper than copper feeder; however, the use of fiber feeder requires the use of two multiplexers. Taking into account the cost of the multiplexers it becomes efficient to use fiber feeder when the feeder length exceeds 9,000 feet. On the other hand, a 12,000 foot loop may have a feeder length of greater or less than 9,000 feet. Thus, a conversion at 12,000 feet total loop length is arbitrary and cannot capture the efficiencies that are gained with proper deployment of fiber that should be based on feeder length alone. AT&T's cost studies, using the Hatfield Model, assume a crossover to fiber feeder when feeder length exceeds 9,000 feet.

MCI: No. MCI contended that BellSouth's recommended copper/fiber crossover at 12,000 feet is not appropriate. MCI further states that BellSouth's overall embedded loop plan is not equivalent to the loop plan that would be deployed by an efficient provider on a forward-looking basis. The crossover point with Universal DLC is not the forward-looking standard.

NCCTA: NCCTA did not address this issue in its Post-Hearing Brief.

NEW ENTRANTS: The New Entrants did not specifically address this issue in their Proposed Orders or Post-Hearing Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff did not address this issue in its Proposed Order.

DISCUSSION

BellSouth's cost studies use a 12,000 foot copper/fiber crossover for the redesign to reflect forward-looking technology. BellSouth witness Thompson explained that today some very long loops are built completely using copper wire. In the future, loops over 12,000 feet will be made up of a combination of fiber and copper. For example, if one of the loops was 15,000 feet long and all copper, it was redesigned to be cooper and fiber, with the crossover point being 12,000 feet to reflect forward-looking technology. Witness Thompson also noted that 12,000 feet has been the generally accepted economic crossover point.

In addition, BellSouth provided data to support its position on December 17, 1997, in response to the New Entrant's First Data Request. BellSouth performed an analysis of the 12,000 foot crossover using Georgia data. Four hundred route lengths were included in the analysis with lengths ranging from 190 feet to 90,383 feet. The investments for each loop included in the sample were first computed utilizing all copper and then all fiber facilities. A linear regression analysis provided a crossover point of 11,643 feet.

AT&T's argument placed great emphasis on the two different types of cable in the loop, which are distribution cable and feeder cable. AT&T's cost studies, using the Hatfield Model, assume a crossover to fiber feeder when feeder length exceeds 9,000 feet and that the use of fiber feeder is only efficient when feeder cable length exceeds 9,000 feet. AT&T argued that BellSouth arbitrarily considers only the total loop length in making its "copper to fiber" replacement calculations, rather than more appropriately separately considering the lengths of both feeder and distribution cable.

The Commission is not persuaded by AT&T's argument and believes that the generally accepted economic crossover point of 12,000 feet as proposed by BellSouth and supported by its data response is more appropriate.

CONCLUSIONS

The Commission concludes that BellSouth's recommended copper/fiber crossover of 12,000 feet is reasonable and appropriate.

III. NONRECURRING CHARGES

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

Issue: Are the nonrecurring charges proposed by the ILECs appropriate for recovering their respective nonrecurring costs associated with providing UNEs and interconnection?

POSITIONS OF PARTIES

BELLSOUTH: Yes. It is BellSouth's position that its nonrecurring rates are reasonable and should be adopted. BellSouth's TELRIC cost studies reflect costs associated primarily with the ordering and provisioning of the UNEs as nonrecurring charges for each such element. They also treat as nonrecurring charges the costs of developing and using the interfaces BellSouth created specifically to permit CLPs access to BellSouth's OSS. BellSouth's TELRIC cost studies also have the advantage of consistency. In other words, the model was designed in a manner that would eliminate the duplicate recovery of costs in recurring and nonrecurring rates. The only other proposal for establishing nonrecurring charges is the AT&T and MCI NRCM, which attempts to eliminate virtually all nonrecurring charges. BellSouth stated that its proposals are more reasonable and reflective of the nonrecurring costs that BellSouth will incur on a forward-looking basis.

CAROLINA/CENTRAL: Yes. Nonrecurring charges are one-time charges that are based on the amount of time required to complete an activity and its associated labor rates. The purpose of the nonrecurring cost study is to determine the cost of initiating, changing, and providing UNE services for the CLP customer. The nonrecurring charges being proposed by Carolina/Central are based on TELRIC. Carolina/Central stated that the nonrecurring charges they have proposed meet the standard of being forward-looking. These charges represent the most current wage rates and time components related to UNE services. Carolina/Central believe their proposals on nonrecurring rates to be appropriate for use in this proceeding.

GTE: Yes. GTE performed a long-run incremental cost study of the expenses needed to support the activities necessary for the processing and provisioning of CLP orders. GTE contended that its cost study accurately estimates GTE's nonrecurring charges and should be used to set nonrecurring rates. GTE considered its study to be the only reliable record evidence of GTE's nonrecurring charges. GTE commented that AT&T took no position with respect to the nonrecurring costs for GTE. GTE stated that MCI's proposed nonrecurring charges are based on an old study that MCI initially withdrew from evidence. GTE believes that study is fatally flawed because it is inextricably linked to the Hatfield Model and does not pretend to replicate GTE's actual, North Carolina-specific costs. Specifically, MCI initially proposed nonrecurring charges for GTE based on version 2.0 of the NRCM. MCI subsequently submitted a new version of the NRCM, version 2.1, and stated that the nonrecurring costs generated by NRCM 2.0 were no longer applicable. MCI, however, did not propose any nonrecurring charges for GTE based on NRCM 2.1.

During the hearing, MCI stated that it wished to rely on the nonrecurring charges for GTE based on the outdated version of the NRCM, version 2.0.

AT&T: No. AT&T stated that the Commission should adopt AT&T's recommended nonrecurring prices generated by the NRCM. The NRCM, like the Hatfield Model, is designed to produce the forward-looking, nonrecurring costs an efficient competitor, operating in North Carolina, would incur. The NRCM develops a "bottoms-up" estimate of costs by defining required nonrecurring services and identifying, within these services, discrete work activities which form the "building blocks" of the NRCM. The NRCM's logic then maps the appropriate set of work activities to each nonrecurring cost service type. As to each of these work activities, the NRCM solicits inputs as to the probability of occurrence of the activity, time to complete the activity, and labor rates associated with the activity, and calculates costs per activity.

MCI: No. AT&T and MCI's NRCM version 2.1 is currently the appropriate model to use in determining the forward-looking, economic cost of nonrecurring rates for UNEs. To be consistent with the Act's pricing standards and the goal of promoting competition in North Carolina's local exchange markets, nonrecurring rates should be based on costs associated with the most-efficient, forward-looking technologies and processes. AT&T and MCI's NRCM is consistent with the pricing standards of the Act and will promote competition in North Carolina's local exchange markets.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: No. The New Entrants stated that the nonrecurring costs are the one-time expenses associated with taking a service order, coordinating the work effort, and installing UNEs. Such nonrecurring costs must be set appropriately so that they do not stifle competitive entry into the market. The New Entrants asserted that all the ILECs' nonrecurring cost studies needed to have adjustments made to certain inputs. Specifically, the New Entrants argued that the work time and travel time estimates reflected in their nonrecurring cost studies had been overstated resulting in excessive nonrecurring costs. Additionally, the New Entrants stated that Carolina/Central's cost studies do not contain adequate supporting documentation and that their proposed loop testing charge should be optional.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: No. The Public Staff stated that nonrecurring charges proposed by the ILECs, with certain modifications and adjustments, are appropriate for recovering their respective nonrecurring costs associated with providing UNEs and interconnection. The Public Staff proposed modifications and adjustments to the fallout rate for electronic interfaces, the treatment of one-time development costs of OSS, the disconnection of various loops and ports, the annual cost factors, and nonrecurring charges for resale.

DISCUSSION

In its cost studies, BellSouth identified the one-time work activities that are typically associated with installing or disconnecting UNEs. For these work activities, BellSouth defined work functions, established work flows, and determined work times. Thereafter, BellSouth developed directly assigned labor costs and accumulated work function costs to determine the total nonrecurring costs for each unbundled network element and interconnection service, with the recognition of shared and common cost and tax factors.

In identifying the work functions associated with the provision of network elements and services, BellSouth considered: (1) the basic work activities that are required to deliver an UNE, such as a loop, including cross-connects in the field or in the central office; (2) the specific functions, such as testing, that CLPs have requested BellSouth to perform in interconnection agreements, and (3) any additional manual processing that BellSouth must perform when electronic orders fall out of the system.

BellSouth witness Varner presented BellSouth's proposal to recover the costs associated with OSS. He stated that OSS interfaces were developed solely to enhance the CLPs' ability to compete in the local exchange market and that the electronic interfaces will not be used by BellSouth's end-user customers.. He contended that the CLPs are the beneficiaries of the systems, and, as such, they should provide for cost recovery. BellSouth witness Thompson explained that the electronic interfaces are new systems developed by BellSouth for the sole purpose of providing CLPs with electronic pre-ordering, ordering, maintenance, and billing capability.

BellSouth witness Taylor stressed that prices for OSS, as with other UNEs, should be set on the basis of the cost of providing those network elements. He specifically recommended that rates and charges be set to recover the costs of providing both new and modified OSS to CLPs, who cause those systems to be made available, and the costs which arise when CLPs order services from the incumbent. He pointed out that failure to recover these costs from the CLPs would distort the types and quantities of OSS supplied. He reasoned that if the CLPs are responsible for the costs of the technology platform and the usage of the platform, there will be an incentive for the CLPs to make choices which minimize their platform and usage costs.

The only other proposal for establishing nonrecurring charges is the AT&T and MCI NRCM. The AT&T and MCI model is based on default percentages for factors such as the amount of copper facilities, the number of central offices that are staffed rather than unmanned, and the amount of set-up time needed. The values assumed for these items affect the costs that are derived. Yet, AT&T and MCI have not used North Carolina-specific data, opting instead to rely on national default values for these items. In addition, BellSouth argued that the NRCM contains unsupported assumptions about dedicated outside plant and automatic flow-through of orders. BellSouth witness Thompson testified that the NRCM sponsored by AT&T and MCI is founded on the use of technology that is impossible to achieve and will not be achievable in the foreseeable future. She also took issue with the assumption that BellSouth has provisioned every existing and future customer with plant from the central office to his location with the exact type of loop desired, pointing out that no prudent company would expend the resources for such a network design. BellSouth believes its proposals are more reasonable and reflective of the nonrecurring costs that BellSouth will incur on a forward-looking basis.

Carolina/Central's nonrecurring cost study consisted of four major steps: (1) the activities necessary to complete service order, installation, and other related service functions for each UNE were identified; (2) the times related with each function performed were identified; (3) the labor rates for each work group that completes the activities were identified and multiplied by the amount of time identified in step 2; and then (4) the costs were grouped by appropriate activities to develop a cost by UNE. Three categories on nonrecurring charges were reflected in the study: (1) service order charges which cover the cost of work performed by Carolina/Central in connection with receiving, recording, and processing a customer's request for service; (2) installation charges which cover the cost of work performed for connection or reconnection of each UNE; and (3) other charges for switch features (custom calling, CLASS, and Centrex), trouble isolation, and trunk interconnections.

Carolina/Central have proposed nonrecurring charges which reflect the fact that today the companies are required to provision UNEs to the CLPs on a manual basis. Carolina/Central witness Hunsucker indicated that Carolina/Central are firmly committed to the development of electronic interfaces that will allow CLPs to efficiently and economically communicate with their OSS. He testified that Carolina/Central's parent Sprint has invested over $14 million in system enhancements to facilitate these interfaces and has established a specialized service center, the National Exchange Access Center, to process CLP orders for service and to handle CLP billing. He testified that Carolina/Central have the capability, upon a bona fide request from a CLP, to immediately begin the implementation of the currently defined OSS interfaces and to provide the pre-ordering interface within 12 months of the completion of its specification by the industry group. He stated that to date no CLP in any Carolina/Central service territory, nationwide, has requested implementation of standard electronic interfaces. Carolina/Central have on their own initiative, developed an Internet-based ordering system to meet the electronic needs of the CLPs, especially smaller CLPs.

Carolina/Central witness Laemmli testified that, if carriers are unwilling to implement the automated processing of service orders, the costs of manually placing the orders should be borne by the carriers. Otherwise, he said, the incentive to implement the automated processing capability would be dramatically reduced. He also indicated that even if automated processing was implemented, there would still be many industry issues that would continue to drive manual processing of some orders. He stated that MCI and other carriers have specifically requested that Carolina/Central set up a process for manual coordination of service migrations for business customers.

Carolina/Central witness Laemmli also pointed out that some of the investments required for the assumed level of automation in the NRCM would not be appropriate for predominately rural Carolina/Central. For example, the NRCM requires that Digital Cross-Connect Systems (DCS) must be present in every central office to allow Next Generation Digital Loop Carrier (NGDLC) unbundled loops to be connected electronically, instead of manually, to CLP equipment. In addition to the fact that the Hatfield Model 5.0a does not include any loop investments for DCSs, the reality is that 72% of Carolina/Central's central offices serve less than 5,000 access lines. Although installing a DCS may be economically attractive in large, urban central offices, the high, fixed costs of a DCS makes it inefficient and not a viable alternative to manually placing jumpers in small central offices that predominate Carolina/Central's service areas.

Carolina/Central asserted that the CLPs would have the Commission believe that nonrecurring charges should be based on an environment where CLPs and ILECs exchange information via electronic interfaces with minimal labor costs incurred by the ILEC. The CLPs contended that this complies with a TELRIC methodology, while their own witnesses stated that TELRIC must be based on the most efficient telecommunications technology and operating practices. Carolina/Central stated that their current operating practice is based on a manual process, not an electronic interface. Carolina/Central pointed out that when CLPs are willing to implement electronic interfaces, they will develop nonrecurring charges based on electronic interfaces and charge CLPs accordingly. However, even then, it will still be appropriate to assess manual nonrecurring charges as some CLPs may continue to place service orders manually.

To accurately determine its nonrecurring charges, GTE performed a long-run incremental cost study of the expenses needed to support the activities necessary for the processing and provisioning of CLP orders. GTE employed Arthur Andersen, L.L.P., a recognized telecommunications-costing consulting firm, to assist in the development of a study methodology. Using that methodology, a number of GTE subject matter experts studied GTE's North Carolina processes, procedures, and systems to determine the costs associated with the delivery of services required by CLPs. These experts examined GTE's existing retail system and determined what modifications and additions to that system were necessary to enable GTE to provision wholesale services to CLPs. As a result, GTE developed its cost study by analyzing actual processes, workgroups, work times, and systems. Once all the activities were defined, fully-loaded labor rates were utilized to determine the cost for each activity.

GTE witness Dye presented GTE's proposed nonrecurring charges, witness Langley supported GTE's nonrecurring cost studies, and witness Shaw described GTE's creation of its National Open Market Centers (NOMC) and its ongoing efforts to improve the provisioning process. GTE's cost study reflects inclusion of the electronic interfaces, or OSS, which exist today based on agreed-upon industry standards. GTE stated that nonrecurring cost estimates, however, should not be based on future, undeveloped, OSS. GTE considers that it is completely appropriate, and consistent with the Act, to have nonrecurring charges on GTE's existing systems and processes.

GTE witness Drake cited numerous problems with the NRCM used by AT&T and MCI. He stated that the work time estimates used by the NRCM assume processes and procedures that are not in place today and are substantially lower than actual work times experienced by GTE personnel performing the nonrecurring activities. He attached to his testimony a paper, which he coauthored, explaining several erroneous assumptions and biased inputs inherent in the design of the NRCM that he believed render the model unreliable for its intended purpose.

Further, GTE argued that the NRCM is not a reliable model for estimating GTE's nonrecurring charges because it is linked to the Hatfield Model. As such, it suffers from the same weaknesses as the Hatfield Model. In particular, it does not pretend to replicate GTE's actual costs, but rather the costs of a purely hypothetical company. Further, GTE argued that the NRCM assumes, contrary to reality, that a futuristic, fully automated OSS will appear and be utilized in GTE's network overnight. Moreover, it does not provide for the recovery of the costs of creating this OSS. NRCM also assumes a 100% flow-through and zero percent fallout rate for all ordering processing and a 98% flow-through and a 2% fallout rate for all provisioning processes.

AT&T and MCI stated that the NRCM calculates the forward-looking, one-time charges associated with ordering, connection, and testing the elements. AT&T and MCI argued that only the costs of "turning on the network elements" should be recovered in nonrecurring charges. These are the one-time costs of actually fulfilling a new entrant or CLP's order, which is done using the local telephone company's existing OSS. AT&T/MCI witness King stated on cross-examination that the NRCM is linked to the Hatfield Model from the standpoint of the technology that has been deployed on the forward-looking technology, the use of fiber plant, and the integrated digital loop carrier. To the extent the development cost of the electronic interfaces, Local Exchange Navigation System (LENS), Trouble Analysis Facilitation Interface (TAFI), and Electronic Data Interchange (EDI) are passed on to a competitive carrier it should be done in recurring rates; however, it is witness Hyde's testimony that these costs should not be passed along to CLPs. However, he sees no problem with a separate rate element for manual ordering to the extent there is a CLP that wants to use manual ordering.

The NRCM uses forward-looking architecture in modeling nonrecurring costs. For example, NRCM uses Local Digital Switches (LDS), Integrated Digital Loop Carrier (IDLC/GR-303) for loops greater than 9 kilofeet (less than 9, copper is assumed), Digital Cross-connect Systems, and Synchronous Optical Network (SONET) rings for transport. This architecture allows communication over electronic interfaces to the OSS in a highly automated, accurate, and rapid manner such that very little or no manual (human) intervention is required. By contrast, AT&T stated that BellSouth's nonrecurring cost model does not incorporate these efficiencies, resulting in an overestimation of manual intervention costs.

AT&T/MCI witness King testified that OSS assumptions are one of the major differences between the AT&T/MCI NRCM and the nonrecurring cost studies submitted by the ILECs. Whereas the NRCM reflects the cost savings that are achieved by using efficient OSS, the ILECs' studies unrealistically assume that much of the work will be done manually rather than through OSS. He strongly defended the fact that the NRCM does not attempt to capture OSS investment required for the establishment and operation of the electronic gateway that serves as the medium for CLP/ILEC interfacing. His view is that the interface has value over many years and to all exchange carriers utilizing the network. He stated that OSS investment today is covered through recurring rates, to the extent that it needs to be recovered at all.

MCI asserted that if this Commission fails to establish the cost of nonrecurring charges based on efficient, forward-looking technology and processes, CLPs will face a daunting barrier to competition in the form of prohibitively high nonrecurring charges which must be paid for each new customer acquired. MCI argued that to comply with TELRIC principles, BellSouth should have (1) used the most forward-looking, least-cost, and most-efficient OSS systems to minimize manual intervention (labor costs), (2) based its fallout and time estimates on forward-looking technology rather than outdated surveys of its service centers, and (3) used forward-looking technologies, such as IDLC with a GR-303 interface, which would have eliminated unnecessary additional conditioning and multiplexing equipment that inflates the level of investment and unnecessary nonrecurring processes, such as engineering and work groups.

The New Entrants asserted that all the ILECs' nonrecurring cost studies needed to have adjustments made to certain inputs. Specifically, the New Entrants argued that the work time and travel time estimates reflected in the ILECs' nonrecurring cost studies had been overstated resulting in excessive nonrecurring costs. Additionally, the New Entrants stated that Carolina/Central's cost studies do not contain adequate supporting documentation and that their proposed loop testing charge should be optional. The New Entrants also argued that the CLPs should not be responsible for the total costs for modifying the ILEC's OSS, since the ILEC also benefits from the modifications as a more efficient wholesale provider. The New Entrants believe that the ILECs' initial costs for developing OSS should be recovered by spreading the costs across all service orders, including those issued in response to the ILECs' own end-users' requests.

The Public Staff is of the opinion that the ILEC-specific nonrecurring cost studies, with certain modifications and adjustments, should be used in this proceeding rather than the NRCM proposed by AT&T and MCI. The Public Staff believes that the NRCM contains too many incorrect and inappropriate assumptions to be used in this proceeding. However, in recommending the ILECs' nonrecurring cost studies, the Public Staff proposed certain changes relating to the following:

1. The fallout rate for electronic interfaces;
2. The one-time developmental costs for new OSS systems and improvements;
3. The disconnection of various loops and ports;
4. The annual cost factors; and
5. Nonrecurring charges for resale.

Based on the foregoing, the Commission believes that the NRCM is not as appropriate to use in this proceeding as the ILEC-specific nonrecurring cost studies. Unlike the ILEC-specific nonrecurring cost studies, the NRCM does not use North Carolina-specific data, opting instead to rely on national default values for factors such as the amount of copper facilities, the number of central offices that are staffed rather than unmanned, and the amount of set-up time needed which are all factors that affect the costs that are derived. The NRCM is linked to the Hatfield Model from the standpoint of the architecture that has been deployed on forward-looking technology. The level of deployment of LDS, IDLC, DCS, and SONET rings for transport reflect unsupported assumptions about the ILECs' real-world, network design. Additionally, this state-of-the-art architecture allows communication over electronic interfaces to the OSS in a highly automated, accurate, and rapid manner such that very little, or no manual (human) intervention is required. While this network design is a laudable goal, the assumptions that the NRCM assumes are not reasonable or achievable, and it produces lower than appropriate labor costs.

The Commission believes that the ILEC-specific nonrecurring cost studies, with certain modifications and adjustments, appropriately capture the forward-looking, nonrecurring costs of provisioning UNEs. The Commission is concerned, however, about two aspects of the ILECs' proposals relating to OSS: the fallout rate for electronic interfaces used in the cost studies and the recovery of one-time development costs. These two issues are addressed subsequently in the Evidence and Conclusions for Finding of Facts Nos. 22 and 25, respectively. The Commission is also concerned about BellSouth's proposal regarding the recovery of nonrecurring costs associated with disconnection of various loops and ports as discussed in the Evidence and Conclusions for Finding of Fact No. 23. Additionally, the Commission also finds that it is appropriate to make changes in the annual cost factors as discussed in the Evidence and Conclusions for Finding of Fact No. 10, and the matter of nonrecurring charges for resale is addressed in the Evidence and Conclusions for Finding of Fact No. 24.

CONCLUSIONS

The Commission concludes that the ILEC-specific nonrecurring cost studies, subject to certain modifications and adjustments as discussed elsewhere herein, should be used in this proceeding, rather than the NRCM sponsored by AT&T and MCI.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

Issue: Have the ILECs used an appropriate fallout rate in calculating nonrecurring costs?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth argued that it is appropriate to assume a 20% fallout rate in its nonrecurring cost study.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: Yes. GTE stated in its Proposed Order that AT&T and MCI's NRCM assumptions of a 98% flow-through and a 2% fallout rate for all provisioning processes are quite unrealistic.

AT&T/MCI: No. The NRCM used by AT&T and MCI assumes a conservative fallout rate of 2%. The fallout levels proposed by AT&T and MCI were selected based on the judgment of their experts of a competitive industry, as well as fallout levels reported by ILECs. AT&T and MCI believe that a 98% flow-through process rate is an achievable, forward-looking benchmark.

NCCTA: No. NCCTA stated that for purposes of the TELRIC studies, the ILEC should estimate its nonrecurring costs assuming a fallout rate of between 5% and 10%. Based upon current efficiency levels and expected software enhancements, NCCTA believes that it is doubtful that BellSouth would tolerate a fallout rate of 20% in its OSS, thereby jeopardizing the efficiency of its customer service operations.

NEW ENTRANTS: No. The New Entrants remarked that BellSouth witness Thompson testified that BellSouth's current fallout rate for access services is 10%. Thus, the New Entrants commented that a 10% fallout rate might be more quickly duplicated in the local service context now that BellSouth has in essence climbed the learning curve and gained more experience with electronic ordering.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: No. The Public Staff stated that 10% is the appropriate fallout rate for the ILECs to use in calculating nonrecurring costs.

DISCUSSION

The fallout rate is the percentage of CLP orders that do not flow through the OSS automatically but require some manual intervention. BellSouth witness Landry defined "functions associated with fallout" as "activity where processes which would normally be automated, but because of errors on the service requests submitted by the CLPs, the service request must be processed manually." BellSouth's nonrecurring cost study assumes a 20% fallout rate for CLP orders from the electronic interface, whereas the NRCM proposed by AT&T and MCI assumes a fallout rate of 2%.

BellSouth witness Thompson testified that BellSouth's estimate is based upon actual experience with electronic ordering by interexchange carriers (IXCs) for access service. She noted that in the early stages of electronic ordering by the IXCs the fallout rate was in excess of 30%, and that over time the rate has fallen to 10%. She explained that BellSouth's studies assume that, over a three-year period, the error rate will follow a similar pattern, and that the average over the three-year period will be approximately 20%.

BellSouth witness Landry testified that the UNE process is at least as complex as the interexchange access process and cited numerous complexities involved with provisioning UNEs that are not present in provisioning basic service. He took issue with the implication that advanced OSS will solve many of the fallout errors, noting that the Easy Access Sales Environment (EASE) system of Southwestern Bell Telephone (SWBT), referenced by AT&T/MCI witness King, is limited to handling resale orders and does not handle the more complex UNE orders.

Carolina/Central's studies assumed differing percentages for flow-through (the inverse of fallout) for ordering, provisioning - facility assignment, provisioning - processor entry, and provisioning - outside plant. Carolina/Central witness Laemmli noted that system fallout could be caused by special requests on the part of the carrier and other reasons not related to errors in Carolina/Central's databases. Regarding AT&T/MCI witness King's statement that errors in ordering are strictly the problem of the CLP and the fact that the NRCM does not provide for recovery of ILEC costs in those cases, witness Laemmli indicated that treatment of errors by the CLP in ordering is not consistent with CLPs' negotiating positions, nor is it in the best interests of consumers. He indicated that at the request of CLPs, Carolina/Central have agreed to make a good faith effort to manually review and resubmit orders that fail in the ordering process, and he believes that this approach better serves all parties involved rather than simply rejecting orders with minor errors caused by CLPs. He stated that Carolina/Central should be compensated for this time through nonrecurring charges, since these errors are directly related to provisioning of a specific service installation, but indicated that Carolina/Central have not included any other costs in nonrecurring charges for manual processing of system fallout.

GTE stated in its Proposed Order that the NRCM assumptions of a 98% flow-through and a 2% fallout rate for all provisioning processes are quite unrealistic. GTE noted that its actual experience with new CLPs reflects an error rate as high as 50% to 80%, with an average fallout rate of 35%. Even for established IXCs such as AT&T or MCI, GTE asserted that fallout is in the 30% to 40% range despite these carriers' familiarity with GTE's ordering processes and systems.

AT&T/MCI witness King testified that fallout during pre-ordering and ordering processes (errors on the Local Service Request itself) are not counted as fallout since the CLP is responsible for manually clearing those orders. He stated that the NRCM assumption of a fallout rate of 2% is based upon the judgment of the model's experts about the operations of a competitive industry, as well as fallout levels reported by ILECs. Witness King testified that "a prime example is the SWBT transcripts for EASE/TSR flow through provisioning which indicate only a 1% fallout rate for resale orders." (Referring to a June 24, 1997, meeting of SWBT before the Texas Public Utility Commission). AT&T stated that fallout is important because in many instances it is the only cost driver for an otherwise seamless electronic flow-through process. With OSS that are well managed and maintained, the rate of fallout is expected to be minimal, especially in a competitive environment. This is true because fallout affects the customer in terms of longer delivery intervals and restoration/response times, as well as higher costs of providing service, conditions a competitive company cannot afford. Therefore, AT&T and MCI's NRCM assumed a conservative fallout rate of 2%.

AT&T/MCI witness King testified that the level of fallout currently reported by some ILECs for resale orders is approaching, at or better than, what the NRCM proposes and this will be the trend in a competitive environment for UNE orders as well. No firm in a competitive environment could afford to rework the number of orders (20%) assumed by BellSouth in its cost studies and hope to be competitive. AT&T stated that BellSouth's assumption of this high of a level of fallout is far from the least-cost, most-efficient technology.

NCCTA witness Barta testified that BellSouth's assumed 20% fallout rate is excessive, and that for the purposes of the TELRIC studies, BellSouth should estimate its nonrecurring costs assuming a fallout rate of between 5% and 10%. Based upon current efficiency levels and expected software enhancements, the NCCTA believes that it is doubtful that BellSouth would tolerate a fallout rate of 20% in its OSS, thereby jeopardizing the efficiency of its customer service operations.

The New Entrants remarked that BellSouth witness Thompson testified that BellSouth's current fallout rate for access services is 10%. Thus, the New Entrants commented that a 10% fallout rate might be more quickly duplicated in the local service context now that BellSouth has in essence climbed the learning curve and gained more experience with electronic ordering.

The Public Staff stated that it agrees with AT&T and MCI that a 20% fallout rate is excessive, but that it could not find any reliable support for a rate as low as 2% as recommended by AT&T and MCI. Thus, the Public Staff recommended a fallout rate of 10% for the ILECs. It is the Public Staff's opinion that it is reasonable to expect a relatively short learning curve compared to the provisioning of access services, because many of the CLPs already have experience in placing electronic orders through their IXC activity and that the ILECs have valuable experience in dealing with and reducing the error rate in electronic ordering.

The Commission agrees with AT&T, MCI, NCCTA, the New Entrants, and the Public Staff that a 20% fallout rate seems excessive for a competitive environment. Based upon the recommendations presented by NCCTA, the New Entrants, and the Public Staff, the Commission concludes that a fallout rate of 10% is reasonable and appropriate for BellSouth as well as for the other ILECs. This is within the range recommended by NCCTA witness Barta and is the long-term rate experienced by BellSouth with IXC orders for exchange access. Since Carolina/Central's processes are strictly manual at this time, they have no actual experience at processing interconnection orders electronically. However, it is reasonable to expect that, when the electronic interface is fully implemented, the fall-out rate will approximate the level found reasonable for BellSouth and GTE. To the extent that Carolina/Central's proposed rates would recover the OSS costs, the rates should be adjusted to reflect no greater than a 10% fallout rate.

CONCLUSIONS

The Commission concludes that it is reasonable and appropriate for the ILECs to use a fallout rate of 10% in their calculations of nonrecurring costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 23

Issue: Should the nonrecurring costs associated with the disconnection of the various loops and ports that BellSouth and GTE proposed to recover through nonrecurring charges be recovered through the recurring rates associated with those loops and ports?

POSITIONS OF PARTIES

BELLSOUTH: No. BellSouth takes the position that the nonrecurring costs associated with the disconnection of the various loops and ports should be recovered through nonrecurring charges imposed at the time of installation.

CAROLINA/CENTRAL: No. Carolina/Central also take the position that nonrecurring costs should be recovered through nonrecurring charges. However, they did not include the costs of disconnection in their nonrecurring charges for installation of unbundled services. Instead, such costs are proposed to be recovered through recurring charges.

GTE: No. GTE's position is consistent with that of BellSouth.

AT&T/MCI: No. AT&T and MCI's NRCM models the cost of disconnection separately. Consequently, AT&T and MCI proposed separate nonrecurring charges for installation and disconnection.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: The New Entrants did not specifically address this issue in their Proposed Orders or Post-Hearing Brief.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff takes the position that the Commission should conclude that nonrecurring costs associated with the disconnection of the various loops and ports should be recovered through the recurring rates associated with those loops and ports. Such recovery, under the Public Staff's proposal, is to be accomplished by spreading the discounted costs over the expected life of the installation, which is four years according to the Public Staff. The Public Staff contends that the overall cost of capital which it has advocated for purposes of this proceeding is the appropriate discount rate to be used in this regard.

DISCUSSION

In addressing the issue of the appropriate cost model to be used by the Commission in determining nonrecurring costs, MCI, in its Proposed Order, expressed great concern that the adoption of high up-front charges for nonrecurring costs would create the single greatest barrier to CLP entry into North Carolina's local exchange markets. MCI argued that such a barrier would be created if the Commission elected to rely upon the ILECs' cost models and model inputs. The New Entrants and other intervenors voiced similar concerns.

On June 1, 1998, the Commission issued an Order which, among other things, required BellSouth to file revised cost studies and prices for UNEs reflecting the recommendations contained in the Public Staff's Proposed Order, including the Public Staff's recommendation concerning BellSouth's recovery of nonrecurring charges associated with disconnecting service. Specifically, the Public Staff's Proposed Order contained the following language:

> The Commission concludes that for BellSouth . . . the nonrecurring costs associated with the disconnection of the various loops and ports should be recovered through the recurring rates associated with those loops and ports by spreading the discounted costs across the expected life of the installation, which the Commission finds to be four years, using the overall cost of capital previously specified.

BellSouth filed the required data on June 16, 1998.

In response to BellSouth's June 16 filing, the Public Staff, on July 21, 1998, filed comments which, among other things, addressed the treatment BellSouth had accorded the Public Staff's recommendation concerning the recovery of disconnection costs. Specifically, the Public Staff stated as follows:

> BellSouth's filing includes the calculation of four separate monthly recurring rate additives that reflect recovery of the cost of disconnecting service, but BellSouth has failed to include recovery of these costs in its proposed monthly recurring rates as recommended by the Public Staff. Instead, BellSouth has continued to reflect recovery of the costs associated with disconnecting service in its nonrecurring charges. The proposed rates should reflect a weighted average of the disconnection costs in the monthly recurring charges. No recovery of disconnect costs should be included in the nonrecurring rates.

In a pleading filed on August 12, 1998, captioned Response of BellSouth Telecommunications, Inc. to Public Staff Comments, BellSouth stated that

> . . . consistent with the Public Staff's Proposed Order, BellSouth has removed all disconnect costs from the nonrecurring rates for loops and ports. However,

> BellSouth proposes to recover disconnect costs via a separate nonrecurring charge rather than through recurring rates for loops and ports as proposed by the Public Staff.

In support of its position, BellSouth argued that the Public Staff's proposal was inconsistent with cost causation principles and that it was administratively unworkable at present.

Regarding the intervenors' argument concerning high up-front charges, the Commission is of the opinion that such charges do tend to discourage the development of competition. Therefore, to mitigate the impact of the higher disconnection costs for loops and ports resulting from the Commission's having adopted the ILECs' costing approaches with certain modifications, the Commission is of the opinion that it should adopt the Public Staff's position, which spreads the recovery of the subject costs over the life of the installation, rather than the position of the ILECs, which would recover all of the costs either at the time of installation or upon disconnection.

Regarding BellSouth's argument that the Public Staff's proposal is inconsistent with cost causation principles, the Commission is of the opinion that the weighted average cost recovery approach advocated by the Public Staff is entirely reasonable and appropriate. Such approach is nondiscriminatory, and it is consistent with other traditional cost recovery rate mechanisms commonly utilized in the telecommunications industry. Further, use of the weighted average cost recovery approach will eliminate the administrative inconveniences alleged by BellSouth in its pleading filed on August 12.

CONCLUSIONS

The Commission concludes that the nonrecurring costs, as approved herein, associated with the disconnection of the various loops and ports should be recovered through the recurring rates associated with those loops and ports. Such recovery should be accomplished by spreading the discounted costs over the expected life of the installation, which the Commission has determined to be four years. The reasonable and appropriate discount rates are the overall costs of capital adopted for purposes of this proceeding. The appropriate overall costs of capital are addressed elsewhere herein. The ILECs' rates should reflect a weighted average of the disconnection costs in the monthly recurring charges. No recovery of disconnection costs should be included in the nonrecurring rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

Issue: Is GTE's proposal to establish new NRCs for resale services outside the scope of this proceeding?

POSITIONS OF PARTIES

GTE and the Public Staff were the only parties who specifically addressed this issue as discussed below.

DISCUSSION

GTE witness Dye recommended two sets of nonrecurring charges. According to his testimony, the first set of nonrecurring charges (NRCs) is designed to recover the cost of service ordering and installation activity for unbundled network elements such as loops and ports, network interface devices (NIDs), and interim number portability. The second set of NRCs which GTE is proposing to establish in this proceeding are the resale service NRCs. The resale service NRCs are for the recovery of costs related to ordering and installation activity for all resale service offerings.

Witness Dye explained that the costs and processes necessary to provide service to a CLP wholesale customer are significantly different than the costs and processes GTE uses to service its own retail customers. As a result, he contends that if GTE were to base resale NRC rates on corresponding retail NRC rates less the wholesale discount, GTE could not be assured that its actual costs of providing wholesale services would be recovered.

In its Proposed Order, the Public Staff states that GTE intends for the proposed resale NRCs to <u>replace</u> NRCs less the wholesale discount which the Commission decided in the GTE arbitration case. Therefore, the Public Staff believes that the Commission should reject GTE's proposal to establish resale NRCs in this proceeding on the basis that this issue has previously been decided and the facts of the matter have not changed. The Public Staff also states that pricing of resold services is not under consideration in this case.

The Commission agrees with the reasoning offered by the Public Staff on this issue.

CONCLUSIONS

The Commission concludes that GTE's proposed resale service NRCs are outside the scope of this proceeding.

<u>EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 25</u>

Issue: Are the ILECs' proposals regarding OSS costs, including the recovery of the one-time development costs of OSS, appropriate?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth proposed that the OSS development expenses should be recovered as one-time, nonrecurring costs charged to CLPs. BellSouth proposed a rate design that would require each CLP to pay an initial $100 charge and a recurring charge of $50 per month, plus a nonrecurring charge of $10.80 for each order placed.

CAROLINA/CENTRAL: Yes. Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief. However, Carolina/Central's nonrecurring cost study assumes that service order charges are manually processed. The reason Carolina/Central made that assumption is because no CLP has requested electronic interfaces with them. Carolina/Central's parent Sprint has made a strong commitment to the development and implementation of the electronic interfaces that will allow CLPs to efficiently and economically communicate with the Sprint OSS, utilized by Sprint local telephone companies. Carolina/Central have the capability to implement electronic interfaces, but at the time of the hearing, no CLP in any Carolina/Central service territory had requested implementation of standard electronic interfaces.

GTE: Yes. GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief. However, GTE proposed to recover all of its costs for developing and implementing its OSS from CLPs.

AT&T/MCI: No. The AT&T/MCI NRCM does not include investment associated with the development and operation of the electronic interfaces the CLPs will use to access BellSouth's OSS. BellSouth's current OSS investment is being recovered through recurring rates, to the extent it needs to be recovered at all, because mechanized OSS manages the totality of the telecommunications network.

NCCTA: No. BellSouth's proposal to recover system development expenses for its OSS as one time, nonrecurring costs charged to CLPs represents inappropriate cost recovery. Instead of recovering the system development costs through nonrecurring charges, the OSS costs should have been amortized over the economic life of the OSS in the TELRIC studies.

NEW ENTRANTS: No. The New Entrants argued that the CLPs should not be responsible for the total cost of modifying the ILEC's OSS, since the ILEC also benefits from the modifications as a more efficient wholesale provider. In regard to BellSouth and GTE, the New Entrants stated that the ILECs initial costs for developing OSS should be recovered on a competitively-neutral basis, in which each user, including the ILEC, should share the expense in direct proportion to the number of service orders it generates. For Carolina/Central, the New Entrants stated that Carolina/Central have significantly overstated their charges by relying solely on manual systems to calculate their nonrecurring charges. The New Entrants recommended that Carolina/Central's proposed nonrecurring service order charges should be reduced by 90% to reflect the use of least-cost, forward-looking technology.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: No. The Public Staff stated that the one-time development costs for new OSS systems and improvements to existing systems should be recovered through recurring rates applicable to users of the OSS, rather than through nonrecurring charges as proposed by the ILECs.

DISCUSSION

BellSouth proposed that the OSS development expenses should be recovered as one-time, nonrecurring costs charged to CLPs.

Carolina/Central have assumed in their nonrecurring cost study that service order charges are manually processed. The reason Carolina/Central made that assumption is because no CLPs have requested electronic interfaces with them. Carolina/Central pointed out that when CLPs are willing to implement electronic interfaces, they will develop nonrecurring charges based on electronic interfaces and charge CLPs accordingly. However, even then, it will still be appropriate to assess manual nonrecurring charges as some CLPs may continue to place service orders manually.

GTE proposed to recover all of its costs for developing and implementing its OSS from CLPs. GTE converted its software expenses to proposed rates by developing an annual recovery factor which results in the cost of the software being recovered over its useful life.

AT&T asserted that BellSouth has provided insufficient documentation to permit any determination as to the reasonableness of the OSS costs it seeks to recover. AT&T argued that until the necessary information is provided and analyzed the Commission should not address recovery of these costs.

NCCTA witness Barta testified that he considered BellSouth's proposal to recover system development expenses as one-time, nonrecurring costs charged to CLPs to be inappropriate. Instead of recovering the costs through nonrecurring charges, he recommended that the costs be amortized over the economic life of the OSS in the TELRIC studies.

Generally, the CLPs took the position that development costs of OSS systems are already being recovered from the ILECs' existing end-users or should be spread across all service order activity, including orders placed by the ILECs' end-users. This is because the CLPs believe that the improvements in the systems benefit the ILECs through elimination of inefficient systems and will result in reduced operating costs.

The Public Staff recommended that the one-time development costs for new OSS systems and improvements to existing systems that the ILECs propose to recover through nonrecurring charges should instead be recovered through recurring rates applicable to users of the OSS. The Public Staff recommended that the expenses incurred in development of the OSS should be amortized over five years at the overall cost of capital found reasonable by the Commission. Any investment that was to be recovered through one-time charges should be converted to a monthly rate by using the ILECs' TELRIC methodology and adding common costs, using the annual cost factors found reasonable for that category of plant.

The Commission agrees with the reasoning offered by the Public Staff on this issue.

CONCLUSIONS

The Commission concludes that the one-time development costs for new OSS systems and improvements to existing systems that the ILECs propose to recover through nonrecurring charges should instead be recovered through recurring rates applicable to users of the OSS. The expenses incurred in development of the OSS should be amortized over five years at the overall cost of capital found reasonable herein. Any investment that was to be recovered through one-time charges should be converted to a monthly rate by using the ILECs' TELRIC methodology and adding common costs, using the annual cost factors found reasonable for that category of plant.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 26

Issue: Are travel times included by BellSouth in developing nonrecurring costs overestimated?

POSITIONS OF PARTIES

BELLSOUTH: No. BellSouth argued that its cost model was designed in a manner that would eliminate the duplicated recovery of costs in recurring and nonrecurring rates. BellSouth stated that in its cost studies it identified the one-time work activities that are typically associated with installing or disconnecting unbundled network elements. BellSouth commented that, in identifying the work functions associated with the provisioning of network elements and services, it considered: (1) the basic work activities that are required to deliver an unbundled element such as a loop, including cross-connects in the field or in the central office, (2) the specific functions, such as testing, that CLPs have requested BellSouth to perform in interconnection agreements; and (3) any additional manual processing that BellSouth must perform when electronic orders "fall out" of the system.

BellSouth argued that, in contrast to its thorough analysis of nonrecurring costs, several CLPs merely proposed that nonrecurring rates be established at levels equal to the nonrecurring rates BellSouth charges its retail customers. That proposal, according to BellSouth, is not based on any analysis of the work times involved in ordering and provisioning network elements and services.

BellSouth asserted that the only other proposal for establishing nonrecurring charges was AT&T and MCI's NRCM. BellSouth contended that the NRCM is inappropriately based on national default percentages for factors such as the amount of copper facilities, the number of central offices that are staffed rather than unmanned, and the amount of set-up time needed. BellSouth argued that North Carolina-specific data was the proper data for use in determining its costs. BellSouth further contended that the NRCM contained unsupported assumptions about dedicated outside plant and automatic flow-through of orders.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: Yes. AT&T did not specifically addressed this issue in its Proposed Order or Post-Hearing Brief. AT&T did, of course, generally argue that the Commission should adopt its recommended nonrecurring prices generated by its nonrecurring cost model.

MCI: Yes. MCI contended that BellSouth's nonrecurring costs are inflated as a result of BellSouth's having overestimated the travel costs included in its cost study. MCI argued that travel time will rarely be necessary where the facilities are in place and where provisioning functions occur remotely and electronically, as would be done when utilizing least-cost, most-efficient technology. Further, MCI asserted that, when dispatch is required, the level of time BellSouth has assumed per order is excessive and assumes that employees are dispatched on a per-order basis. MCI argued that an efficient provider would assign employees several tasks per trip. MCI further contended that

BellSouth does not send employees out on a per-order basis and should not be using such an assumption in its studies. In summary, MCI contended that BellSouth's nonrecurring cost model does not assume forward-looking, least-cost, most-efficient technology and network architecture.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: Yes. With respect to travel costs, the New Entrants take the position that BellSouth has overlooked economies of scale that will reduce work times and travel times. For example, the New Entrants contend that under BellSouth's costing approach, if a CLP orders three loops at once for the same location, the CLP would be charged as though BellSouth's technicians were required to make three trips to provision those loops. For the foregoing reason, among other things, witness McMillin recommended that the Commission reduce the work times used by BellSouth in its study by a minimum of 31%.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its Proposed Order.

DISCUSSION

As discussed elsewhere herein, the Commission is of the opinion that the ILECs' cost studies, including BellSouth's, with certain modifications and adjustments are the most appropriate for use in this proceeding. In its cost studies, BellSouth specifically identified the activities that are typically associated with installing or disconnecting unbundled network elements, and those cost studies reflect North Carolina-specific data. That approach is superior to the methodologies advocated by the CLPs.

CONCLUSIONS

The Commission concludes that travel times included by BellSouth in developing nonrecurring costs are not overestimated and should be approved.

IV. COLLOCATION

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 27

Issue: Are the collocation charges proposed by the ILECs, as modified, cost-based and appropriate?

POSITIONS OF PARTIES

BELLSOUTH: Yes. It is BellSouth's position that BellSouth's Collocation Cost Study accurately estimates the cost that will be incurred to provide collocation and should be adopted by the Commission. BellSouth maintained that collocation is not an UNE and, therefore, not subject to the pricing standard in Section 252(d) of TA96. Therefore, BellSouth stated that the FCC's Order No. 96-355 contains certain, nonpricing rules that are binding for purposes of collocation. BellSouth argued that AT&T/MCI's Collocation Model replicates fictitious central offices which were designed by AT&T and MCI consultants from the basement up. BellSouth also argued that AT&T/MCI's Collocation Model is hypothetical, with national default inputs, that do not reflect North Carolina-specific costs. BellSouth stated that both the Georgia and Louisiana Public Service Commissions declined to adopt the AT&T/MCI Collocation Model and, instead, established collocation rates based on BellSouth's cost studies.

CAROLINA/CENTRAL: Yes. Carolina/Central argued that since the Companies filed an intrastate collocation tariff with the Commission on September 4, 1997, which was approved by the Commission effective September 29, 1997, and based on a TELRIC study, the Commission should adopt those tariff rates for collocation elements in this proceeding.

GTE: Yes. GTE contended that Section 251(d)(1) of TA96 requires that GTE be permitted to recover the actual costs of providing for collocation of CLP equipment. GTE argued that collocation rates should be set in accordance with GTE's federal virtual and physical collocation tariffs. GTE stated that those collocation rates were set using a method that allows recovery of GTE's costs, including a reasonable share of its joint and common costs.

AT&T: No. AT&T asserted that its Collocation Model calculates recurring costs using the same techniques the Hatfield Model employs in the calculation of recurring costs of UNEs. AT&T maintained that the developers of the Model constructed a forward-looking "model" central office and a forward-looking "collocation area layout" based on efficient central office planning practices and assuming both efficient suppliers and competitive processes. Therefore, AT&T argued that its Collocation Model is superior and should be adopted by the Commission.

MCI: No. MCI argued that the Collocation Model Version 2.0 jointly sponsored by AT&T and MCI uses forward-looking costs and satisfies the nondiscrimination requirement of Section 251(c)(6) of TA96 by basing the cost calculations and rates for collocation services on TELRIC. MCI stated that BellSouth's proposed collocation rates are overstated and inflated, thereby creating a barrier to new entrants attempting to enter the local telecommunications market. MCI asserted that BellSouth's Collocation Model overstates the costs for labor and material in constructing collocation space. MCI stated that BellSouth is attempting to recover costs associated with a "luxury collocation condo" and that the high rents charged for BellSouth's "collo condo" bars entry and violates the pricing standards of Section 252(d) of TA96.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: No. The New Entrants recommended that the Commission order the ILECs to file revised/new cost studies and proposed rates for physical and virtual collocation within 90 days of the Commission's Order in this docket.

The New Entrants recommended that BellSouth's estimated recurring costs for collocation should be adjusted to be consistent with New Entrants witness McMillin's recommended changes to the cost of capital, depreciation rates, and utilization rates for BellSouth's recurring unbundled loop rates. The New Entrants also recommended a reduction of 31% in BellSouth's proposed work times for nonrecurring costs for physical and virtual collocation for the same reasons as witness McMillin recommended such a 31% reduction in labor times for nonrecurring loop charges. The New Entrants also pointed out that BellSouth proposed 12 separate rate elements for virtual collocation: the rates for two elements are based on TELRIC studies presented in this docket, and the rates for ten elements are to be based on the FCC tariffed rate and not TELRIC. The New Entrants argued that virtual collocation rates should be based on forward-looking cost information presented in this docket and not FCC tariffed rates. Finally, the New Entrants objected to BellSouth proposing to price a NRC for space preparation for physical collocation on an ICB. The New Entrants argued that allowing BellSouth to price based on an ICB will create an incentive for BellSouth to inflate costs to create a barrier to entry, and that if BellSouth were required to tariff such rates, it would not have that incentive.

The New Entrants stated that GTE failed to provide cost studies for collocation in this proceeding and instead has proposed rates for collocation elements that appear to be the current tariffed General Telephone Operating Company (GTOC) interstate rates. Therefore, the New Entrants argued, it is not possible to assess whether GTE's forward-looking costs associated with collocation are appropriately reflected in the collocation rates. The New Entrants recommended that the Commission adopt the rates for physical and virtual collocation approved in Docket Nos. P-10, Sub 485A, and P-7, Sub 834A. on an interim basis until a full and open examination of GTE's support for its costs can occur.

For Carolina/Central's collocation rates, the New Entrants stated that Carolina/Central proposed rates based on their tariffed rates. The New Entrants recommended that the Commission require Carolina/Central to submit cost studies to support rates for collocation. They also proposed that the Commission order that Carolina/Central's tariffed collocation rates remain in effect subject to true-up until the Commission adopts a set of cost-based collocation rates for Carolina/Central.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff is of the opinion that the collocation charges proposed by the ILECs, as modified, are cost-based and should be approved.

DISCUSSION

BellSouth witness Varner asserted in direct testimony that virtual collocation should be based on existing tariff rates. Witness Varner stated that rates have existed in federal tariffs for several years and were scrutinized at the time of their initial filing. Witness Varner stated that these rates are clearly cost-based, however, they are not subject to the pricing standards of Section 252(d) of TA96. Physical collocation, witness Varner asserted, is required to be provided in TA96 and virtual collocation will be the exception rather than the rule. Also, witness Varner stated that some IXCs currently have virtual collocation and may want to continue using virtual collocation for their combined IXC/CLP business. Physical collocation is not used by IXCs in North Carolina, and witness Varner argued that prices should equal the TELRIC cost study results. Witness Varner stated in rebuttal testimony that a comparison of virtual collocation rates between the TELRIC study results and the interstate tariff rates shows that some elements are priced higher and some are priced lower, however, setting virtual collocation based on the TELRIC study would set the stage for an arbitrage situation where competitors could pick and choose from the tariff or the cost study results depending on which source produced a lower rate for the particular element being purchased.

BellSouth witness Varner testified on cross-examination that BellSouth is recommending that virtual collocation rates be set at the interstate tariff rates which are not TELRIC rates. Witness Varner also testified that the proposed physical collocation rates are TELRIC rates. When questioned whether BellSouth.Net, a subsidiary of BellSouth Corporation and an information service provider, paid the same collocation rates that BellSouth is recommending in this proceeding, witness Varner responded that he did not know.

GTE witness Gilbert in rebuttal testimony presented his findings in a review of the AT&T/MCI Collocation Cost Model, Version 2.0 submitted in this proceeding. Witness Gilbert maintained that the AT&T/MCI Collocation Model develops costs that are based on unsupported central office planning assumptions and assumes that there will always be a requirement for four collocation spaces in any central office so as to dilute the costs and jeopardize the opportunity for an ILEC to recover its costs. Witness Gilbert stated that the facts do not support this since there are only 12 offices nationally and none in North Carolina with more than one CLP occupying or requesting collocation space. Witness Gilbert also criticized the AT&T/MCI Collocation Model for omitting costs to establish a separate and secure entry into CLP space. Additionally, witness Gilbert questioned the credibility of the data and noted that the Model fails to account for regional differences in construction costs and inaccurately calculates the power costs.

New Entrants witness Solomon stated in rebuttal testimony that collocation is the first link in a chain of events that must occur in order for a CLP to be able to provide competitive local exchange services through the purchase of UNEs. Witness Solomon stated that collocation rates must be cost-based so CLPs can make informed decisions as to market entry. Witness Solomon asserted that collocation rates should be set in this proceeding. Witness Solomon argued that Carolina/Central did not propose any collocation rates in this proceeding and responded to a New Entrants' data request that Carolina/Central have an approved intrastate collocation tariff for North Carolina that will be used. However, witness Solomon suggested that the Commission either open a new docket to address this issue or continue this docket in regard to Carolina/Central's collocation rates as a separate issue.

New Entrants witness Gose stated in rebuttal testimony that physical and virtual collocation should be treated as UNEs because the FCC's Interconnection Order at Paragraph 542 considered "the means of achieving interconnection and access to UNEs that ILECs are required to make available to requesting carriers. Among the alternatives considered by the FCC was collocation, which the FCC noted was the only method of interconnection or access specifically addressed in Section 251".

As indicated above, the Public Staff is of the opinion that the collocation charges proposed by the ILECs, as modified, are cost-based and should be approved. The Public Staff maintained that collocation rates are not subject to the same pricing standards under Section 252(d)(1) of the Act as UNEs, i.e. they are not required to be cost-based. However, under Section 251(c)(6), they are required to be just, reasonable, and nondiscriminatory. Specifically, Section 251(c)(6) of TA96 states:

> Collocation: The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

The Public Staff stated that no parties advanced any reasonable basis for pricing collocation other than cost and, therefore, the Commission should conclude that collocation rates should be cost-based.

The Public Staff also stated that AT&T and MCI presented their Collocation Model which envisions the construction of all new central offices and which would result in the most efficient physical collocation for CLPs. The Public Staff maintained that the CLPs' position, however, was contrary to the Act because it does not take into consideration the alternative of virtual collocation. The Public Staff recommended that the Commission reject the rates produced by the AT&T/MCI Collocation Model in favor of the rates proposed by the ILECs, except as modified.

The ILECs are proposing the following collocation rates:

<u>BellSouth:</u>	Physical collocation rates based on its TELRIC Collocation Model. Virtual collocation rates based on its interstate tariff.
<u>Carolina/Central:</u>	Physical and virtual collocation rates based on its intrastate collocation tariffs.
<u>GTE:</u>	Physical and virtual collocation rates based on the current tariffed GTOC interstate rates.

Based on the record of evidence in this proceeding, the Commission believes that it is reasonable to conclude that the collocation rates proposed by the ILECs are cost-based and should be approved as modified in the Evidence and Conclusions for Finding of Fact Nos. 28, 29, and 30 herein. The record does not contain sufficient evidence to find that the ILECs' proposed collocation rates, as modified by other Commission findings herein, are inappropriate.

CONCLUSIONS

The Commission concludes that the collocation charges proposed by the ILECs, as modified elsewhere herein, are cost-based, reasonable, and appropriate and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 28

Issue: Is BellSouth's proposed application fee for physical collocation excessive and, if so, should it be reduced?

POSITIONS OF PARTIES

BELLSOUTH: No. BellSouth did not specifically address this issue in its Proposed Order or Post-Hearing Brief. However, BellSouth argued that its Collocation Cost Study accurately estimates the cost that will be incurred to provide collocation and should be adopted by the Commission.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: Yes. AT&T asserted that BellSouth's collocation rates, including its application fee, are exorbitant and will present an enormous financial barrier for any CLP that wants entry to the local exchange market in North Carolina using combinations of loops and switches.

MCI: Yes. MCI stated that BellSouth's proposed collocation application fee of $7,084 is simply to receive an "estimate" which will be offered by BellSouth as a "take it or leave it" price for physical collocation and that a CLP would have nowhere to go to seek relief from BellSouth's monopoly pricing practices.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: Yes. The New Entrants stated that BellSouth's collocation rates are significant in magnitude and noted that BellSouth proposes to charge CLPs $7,084 just as an application fee for collocation service at a single central office. The New Entrants stated that BellSouth witness Varner explained that for the application fee, all the CLP gets is a listing of what work needs to be done and an estimate of the cost. The New Entrants also argued that BellSouth witness Thompson admitted that if one CLP paid BellSouth a $7,084 application fee and a second CLP requested physical collocation at the same central office, BellSouth would receive a second $7,084 fee; however, AT&T/MCI witness Bissell observed that the work times in implementing a second collocation request should be much less.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff believes that BellSouth's proposed application fee for collocation is excessive and should be reduced to BellSouth's current tariffed rate of $3,850.

DISCUSSION

BellSouth witness Varner testified on cross-examination that the $7,084 application fee for physical collocation would be the same if a CLP wanted a fairly small item collocated versus a CLP that wanted a large piece of equipment collocated. Witness Varner rationalized that whether it's a small or large addition for the physical collocation, BellSouth would still have to send somebody out to the office, assess the state of the office, and note what needs to be done to the office to prepare it for the physical collocation.

BellSouth panel witnesses Zarakas and Caldwell stated in rebuttal testimony that BellSouth's application fee is for a service inquiry function that determines if the CLP's request for physical collocation can be met. The fee includes marketing, project management, engineering, and administrative time associated with review, research, and planning due to the request, as well as a written response to the customer.

BellSouth witness Thompson testified on cross-examination that part of the $7,084 application fee is time spent by the interexchange network access coordinator (INAC). Forty hours of work time from the INAC is included in the application fee. Witness Thompson also explained that BellSouth subject matter experts developed the inputs for BellSouth's Collocation Model. Witness Thompson also agreed that BellSouth's subject matter experts did not assume any economies of scope or scale.

New Entrants witness McMillin noted in rebuttal testimony that BellSouth's application fee for collocation in its SGAT is $3,850. Witness McMillin asserted that BellSouth's high nonrecurring charges for collocation are driven by the Company's work time estimates and the TELRIC labor rate. Witness McMillin recommended that the Commission reduce BellSouth's estimated work times for physical collocation by 45% consistent with his recommendation for unbundled loops.

As indicated above, the Public Staff is of the opinion that BellSouth's proposed application fee for collocation is excessive and should be reduced. The Public Staff maintained that BellSouth's application fee for collocation is excessive ($7,084 compared to $4,723 for GTE and $3,762 for both Carolina and Central). The Public Staff stated that the application fee in BellSouth's current collocation tariff, on the other hand, is $3,850. The Public Staff stated that BellSouth's witnesses were unable to justify the proposed fee on cross-examination and that the Public Staff was unable to find an explanation for the disparity between BellSouth's proposed fee, its tariffed fee, and the fees proposed by the other ILECs. The Public Staff recommended that the Commission conclude that BellSouth's appropriate application fee for collocation should be set at the current tariffed rate of $3,850.

The Commission believes, based on the record of evidence, that BellSouth's proposed application fee for collocation is excessive. The Commission also notes that the current tariffed rate for the collocation application fee is $3,850 and that this is the amount presented in BellSouth's SGAT. Therefore, the Commission believes that it is appropriate to conclude that BellSouth's physical collocation application fee should be set at the current tariffed rate of $3,850.

CONCLUSIONS

The Commission concludes that BellSouth's application fee for physical collocation is excessive and should be reduced to BellSouth's current tariffed rate of $3,850.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 29

Issue: Should BellSouth allow CLPs to use wire cages for physical collocation?

POSITIONS OF PARTIES

BELLSOUTH: No. BellSouth proposes to install gypsum board drywall with gaps at the top and bottom of walls closed off with security mesh which will provide for safer physical collocation than wire mesh cages.

CAROLINA/CENTRAL: Carolina/Central did not take a position on this issue in their Proposed Order or Post-Hearing Brief.

GTE: GTE did not address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: Yes. AT&T asserted that wire mesh cages are cleaner, easier to install, safe, and are the most cost efficient method of providing for physical collocation. If grounded correctly, wire mesh poses no more risk than the overhead ironwork that is within a few inches of the top of equipment racks and in contact with technicians each time they run cables. ILECs have been using wire mesh collocation enclosures in their central offices for both transmission and switching equipment without any reported safety or transmission problems.

MCI: Yes. MCI is in agreement with AT&T's position.

NCCTA: NCCTA did not address this issue in its Post-Hearing Brief.

NEW ENTRANTS: The New Entrants did not address this issue in their Proposed Orders or Post-Hearing Brief.

ATTORNEY GENERAL: The Attorney General did not address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff's position is that BellSouth should allow CLPs to use wire cages for physical collocation.

DISCUSSION

As indicated above, the Public Staff is of the opinion that BellSouth should allow CLPs to use wire cages for physical collocation. There was some controversy between BellSouth and AT&T/MCI witnesses as to whether a safety hazard would exist if the CLPs physically collocated their equipment within wire cages rather than drywall enclosed spaces in the central office. Building wire cages is clearly more economical for the CLPs, and the rates proposed by GTE and Carolina/Central already contemplate that wire cage enclosures will be used.

BellSouth witness Redmond testified that BellSouth is the only ILEC that allows CLPs to place switching equipment within the collocation enclosure area. Switches require their own isolated ground plane rather than just being grounded to the common, integrated system. The introduction of multiple isolated and integrated ground planes in close proximity to each other is where BellSouth has concerns for safety. Collocators typically squeeze as much equipment into the collocation space as they possibly can, leaving little room for maintenance. It is quite reasonable that given the limited space in which to operate, a maintenance worker could contact two ground planes at once if there is no barrier. It would be virtually impossible to properly ground a wire fence due to the weave of the fabric as well as the attachments to the posts. Gaps are inherent to the separate units of metal in a fence, therefore, complete contact of a ground cannot be made.

In rebuttal testimony, AT&T/MCI witness Bissell stated that BellSouth proposes an approach to physical collocation that adds substantial unnecessary costs through the use of drywall. For example, BellSouth's proposal to install drywall with gaps at the top and bottom of walls and closed off with security mesh restricts the overall ambient lighting and air conditioning, resulting in the need for increased air conditioning capacity and the need for additional light fixtures.

Witness Bissell further stated that using drywall construction materials requires mandatory processes that add to the overall cost of providing collocation. For example, the use of drywall requires that a plaster-like compound be placed on all seams and joints. This compound must then be wet sanded, and the entire wall painted with more than one coat of paint. Not only is this extremely messy and time-consuming but also dictates lengthy construction intervals. It also requires the use of costly floor to ceiling dust barriers to ensure that dust particles remain within the construction area and do not contaminate adjacent telecommunications equipment.

In addressing BellSouth's safety concerns, witness Bissell testified that an isolated grounding arrangement (also referred to as an isolated bonding network) can be used with all types of telecommunications equipment. The overall design of an isolated bonding network as proposed by major telecommunications equipment suppliers, such as Nortel, incorporates the following: (1) metal equipment relay racks isolated from both the floor and overhead superstructure, (2) isolated, separate ground leads for equipment and ironwork (relay racks) using the battery return bar of the battery distribution fuse bay (BDFB) or DC power plant, and (3) all ironwork within seven feet of equipment grounded to an integrated collector bar connected to the single point ground. The seven-foot rule in number (3) above ensures the safety of maintenance personnel by eliminating the possibility of anyone coming in contact with two different ground planes. With a wire cage installation, the cage material would be grounded in the same manner as the overhead ironwork and cable racks. If grounded correctly, the installation of wire mesh poses no more risk to personnel than the cable racks and overhead ironwork which technicians constantly come into contact with when running cable.

The Commission is of the opinion that the safety concerns of BellSouth have been adequately addressed and answered by the CLPs and that the use of wire cages for physical collocation should be permitted.

CONCLUSIONS

The Commission concludes that BellSouth should allow CLPs to use wire cages for physical collocation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 30

Issue: Should GTE file specific rates for building modifications to provide physical collocation and also specify the simple, moderate, and complex classifications of its North Carolina offices in which physical collocation is offered?

POSITIONS OF PARTIES

GTE and the Public Staff were the only parties who specifically addressed this issue.

GTE: No. GTE's proposed rates for building modifications to provide physical collocation include three categories of modification: simple, moderate, and complex. On June 16, 1998, GTE filed revised cost studies and UNE prices as required by Commission Order dated June 1, 1998. In its Collocation Issues filing attached to its revised cost studies, GTE stated that building modification costs are not driven by square footage requirements of the collocation cage enclosure. GTE's interstate rates are based upon the work required to provide modifications to the wire center or access tandem to accommodate provisioning of physical expanded interconnection service (EIS) and are based upon its existing Interstate Expanded Interconnection tariff offering for physical collocation previously filed with and approved by the FCC. The interstate tariff clearly states that the rates correspond to the amount of work and construction required for each central office.

PUBLIC STAFF: Yes. The Public Staff takes the position that GTE should file specific rates based on the actual cost of modifications along the lines of BellSouth and Carolina/Central, using annual cost factors. The rates proposed by GTE included three categories of modification - simple, moderate, and complex - but the criteria for the categories were not specified. On July 21, 1998, the Public Staff filed comments regarding the Commission Order issued June 1, 1998, requiring the ILECs to file revised cost studies and prices for UNEs. After reviewing GTE's Collocation Issues filing attached to its revised cost studies, the Public Staff takes the position that GTE should specify the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered in its intrastate tariff.

DISCUSSION

GTE's proposed rates for building modifications to provide physical collocation include three categories of modification: simple, moderate, and complex. BellSouth's and Carolina/Central's proposed rates are based upon square footage construction costs. In its Proposed Order, the Public Staff took the position that GTE should file specific rates based on the actual cost of modifications along the lines of BellSouth and Carolina/Central.

On June 16, 1998, GTE filed revised cost studies and UNE prices as required by Commission Order dated June 1, 1998. GTE also attached to this filing an explanation of Collocation Issues.

GTE stated that its building modification costs are not driven by the square footage requirement of the collocation cage enclosure. GTE argued that it would, therefore, be inappropriate to try and recover these costs through a charge based on square feet. GTE referred to its interstate tariff which states that "[t]he Building Modification Charge is associated with work performed by the Telephone Company to provide modifications to the wire center or access tandem to accommodate provisioning of physical EIS. These include, but are not limited to, security access card swipe equipment, construction of separate entrance/exit, construction of separate pathways or corridors, and/or additional security locks." Furthermore, GTE explained that the interstate tariff clearly states that, "The rates correspond to the amount of work and construction required for each central office. Each central office is mapped to the appropriate rate level as shown in 17.7.7." In its Collocation Issues explanation, GTE also listed three North Carolina offices which have been evaluated and mapped to the appropriate rate level - simple, moderate, and complex.

Additionally, GTE explained that some collocation costs are dependent upon the square footage of space requested. For example, GTE has a separate nonrecurring charge for construction of the cage enclosure that is appropriately developed on a square footage basis. These costs, however, are not included in GTE's building modification charge. Also, GTE remarked that a CLP may not necessarily bear the entire cost of building modification by itself. GTE's interstate tariff includes a provision that allows building modification costs to be shared by all customers collocating in a central office.

On July 21, 1998, the Public Staff filed comments to the ILECs revised cost studies and prices for UNEs. After reviewing GTE's Collocation Issues attachment to its filing, the Public Staff withdrew its original objection, as stated in its Proposed Order, to GTE's original proposed collocation rates since these are the existing rates contained in GTE's interstate tariffs. However, the Public Staff stated that GTE should specify the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered in its intrastate tariff.

The Commission is in agreement with the Public Staff's position that GTE should refile its intrastate tariff to include the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered.

CONCLUSIONS

The Commission concludes that GTE's revised collocation rates should be adopted, and that GTE should be required to refile its intrastate tariff and include the simple, moderate, and complex classifications of its North Carolina offices in which collocation is offered.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

Issue: Is BellSouth's proposal that CLPs purchase collocated space to make use of combined loops and switches in violation of the Eighth Circuit's decision?

POSITIONS OF PARTIES

BELLSOUTH: No. BellSouth characterized AT&T's position as being one in which BellSouth is said to require CLPs to use their own equipment in collocated space as contrary to the Eighth Circuit's holding that the CLP may obtain the ability to provide telecommunications service entirely through ILEC UNEs. BellSouth denies that it requires a CLP to use any equipment in its space whether collocated or otherwise. BellSouth said it will deliver the unbundled loop and port to AT&T. How AT&T chooses to combine them is up to AT&T. On cross-examination, BellSouth witness Varner stated that it was BellSouth's policy to provide UNEs in accordance with the Act and the decisions of the various state commissions and that, while collocation is the only method that BellSouth has identified as being practical and required by the Act, BellSouth is also examining other methods.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: Yes. AT&T argued that BellSouth's policy of requiring AT&T to purchase collocated space in order to make use of combined loops and switches violates the Eighth Circuit's holding in Iowa Utilities Board v. FCC. The Eighth Circuit ruled in that case that ILECs must provide CLPs the opportunity to combine UNEs themselves, and that nothing in Section 251(c)(3) requires a competing carrier to own or control some portion of the network before being able to purchase a UNE. AT&T cited a decision made by the Massachusetts Department of Public Utilities issued on March 13, 1998. In an arbitration docket involving Bell Atlantic in which that state regulatory commission decided that, inasmuch as collocation requires a CLP to own a portion of the network, collocation as a precondition to obtaining UNEs "appears to be at odds with the Eighth Circuit's findings." AT&T also provided in supplemental materials a decision by the Florida Public Service Commission in Docket No. 971140-TP issued on June 12, 1998, which found a collocation requirement to receive access to UNEs to be violative of the Eighth Circuit decision. That case involved the construction of interconnection agreements, where the Florida Commission also found BellSouth obligated to provide any existing combination on an "as is" basis.

MCI: Yes. MCI argued that requiring CLPs to combine network elements at a collocation site is not a reasonable or nondiscriminatory alternative to providing CLPs with supervised access to BellSouth's network to combine elements effectively. Moreover, Section 251(c)(6) does not purport to state that collocation is the only method available to CLPs for obtaining access to BellSouth's UNEs. MCI is not required to provide its own elements when it obtains UNEs from BellSouth, since the Eighth Circuit decision explicitly held that CLPs can provide a finished service using only ILEC elements.

NCCTA: NCCTA did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

NEW ENTRANTS: The New Entrants did not specifically address this issue in their Proposed Orders or Post-Hearing Brief.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its Proposed Order.

DISCUSSION

The narrow question presented here is whether the Eighth Circuit decision forbids an ILEC such as BellSouth from requiring a CLP to collocate in order to receive access to UNEs.

Legally, this matter is in great flux at this time. The Eighth Circuit's decision is on appeal to the United States Supreme Court. Matters dealing with recombination have also been the subject of appeals closer to home in the federal district court and the Fourth Circuit Court of Appeals.

This question is, in fact, the latest twist in a long-running dispute as to how the CLPs will rebundle UNEs if ILECs will not do it.

The Commission believes that the collocation issue can best be approached by looking for practical solutions. Clearly, collocation is a practical way of providing UNE access. Whether it is the only legal and practical way is a different question. However, the record in this case lacks any substantial assessment of ways other than collocation that UNE access can be accomplished. It is simply argued by the CLPs that collocation is too expensive, too clumsy, and is not required.

The Commission notes that elsewhere it has concluded that the collocation rates proposed by the ILECs, subject to certain modifications, should be approved. That being the case, the Commission believes that it should further conclude that collocation is a legally permissible way for an ILEC to provide access to UNEs and that the record in this case, including the current status of the law, does not require or permit the Commission to render a final decision at this time as to whether there are any other legally permissible and practical ways for the ILECs to provide such access. It is likely that the issues related to collocation requirements now being raised in this docket will ultimately be decided by the federal appellate courts. Those federal appellate decisions will be binding upon the affected parties and this Commission and may well require modifications of ILEC/CLP interconnection agreements.

However, on the basis of the record now before the Commission in this docket, the Commission believes that the ILECs have adequately answered the CLPs' complaints regarding collocation requirements. Therefore, the Commission concludes that it is neither necessary nor advisable at this time for it to rule on whether a collocation requirement comports with the Eighth Circuit decision. This is a matter best left for final resolution after the affected parties with vested interests in the matter have had the opportunity to present their legal arguments to the federal appellate courts.

CONCLUSIONS

The Commission concludes that collocation is a legally permissible way for an ILEC to provide access to UNEs; that the record in this case, including the current status of the law, does not require or permit the Commission to render a final decision at this time as to whether there are any other legally permissible and practical ways for the ILECs to provide such access; and that the ILECs have adequately answered the CLPs' complaints related to collocation requirements. The Commission will, at the appropriate point in time, work diligently with affected parties to ensure that interconnection agreements are amended and revised, as necessary, to conform to the mandates of applicable federal court decisions regarding collocation requirements.

V. OTHER ISSUES

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

Issue: Should rates for UNEs be geographically deaveraged at this time?

POSITIONS OF PARTIES

BELLSOUTH: No. BellSouth opposed deaveraging rates for UNEs. It contended that deaveraging was inappropriate until an appropriate universal service plan was in place and rate rebalancing and deaveraging of retail rates could be accomplished.

CAROLINA/CENTRAL: Yes. Carolina/Central proposed prices for loops, local switching ports, and transport elements that were deaveraged into six rate bands.

GTE: No. GTE opposed deaveraging unbundled network element prices before deaveraging retail prices.

AT&T/MCI: Yes. AT&T and MCI argued that the ILECs should be required to deaverage their prices in order to determine the true cost of serving customers in various geographic regions throughout North Carolina.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: Yes. The New Entrants argued that averaging distorts the purchase and investment decisions of CLPs and that, where costs vary, prices should also vary accordingly.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: No. The Public Staff, in its Proposed Order, opposed geographical deaveraging at this time.

DISCUSSION

The proponents of deaveraging UNE rates generally argued that such deaveraging is required by the Act and public policy considerations. They asserted that it brings rates closer to actual costs and sends correct signals to the marketplace, while rate averaging distorts purchase and investment decisions by CLPs and also gives ILECs cost advantages in urban areas.

The opponents of deaveraging asserted that, without rate rebalancing, deaveraging would create arbitrage opportunities for CLPs, by allowing them to target high margin customers and services. Such targeting, according to opponents, would ultimately lead to higher prices for rural customers.

The historical practice of maintaining statewide average retail rates based on the number of lines in a calling area, in all likelihood, will not be sustainable in the long run as competition develops. The Commission, however, is of the opinion that it would be unwise to begin the process of deaveraging before the necessary mechanisms to support universal service are in place.

The Commission is also mindful of the relationship between the prices of UNEs and the pricing of retail services and accordingly is of the opinion that deaveraging will likely have a significant impact on the overall availability of competitively priced services. Therefore, to ensure that all competitors are treated fairly and that the interests of all consumers are fully protected, the Commission is of the opinion that the deaveraging of rates for UNEs and retail services should be implemented by means of a carefully considered and well-coordinated plan. Development of such a plan requires that all aspects of this process be identified, debated, carefully studied, and clearly understood. The record in this proceeding does not contain the information and data needed for this purpose.

For the foregoing reasons, the Commission is of the opinion that it would be inappropriate to deaverage UNE rates at this time.

CONCLUSIONS

The Commission concludes that the proposals for geographical deaveraging of UNE prices are premature and should be rejected for purposes of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 33

Issue: Based on the current status of the law and relevant appellate decisions, should the ILECs be required to combine unbundled network elements for CLPs and utilize IDLC technology to develop UNE rates?

POSITIONS OF PARTIES

BELLSOUTH: No. BellSouth took the position that TA96 obligates the ILECs to provide UNEs to requesting CLPs and that it has agreed to do so and has submitted appropriate cost studies. AT&T and MCI argued that this is not enough and that BellSouth should be obligated to combine network elements (such as a combined loop and port) for their benefit at a "package price." The position taken by AT&T and MCI in their cost studies is legally flawed in that the studies assume delivery of a combined loop and port using IDLC technology. This assumption is predicated upon an erroneous belief that CLPs are entitled to purchase combinations of network elements at cost-based rates, including elements as they are already combined on BellSouth's network. However, the Eighth Circuit has squarely held in Iowa Utilities Board v. FCC, 120 F.3d 753 (8th Cir., 1997) that no such entitlement exists under TA96. If BellSouth was required to provide CLPs such as AT&T and MCI with the UNE platform, CLPs would not be receiving elements on an unbundled basis; CLPs would not be combining elements themselves and would not be incurring additional burdens or costs in providing finished telecommunications services. Simply put, the only thing AT&T and MCI would be doing under their platform theory is engaging in resale. The AT&T/MCI UNE platform theory was purportedly based on Section 51.315(b) of the FCC's rules, but that rule has been vacated by the Eighth Circuit. Therefore, BellSouth is not required to deliver combined network elements at cost-based rates. There is no merit to the assertion by AT&T and MCI that BellSouth requires CLPs to use their own equipment in collocated space contrary to the holding of the Eighth Circuit that a CLP "may obtain the ability to provide telecommunications services through an incumbent LEC's unbundled network elements." To the contrary, BellSouth does not require that CLPs such as AT&T use any equipment in its space, whether collocated or otherwise. BellSouth will deliver the unbundled loop and port to the CLP; how the CLP combines the loop and port is entirely up to the CLP.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: No. GTE should not be required to provide packaged combinations of network elements that would permit a CLP to replicate GTE's retail services. CLPs that wish to combine UNEs must do so through a collocation arrangement. GTE's inputs to the ICM reflect the appropriate level of forward-looking investment for DLC.

AT&T: Yes. AT&T took the position that BellSouth should be required to provide combinations of UNEs, as provided for by the terms of their Interconnection Agreement. In addition, when a CLP elects to purchase UNEs and recombine them itself, BellSouth should be required to unbundle and permit recombination of those UNEs in an efficient, cost-effective manner. BellSouth has designed its cost studies so that the only alternative to combinations -- standalone UNEs -- are so prohibitively expensive so as to preclude the possibility of any real competition in the local exchange market. This is contrary to House Bill 161, TA96, the FCC's Interconnection Order, the Eighth Circuit's decision, and sound public policy. Furthermore, the manner in which BellSouth intends to provide UNEs will prohibit timely, high quality, and efficient recombination of UNEs by CLPs to the detriment of North Carolina consumers. BellSouth's refusal to provide CLPs with IDLC technology imposes significant additional costs and will result in poor quality service for North Carolina consumers.

MCI: Yes. MCI took the position that the Hatfield Model produces costs for individual UNEs such that rates will accurately reflect costs of individually purchased UNEs or UNEs purchased in combination. TA96 requires that ILECs provide network elements in a manner that allows entrants to combine such elements in order to provide telecommunications service. MCI has the right, pursuant to its Interconnection Agreement with BellSouth, to purchase combinations of network elements. BellSouth cannot voluntarily enter into such a contract and now say that the law prohibits it from performing such a contract obligation. Requiring CLPs to combine network elements at a collocation site is not a reasonable and nondiscriminatory alternative to providing CLPs with supervised access to BellSouth's network in order to combine elements efficiently. BellSouth's argument that collocation is the only statutorily authorized means of CLP entry into its premises cannot be supported. Moreover, MCI is not required to provide its own elements when it obtains unbundled elements from BellSouth; the Eighth Circuit decision explicitly held that CLPs can provide a finished service using only the ILEC's elements. The ILEC position on this issue violates Section 251(c)(3) of TA96, even under the Eighth Circuit's reading of that provision. BellSouth has failed to include the most efficient telecommunications technology in its cost studies, as demonstrated by its use of "decade of the 1970's" UDLC technology in its loop cost studies, rather than the more efficient, least-cost IDLC technology.

NCCTA: No. NCCTA took the position that TA96 cannot be reasonably interpreted to permit competing providers to purchase "platforms" of ILEC UNE services based on cost rather than at wholesale rates. Moreover, the Eighth Circuit has acknowledged that the responsibility for combining UNEs to create services rests on those carriers purchasing the uncombined elements, not on the ILECs. Nothing in TA96 or the FCC's rules implementing the Act indicates that CLPs should be allowed to so dramatically change their underlying cost structure simply by calling an ILEC service a "platform of unbundled network elements" instead of a resold service.

NEW ENTRANTS: GTE's cost model overstates the amount of DLC investment and equipment used by GTE in North Carolina. The Carolina/Central cost model imposes an arbitrary limitation on DLC line capacity and, as a result, overstates costs because the limitation significantly overstates the number of required DLC units.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: No. The Public Staff took the position that the ILECs should not be required to combine unbundled network elements for CLPs.

DISCUSSION

Section 251 of TA96 provides for competitive entry into the local exchange telecommunications markets by three distinct methods: (1) interconnection; (2) unbundled access; and (3) resale. All of the parties to this proceeding agree that each of these alternative methods of market entry is important to the ultimate development of competitive markets.

One of the most controversial issues in the arbitration proceedings concerned the combination (or recombination) of unbundled network elements: the extent to which the ILECs would be required to provide combinations of elements and at what price. Section 251(c)(3) of the Act requires ILECs to provide unbundled network elements "in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications services." Under the FCC's rules dealing with combinations of unbundled network elements, 47 C.F.R. 51.315(b)-(f), ILECs may not separate requested elements that they currently combine and must perform functions to combine unbundled elements, even if not ordinarily combined, provided such combination is technically feasible and will not impair the ability of other carriers to obtain access to unbundled elements or interconnection.

The Eighth Circuit vacated the above-referenced Rules of the FCC in the Iowa Utilities Board case, saying that they cannot be squared with the Act's requirement that requesting carriers combine the unbundled network elements themselves. The Eighth Circuit also held that CLPs may obtain the ability to provide "finished services" through access to unbundled network elements at cost-based rates pursuant to Section 251(c)(3).[1] However, prior to the time the Eighth Circuit entered its decision, this Commission concluded in the BellSouth/AT&T (Docket No. P-140, Sub 50) and BellSouth/MCI (Docket No. P-141, Sub 29) arbitration proceedings that when a CLP combines unbundled elements in such a way as to replicate an ILEC retail service, without adding any substantive features or capabilities of its own, it must pay the retail price less the wholesale discount for the service rather than the rates of the combined elements. AT&T and MCI appealed that issue and other issues to the United States District Court for the Eastern District of North Carolina.

On May 22, 1998, The Honorable Judge W. Earl Britt, Senior United States District Judge, entered Orders in the AT&T and MCI appeals[2] which, in pertinent part, struck Paragraphs 1.A and 30.5 from the BellSouth/AT&T Interconnection Agreement and Attachment III, Section 2.3 of the BellSouth/MCI Interconnection Agreement and remanded the matters to this Commission for rearbitration consistent with the Orders entered by that Court and the Eighth Circuit. Paragraph 1.A of the AT&T Agreement and Attachment III, Section 2.3 of the MCI Agreement contained the pricing provision as described above. The Court agreed with AT&T and MCI and held that the pricing approach adopted by the Commission was inconsistent with the letter and intent of both TA96 and the Eighth Circuit's opinion in the Iowa Utilities Board case. In addition, Judge Britt disagreed with the positions taken by AT&T and MCI to the effect that their Interconnection Agreements contained negotiated provisions whereby BellSouth voluntarily consented to combine network elements at their request. The Court, in addressing Section 30.5 of the AT&T/BellSouth Interconnection Agreement, noted that the provision in question was negotiated and settled upon before the Eighth Circuit struck down the FCC's requirement that the ILECs combine unbundled elements for the requesting carriers. Therefore, the court found that Paragraph 30.5 was no longer consistent with the law and, like Paragraph 1.A, must also be removed from the Agreement.[3]

On June 22, 1998, AT&T filed a Notice of Appeal to the United States Court of Appeals for the Fourth Circuit with respect to those parts of Judge Britt's decision relating to Paragraph 30.5 of the BellSouth/AT&T Interconnection Agreement.

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[1] The United States Supreme Court has granted *certiorari* to review the Eighth Circuit's decision. Case Nos. 97-826, 97-829, 97-830, 97-831.

[2] AT&T Communications of the Southern States, Inc. v. BellSouth Telecommunications, Inc., et al., Case Number 5:97-CV-405-BR (E.D.N.C., Order Filed May 22, 1998); MCI Telecommunications Corporation, et al. v. BellSouth Telecommunications, Inc., et al., Case Number 5:97-CV-425-BR (E.D.N.C., Order Filed May 22, 1998).

[3] On or about June 5, 1998, BellSouth filed a Rule 59(E) Motion to Amend or Clarify in the MCI appeal decided by Judge Britt whereby the Court was requested to strike Section 2.4 of Attachment III from the BellSouth/MCI Interconnection Agreement, on the ground that Section 2.4 is directly analogous to Paragraph 30.5 of the AT&T Agreement. Alternatively, the Court was requested to simply clarify that MCI, like AT&T, may not require BellSouth to combine network elements for it. On July 1, 1998, the Court denied BellSouth's motion.

At the hearing in this docket, BellSouth witness Varner testified that BellSouth is in complete agreement with the decision of the Eighth Circuit that CLPs may provide services using only unbundled network elements and combine them in any manner they choose as long as they do the combining.

Witnesses for the New Entrants tended to agree with BellSouth regarding the ILECs' obligation to recombine unbundled network elements back to a finished service or platform and the pricing of such combinations as resale.

The CLPs maintained that the ILECs' use of combined elements in their networks to serve their own customers is discriminatory unless the same combinations are provided to CLPs at cost-based rates. According to AT&T witness Ellison, the benefits of network element competition are only available when services can be provided using combinations of network elements. Serving the average consumer, he said, requires that new entrants enjoy the same economic choices as the ILECs and that consumers should be able to change local service providers with minimal effort and cost. Neither the use of individual network elements nor resale fulfills these needs.

AT&T and MCI were particularly critical of BellSouth's use of Integrated Digital Loop Carrier technology to serve its own customers, while not making this technology available to CLPs on an unbundled basis. The response of BellSouth's witnesses was that BellSouth cannot provide unbundled network elements using a technology that is integrated by design. In other words, BellSouth cannot both separate the loop and the switch and keep them integrated. According to BellSouth witness Gray, if a CLP wants to serve a customer that is currently served on IDLC with an unbundled loop, BellSouth would move the loop either to a copper pair or to a universal digital configuration. If a CLP wants to keep the customer on IDLC, it can get the combined loop and port on a resale basis. Certain CLPs also allege that the DLC-related inputs included by GTE in its cost studies overstate GTE's DLC investment.

It is likely that the Orders entered by the Commission in the arbitration proceedings will, at the appropriate point in time, have to be modified as a result of relevant federal court decisions, including decisions already rendered by the Eighth Circuit and the Federal District Court for the Eastern District of North Carolina and decisions to be rendered by the Fourth Circuit Court of Appeals and the United States Supreme Court. Nevertheless, the Commission's task in this docket is simply to determine permanent prices to replace the interim prices for unbundled network elements that were previously established in the arbitration proceedings. Allegations of discrimination should and must be considered insofar as they concern the permanent prices for UNEs. Final decisions regarding certain related issues raised by the CLPs, such as methods of providing unbundled network elements or whether such elements can be unbundled at all, will ultimately be decided by the federal appellate courts. Those federal appellate decisions will be binding upon the affected parties and this Commission and may well require modifications of ILEC/CLP interconnection agreements. However, based upon the evidence presented in this case, the ILECs have adequately answered the CLPs' complaints regarding matters related to recombination requirements, discrimination, inefficiencies, and IDLC/UDLC technology, including associated DLC-related cost study inputs.

CONCLUSIONS

The Commission concludes that, based on the current status of the law including relevant federal court decisions, the ILECs should not be required to combine unbundled network elements for CLPs and that the ILECs have adequately answered the CLPs' complaints related to recombination requirements, discrimination, inefficiencies, and IDLC/UDLC technology, including associated DLC-related cost study inputs. The Commission will work diligently with affected parties to ensure that interconnection agreements are amended and revised, as necessary and at the appropriate point or points in time, to conform to the mandates of applicable federal court decisions.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34

Issue: Are the proposals of BellSouth and GTE to apply the unbundled local switching rates to interconnection reasonable?

POSITIONS OF PARTIES

BellSouth and GTE propose to charge the unbundled local switching and transport rates to CLPs for interconnection, or transport and termination, as discussed below. The Public Staff agrees with these proposals.

DISCUSSION

Witness Varner testified that BellSouth's proposed unbundled local switching rates are intended to recover the costs of the same switching functions that are the subject of provisions in interconnection agreements on compensation for exchange of traffic, and that the same rates should apply in both cases. He explained that BellSouth's intent is to apply the unbundled local switching rates to the CLPs for interconnection. The rates that the CLP would charge BellSouth would depend on the language of the agreement between the parties.

GTE witness Dye proposed to apply the local switching elements to CLPs for the termination of traffic in the situation where, under a "bill and keep" approach, there is an imbalance in the traffic of more than 10%.

The unbundled network element rates proposed by BellSouth and GTE for local switching and transport, including end-office switching, tandem switching, and various types of transport, are equal to the rates proposed by BellSouth and GTE for local interconnection.

CONCLUSIONS

The Commission concludes that BellSouth's and GTE's proposals in this regard are reasonable and appropriate and should be approved. Approval of the GTE proposal, however, should not be taken as Commission approval of "bill and keep" as the sole arrangement for the exchange of traffic. It is the Commission's intent to continue to leave the method of compensation, i.e., reciprocal compensation or "bill and keep," up to the negotiating parties.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35(a)

Issue: Is the cost recovery mechanism for SPNP or INP costs advocated by BellSouth, GTE, and Carolina/Central appropriate?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth believes that it is appropriate to charge the full cost of INP to each new entrant.

CAROLINA/CENTRAL: Yes. Carolina/Central stated that they developed TELRIC costs for INP using the SCIS program to estimate the cost of RCF. Carolina/Central stated that they have proposed a 55% discount for RCF to allow for the negligible additional routing time necessary to complete the forwarded call compared to permanent number portability. Carolina/Central noted that this nominal dialing delay does not result in inferior service with respect to UNEs.

GTE: GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

AT&T: No. AT&T proposed that there be no charge imposed by either BellSouth or the New Entrants for interim number portability. AT&T argued that this position is consistent with the FCC's Order and Further Rulemaking in CC Docket 95-116. AT&T stated that it recommends that the Commission order each carrier to pay for its own costs of providing interim number portability.

MCI: MCI did not specifically address this issue in its Proposed Order.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: No. The New Entrants proposed that carriers be required to bear their own SPNP costs since this method would be acceptable under federal law, specifically Section 251(e)(2) of TA96, and consistent with the FCC's interpretation of the Number Portability Order requiring competitive neutrality.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: The Public Staff did not specifically address this issue in its Proposed Order.

DISCUSSION

New Entrants witness Gose stated in rebuttal testimony that the ILECs propose that CLPs pay the full cost of INP. Witness Gose stated that GTE responded to a New Entrants' data request that GTE considers CLPs to be the sole "cost causer" of INP expenses and that since "GTE is not the cost causer, no incremental costs of GTE are included in its proposed rates." Witness Gose stated that Congress and the FCC have stated that ILECs may not impose the full costs of SPNP on new entrants, as the ILECs propose to do here.

BellSouth witness Varner stated in rebuttal testimony that BellSouth incurs costs in provisioning INP, and if it is unable to recover the cost from CLPs, then the cost will ultimately be borne by BellSouth's end user customers.

Section 251(e)(2) of TA96 states:

> Costs: The cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission.

The Commission notes that on May 5, 1998, the FCC adopted its Third Report and Order in CC Docket No. 95-116 in the Matter of Telephone Number Portability which was released on May 12, 1998. The FCC stated that the Third Report and Order implements Section 251(e)(2) of TA96 with regard to the cost recovery of providing **long-term number portability**. The FCC noted that Section 251(b)(2) of TA96 requires all LECs, both incumbents and new entrants, "to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission" (47 U.S.C. § 251(b)(2)).

The FCC's Third Report and Order states:

> We conclude that it is competitively neutral for carriers to bear their own carrier-specific costs directly related to providing number portability. (Paragraph 9)

The FCC also stated that it would allow but not require ILECs subject to rate-of-return or price-cap regulation to recover their carrier-specific costs directly related to providing number portability through a federal charge assessed on end-users (Paragraph 135). The FCC also stated that carriers not subject to rate regulation - such as CLPs, commercial mobile radio services (CMRS) providers, and non-dominant interexchange carriers - may recover their costs directly related to providing number portability in any lawful manner consistent with their obligations under the Act (Paragraph 136).

The FCC's Third Report and Order considers cost recovery of **long-term number portability measures**. The 100 largest Metropolitan Statistical Areas (MSAs) in the United States must implement long-term number portability by December 31, 1998, under the FCC's implementation schedule. North Carolina has three MSAs that are within the 100 largest in the United States: Charlotte, Greensboro, and Raleigh. Greensboro and Charlotte are in Phase III of the long-term number portability implementation and scheduled for completion by June 30, 1998, for which the deadline has been extended until October 31, 1998. Raleigh is in Phase IV of the implementation and scheduled for completion by September 30, 1998, for which the deadline has been extended until November 30, 1998. Therefore, the issue of interim number portability measures such as RCF discussed in this proceeding will be a moot point after long-term number portability is implemented in the three North Carolina MSAs scheduled for long-term number portability implementation before the end of 1998.

The Commission notes that the FCC's recent Order on cost recovery considers **long-term number portability costs**, not interim number portability measures as discussed in this docket. RCF is very different from long-term number portability measures. RCF is a service offering that the ILECs have been offering for years. Long-term number portability will require the establishment of a database and new systems to accommodate the long-term porting of numbers. Costs for RCF or INP are minimal compared to the expected costs for long-term number portability. Additionally, the Commission notes that it has not addressed cost-recovery for long-term number portability costs.

The Commission believes that it is appropriate in the context of this docket to establish the INP rates proposed by the ILECs with the exception of GTE's RCF rates which are discussed in the Evidence and Conclusions for Finding of Fact No. 35(b). Therefore, the Commission adopts the positions of the ILECs (with the exception of GTE) on the appropriate INP rates and concludes that the cost recovery mechanism for INP costs as proposed by the ILECs is appropriate for purposes of this proceeding. The Commission notes that its decision should in no way be considered a precedent for the purpose of determining cost-recovery for long-term number portability costs.

CONCLUSIONS

The Commission concludes that the rates for INP proposed by the ILECs with the exception of GTE's RCF rates which are discussed in the Evidence and Conclusions for Finding of Fact No. 35(b) and that the cost recovery mechanism for INP costs as proposed by the ILECs are reasonable and appropriate for purposes of this proceeding. The Commission notes that its decision should in no way be considered a precedent for the purpose of determining cost-recovery for long-term number portability costs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 35(b)

Issue: Are GTE's proposed rates for INP (specifically RCF) excessive and, if so, should they be reduced?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

CAROLINA/CENTRAL: Carolina/Central did not specifically address this issue in their Proposed Order or Post-Hearing Brief.

GTE: No. GTE witness Dye stated that GTE determined its proposed prices for INP based on the TELRIC costs supplied in this proceeding plus the fixed allocation of wholesale common costs.

AT&T: AT&T did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

MCI: MCI did not specifically address this issue in its Proposed Order.

NCCTA: NCCTA did not specifically address this issue in its Post-Hearing Brief.

NEW ENTRANTS: Yes. The New Entrants believe that GTE's proposed pricing structure for SPNP is discriminatory since it requires CLPs to pay a monthly charge for local number portability (LNP). The New Entrants stated that GTE's proposed costs for SPNP are strikingly higher than costs proposed by either BellSouth or Carolina/Central. The New Entrants maintained that GTE's $7.32 proposed monthly cost for RCF does not appear reasonable when compared to Central's ($0.05 residential and $0.35 business) nor does GTE's proposed $6.06 for an additional path relate favorably to Central's $0.03. The New Entrants stated that based on GTE's proposed rates for INP, customers of CLPs would have a very large incentive to forego transfer of their existing telephone numbers to their new service provider or it would compel them to cancel their plans to switch altogether.

ATTORNEY GENERAL: The Attorney General did not specifically address this issue in his Post-Hearing Brief.

PUBLIC STAFF: Yes. The Public Staff believes that GTE's proposed rates for INP are excessive and should be reduced.

DISCUSSION

As indicated above, the Public Staff is of the opinion that GTE's proposed recurring rates for INP (specifically RCF) are excessive and should be reduced. The Public Staff maintained that GTE's proposed recurring rates for RCF are completely out of line with those proposed by Carolina/Central and BellSouth. The proposed recurring rates for RCF of BellSouth, Carolina/Central, and GTE, are as follows:

	Initial path	Additional path
BellSouth	\$ 1.90/ # ported	\$ 0.37/ # ported
Carolina, res.	\$ 0.43/ # ported	\$ 0.05/ # ported
Carolina, bus.	\$ 1.06/ # ported	\$ 0.25/ # ported
Central, res.	\$ 0.05/ # ported	\$ 0.03/ # ported
Central, bus.	\$ 0.35/ # ported	\$ 0.12/ # ported
GTE (revised)	\$ 7.32/ # ported	\$ 6.06/ # ported

As can be seen, GTE's proposed recurring rates for RCF are at least 300% higher than the next highest rate proposed by BellSouth. The Public Staff maintained that there are many commonalities between the ILECs which should lead to similar rates. The Public Staff stated that GTE has not adequately explained the differences in the proposed recurring rates and that, therefore, GTE should be required to reexamine its costs for the service with the goal of reducing the recurring rates to a level within the range of those of the other ILECs.

New Entrants witness Gose stated in rebuttal testimony that GTE's proposed SPNP costs are "outrageous". Witness Gose asserted that GTE's SPNP rates appear to have no valid relationship whatsoever to forward-looking costs. Witness Gose noted the tremendous disparity between SPNP costs proposed by GTE and the other ILECs. Witness Gose asserted that SPNP is of critical importance to competition and that adoption of GTE's SPNP rates would act as an insurance policy for GTE that new entrants could not successfully compete for any of GTE's customers. Witness Gose recommended that the Commission reject GTE's proposed SPNP rates and replace them with Carolina/Central's rates.

The Commission believes that SPNP is a very important issue. It is clear from the evidence that GTE's proposed recurring rates for RCF are significantly higher than the rates proposed by the other ILECs, and GTE has not provided an adequate explanation for the disparity. Therefore, the Commission believes that it is appropriate to reject GTE's proposed recurring SPNP rates for RCF and order GTE to reexamine its costs for the service with the goal of reducing the recurring rates for RCF to a level within the range of those of the other ILECs, but in no case higher than BellSouth's proposed recurring rates for RCF.

Further, the Commission notes that in GTE's revised cost studies filed on June 16, 1998 to reflect the recommendations of the Public Staff's Proposed Order, GTE reflected a rate of $1.482445 for Remote Call Forwarding Feature. This rate was not listed in GTE's original rate schedule, and GTE has provided no evidence to support the rate. The Public Staff also noted this new rate in its July 21, 1998 Comments on the ILECs revised cost studies. The Commission finds that GTE has not adequately supported its new rate for Remote Call Forwarding Feature and must file cost studies to support this new rate.

CONCLUSIONS

The Commission concludes that it is reasonable and appropriate to require GTE to reevaluate its proposed recurring rates for RCF with the goal of reducing the rates to a level within the range of those of the other ILECs, but in no case higher than BellSouth's proposed recurring rates for RCF.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 36

Issue: Should rates for unbundled network elements be excluded from the ILECs' price plans?

POSITIONS OF PARTIES

The only parties who specifically addressed this issue were BellSouth and the Public Staff.

BELLSOUTH: Yes, although BellSouth's position on this issue is confusing. BellSouth witness Varner, when asked where he proposed to put the rates proposed in his exhibits, testified that the proposed UNE rates would go into the interconnection basket of BellSouth's price plan. The UNE rates would also go into the SGAT. However, witness Varner noted that the rates would be in negotiated interconnection agreements, which are contracts and not in the price plan. He further stated that BellSouth did not intend to file tariffs including these UNE rates. Therefore, it appears to be BellSouth's position that the UNE rates would appear either in the SGAT or the interconnection agreements and would thus not be within the price plan.

PUBLIC STAFF: Yes. In its Proposed Order, the Public Staff took the position that rates for unbundled network elements should be excluded from the price plans of the ILECs.

DISCUSSION

BellSouth witness Varner in essence testified that the rates he proposed in his exhibits would be the rates in the SGAT and the rates in BellSouth's negotiated agreements, which would not be in any category under the price plan because they are set by contract. Finding no compelling reason to do otherwise, the Commission concludes that these rates should be excluded from the price plans of all of the ILECs.

CONCLUSIONS

The Commission concludes that rates for unbundled network elements should be excluded from the price plans of the ILECs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 37

Issue: Should reciprocal compensation be determined based on the cost of network facilities actually used by the CLP to terminate local calls?

POSITIONS OF PARTIES

Only Carolina/Central and the New Entrants specifically addressed this issue in their Proposed Orders and Post-Hearing Briefs.

CAROLINA/CENTRAL: Yes. Carolina/Central stated that the local interconnection requirements of Section 251 of the Act recognize that the development of a fully competitive market is dependent upon the ability of Carolina/Central's customers to call, and be called by, customers of any CLP. The reciprocal compensation provision is intended to ensure that Carolina/Central and each CLP are compensated for traffic terminated on their networks by the other. The level of compensation should be dependent upon the amount of facilities that each provides in the transportation and termination of the call.

NEW ENTRANTS: No. The New Entrants stated that the compensation to be received by a CLP for transport and termination of traffic should be equal to the rate of the ILEC in whose territory the CLP switch is located. The ILECs have proposed transport and termination rates that vary depending upon whether the originating carrier delivers the call to their end office or their tandem. CLP switches, however, fulfill the same functions as the combined functions of ILEC tandem and end-office switches. Thus, where the CLP switch serves a geographic area comparable to that served by an ILEC tandem switch and its subtending end-office switches, the compensation received by the CLP for traffic terminated at that switch should be equal to the tandem rate plus the end-office rate of the ILEC in whose territory the CLP switch is located. The New Entrants argued that this was consistent with the FCC's preference for a symmetrical approach and will be administratively simpler than individual calculations.

DISCUSSION

Carolina/Central argued that their position that the CLPs should not be permitted to charge Carolina/Central for functions they do not perform is supported by FCC Rule 51.701(c). Rule 51.701(c) is stated as follows:

> (c) Transport. For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

Carolina/Central stated that this FCC Rule requires symmetrical compensation only when the CLP provides the equivalent facility to that provided by the ILEC. Carolina/Central argued that unless the CLP clearly provides an equivalent tandem or transport facility to that provided by Carolina/Central, then they would not be required to equally compensate the CLP.

For example, Carolina/Central contended that if they employ tandem switching, transport, and end-office switching to terminate a local call originated on the CLP's network, then Carolina/Central should be compensated for the costs associated with the utilization of such facilities. However, if the CLP provides just one switch and no transport, Carolina/Central argued that the CLP should not receive compensation that would be based upon tandem switching and transport costs, because the CLP would not incur those costs. As was acknowledged by ICG witness Jackson, ICG will typically employ only one switch to terminate calls from Carolina/Central's customers.

This proceeding is concerned with establishing ILECs' UNE rates — i.e., the rates that ILECs will charge to CLPs, not the rates that CLPs will charge to ILECs or each other. Accordingly, the Commission considers this matter of reciprocal and symmetrical compensation to be outside the scope of this proceeding.

CONCLUSIONS

The Commission concludes that the matter of reciprocal and symmetrical compensation is beyond the scope of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 38

Issue: Should GTE be allowed to recover one-time implementation costs in this proceeding incurred in carrying out the mandates of TA96?

POSITIONS OF PARTIES

The only parties who specifically addressed this issue were GTE and NCCTA.

GTE: Yes. In its testimony, GTE took the position that it will incur additional one-time implementation costs in carrying out the mandates of TA96, including system change and modification costs that appropriately are not included in the Company's various UNE rates. Because GTE had not completed a full evaluation of the extent of these costs, it did not propose a specific rate for recovery of these costs at this time. Once GTE has completed its analysis and assessment of the appropriate costs levels, it will submit its proposed recovery mechanism for these implementation costs to the Commission. GTE did not specifically address this issue in its Proposed Order or Post-Hearing Brief.

NCCTA: No. NCCTA took the position that GTE's one-time implementation cost assessment should be rejected.

DISCUSSION

In addition to its other rate proposals, GTE offered testimony indicating an intent, at some future time, to submit a proposed mechanism for consideration and approval by the Commission which would allow recovery of the one-time implementation costs incurred to comply with the mandates of TA96. Because GTE's own testimony stated that the costs in question ". . . appropriately are not included in the various UNE rates," the Commission is of the opinion that such a recovery mechanism is outside the scope of this proceeding and should be rejected. One-time implementation costs which may not, according to GTE's own testimony, be appropriately recovered through UNE rates cannot be recovered in this proceeding.

CONCLUSIONS

The Commission concludes that GTE's unspecified recovery mechanism for one-time implementation costs is outside the scope of this proceeding and should be denied.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 39

Based on the foregoing findings of fact and conclusions, the Commission is of the opinion that the permanent UNE rates to be filed and approved pursuant to this Order will be just, reasonable, nondiscriminatory, and cost-based in accordance with federal and state law and should be the permanent prices charged by the ILECs under their arbitrated agreements and by BellSouth under its SGAT. It is the Commission's hope that these rates will advance the development of competitive markets in a way that is fair to new entrants and incumbents alike. The Commission recognizes that no cost study is perfect and that no rate is really permanent. All of the rates established in this proceeding are subject to revision prospectively as changes in cost and other circumstances warrant. Finally, the Commission urges the parties to continue to negotiate in good faith whenever possible, so that competition can move forward without undue delay.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth, GTE, and Carolina/Central shall, not later than 30 days from the date of this Order, file cost studies, supporting documentation, and rates for unbundled network elements and interconnection. Such cost studies, supporting documentation, and rates shall fully incorporate

and reflect the modifications, adjustments, and conclusions set forth in this Order and the comments filed by the Public Staff on July 21, 1998. BellSouth, Carolina/Central, and GTE shall coordinate fully with the Public Staff in order to ensure the accuracy of their filings. The Public Staff shall, not later than 30 days from the date of this Order, either concur in the accuracy of the ILEC filings or file comments setting forth any areas of disagreement with those filings.

2. That the cost studies and supporting documentation shall be filed by the ILECs in electronic form and shall, upon request, be provided to all parties subject to previous restrictions on disclosure of information for which proprietary treatment has been requested.

3. That, after approval by the Commission, the rates filed pursuant to this Order shall be deemed permanent prices pursuant to Section 252(d) of TA96 for purposes of replacing interim prices contained in existing interconnection agreements and BellSouth's SGAT.

4. That BellSouth, GTE, and Carolina/Central shall, not later than 30 days from the date of this Order, file proposals to refund the difference between revenues collected for services provided under interim prices subject to true-up and revenues that would have been collected under the permanent prices established in this docket.

ISSUED BY ORDER OF THE COMMISSION.

This the 10th day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Pittman filed a concurring opinion.

DOCKET NO. P-100, SUB 133d

COMMISSIONER WILLIAM R. PITTMAN, CONCURRING:

While I concur with the majority in each issue presented in this case, I concur only reluctantly on geographical deaveraging and on part of the combination of unbundled elements issue.

Geographical deaveraging must be accomplished eventually. It is the only way to accurately base prices upon costs. The proponents of deaveraging are correct, in my opinion, that deaveraging is required by the Act, by economics and by public policy considerations. As much as we may not like the cold, hard fact that it costs more to serve an isolated rural customer than it does an urban customer, we must face it some time. Where better to face it that in setting rates for the lowest common denominators in the pricing structure?

The opponents of deaveraging are also correct in asserting that deaveraging will tend to steer competitors toward high margin customers. That is a cold, hard fact of competition itself and we are naive to believe that maintaining an artificial averaged pricing structure will ameliorate that fact in the least. Perhaps this record is lacking in all the information necessary for us to bite the deaveraging bullet in this docket. In dodging it, we postpone the inevitable.

There is no question that the law as it currently exists does not require the ILECs to combine unbundled network elements for CLPs. However, I believe we must carefully examine the meaning of the word "combination." ILDC is an instance where that kind of examination should be required.

If a technology is integrated by design, if it cannot be separated and keep its essential character, it ought to be an element in and of itself. If BellSouth cannot separate ILDC loops and switches without destroying the essential character of the ILDC technology, BellSouth should be required to offer ILDC as a separate unbundled network element. Something so integrated by design, which cannot be separated into component parts and recombined by another to function as designed, is not a combination, no matter how much you call it a combination. It has a cost which can be determined and it ought to be priced as a stand-alone network element. I believe we should correct this illogical fiction at our earliest opportunity.

/s/ William R. Pittman
Commissioner William R. Pittman

APPENDIX A

GLOSSARY OF ACRONYMS Docket No. P-100, Sub 133d	
Act	Telecommunications Act of 1996
ADSL	Asynchronous Digital Subscriber Line
ARMIS	Automated Reporting Management Information System
AT&T	AT&T Communications of the Southern States, Inc.
BCPM	Benchmark Cost Proxy Model
BDFB	Battery Distribution Fuse Bay
BellSouth	BellSouth Telecommunications, Inc.
BOCs	Bell Operating Companies
CAPM	Capital Asset Pricing Model
Carolina/Central	Carolina Telephone and Telegraph Company and Central Telephone Company
CCLC	Carrier Common Line Charge
CLASS	Custom Local Area Signaling Service

GLOSSARY OF ACRONYMS Docket No. P-100, Sub 133d	
CLP	Competing Local Provider
CMRS	Commercial Mobile Radio Services
Commission	North Carolina Utilities Commission
CompTel	Competitive Telecommunications Association
CTC	Competitive Transition Charge
DCF	Discounted Cash Flow
DCS	Digital Cross-Connect Systems
DLC	Digital Loop Carrier
EASE	Easy Access Sales Environment
EDI	Electronic Data Interchange
Eighth Circuit	United States Court of Appeals for the Eighth Circuit
EIS	Expanded Interconnection Service
FCC	Federal Communications Commission
FLEC	Forward-Looking Economic Costs
FLEC Docket	Docket No. P-100, Sub 133b, relating to Forward-Looking Economic Cost Model for Universal Service
FLEC Order	Order Adopting Forward-Looking Economic Cost Model and Inputs issued in Docket No. P-100, Sub 133b
GAAP	Generally Accepted Accounting Principle
GTE	GTE South, Incorporated
GTOC	General Telephone Operating Company
HDSL	High-Bit Rate Digital Subscriber Line
HM	Hatfield Model
ICB	Individual Case Basis
ICG	ICG Telecom Group, Inc.
ICM	Integrated Cost Model
IDLC	Integrated Digital Loop Carrier
ILEC	Incumbent Local Exchange Company (Carrier)

GLOSSARY OF ACRONYMS Docket No. P-100, Sub 133d	
INAC	Interexchange Network Access Coordinator
INP	Interim Number Portability
Interconnection Order	FCC's First Report and Order in CC Dockets 96-98 and 95-185, issued August 8, 1996
Intermedia	Intermedia Communications, Inc.
ISDN	Integrated Services Digital Network
IXC	Interexchange Carrier
JCC	Joint and Common Costs
KMC	KMC Telecom, Inc.
LDS	Local Digital Switches
LENS	Local Exchange Navigation System
LERG	Local Exchange Routing Guide
LNP	Local Number Portability
Lucent	Lucent Technologies
MCI	MCI Telecommunications Corporation
MSA	Metropolitan Statistical Area
NARUC	National Association of Regulatory Utility Commissioners
NCCTA	North Carolina Cable Telecommunications Association
New Entrants	Business Telecom, Inc.; ICG Telecom Group, Inc.; Intermedia Communications, Inc.; Interpath Communications, Inc.; and KMC Telecom, Inc.
NGDLC	Next Generation Digital Loop Carrier
NID	Network Interface Device
NOMC	National Open Market Center
NRC	Nonrecurring Charge
NRCM	Nonrecurring Cost Model
OSS	Operations Support Systems
PBX	Private Branch Exchange

GLOSSARY OF ACRONYMS Docket No. P-100, Sub 133d	
Public Staff	Public Staff-North Carolina Utilities Commission
RAO	Recommended Arbitration Order
RCF	Remote Call Forwarding
RIC	Residual Interconnection Charge
RRR	Residual Recovery Requirement
SCIS	Switching Cost Information System
SGAT	Statement of Generally Available Terms and Conditions
SONET	Synchronous Optical Network
SNET	Southern New England Telephone
S&P	Standard & Poors
SPNP	Service Provider Number Portability
Sprint	Sprint Communications Company, L.P.
SWBT	Southwestern Bell Telephone
SWIM	Switching Model
TAFI	Trouble Analysis Facilitation Interface
TA96	Telecommunications Act of 1996
TELRIC	Total Element Long-Run Incremental Cost
TFI	Technology Future Incorporated
UDLC	Universal Digital Loop Carrier
UNE	Unbundled Network Element
USF	Universal Service Fund
WATS	Wide Area Telecommunications Services

APPENDIX B

ECONOMIC LIVES AND FUTURE NET SALVAGE PERCENTAGES

Docket No. P-100, Sub 133d

	BellSouth		Carolina/Central		GTE South	
	Estimated Life (Yrs.)	Salvage Value (%)	Estimated Life (Yrs.)	Salvage Value (%)	Estimated Life (Yrs.)	Salvage Value(%)
Motor Vehicles	8.1	12	7.5	10	8	20
Special Purpose Vehicles	12	0	12	0	12	0
Garage Work Equipment	12	0	12	0	12	0
Other Work Equipment	16.2	0	12	0	12	0
Buildings	45	3	30	0	30	0
Furniture	15	9	15	0	15	0
Office Supplies Equipment	11.5	10	10	0	10	0
General Purpose Computers	6	0	6	0	6	0
Digital Switching	16	0	16	0	16	0
Circuit Equipment - Digital	11	0	11	0	11	0
Poles	34	-61	25	-75	25	-50
Aerial Cable - Metallic	20	-14	20	-35	20	-10
Aerial Cable - Non-Metallic	25	-15	25	-25	25	-25
Underground Cable - Metallic	25	-17	25	-30	25	-10
Underground Cable - Non-Met	25	-15	25	-20	25	-20
Buried Cable - Metallic	20	-9	20	-10	20	-10
Buried Cable - Non-Metallic	25	-6	25	-10	25	0
Conduit Systems	59	-8	50	-10	50	-10

DOCKET NO. P-100, SUB 133d

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
General Proceeding to Determine Permanent	)	ERRATA
Pricing for Unbundled Network Elements	)	ORDER

BY THE PRESIDING COMMISSIONER: On December 10, 1998, the Commission issued an Order Adopting Permanent Pricing for Unbundled Network Elements in this docket. Ordering Paragraph No. 1. provided that BellSouth, GTE, and Carolina/Central were to file, not later than 30 days from issuance of the Order, cost studies, supporting documentation and rates for unbundled network elements and interconnection. Ordering Paragraph No. 1 further provided that the Public Staff, not later than 30 days from the Commission's Order was to either concur in the accuracy of the filings by the local exchange companies or file comments setting forth any areas of disagreement with those filings. Therefore, Ordering Paragraph No. 1 appears to provide the same day for the submission of cost studies by the local exchange companies and comments by the Public Staff. This was in error. The last sentence of Ordering Paragraph No. 1 should read: "The Public Staff shall, not later than 30 days from the date that BellSouth, GTE, and Carolina/Central have made their required filings above, either concur in the accuracy of the ILEC filings or file comments setting forth any areas of disagreement with those filings."

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133f

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Lifeline and Link-Up Services Pursuant to	)	
Section 254 of the Telecommunications	)	ORDER DELETING DEPENDENCY
Act of 1996	)	CRITERION IN LINK-UP PROGRAM

BY THE COMMISSION: On November 5, 1997, the Commission issued an Order Requiring Expanded Lifeline and Link-Up Services wherein, pursuant to Federal Communication Commission (FCC) requirements, the Commission made the eligibility criteria for Lifeline and Link-Up the same by adding Food Stamps to the Lifeline eligibility criteria.

As local exchange carriers (LECs) have been filing tariffs to comply with the changes in eligibility criteria, our attention has been brought to Rule R9-6(c)(2)a., which reads as follows:

> (2) In order to be eligible for assistance, a residential subscriber must:
> a. Not be a dependent for federal income tax purposes, as defined in 26 USC Sec. 152 (1986), unless the subscriber is more than 60 years of age;

Some LECs have included this criterion in their tariffs and others have excluded it. There is no such corresponding eligibility requirement in the Lifeline program.

This criterion was included in the original Link-Up program as adopted by the FCC in 1987. The Universal Service Order (USO) issued on May 8, 1997, does not specifically mention this criterion in order to eliminate it. However, the FCC has required that the eligibility criteria for Lifeline and Link-Up be the same and has required that state commissions adopt narrowly targeted qualification criteria based solely on income or factors related to income. The dependency criterion is not related to income.

Accordingly, the Commission concludes that the dependency criterion set out in Rule R9-6(c)(2)a. should be eliminated so as to make the eligibility criteria for Lifeline and Link-Up the same. Thus, Rule R9-6(c)(2) should be rewritten as follows:

> (2) In order to be eligible for assistance, a residential subscriber must be a current recipient of Supplemental Security Income, Food Stamps, or a current participant in Work First or Temporary Assistance for Needy Families.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133f

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Lifeline and Link-Up Services Pursuant to	)	
Section 254 of the Telecommunications	)	ERRATA ORDER
Act of 1996	)	

BY THE CHAIR: On page 2 of the Commission November 5, 1997, Order Requiring Expanded Lifeline and Link-Up Services, the Commission quoted certain portions of the Universal Service Order at Paragraph 384 to the effect that Lifeline must include certain services as follows:

> [S]ingle party service; voice grade access to the public switched network; DTMF or its functional digital equivalent; access to emergency service; access to directory assistance; and toll-limitation services...(USO, Paragraph 384).

This citation did not include mention of certain other services that were required of Lifeline in Paragraph 384 — namely, access to operator services and interexchange services. Accordingly, that citation should read:

> [S]ingle party service; voice grade access to the public switched telephone network; DTMF or its functional digital equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll-limitation services...(USO, Paragraph 384).

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE CHAIR.
This the _1st_ day of May, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-100, SUB 133f

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Lifeline and Link-Up Services Pursuant to Section 254 of	)	ERRATA
the Telecommunications Act of 1996	)	ORDER

BY THE CHAIR: On February 3, 1998, an Order Deleting Dependency Criterion in Link-Up Program was issued in this docket. This Order revised Rule R9-6(c)(2) as follows:

> (2) In order to be eligible for assistance, a residential subscriber must be a current recipient of Supplemental Security Income, Food Stamps, or a current participant in Work First or Temporary Assistance for Needy Families.

In so doing this rewrite deleted the existing subsections a. and b. and conflated the provisions into a single paragraph. However, the following section (d) continued references to the subsections a. and b. of R9-6(c)(2) which should have been eliminated.
Accordingly, Rule R9-6(d) is rewritten as follows:

(d) Verification. — The appropriate social service agency shall verify the eligibility criteria set out in (c)(2). The local exchange company may require a subscriber to fill out an application form containing information pertinent to the requirements of (c)(2) in order to assist in the certification process.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE CHAIR.
This the 1st day of June, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. T-100, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Preemption of Intrastate Motor Carriers of Passengers in Charter Bus Transportation	))))))	ORDER CONCERNING PREEMPTION OF REGULATION OVER MOTOR CARRIERS OF PASSENGERS IN CHARTER BUS TRANPORTATION AND CANCELLING CERTIFICATES

BY THE COMMISSION: In June 1998, Congress passed and the President signed the Transportation Equity Act for the 21st Century (H.R. 2400), which became Public Law No. 105-178. Section 4016 is entitled "Authority Over Charter Bus Transportation" and provides as follows:

"(a) MOTOR CARRIERS OF PASSENGERS-

(1) LIMITATION ON STATE LAW- No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or inforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to--

(A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;

(B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, or changes in schedules may be required; or

(C) <u>the authority to provide intrastate or interstate charter bus transportation</u>." (Emphasis added)

Exceptions to preemption are enumerated in subsection (2). A State may continue safety regulatory authority with respect to motor vehicles, may impose highway route controls or limitations based on the size or weight of the motor vehicle, and may continue to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization. Preemption also does not apply to intrastate commuter bus operations nor does it apply to intrastate regular route passenger transportation.

The Commission is of the opinion that this Order should be issued formally advising regulated motor carriers of passengers in charter operations of the regulatory changes pursuant to the Federal preemption as set forth herein.

IT IS, THEREFORE, ORDERED:

1. That, effective as of the date of this Order, the Commission shall no longer require intrastate motor carriers of passengers in charter operations to do the following:

a. Obtain a certificate of public convenience and necessity prior to conducting operations

b. File or operate pursuant to tariffs

c. Obtain prior approval from the Commission for the transfer of franchises for mergers or for other sales or transfers pursuant to G.S. 62-111

d. File annual reports pursuant to G.S. 62-36 and Rule R1-32

e. Comply with laws or regulations that have been preempted under Section 4016

2. That, effective July 1, 1998, intrastate motor carriers of passengers in charter operations shall no longer be required to pay a regulatory fee or file regulatory reports pursuant to G.S. 62-302.

3. That, effective as of the date of this Order, the Commission shall no longer exercise jurisdiciton over complaints against intrastate motor carriers of passengers in charter operations.

4. That the Commission shall no longer accept applications for certificates of public convenience and necessity from intrastate motor carriers of passengers in charter operations filed after the date of this Order or consider applications currently pending before the Commission.

5. That by copy of this Order mailed to all holders of certificates of public convenience and necessity related to the intrastate transportation of passengers in charter operations, said certificates are hereby cancelled effective as of the date of this Order.

6. That all tariffs currently on file by intrastate motor carriers of passengers in charter operations are hereby cancelled.

ISSUED BY ORDER OF THE COMMISSION.

This the _9th_ day of September, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. T-100, SUB 44

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Revision of Certain Rules in Chapter 2 of the Rules and Regulations of the North Carolina Utilities Commission	)	ORDER AMENDING RULES AND REGULATIONS

BY THE COMMISSION: In June 1998, Congress passed and the President signed the Transportation Equity Act for the 21st Century (H.R. 2400) which became Public Law No. 105-178. Section 4016 is entitled "Authority Over Charter Bus Transportation" and provides in pertinent part "No State or political subdivision thereof...shall enact or inforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to...the authority to provide intrastate or interstate charter bus transportation." Exceptions to preemption allow a State to continue safety regulatory authority with respect to motor vehicles and to continue to regulate carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization. Preemption also does not apply to intrastate commuter bus operations nor does it apply to intrastate regular route passenger transportation.

Upon consideration thereof, the Commission, acting under the power and authority delegated to it for the promulgation of rules and regulations pursuant to G.S. 62-31, concludes that certain of its Rules and Regulations in Chapter 2 should be amended in accordance with Appendix A attached hereto.

IT IS, THEREFORE, ORDERED:

1. That the Commission's Rules and Regulations set forth in Chapter 2 be, and the same are hereby, revised/repealed in accordance with Appendix A attached and made a part thereof, effective as of the date of this Order.

2. That a copy of this Order be published in the Commission's Truck Calendar of Hearings and a copy shall be mailed by the Chief Clerk to the following: North Carolina Trucking Association, Inc.; Motor Carriers Traffic Association, Inc.; and North Carolina Movers Association, Inc.

ISSUED BY ORDER OF THE COMMISSION

This the 24th day of November, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Rule R2-8. Applications for certificates and transfers; notice.

(c) Notice of Application and Hearings.

(3) Upon receipt of an application to operate as a bus company over fixed routes, the Commission, within ten (10) days after the filing of the application, shall cause notice thereof to be given by mail to the applicant, to other bus companies holding certificates to operate in the territory proposed to be served by the applicant, and to other bus companies who have pending applications to so operate. If no protests, raising material issues of fact to the granting of the application, are filed with the Commission within thirty (30) days after the notice is given, the Commission shall proceed to decide the application. If protests are filed raising material issues of fact to the granting of the application, the Commission shall set the application for hearing as soon as possible and cause notice thereof to be given to the applicant and all other parties of record.

Rule R2-15. Proof required.

(d) Repealed

DOCKET NO. W-100, SUB 32

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Adoption of New Application by Consumer-owned Or Nonprofit Water or Sewer Corporation For Exemption from Commission Regulation Pursuant to N.C.G.S. §62-110.5	))))	ORDER ADOPTING NEW APPLICATION BY CERTAIN WATER OR SEWER CORPORATIONS

BY THE COMMISSION: In accordance with N.C.G.S. §62-110.5, the Commission may exempt from regulation certain water or sewer utilities owned by nonprofit membership or consumer-owned corporations, effective August 28, 1997.

Exemption of such utilities is subject to those conditions the Commission deems appropriate if:

(1) The members or consumer-owners of the corporation elect the governing board of the corporation pursuant to the corporation's articles of incorporation and bylaws; and

(2) The Commission finds that the organization and the quality of service of the utility are adequate to protect the public interest to the extent that additional regulation is not required by the public convenience and necessity.

The new form, *Application By Consumer-Owned Or Nonprofit Water or Sewer Corporation For Exemption From Commission Regulation Pursuant to N.C.G.S. §62-110.5*, is very similar to the other application forms relating to water and sewer franchises, transfers, and rate increases that were adopted by the Commission in 1997.

IT IS, THEREFORE, ORDERED as follows:

1. That the new Application By Consumer-Owned Or Nonprofit Water or Sewer Corporation For Exemption From Commission Regulation Pursuant to N.C.G.S. §62-110.5, attached hereto as Attachment A, is hereby adopted by this Commission, effective with the date of this Order.

2. That all parties to this proceeding shall receive a copy of the Order and the accompanying attachment. Utilities who are not a party to this proceeding shall be mailed a copy of the Order. Attachment A shall be mailed to interested parties upon request.

ISSUED BY THE ORDER OF THE COMMISSION.
This the 21st day of July, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-2, SUB 669
DOCKET NO. E-2, SUB 700
DOCKET NO. E-2, SUB 730

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. E-2, SUB 669 In the Matter of Application by Carolina Power & Light Company for a Certificate of Public Convenience and Necessity to Construct Approximately 500 MW of Combustion Turbine Capacity in Wayne County, North Carolina; DOCKET NO. E-2, SUB 700 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 Capacity in Buncombe County, North Carolina; and DOCKET NO. E-2, SUB 730 In the Matter of Application by Carolina Power & Light Company for a Certificate of Public Convenience and Necessity to Construct Approximately 177 MW of Combustion Turbine Generating Capacity in Wayne County and 160 MW of Combustion Turbine Generating Capacity in Buncombe County, North Carolina	)	ORDER GRANTING CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY

HEARD: Wednesday, November 4, 1998 at 9:30 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner William R. Pittman, Presiding; Chairman Jo Anne Sanford and Commissioner Ralph Hunt

APPEARANCES:

For Carolina Power & Light Company:

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

For Carolina Industrial Group for Fair Utility Rates (CIGFUR II)

Ralph McDonald, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602

For Carolina Utility Customers Association, Inc.:

James P. West, Esq., West Law Offices, P.C., Suite 1735, Two Hannover Square, 434 Fayetteville Street Mall, Raleigh, North Carolina 27601

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 August 18, 1998, pursuant to N.C. G.S. 62-110.1 and in accordance with Commission Rule R8-61, CP&L filed an application for a Certificate of Public Convenience and Necessity (Certificate) and the supporting testimony of Verne B. Ingersoll, II. CP&L seeks authority to construct an additional 177 MW of combustion turbine generating capacity in Wayne County, North Carolina, at a site adjacent to CP&L's Lee Steam Plant and an additional 160 MW of combustion turbine generating capacity in Buncombe County, North Carolina, at a site adjacent to CP&L's Asheville Steam Plant.

The Commission concluded that this Application should be treated as a request to amend CP&L's existing certificates for Wayne and Buncombe Counties, which were issued March 21, 1996, and August 1, 1997, respectively. By Order issued September 23, 1998, and amended on September 25, 1998, the Commission scheduled an evidentiary hearing on this matter for November 4, 1998, in Raleigh, North Carolina.

On October 12, 1998, CIGFUR II filed a petition to intervene, which was allowed by Commission Order dated October 14, 1998. On October 15, 1998, Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene, which was allowed by Commission Order dated October 19, 1998.

The Public Staff filed the joint testimony of Darlene P. Peedin, John R. Hinton, and Kerim L. Powell and five appendices on October 20, 1998, and a confidential report on its investigation and conclusions with respect to CP&L's Request for Proposals (RFP) and its bidding process on October 30, 1998.

On November 3, 1998, a motion to withdraw was filed with the Commission requesting that Robert C. Ervin be allowed to withdraw as the attorney for CUCA, with James P. West as the replacement. On November 4, 1998, a notice of appearance was filed declaring James P. West as counsel for CUCA.

The evidentiary hearing was held on November 4, 1998, as scheduled. CP&L presented the testimony and exhibits of Verne B. Ingersoll, II. The Public Staff presented the joint testimony of Darlene P. Peedin, John R. Hinton, and Kerim L. Powell. No other witnesses were presented.

Based on the foregoing, all of the evidence admitted during the hearing and the entire record of this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. CP&L is a corporation organized and existing under the laws of the State of North Carolina, and it is a public utility operating in North and South Carolina where it is engaged in the business of generating, transmitting, distributing, and selling electric power. As such, it is subject to the jurisdiction of this Commission.

2. CP&L has properly made application to this Commission to amend its previously granted certificates of public convenience and necessity as required prior to the commencement of construction of additional generating capacity and related facilities in Wayne and Buncombe Counties.

3. Commission Rules R8-60 and R8-61, respectively, require each utility to file an Annual Report identifying its summer and winter peak loads, annual energy forecast, generating capability, and reserve margins for each year and to show the extent to which proposed construction conforms to the utility's most recent report.

4. CP&L is required to secure and maintain adequate and reliable resources to meet the anticipated demands for electricity in its assigned service territory.

5. CP&L's most recent demand and energy forecasts filed with the Commission support CP&L's position that unless it adds approximately 340 MW of additional peaking capacity to its system by the summer of 2000, its capacity margin will fall to an unacceptable level and that it will be difficult for CP&L to reliably meet the demand for electricity in its assigned service territory.

6. To meet its capacity need, CP&L issued a request for proposals (RFP) for peaking capacity on April 16, 1997. CP&L initially acquired sufficient capacity to meet its peaking resource needs through this RFP by signing letters of intent with three bidders to provide approximately 825 MW of capacity in 2000 and 2001. Subsequently, one of the bidders, which had signed a letter of intent to provide 314 MW of peaking capacity by the summer of the year 2000, notified CP&L that it would not provide this capacity in accordance with its bid and letter of intent.

7. CP&L properly evaluated the use of purchased power options, third party construction alternatives, system purchase alternatives, and company built supply-side resources and, for purposes of this proceeding, used reasonable methods to acquire capacity from the wholesale market.

8. As a result of CP&L's several supply-side solicitations and bid evaluations, it acquired a portfolio of supply resources to meet its projected needs that includes purchases from marketers, dedicated third party plants, system power and self-build alternatives.

9. CP&L used a reasonable process to determine that the best peaking resources available to it for the summer of 2000 are the addition of combustion turbine capacity of approximately 177 MW and 160 MW, respectively, at its Wayne and Buncombe County sites.

10. Combustion turbines are the most appropriate resource for CP&L to add to meet its peaking capacity needs for the summer of 2000, and the combustion turbine capacity of approximately 177 MW proposed to be added to the Wayne County site and approximately 160 MW proposed to be added to the Buncombe County site are the only reasonably viable alternatives available to CP&L.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 AND 2

These findings of fact are essentially informational, procedural, and jurisdictional in nature and are not controversial. CP&L's Application incorporated its Preliminary Plans for a New Generation Facility filed in Docket No. E-2, Sub 669, on December 19, 1994, pursuant to Commission Rule R8-61, which was filed for the 1200 MW of combustion turbine generating capacity initially planned to be constructed in Wayne County. The Application also incorporated CP&L's Preliminary Plans for a New Generation Facility filed in Docket No. E-2, Sub 700, on September 14, 1996, pursuant to Commission Rule R8-61, which was filed for the 320 MW of combustion turbine generating capacity CP&L initially planned to construct in Buncombe County. Thus, the Application in Docket No. E-2, Sub 730, was properly filed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 AND 4

These findings of fact are based upon N.C. G.S. 62-2, 62-32, 62-42, and 62-110.1 and Commission Rules R8-60 and R8-61. These statutes and Commission 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. Historically, the Commission has required utilities to evaluate all resources reasonably available in meaningful quantities in determining the type of resource to be added to their systems to meet projected needs for capacity. This includes the evaluation of demand-side management resources (DSM), purchased power, and new company-owned facilities.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The evidence for this finding is contained in the forecasts in CP&L's 1995 Integrated Resource Plan (IRP), as discussed in the testimony of CP&L witness Verne B. Ingersoll, II, CP&L's Application, the testimony of CP&L witness Ingersoll, and the joint testimony of Public Staff witnesses Darlene P. Peedin, John R. Hinton, and Kerim L. Powell.

CP&L's Application and Mr. Ingersoll's testimony explained that unless CP&L acquires additional capacity by the summer of 2000, CP&L's system capacity margin will have decreased to the point that CP&L can no longer assure reliable service to its customers. CP&L uses a target capacity margin of 13% to determine the need for generation additions. As explained in the Application, all utilities require a margin of generating capacity above the capacity used to serve expected load in order to assure reliable service. At any given time during the year, some plants will be out of service and unavailable due to periodic outages to perform maintenance, refuel nuclear plants and repair failed equipment. 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 an operating reserve to maintain the balance between supply and demand on a moment-to-moment basis.

CP&L's demand forecasts, Application and testimony indicated that CP&L currently has a total generation capacity of 11,701 MW. Table 4 in Attachment IV to the Application shows CP&L's projections that without the addition of approximately 177 MW of combustion turbine capacity at the Wayne County site and approximately 160 MW at the Buncombe County site, CP&L's capacity margin will drop to 8.2% and 8.1%, respectively, for the summers of 2000 and 2001.

Mr. Ingersoll's testimony indicated that adding the 177 MW in Wayne County and the 160 MW in Buncombe County will translate into capacity margins of 10.7% and 10.5% for the years 2000 and 2001.

The Public Staff witnesses testified that based on the forecast presented in the most recent IRP filed by CP&L in Docket No. E-100, Sub 82, CP&L demonstrated that additional peaking capacity is necessary in 2000 and 2001 to adequately serve native load customers in its service territory. This is consistent with figures presented by CP&L in past Short-Term Action Plans covering recent years. A copy of the forecast was attached to the testimony as Appendix E. According to the data presented in the forecast, CP&L anticipates approximately 300 MW per year load growth of a peaking nature through 2003. The Public Staff concluded in its testimony that the forecast presented by CP&L provides sufficient justification for the requested additional peaking capacity.

The Commission finds CP&L's Application, the testimony of CP&L witness Ingersoll and the testimony of Public Staff witnesses Peedin, Hinton, and Powell persuasive on these issues and observes that no one challenged CP&L's evidence with regard to its forecast, target capacity margin, or need for additional capacity resources in order to meet projected demand. Thus, the Commission concludes that unless CP&L adds the approximately 177 MW of combustion turbine capacity in Wayne County and the 160 MW in Buncombe County, CP&L's capacity margin will fall to an unacceptable level, and it will be difficult for CP&L to reliably meet the demand for electricity in its assigned service territory. The Commission, therefore, concludes that CP&L has a need for approximately 340 MW of additional peaking capacity to be placed in service by the summer of 2000 and that the proposed 337 MW of peaking capacity at CP&L's sites in Wayne and Buncombe Counties measurably improves CP&L's capacity margin.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

The evidence for this finding is contained in the testimony of CP&L witness Ingersoll and Public Staff witnesses Peedin, Hinton, and Powell.

CP&L witness Ingersoll testified that to meet its need for additional capacity, CP&L issued an RFP for peaking capacity on April 16, 1997, for the purpose of determining the cost and availability of purchased power, as compared to CP&L constructing and owning the equivalent amount of capacity.

As a result of the RFP, CP&L received bids for over 2,000 MW of capacity. After all bids were evaluated, CP&L selected three bids for a total of 825 MW of capacity for 2000 and 2001 and signed letters of intent with each bidder in March of 1998. One of the letters of intent was with Bidder B for 314 MW of peaking capacity to be provided by the summer of 2000. CP&L witness Ingersoll further testified that on July 14, 1998, Bidder B notified CP&L that it would not be able to provide the 314 MW of capacity it had bid in accordance with the terms which it proposed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 7 THROUGH 9

These findings are based on CP&L's Application, the testimony of CP&L witness Ingersoll, and the testimony of Public Staff witnesses Peedin, Hinton, and Powell.

CP&L witness Ingersoll's testimony with respect to CP&L's 1997 RFP has been discussed previously in Finding of Fact No. 6. The Public Staff's witnesses testified in some detail about the events that led to CP&L's RFP. They testified that in Docket No. E-2, Sub 669, CP&L and the Public Staff entered into a stipulation in which CP&L agreed to use competitive bidding to consider alternative resource options for its next two increments of capacity, the first of which needed to be operational by the summer of 1999.

The testimony of the Public Staff's witnesses further showed that CP&L first issued an informal solicitation aimed at judging the availability and cost of short-term peaking capacity purchases. This informal solicitation resulted in a purchase from Philadelphia Electric Company (PECO) for 1998, which delayed the construction of Wayne County by one year. CP&L 's first comprehensive solicitation was issued in June of 1996. This RFP requested bidders to provide proposals for approximately 700 to 1,000 MW of capacity available for delivery by June 1, 1999, either as power purchases or options for capacity. This RFP resulted in CP&L choosing to build the initial 160 MW of the Buncombe County project, pursue an additional PECO purchase option, and continue the Wayne County project.

In April of 1997, CP&L issued its second formal RFP. This one was for approximately 400 MW of combustion turbine capacity for delivery by June 1, 2000, and for 400 MW of capacity for delivery beginning June 1, 2001. The Public Staff witnesses testified that, as a result of the RFP, CP&L selected three winning bids totaling approximately 825 MW from bidders identified in its Application as Bidders A, B, and C, and signed letters of intent with each in March of 1998. These bids were selected from a short list of four bidders forwarded from the initial screening of eight bidders, which had submitted a total of 17 bids.

The Public Staff further testified that CP&L appears to have negotiated with all bidders in good faith and that it is still finalizing contracts with Bidders A and C. Because Bidder B informed CP&L in July of 1998 that it could no longer meet either the delivery terms or the pricing terms bid in the solicitation, CP&L turned to the alternate self-build options that are the subject of this proceeding. The Public Staff further testified that these two options were chosen primarily for two reasons: (1) each could be built in time to meet the June 2000 capacity need, and (2) the proposals from the remaining bidders were economically unattractive.

The Public Staff testified to having reviewed CP&L's 1997 RFP and its evaluation of the bids received as a result of that solicitation. The Public Staff concluded that CP&L's evaluation of the bids as a result of the solicitation was reasonable for purposes of this proceeding, CP&L employed reasonable methods to acquire capacity from the wholesale market, and that the RFP was consistent with the need demonstrated by forecasted load growth. A confidential report was filed with the Commission that generally described the evaluation process, commented on CP&L's methodology, and supported the above-described Public Staff testimony with respect to CP&L's process.

As a result of its several supply-side solicitations and bid evaluations, CP&L selected a portfolio of supply resources to meet its future forecast needs. The following table shows the amount of dedicated plant purchases, self-build construction and market purchases initially selected by CP&L.

Initially Selected Supply Portfolio (in MW)

Year	Plant Purchase	Self-Build	Market Purchase
1998	0		400
1999	0	160	500*
2000	314*	509	300*
2001	336*		175*
Total	**650**	**669**	**475****

Note: * means the capacity was obtained as a result of CP&L's RFP
** includes only 300 + 175 (others were only for one year)

Due to the substituting of self-build capacity for the capacity that is not being supplied by Bidder B, CP&L's current resource portfolio must be adjusted as illustrated in the following table.

Current Expected Supply Portfolio (in MW)

Year	Plant Purchase	Self-Build	Market Purchase
1998	0		400
1999	0	160	500*
2000	0 *	846	300*
2001	336**		175*
Total	**336**	**1006**	**475**

Note: * reflects the withdrawal by Bidder B
** means the capacity was obtained as a result of CP&L's RFP

Although self-build construction now accounts for a greater portion of the resource mix than the initially selected portfolio, the Commission concludes that CP&L's use of the wholesale market is consistent with the Commission's policy of promoting competition in the wholesale generation and bulk power markets. Based on all of the foregoing, the Commission concludes that, for purposes of this proceeding, CP&L's evaluation of the bids it received as a result of the solicitation was reasonable, CP&L employed reasonable methods to acquire capacity from the wholesale market, and that the RFP was consistent with the need demonstrated by forecasted load growth.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

These findings are based on CP&L's Application, the testimony of CP&L witness Ingersoll, and the testimony of Public Staff witnesses Peedin, Hinton, and Powell.

CP&L witness Ingersoll testified that because Bidder B notified CP&L on July 14, 1998, that it would not be able to provide the 314 MW of capacity it had bid in accordance with the terms which it proposed, CP&L had insufficient time to negotiate an agreement with another bidder. None of the other bidders would have time to procure a site, acquire the necessary air permits, engineer the project and build the facility by the summer of 2000. In addition, combustion turbine equipment availability currently is uncertain unless contracts or options are already in place, mainly because of the events of this past summer.

Mr. Ingersoll further testified that CP&L was left with two alternatives: (1) rely on the wholesale spot market; or (2) build the new generating capacity itself. He testified that in CP&L's opinion sole reliance on the wholesale spot market to provide this firm peaking capacity would not be prudent given the price volatility and capacity shortages that occurred in the wholesale market during the summer of 1998. CP&L, therefore, concluded that relying on the spot market for the planned capacity would be unduly risky from both a price and reliability standpoint.

Mr. Ingersoll further testified that the most reasonable resource alternative available to CP&L to meet its capacity needs is the installation by CP&L of approximately 177 MW of combustion turbine generating capacity in Wayne County, North Carolina, adjacent to CP&L's Lee Steam Electric Plant and approximately 160 MW of combustion turbine generating capacity in Buncombe County, North Carolina, adjacent to CP&L's Asheville Steam Electric Plant. Mr. Ingersoll explained that CP&L owns the sites for the facilities and has obtained necessary air permits to build the additional combustion turbines at both sites. In addition, CP&L has an option contract with General Electric (GE) to purchase the combustion turbines at reasonable prices.

The Public Staff witnesses agreed with CP&L that building the proposed additional capacity was appropriate because the units could be built in time to meet the June 2000 capacity need and the proposals from the remaining bidders from the RFP were economically unattractive. The Public Staff witnesses further testified that they recommended that the Commission issue amended certificates to CP&L for the construction of (1) a fourth combustion turbine unit of approximately 177 MW at its Wayne County site, and (2) a second combustion turbine unit of 160 MW at its Buncombe County site.

Based on the foregoing, the Commission concludes that combustion turbines are the most appropriate resource for CP&L to add to meet its peaking capacity needs beginning in the summer of 2000. The Commission further concludes that the combustion turbine capacity of approximately 177 MW proposed to be added to the Wayne County site and approximately 160 MW proposed to be added to the Buncombe County site are the only reasonably viable alternatives available to CP&L.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L's application to amend its certificate of public convenience and necessity for its Wayne County site is approved, and CP&L is authorized to construct a fourth combustion turbine unit of approximately 177 MW at its Wayne County site, in conformance with its amended application filed herein.

2. That an amended certificate, attached hereto as Appendix A, should be issued for the construction of a total of approximately 686 MW of combustion turbine capacity at the Wayne County site.

3. That CP&L's application to amend its certificate of public convenience and necessity for its Buncombe County site is approved, and CP&L is authorized to construct a second combustion turbine unit of approximately 160 MW at its Buncombe County site, in conformance with its amended application filed herein.

4. That an amended certificate, attached hereto as Appendix B, should be issued for construction of a total of approximately 320 MW of combustion turbine capacity at the Buncombe County site.

ISSUED BY ORDER OF THE COMMISSION.
This the 17th day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 669
DOCKET NO. 3-2, SUB 730

Carolina Power & Light Company
411 Fayetteville Street Mall
Raleigh, North Carolina 27602

is issued this amended

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. 62-110.1

authorizing construction and operation
of approximately 686 MW of combustion
turbine generating capacity

located adjacent to

Carolina Power & Light Company's Lee Steam Electric Plant
in Wayne County, North Carolina

subject to the reporting requirements of G.S. 62-110.1(f) and all other orders, rules, regulations and conditions now or hereafter lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

APPENDIX B

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 700
DOCKET NO. E-2, SUB 730

Carolina Power & Light Company
411 Fayetteville Street Mall
Raleigh, North Carolina 27602

is issued this amended

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
PURSUANT TO G.S. 62-110.1

authorizing construction and operation
of approximately 320 MW of combustion
turbine generating capacity

located adjacent to

Carolina Power & Light Company's Asheville Steam Electric Plant
in Buncombe County, North Carolina

subject to the reporting requirements of G.S. 62-110.1(f) and all other orders, rules, regulations and conditions now or hereafter lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 17th day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

(SEAL)

DOCKET NO. E-2, SUB 716

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 N.C.G.S. 62-100 et seq. to Construct a 10,400-Foot 230 kV Transmission Line in Wake County	)	ORDER GRANTING CERTIFICATE OF ENVIRONMENTAL COMPATIBILITY AND PUBLIC CONVENIENCE AND NECESSITY, AND WAIVING PUBLIC NOTICE AND HEARING REQUIREMENTS

BY THE COMMISSION: On January 26, 1998, Carolina Power & Light Company (CP&L) filed an application to remove and relocate a two-mile portion (approximately 10,400 feet) of the existing Cary Regency Park-Durham 230 kV transmission line, and a motion to waive the notice and hearing requirements of G.S. 62-102 and 62-104.

The proposed removal and relocation is to accommodate the construction of a new residential community a long the proposed route of the new Aviation Parkway that will connect the Northern Wake Expressway and U.S. Highway 70. CP&L's estimate of the cost is $818,492, which will be borne in its entirety by Brier Creek Associates (BCA), the developer of the new residential community. BCA will also be responsible for acquiring all necessary easements; clearing the right-of-way corridor; and compliance with all applicable laws and regulations pertaining to such clearing, including obtaining any and all permits required.

Environmental and land use impacts of this project were minimized by planning the shortest practicable relocation to resolve the development conflict. The proposed transmission line route follows the proposed route of the new Aviation Parkway.

No alternative line routes were investigated because the proposed route is the shortest practical route and follows the proposed route of the new Aviation Parkway.

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 land owners do not object to such a waiver and either of the following conditions exists:

1. The transmission line is less than one mile long.

2. The transmission line is for the purpose of relocating an existing transmission line to accommodate a commercial, industrial or other private development conflict.

The proposed 10,400 foot transmission line meets the second of these conditions. CP&L has stated that if BCA cannot obtain the easements voluntarily, the proposed line will not be constructed.

The Public Staff presented this matter at the Commission's Staff Conference on February 2, 1998, recommending the Commission grant a waiver to CP&L as allowed by G.S. 62-101(d)(1) and issue a Certificate of Environmental Compatibility and Public Convenience and Necessity for the construction of the subject 230 kV transmission line located in Wake County, North Carolina.

After careful consideration, the Commission finds good cause to grant the certificate and waive the notice and hearing requirements as requested.

IT IS, THEREFORE, ORDERED as follows:

1. That a Certificate of Environmental Compatibility and Public Convenience and Necessity, attached as Appendix A, is granted.

2. That the requirements for publication of notice and hearing are waived.

ISSUED BY ORDER OF THE COMMISSION.
This the 3rd day of February, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 716

Know 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 remove and relocate a 10,400 foot portion of the existing Cary Regency Park-Durham 230 kV transmission line to accommodate the construction of a new residential community along the proposed route of the new Aviation Parkway

to be located in

Wake 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 other 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 3rd day of February, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-2, SUB 720

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Request by Carolina Power & Light Company for Approval of Premier Power Experimental Service Rider PPS-1A; Application for a Certificate of Public Convenience and Necessity to Install up to 250 MW of Emergency Diesel Generation on Customers' Premises; and Request for a Waiver of Rule R8-61 Provisions	)	ORDER APPROVING EXPERIMENTAL RIDER AND ISSUING CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

BY THE COMMISSION: On March 19, 1998, Carolina Power & Light Company (CP&L) filed with the Commission a request for approval of an experimental service rider called Premier Power Service (PPS) and an application for a certificate of public convenience and necessity to install up to 250 MW of diesel generation for emergencies. The experimental service program would run through December 31, 2003, is voluntary to customers, and involves the installation of diesel generation between 200 and 3,500 kW on the utility side of the meter at the premises of those general service customers electing to take the service.

By Order dated April 21, 1998, the Commission required publication of notice. CP&L filed its affidavits of publication on June 4, 1998, and June 9, 1998. After discussions with the Public Staff regarding the pricing of this service and other issues, CP&L filed a revised rider PPS-1A on June 29, 1998. CP&L will determine the PPS rate for each customer based on the cost of the physical equipment (adjusted for its remaining salvage value), the costs of installation cost, and estimated expenses over the contract term. For contracts ending less than ten years from the equipment's original in-service date, PPS pricing includes an adjustment to smooth the effects related to the significant variance in salvage value during this period: The rider is designed so that CP&L will earn no more than its allowed return on equity.

By letter dated May 29, 1998, Piedmont Power Products, Inc., a diesel equipment supply and service company, through its representative, Mr. John Dixon, filed a complaint concerning CP&L's use of its customer relationships and the potential for pricing subsidies from other ratepayers. Both CP&L and the Public Staff met independently with Mr. Dixon to discuss the program and its pricing. An agreement was reached on a disclosure statement that would ease his company's concerns. By telephone conversation on June 30, 1998, Mr. Dixon authorized the Public Staff to communicate the withdrawal of his complaint.

Except for extraordinary situations, CP&L expects to sign contracts with customers for not less than five years. To validate the pricing, the Public Staff will randomly review Premier Power Service contracts during the first five years this experimental service is available.

The Public Staff presented this item at the Commission Staff Conference on July 6, 1998, and recommended that the Commission grant the requested certificate of public convenience and necessity, approve the experimental service and rider PPS-1A, and require CP&L to provide each customer with a disclosure statement prior to contracting for Premier Power Service.

Based on the foregoing and the representations in CP&L's filing, the Commission concludes that the Public Staff's recommendation should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the certificate of public convenience and necessity for up to 250 MW of emergency diesel generation attached as Appendix A is hereby issued to CP&L for installations between 200 and 3,500 kW at the premises of the customers in CP&L's franchised service territory electing to take the service.

2. That the experimental Premier Power Service and the associated revised rider, PPS-1A attached as Appendix B, are hereby approved to become effective as of the date of this Order through December 31, 2003.

3. That the Customer Disclosure attached as Appendix C shall be presented by CP&L to each customer prior to contracting for Premier Power Service.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of July, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

For Appendices B & C see the Official Order in the Chief Clerk's Office.

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-2, SUB 720

Carolina Power & Light Company
411 Fayetteville Street Mall
P.O. Box 1551
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 up to 250 MW of emergency
diesel generation between 200 and
3,500 kilowatts per installation

located at

various customer premises
in CP&L's assigned franchise territory

subject to the reporting requirements of G.S. 62-110.1(f), and all other orders, rules, regulations and conditions now or hereafter lawfully made by the North Carolina Utilities Commission.

ISSUED BY ORDER OF THE COMMISSION.

This the 7th day of July, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-2, SUB 722

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Carolina Power & Light Company Light Company for Authority to Adjust Its Electric Rates and Charges Pursuant to N.C. General Statute 62-133.2 and NCUC Rule R8-55	))))	ORDER APPROVING FUEL CHARGE ADJUSTMENT

HEARD: Tuesday, August 4, 1998, at 10:00 a.m., Commission Hearing Room 2115, 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 the Applicant:

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

For the Public Staff:

Gisele L. Rankin, Staff Attorney; Lucy E. Edmondson, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520,
For: The Using and Consuming Public

For the Attorney General:

Margaret A. Force, Assistant Attorney General, NC Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602,
For: The Using and Consuming Public

For the Carolina Industrial Group for Fair Utility Rates (CIGFUR II):

Ralph McDonald, Bailey & Dixon, L.L.P., Post Office Box 1351, Raleigh, North Carolina 27602-1351

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 4, 1998, 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 0.216 cents/kWh (0.223 cents/kWh including gross receipts tax) to the base factor of 1.276 cents/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537, or a recommended fuel factor of 1.060 cents/kWh. In its Application, the Company also requested an increment of 0.043 cents/kWh (0.044 cents/kWh including gross receipts tax) for the Experience Modification Factor (EMF) to collect approximately $14.1 million of under-recovered fuel expense experienced during the period April 1, 1997 to March 31, 1998. 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 its Application, in conjunction with the expiration of the EMF Rider approved in the last fuel proceeding (Docket No. E-2, Sub 712), would result in no net change in customers' bills.

On June 10, 1998, the Carolina Industrial Group for Fair Utility Rates (CIGFUR II) filed a Petition to Intervene. The Petition was granted by the Commission on June 12, 1998. The intervention of the Public Staff is noted pursuant to Commission Rule R1-19(e).

On June 12, 1998, the Commission issued its Order Scheduling Hearing, Requiring Filing of Testimony and Requiring Public Notice. The hearing was scheduled for August 4, 1998.

On June 22, 1998, the Public Works Commission of the City of Fayetteville filed a Petition to Intervene which was granted on June 23, 1998. On July 1, 1998, the Attorney General filed Notice of Intervention.

On July 17, 1998, CP&L filed the Affidavit of Ronald R. Penny in which CP&L revised its recommended fuel factor to 1.079 cents/kWh; the fuel expense under-recovery for the test period to $11.7 million; and the resulting EMF increment factor to 0.036 cents/kWh.

On July 20, 1998, the Public Staff filed the Affidavits and Exhibits of Thomas S. Lam and Darlene P. Peedin. 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 20, 1998, Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene in the proceeding. The Commission granted CUCA's Petition on July 27, 1998.

On July 31, 1998, 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 4, 1998. At the beginning of the hearing, CP&L advised the Commission that none of the parties objected to the Company's revised recommended fuel factor or EMF Rider as outlined in witness Penny's Affidavit filed on July 17, 1998. As a result, no witnesses were required to testify in this proceeding. The Commission received into evidence CP&L's Application, the direct testimony, exhibits and Affidavit of CP&L witness Penny, and the Affidavits and exhibits of Public Staff witnesses Lam and Peedin. The Commission asked that proposed orders be filed within twenty days after the mailing of the transcript. The transcript was mailed on August 7, 1998, 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, 1998.

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 1.079 cents/kWh.

5. The Company's North Carolina test period jurisdictional fuel expense under-collection is $11,737,123.

6. The Company's Experience Modification Factor (EMF) is an increment of 0.036 cents/kWh (including gross receipts tax the factor is 0.037 cents/kWh).

7. The performance of CP&L's nuclear units during the test period was reasonable and prudent.

8. The new maximum dependable capacity (MDC) values for Brunswick Unit Nos. 1 and 2 are accepted.

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 pre-filed exhibits and direct testimony submitted by the Company in support of its Application utilized the 12 months ended March 31, 1998, 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, 1998.

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 ten 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 706 for calendar year 1997 and in Docket No. E-2, Sub 719 for calendar year 1998. 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 FINDINGS OF FACT NO. 4

The evidence supporting these findings can be found in the testimony, exhibits and Affidavit of Company witness Penny and the Affidavit of Public Staff witness Lam.

In Penny Exhibit No. 3, the Company calculated a fuel factor of 1.181 cents/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 1992-1996 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 65.22% and the capacity factors of the Robinson and Harris Units, both PWRs, were normalized at 76.01%. The Company's NERC normalized calculations resulted in a system nuclear capacity factor of 70.47% using this data.

Witness Penny explained in his pre-filed testimony that he could not recommend the 1.181 cents/kWh fuel factor based on the NERC average capacity factors because the Company's nuclear units are expected to significantly outperform the NERC average during the period in which rates established in this case will be in effect. Therefore, as indicated in his Affidavit, Company witness Penny recommended adoption of a fuel factor of 1.079 cents/kWh.

After review of the Company's revised filing, Public Staff witness Lam recommended that the Commission approve CP&L's requested fuel factor of 1.079 cents/kWh. Witness Lam stated in his Affidavit that the recommended fuel factor was based on the premise that the operation of the Company's nuclear units will outperform the NERC five-year average of 70.47%. No other party produced any evidence on this issue.

Based on the evidence of the record, the Commission determines that the proper fuel factor to adopt in this case is 1.079 cents/kWh. This factor is a reduction of 0.197 cents/kWh (0.204 cents/kWh including gross receipts tax) from the base fuel factor of 1.276 cents/kWh approved in CP&L's last general rate case, Docket No. E-2, Sub 537.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NOS. 5 AND 6

The evidence supporting these findings can be found in the testimony, exhibits and Affidavit of Company witness Penny and the Affidavits of Public Staff witnesses Lam and Peedin.

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....."

Company witness Penny explained in his pre-filed testimony that the Company under-collected its fuel expense by almost $14.1 million during the test year from the fuel factors approved in the past two fuel cases, Docket Nos. E-2, Sub 697 and Sub 712. Witness Penny further explained that the under-recovery had been adjusted on a monthly basis to reflect the adjustment for Stone Container fuel costs and marketer fuel cost. In his Affidavit, witness Penny revised the EMF under-recovery to $11.7 million. This reduction in the EMF amount resulted from accounting corrections to the original amount requested in its Application. Public Staff witness Peedin reviewed the Company's EMF calculations and agreed with the revised $11.7 million amount.

In her Affidavit, Public Staff witness Peedin also recommended that the Commission approve the Stipulation reached by the Public Staff, the Attorney General, CP&L, Duke Power Company, and North Carolina Power regarding the proper methodology for determining the fuel cost associated with power purchases from power marketers and other suppliers (the Marketer Stipulation). The parties filed the Marketer Stipulation with the Commission on March 14, 1997, in Docket No. E-2, Sub 697.

The Marketer Stipulation specifies how the fuel cost of certain purchases made by a utility are determined for fuel clause inclusion. 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 Marketer Stipulation was intended to be applicable to the 1997 and 1998 fuel cases filed by the parties listed above. The Commission notes that the Marketer Stipulation has been used in all the 1997 fuel cases, and most recently, in Duke's 1998 fuel case. No evidence was produced in this case to suggest that the Commission's previous determination that the use of the Marketer Stipulation is reasonable and justified is no longer valid.

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 by Witnesses Penny and Peedin, the Commission concludes that the methodology for determining the fuel cost component of purchases from marketers and certain other suppliers as set forth in the Marketer Stipulation is reasonable and will be accepted for purposes of this proceeding. As such, the Commission approves for this case the revised EMF under-recovery amount of $11.7 million as proposed by the Company and accepted by the Public Staff.

In the Affidavit of witness Penny, he proposed a revised EMF increment factor of 0.036 cents/kWh (0.037 cents/kWh including gross receipts tax) to collect $11,737,123 of under-recovered fuel cost incurred during the test period. This factor was determined by dividing the under-recovered amount by the adjusted N.C. retail kWhs of 32,547,148,770. CP&L asked that this factor remain in effect for a 12-month period. Staff witnesses Lam and Peedin agreed with the EMF factor computed by the Company.

The Commission finds that the EMF increment of 0.036 cents/kWh (0.037 cents/kWh including gross receipts tax) recommended by the Company and accepted by the Public Staff is appropriate for use in this proceeding. The EMF increment should remain in effect for a fixed 12-month period from the effective date of this Order.

The effect of the Commission's findings in this Order with respect to the change in CP&L's base fuel factor and the EMF increment, in conjunction with the expiration of the EMF Rider approved in CP&L's last fuel proceeding, would result in an annual rate increase of approximately $4.0 million for CP&L. However, the Commission has also entered an Order dated August 6, 1998 in Docket No. E-2, Sub 435 which requires CP&L to reduce its rates by approximately $4.0 million on an annual basis due to the cancellation of CP&L's EZ $64 Program. The effective date of both Orders will be September 15, 1998. The combined effect of these two Orders will result in no net change in CP&L's revenues or in rates for CP&L's North Carolina retail customers for service rendered on and after September 15, 1998.

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 affidavit 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 706 for calendar year 1997 and Docket No. E-2, Sub 719 for calendar year 1998. 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 91.4% exceeding the NERC five-year average of 70.5%. The Company's BWRs at Brunswick Units 1 and 2 experienced capacity factors of 100.8% and 91.5% respectively. The PWRs at Robinson and Harris experienced capacity factors of 96.4% and 79% respectively. Public Staff witness Lam verified the Company's test year average 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.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

The evidence supporting this finding can be found in the filed testimony and exhibits of Company witness Penny.

Witness Penny included an exhibit in accordance with Item (d)(7) of Commission Rule R8-55 which indicated changes to the MDC rating for Brunswick Units Nos. 1 and 2 effective January 1, 1998. Support documentation for this change was filed with the Commission on June 3, 1998. CP&L is asking to increase the MDC for Brunswick Unit No. 1 to 820 MWs and the MDC for Unit No. 2 to 811 MWs. This is an increase from the old MDCs of 767 and 754 MWs, respectively.

Since no party offered any evidence challenging this change, the Commission accepts the new MDC values for Brunswick Unit Nos. 1 and 2.

IT IS, THEREFORE, ORDERED as follows:

1. That, effective for service rendered on and after September 15, 1998, CP&L shall adjust the base fuel component in its North Carolina retail rates by an amount equal to a 0.197 cents/kWh decrement (0.204 cents/kWh including gross receipts tax) from the base fuel component approved in Docket No. E-2, Sub 537. Said decrement 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 an increment of 0.036 cents/kWh (0.037 cents/kWh including gross receipts tax). The EMF is to remain in effect for a 12-month period beginning September 15, 1998.

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 charge adjustments 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 9th day of September 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

CP&L BILL MESSAGE

The North Carolina Utilities Commission issued Orders on August. 6, and September. __, 1998, approving, respectively, (1) a rate reduction with termination of the EZ$64 Program and (2) a rate increase related to fuel costs. Together, no net change will result in rates for North Carolina retail customers effective for service on and after September. 15, 1998.

DOCKET NO. E-2, SUB 737

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Carolina Power & Light Company's	)	ORDER APPROVING
Application for Approval of Accelerated	)	ACCELERATED COST
Cost Recovery of its Nuclear	)	RECOVERY OF NUCLEAR
Generating Assets	)	GENERATING FACILITIES

BY THE COMMISSION: On December 11, 1998, Carolina Power & Light Company (CP&L) filed an application pursuant to N.C.G.S. §§ 62-30, 62-31, 62-32, and 62-35(a), and Rule R1-5 of the Commission's Rules of Practice and Procedure for permission to accelerate the cost recovery of its nuclear generating assets for a five-year period beginning January 1, 2000. In support of this request, CP&L cites the current debate at both the state and federal levels regarding the deregulation of the generation of electricity and the primacy of the issue as to whether the market price of electricity after deregulation would be sufficient to allow utilities to recover their investments in electric generating assets, in particular nuclear generation assets. CP&L asserts that the acceleration of the cost recovery of nuclear assets would help minimize this potential issue.

The Commission approved accelerated amortizations of certain regulatory assets by Order dated December 6, 1996, in Docket No. E-2, Sub 699. The amount approved in that docket was $106 million on a total North and South Carolina retail jurisdictional basis. These amortizations expire on December 31, 1999. CP&L has requested that upon the expiration of these amortizations, it be allowed to accelerate the cost recovery of its nuclear generation facilities by a minimum of $83 million and a maximum of $117 million annually (on a North Carolina retail jurisdictional basis) for the period January 1, 2000, through December 31, 2004, for a maximum total North Carolina retail accelerated cost recovery of $585 million over the five-year period. On a total North and South Carolina retail jurisdictional basis, this would be a minimum of $106 million and a maximum of $150 million, for a total of $750 million.

The proposed annual North Carolina retail minimum of $83 million would be used to accelerate the cost recovery of the Harris nuclear plant, which is CP&L's newest and most expensive nuclear plant. The remaining North Carolina jurisdictional amount of up to $34 million is proposed to be used as follows: (1) applied to further accelerated cost recovery of the Harris plant; (2) applied to accelerated cost recovery of CP&L's other nuclear plants; or (3) carried forward for use only during the following year. CP&L's application further states that this accelerated cost recovery would be accomplished through existing customer rates, and CP&L would not seek to increase electricity rates due to these increased expenses. Finally, the application states that the accelerated cost recovery, if approved, would be allocated among customer classes using the production factor used to allocate nuclear production plant.

Under the proposal, the accelerated cost recovery expenses would be recorded to the depreciation expense/accumulated depreciation accounts for the plants in question. The annual and accumulated accelerated cost recovery amounts would be separately identified and quantified in CP&L's accounting records and in all of its financial reporting to the Commission (to distinguish those amounts from the depreciation expense and accumulated depreciation balances resulting from the depreciation rates approved by the Commission). CP&L also proposes to file annual reports with the Commission identifying the amount of accelerated cost recovery charged to each nuclear unit. While the application states that CP&L intends to charge annually the entire amount requested ($117 million on a North Carolina retail basis), in the event that less is charged, it would include in the annual report the reasons for the reduction.

The Public Staff presented this matter to the Commission at its weekly Staff Conference on Monday, December 21, 1998. The Public Staff indicated that it had been authorized to state that the Carolina Industrial Group for Fair Industrial Rates II (CIGFUR) and the Carolina Utility Customers Association, Inc. (CUCA), have no objection to CP&L's application. The Attorney General authorized the Public Staff to state that he is satisfied with the proposal, with the understanding that CP&L and the other parties acknowledge that in a general rate proceeding the Commission is not bound or limited in any way with regard to its ability to alter CP&L's cost recovery or depreciation rates on nuclear facilities. The Public Staff recommended that the Commission issue the Public Staff's proposed order granting CP&L's application.

Based on the foregoing and the representations in the application, the Commission concludes that CP&L's application for approval to accelerate the cost recovery of its nuclear generating assets should be approved as discussed herein.

IT IS, THEREFORE, ORDERED as follows:

1. That CP&L is authorized to accelerate the cost recovery of its nuclear generation facilities by a minimum of $83 million and a maximum of $117 million annually (on a North Carolina retail jurisdictional basis) for a five-year period, beginning January 1, 2000, and ending December 31, 2004.

2. That this accelerated cost recovery shall be accomplished through existing customer rates, and CP&L shall not seek to increase electricity rates due to these increased expenses.

3. That the annual North Carolina retail minimum of $83 million shall be used to accelerate the cost recovery of the Harris nuclear plant. The remaining North Carolina jurisdictional amount of up to $34 million shall be used as follows: (1) applied to further accelerated cost recovery of the Harris plant; (2) applied to accelerated cost recovery of CP&L's other nuclear plants; or (3)

carried forward for use only during the following year. More than $34 million cannot be carried forward to another year.

4. That these accelerated cost recovery expenses shall be recorded to the depreciation expense/accumulated depreciation accounts for the plants in question.

5. That the annual and accumulated accelerated cost recovery amounts shall be separately identified and quantified in CP&L's accounting records and in all of its financial reporting to the Commission (to distinguish those amounts from the depreciation expense and accumulated depreciation balances resulting from the depreciation rates approved by the Commission).

6. That these accelerated cost recovery expenses shall be allocated among customer classes using the production factor used to allocate nuclear production plant.

7. That CP&L shall file annual reports with the Commission identifying the amount of accelerated cost recovery charged to each nuclear unit.

8. That in the event CP&L charges less than the maximum $117 million (on a North Carolina retail jurisdictional basis), it shall include in the annual report required by this Order the reasons it charged less than the maximum amount.

ISSUED BY ORDER OF THE COMMISSION.
This the 22nd day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-7; SUB 620

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of Duke Power Company	)	ORDER APPROVING FUEL
Pursuant to G.S. 62-133.2 and NCUC Rule	)	CHARGE ADJUSTMENT
R8-55 Relating to Fuel Charge	)	
Adjustments for Electric Utilities - 1998	)	

HEARD: Tuesday, May 5, 1998 at 10:00 a.m., Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner William R. Pittman, Presiding; Commissioners J. Richard Conder and Robert V. Owens, Jr.

APPEARANCES:

For Duke Power Company:

William Larry Porter, Deputy General Counsel, Duke Power Company, Post Office Box 1244, Charlotte, North Carolina 28201-1244

and

Robert W. Kaylor, P.A., 225 Hillsborough St., Suite 480 Raleigh, North Carolina 27603

For the Public Staff:

A. W. Turner, Jr., Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520
For: The Using and Consuming Public

For 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 6, 1998, 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 11, 1998, 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 April 20, 1998, the Public Staff filed the Affidavits of Thomas S. Lam, Electric Engineer, Electric Division, John R. Hinton, Financial Analyst, Economic Research Division and Darlene P. Peedin, Staff Accountant, Accounting Division.

The case came on for hearing as ordered on May 5, 1998. Steven K. Young, Vice President, Rates and Regulatory Affairs of Duke Power Company presented direct testimony for Duke. Darlene P. Peedin, Staff Accountant, Accounting Division and Thomas S. Lam, Electric Engineer, Electric Division presented testimony on behalf of the Public Staff and the affidavit of John R. Hinton, Financial Analyst, Public Staff Economic Research 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.

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, 1997.

3. Duke's fuel procurement and power purchasing practices during the test period were reasonable and prudent.

4. The test period per book system sales are 73,582,623 mWh.

5. The test period per book system generation is 82,325,405 mWh and is categorized as follows:

Generation Type	mWh
Coal	45,234,243
Oil & Gas	301,114
Light Off	-
Nuclear	29,568,983
Hydro	1,747,912
Net Pumped Storage	(619,329)
Purchased Power	1,492,064
Catawba Contract Purchases	2,315,800
Catawba Interconnection Agreements	2,322,951
Interchange	(38,333)
Total Generation	82,325,405

6. The nuclear capacity factor appropriate for use in this proceeding is 80%.

7. The adjusted test period sales of 73,462,645 mWh consists of test period system sales of 73,582,623 mWh which are increased by 992,401 mWh and 573,660 mWh for customer growth and weather normalization, and reduced by 1,686,039 mWh associated with the adjustment for Catawba retained generation.

8. The adjusted test period system generation for use in this proceeding is 82,177,558 mWh and is categorized as follows:

Generation Type	mWh
Coal	42,553,858
Oil & Gas	250,309
Light Off	-
Nuclear	35,181,912
Hydro	1,958,000
Net Pumped Storage	(546,186)
Purchased Power	1,492,064
Catawba Contract Purchases	1,287,601
Total Generation	82,177,558

9. The appropriate fuel prices and fuel expenses for use in this proceeding are as follows:

A. The coal fuel price is $12.94/mWh.
B. The oil and gas fuel price is $46.97/mWh.
C. The appropriate Light Off fuel expense is $3,471,000.
D. The nuclear fuel price is $4.53/mWh.
E. The purchased power fuel price is $14.77/mWh.
F. The Catawba Contract Purchase fuel price is $4.01/mWh.

10. Setting fuel costs associated with purchases from power marketers and certain other sellers 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 $694,647,000.

12. The proper fuel factor for this proceeding is .9456¢/kWh, excluding gross receipts tax.

13. The Company's North Carolina test period jurisdictional fuel expense over-collection was $9,436,000. The adjusted North Carolina jurisdictional test year sales are 49,338,702 mWh.

14. The Company's Experience Modification Factor (EMF) is a decrement of .0191¢/kWh, excluding gross receipts tax.

15. Interest expenses associated with the over-collection of test period fuel revenues amount to $1,415,000, based upon a 10% annual interest rate.

16. The EMF interest decrement is .0029¢/kWh, excluding gross receipts tax.

17. The final fuel factor is .9236¢/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, 1997.

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, 1997. 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 Young.

Company witness Young testified that the test period per books system sales were 73,582,623 mWh and test period per book system generation was 82,325,405 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	45,234,243
Oil & Gas	301,114
Light Off	-
Nuclear	29,568,983
Hydro	1,747,912
Net Pumped Storage	(619,329)
Purchased Power	1,492,064
Catawba Contract Purchases	2,315,800
Catawba Interconnection Agreements	2,322,951
Interchange	(38,333)
Total Generation	82,325,405

Witness Young testified that Duke achieved a system nuclear capacity factor of 73.01% for the test period and that the most recent (1992-1996) North American Electric Reliability Council's five-year average nuclear capacity factor for all pressurized water reactor units is 76.01%. Witness Young'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 35,181,912 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 Young and the affidavit of Public Staff witness Hinton.

Witness Young decreased total per book test period sales by 119,978 mWh. This adjustment is the sum of adjustments for customer growth, weather, and Catawba retained generation of 992,401 mWh, 573,660 mWh and negative 1,686,039 mWh, respectively. The level of Catawba retained generation is associated with the system nuclear capacity factor of 80%.

The Public Staff accepted witness Young's adjustments for customer growth and Catawba retained generation, but took exception to the Company's adjustment for weather normalization.

Public Staff witness Hinton submitted an affidavit in which he proposed that Duke incorporate 30 years of weather data in future fuel charge adjustment proceedings. In the current proceeding the Company used five years of weather data to calculate its weather normalization adjustment. Because the use of 30 years of weather data in this proceeding would have resulted in a higher fuel factor than was requested by the Company, the Public Staff did not propose to change the Company's calculation of adjusted test period sales.

The Commission notes that Rule R8-55(c)(1) states:

> Fuel costs will be <u>preliminarily</u> established utilizing the methods and procedures approved in the utility's last general rate case...". (emphasis added)

Reference to this provision in isolation would indicate that the Company should be required to incorporate 30 years of weather data in future proceedings, however, R8-55(d)(3) states:

> In the event that said methodology is inconsistent with the normalization methodology set forth in paragraph (c)(1) above,

additional pro forma calculation shall be presented incorporating the methodology reflected in paragraph (c)(1).

The Commission concludes that in future fuel charge adjustment proceedings the Company should submit a fuel rate calculation utilizing the weather normalization method approved in its last general rate case proceeding, however, the Company may also propose a different normalization method if it so chooses.

The Commission concludes that the adjustments for customer growth of 992,401 mWh, and weather normalization of 573,660 mWh, and Catawba retained generation of a negative 1,686,039 mWh as presented by the Company and reviewed and accepted by the Public Staff are reasonable and appropriate for use in this proceeding. Therefore, the Commission concludes that the per book test period system sales of 73,582,623 mWh should be decreased by 119,978 mWh resulting in an adjusted test period sales level of 73,462,645 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 Young.

Witness Young made an adjustment of a negative 147,847 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 82,177,558 mWh.

Witness Lam reviewed and accepted witness Young's adjusted generation level of 82,177,558 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 the adjustment to per book system generation of a negative 147,847 mWh and the resulting adjusted test period generation level of 82,177,558 mWh are both reasonable and appropriate for use in this proceeding. Total generation is categorized as follows:

Generation Type	mWh
Coal	42,553,858
Oil & Gas	250,309
Light Off	-
Nuclear	35,181,912
Hydro	1,958,000
Net Pumped Storage	(546,186)
Purchased Power	1,492,064
Catawba Contract Purchases	1,287,601
Total Generation	82,177,558

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-16

The evidence for these findings of fact is found in the testimony and exhibits of Company witness Young and the testimony of Public Staff witnesses Lam and Peedin.

Witness Young recommended fuel prices as follows: (1) coal price of $12.94/mWh; (2) oil and gas price of $46.97/mWh; (3) light-off fuel expense of $3,471,000; (4) nuclear fuel price of $4.53/mWh; (5) purchased power fuel price of $14.77/mWh; and (6) Catawba Contract purchase fuel price of $4.01/mWh.

Witness Lam in his affidavit accepted Mr. Young's recommended fuel expense and fuel prices. Witness Peedin in her affidavit recommended that the Commission approve the Stipulation reached by the Public Staff, the Attorney General, Carolina Power & Light Company (CP&L), Duke Power Company, and North Carolina Power (NC Power) regarding the proper methodology for determining the fuel cost associated with power purchases from power marketers and other suppliers.

Company witness Young testified that, pursuant to the Stipulation, the Company's test period purchased power expense was adjusted to reflect 75% of the total energy charges of certain purchased power transactions as the fuel cost component for purposes of determining the fuel factor in this proceeding.

Public Staff witness Peedin testified that in the absence of reasonably available alternative information, use of the utilities' own off-system sales to determine a proxy for the fuel cost component of the utilities' purchases from marketers, as contemplated by the Stipulation, is reasonable.

In its Order issued June 24, 1997, in Docket No. E-7, Sub 598, the Commission stated that the signing parties could employ the Stipulation in Duke's 1998 fuel charge adjustment proceeding, but that non-signing parties could contest the terms of the Stipulation in each proceeding in which it is presented. In this proceeding, CUCA appeared to question the use of the terms of the Stipulation for purposes of determining Duke's fuel charge adjustment. The Commission notes that CUCA did not present any evidence to either dispute the use of the Stipulation or to support some other method of assigning fuel cost to purchases from power marketers. Based on the testimony of witnesses Young and Peedin, and the lack of any direct testimony in opposition to the Stipulation, the Commission concludes that the Stipulation is appropriate in this proceeding. The Commission further concludes that no alternative fuel cost information for purchases from power marketers is reasonably available and therefore the purchased power fuel expense of $14.77/mWh as proposed by the Company and reviewed and accepted by the Public Staff is reasonable and appropriate for use in this proceeding.

Therefore, the Commission concludes that adjusted test period fuel expenses of $694,647,000 and the fuel factor of .9456¢/kWh, excluding gross receipts tax, are reasonable and appropriate for use in this proceeding. This approved base fuel factor is .1576¢/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 over-recovered fuel cost and the resulting experience modification factor (EMF) and associated interest as set forth on Young Exhibit 6. The $9,436,000 over-recovered fuel revenue is divided by the adjusted North Carolina jurisdictional sales of 49,338,702 mWh to arrive at an EMF decrement of .0191¢/kWh, excluding gross receipts tax, and an EMF interest decrement of .0029¢/kWh. The Commission, concludes that the EMF decrement of .0191¢/kWh, excluding gross receipts tax, and the EMF interest decrement of .0029¢/kWh are reasonable and appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

Accordingly, the fuel calculation, incorporating the conclusions reached herein, results in a final net fuel factor of .9236¢/kWh, excluding gross receipts tax, as shown in the following table:

Description	Adjusted Generation (mWh)	Fuel Price $/mWh	Fuel Dollars (000's)
Coal	42,553,858	12.94	$550,647
Oil and gas	250,309	46.97	11,758
Light-Off			3,471
Nuclear	35,181,912	4.53	159,480
Hydro	1,958,000	-	0
Net Pumped Storage	(546,186)	-	0
Purchased Power	1,492,064	14.77	22,043
Catawba Contract Purchases	1,287,601	4.01	5,168
TOTAL	82,177,558		752,567
Less:			
Intersystem Sales	(3,547,530)		(57,920)
Line Loss	(5,167,383)		0
System mWh Sales	73,462,645		$694,647
Fuel Factor ¢/kWh			.9456
EMF ¢/kWh			(.0191)
EMF Interest ¢/kWh			(.0029)
FINAL FUEL FACTOR ¢/kWh			.9236

IT IS, THEREFORE, ORDERED:

1. That, effective for service rendered on and after July 1, 1998, 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 .1576¢/kWh decrease (excluding gross receipts tax) and further that Duke shall adjust the resultant approved fuel cost by decrements of .0191¢/kWh and .0029¢/kWh (excluding gross receipts tax) for the EMF and EMF interest, respectively. The EMF and EMF interest decrements are to remain in effect for a 12-month period beginning July 1, 1998.

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 in future fuel charge adjustment proceedings the Company should submit a fuel rate calculation utilizing the weather normalization method approved in its last general rate case proceeding, however, the Company may also propose a different normalization method if it so chooses.

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 19th day of June, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-7, SUB 620

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Duke Power Company Pursuant to	)	NOTICE TO CUSTOMERS
G.S. 62-133.2 and NCUC Rule R8-55 Relating to	)	OF NET RATE DECREASE
Fuel Charge Adjustments for Electric Utilities - 1998	)	

ELECTRICITY - RATES

NOTICE IS GIVEN that the North Carolina Utilities Commission entered an Order on June , 1998, after public hearings, approving a fuel charge net rate decrease of approximately $29 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, 1998. The rate decrease was ordered by the Commission after review of Duke's fuel expense during the 12-month period ended December 31, 1997, and represents actual changes experienced by the Company with respect to its reasonable cost of fuel and the fuel component of purchased power during the test period.

The Commission's Order will result in a monthly net rate decrease of approximately 59¢ for each 1,000 kWh of usage per month.

ISSUED BY ORDER OF THE COMMISSION.

This the 19th day of June , 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-22, SUB 376

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	
Application of North Carolina Power Pursuant to	) ORDER APPROVING
North Carolina General Statute 62-133.2 and North	) FUEL CHARGE
Carolina Utilities Commission Rule R8-55 Relating	) ADJUSTMENT
to Fuel Charge Adjustments For Electric Utilities	)

HEARD: Thursday, November 19, 1998, at 10:00 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611

BEFORE: Chair Jo Anne Sanford, Presiding; and Commissioners Ralph A. Hunt and J. Richard Conder

APPEARANCES:

For North Carolina Power:

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

For the Public Staff:

Lucy E. Edmondson, 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, Bailey and Dixon, Attorneys at Law, P. O. Box 12865, Raleigh, North Carolina 27605-2865

BY THE COMMISSION: G.S. 62-133.2 requires the North Carolina Utilities Commission to hold a hearing for each electric utility engaged in the generation and production of electric power by fossil or nuclear fuel within 12 months after the last general rate case order for each utility for the purpose of determining whether an increment or decrement rider is required to reflect actual changes in the cost of fuel and the fuel component of purchased power over or under the base fuel component established in the last general rate case. The statute further requires that additional hearings be held on an annual basis, but only one hearing for each utility may be held within 12 months of the last general rate case. In addition to the increment or decrement to reflect changes in the cost of fuel and the fuel component of purchased power, the Commission is required to incorporate in its fuel cost determination the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test year. The last general rate case order for North Carolina Power (or the Company) was issued by the Commission on February 26, 1993, in Docket No. E-22, Sub 333. The last order approving a fuel charge adjustment for the Company was issued on December 29, 1997 in Docket No. E-22, Sub 373.

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 11, 1998. 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 16, 1998, the Commission issued an Order Scheduling Hearing and Requiring Public Notice, which was modified that same day by an Errata Order Scheduling Hearing and Requiring Public Notice of this proceeding.

The Carolina Industrial Group for Fair Utility Rates (CIGFUR I) filed a Petition to Intervene on September 24, 1998, which petition was granted on October 6, 1998. The Carolina Utility Customers Association, Inc. (CUCA) filed a Petition to Intervene on October 5, 1998, which petition was granted by Order dated October 6, 1998.

On November 4, 1998, the Public Staff filed the affidavits of Thomas S. Lam and Darlene P. Peedin.

On November 5, 1998, the Company filed a Notice of Affidavits, which indicated that the Company would enter its 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 9, 1998, the Public Staff filed a Notice of Affidavits, which indicated that the Public Staff's affidavits would be used in evidence in lieu of oral testimony in the absence of a request to cross-examine the affiants. No party requested the right to cross-examine the Public Staff.

On November 19, 1998, the Company filed its Notice of Publication of this proceeding.

The matter came on for hearing as scheduled on Thursday, November 19, 1998. The prefiled direct testimony of the Company's witnesses was stipulated into the record by affidavit. The affidavits of Public Staff witnesses Lam and Peedin and the exhibits of all of the witnesses were also admitted into evidence.

Based upon the foregoing, the prefiled testimony and affidavits of Company witnesses Goode, Green and Pierce and Public Staff witnesses Lam and Peedin, 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, 1998.

3. The Company's fuel and power purchasing practices during the test period were reasonable and prudent.

4. The fuel proceeding test period per book system sales are 67,913,311 MWh.

5. The fuel proceeding test period per book system generation is 70,725,471 MWh, which includes various generation as follows:

	MWh
Coal	33,532,726
Combustion Turbine	1,630,713
Heavy Oil	1,143,359
Natural Gas	- 0 -
Nuclear	28,021,929
Hydro	3,465,158
Pumped Storage (Pumping)	(3,180,785)
Power Transactions	
NUG	2,854,207
Other	8,173,634
Sales for Resale	(4,915,470)

4. The normalized system nuclear capacity factor which is appropriate for use in this proceeding is 88%, which is the estimated nuclear capacity factor for the rate year ending December 31, 1999.

5. The increase to system test period sales of 1,690,885 MWh results from an increase of 433,722 MWh associated with customer growth, 361,114 MWh of additional customer usage, an increase of 905,830 MWh associated with weather normalization, and a decrease of 9,781 MWh from the restatement of non-jurisdictional ODEC sales from production level to sales level, added to fuel test period per book system sales of 67,913,311 MWh.

6. The adjusted test period system generation for use in this proceeding is 72,508,259 MWh, which includes various generation as follows:

	MWh
Coal	36,123,017
Combustion Turbine	1,756,695
Heavy Oil	1,231,690
Natural Gas	- 0 -
Nuclear	26,148,251
Hydro	3,465,158
Pumped Storage	(3,180,785)
Power Transactions	
NUG	3,074,662
Other	8,805,042
Sales for Resale	(4,915,470)

7. The appropriate fuel prices for use in this proceeding are as follows:

A. The coal fuel price is $12.81/MWh.
B. The nuclear fuel price is $4.24/MWh.
C. The heavy oil fuel price is $23.83/MWh.
D. The natural gas price is $0/MWh.
E. The internal combustion turbine fuel price is $28.34/MWh.
F. The fuel price for other power transactions is $24.26/MWh.
G. Hydro, pumped storage, and non-utility generation (NUG) have a zero fuel price.

8. The adjusted system fuel expense for the July 1, 1997, to June 30, 1998 test period for use in this proceeding is $640,338,016.

9. The appropriate fuel cost rider (Rider A) for this proceeding is a decrement of 0.171¢/kWh, excluding gross receipts tax, or a 0.177¢/kWh decrement, including gross receipts tax.

10. The Company's North Carolina test period jurisdictional fuel expense over-collection as filed is $243,879. The adjusted North Carolina jurisdictional test year sales are 3,288,624 MWh.

11. The total jurisdictional fuel expense over-collection which is appropriate for use in establishing the experience modification factor (EMF) in this proceeding is $243,879.

12. Interest expense associated with the over-collection of test period fuel revenues amount to $36,582, based upon a 10% annual interest rate.

13. The Company's EMF and interest combine for a decrement of 0.009¢/kWh, excluding gross receipts tax, or a 0.009¢/kWh decrement, including gross receipts tax.

14. The final fuel factor is 0.941¢/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 11, 1998, was based on the 12 months ended June 30, 1998.

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

Company witnesses Goode and Green testified with regard to the July 1, 1997 to June 30, 1998 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 67,913,311 MWh and 70,725,471 MWh, respectively. The test period per book system generation includes various generation as follows:

	MWh
Coal	33,532,726
Combustion Turbine	1,630,713
Heavy Oil	1,143,359
Natural Gas	- 0 -
Nuclear	28,021,929
Hydro	3,465,158
Pumped Storage (Pumping)	(3,180,785)
Power Transactions (Net)	
NUG	2,854,207
Other	8,173,634
Sales for Resale	(4,915,470)

The 33,532,726 MWh of per book system coal generation includes 2,640,877 MWh of ODEC generation and a small amount of natural and refinery gas. The 28,021,929 MWh of per book system nuclear generation includes 1,732,108 MWh of ODEC generation.

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 94.3% for the July 1, 1997 to June 30, 1998 test period. Witness Green normalized the system nuclear capacity factor to a level of 88.00%, which is the estimated nuclear capacity factor for the rate year ending December 31, 1999. Witness Lam agreed that the nuclear capacity factor of 94.3% as achieved by the Company should be normalized to 88.00% 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, 1997 to June 30, 1998 test period levels of sales and generation are reasonable and appropriate for use in this proceeding. The Commission further concludes that the 88.00% 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, 1998 were adjusted by jurisdiction for weather normalization, customer growth, and increased usage. Witness Pierce adjusted total Company sales by 1,690,885 MWh. This adjustment is the sum of adjustments for customer growth, increased usage, and weather normalization of 433,722 MWh, 361,114 MWh and 905,830 MWh, respectively, and an adjustment of (9,781) 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 433,722 MWh, 361,114 MWh, and 905,830 MWh, respectively, and an adjustment of (9,781) 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

Company witness Pierce presented an adjustment to per book MWh generation for the 12-month period ended June 30, 1998, due to weather normalization, customer growth, and increased usage of 1,782,788 MWh, to arrive at witness Green's adjusted generation level of 72,508,259 MWh. Witness Lam reviewed and accepted witness Pierce's adjustment to per book MWh generation for the 12-month period ended June 30, 1998, due to weather normalization, customer growth and increased usage. Witness Lam also accepted witness Green's adjusted generation level of 72,508,259 MWh which includes various generation as follows:

	MWh
Coal	36,123,017
Combustion Turbine	1,756,695
Heavy Oil	1,231,690
Natural Gas	- 0 -
Nuclear	26,148,251
Hydro	3,465,158
Pumped Storage (Pumping)	(3,180,785)
Power Transactions (Net)	
NUG	3,074,662
Other	8,805,042
Sales for Resale	(4,915,470)

The 36,123,017 MWh of adjusted test period coal generation includes 2,852,147 MWh of ODEC generation. The 26,148,251 MWh of adjusted test period nuclear generation includes 1,600,655 MWh of ODEC generation.

Based on the foregoing evidence and with no other evidence to the contrary, the Commission concludes that the adjustment of 1,782,788 MWh is reasonable and appropriate for use in this proceeding, and that the resultant adjusted fuel generation level of 72,508,259 MWh is 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 witness 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 1998 fuel prices as follows: (1) coal price of $12.81/MWh; (2) nuclear fuel price of $4.24/MWh; (3) heavy oil price of $23.83/MWh; (4) natural gas price of $0/MWh; (5) internal combustion turbine price of

$28.34/MWh; (6) other power transactions price of $24.26/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 $640,338,016 and the fuel cost rider (Rider A) decrement of 0.171¢/kWh, excluding gross receipts tax, or a 0.177¢/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 and the affidavits of Public Staff witnesses Peedin and Lam.

North Carolina G.S. 62-133.2(d) requires the Commission to "incorporate in its fuel cost determination under this subsection the experienced over-recovery or under-recovery of reasonable fuel expenses prudently incurred during the test period . . . in fixing an increment or decrement rider. The Commission shall use deferral accounting, and consecutive test periods, in complying with this subsection, and the over-recovery or under-recovery portion of the increment or decrement shall be reflected in rates for 12 months, notwithstanding any changes in the base fuel cost in a general rate case." Further, Rule R8-55(c)(5) provides: "Pursuant to G.S. 62-130(e), any over-collection of reasonable and prudently incurred fuel costs to be refunded to a utility's customers through operation of the EMF rider shall include an amount of interest, at such rates as the Commission determines to be just and reasonable, not to exceed the maximum statutory rate."

Company witness Goode testified that the Company over-collected its fuel expense by $243,879 during the test year ending June 30, 1998. Company witness Pierce testified that the adjusted North Carolina jurisdictional fuel clause test year sales are 3,288,624 MWh. Public Staff witnesses Peedin and Lam accepted those fuel expenses and sales calculations as well as the Company's EMF and interest calculations and recommended approval of the Company's request.

In her affidavit, Public Staff witness Peedin also recommended that the Commission approve the Stipulation reached by the Public Staff, the Attorney General, Carolina Power & Light Company (CP&L), Duke Power Company (Duke), and North Carolina Power regarding the proper methodology for determining the fuel cost associated with power purchases from power marketers and other suppliers (the Marketer Stipulation). The parties filed the Marketer Stipulation with the Commission on March 14, 1997, in Docket No. E-2, Sub 697.

The Marketer Stipulation specifies how the fuel cost of certain purchases made by a utility are determined for fuel clause inclusion. 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 Marketer Stipulation was intended to be applicable to the 1997 and 1998 fuel cases filed by the parties listed above. The Commission notes that the Marketer Stipulation has been used in all of the 1997 fuel cases, and most recently, in Duke's and CP&L's 1998 fuel cases. No evidence was produced in this case to suggest that the Commission's reliance upon the Marketer Stipulation is unreasonable or otherwise unjustified.

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 by Witnesses Goode and Peedin, the Commission concludes that the methodology for determining the fuel cost component of purchases from marketers and certain other suppliers as set forth in the Marketer Stipulation is reasonable and will be accepted for purposes of this proceeding. As such, the Commission approves for this case the EMF over-recovery amount of $243,879 as proposed by the Company and accepted by the Public Staff.

The total jurisdictional fuel expense over-collection for use in establishing the EMF in this proceeding is $243,879. The appropriate level of interest for this over-collection is $36,582 and is calculated in accordance with Rule R8-55(c) 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, 1999, using the adjusted North Carolina retail sales of 3,288,624 MWh.

The Commission concludes that the fuel revenue over-collection and associated interest of $243,879 and $36,582, 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 $243,879 over-collected fuel revenue plus the $36,582 of interest was divided by the adjusted North Carolina jurisdictional sales of 3,288,624 MWh to arrive at the proposed EMF decrement of .009¢/kWh, excluding gross receipts tax, or a .009¢/kWh decrement, including gross receipts tax. This reflects the EMF-Rider B decrement proposed by Company witness Pierce, and accepted by Public Staff witnesses Peedin and Lam. The Commission concludes that, there being no controversy, the proposed EMF decrement of .009¢/kWh, excluding gross receipts tax, is reasonable and appropriate for use in this proceeding, and shall become effective on January 1, 1999, 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, and the affidavits of Public Staff witnesses Peedin and 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 0.941¢/kWh.

The fuel factor is determined as follows:

	Effective 1/1/99 (Including Gross Receipts Tax)
Base Fuel Factor (¢/kWh)	1.127
EMF/Rider B (¢/kWh)	(0.009)
Fuel Cost/Rider A (¢/kWh)	(0.177)
FINAL FUEL FACTOR (¢/kWh)	0.941

IT IS THEREFORE, ORDERED as follows:

1. That effective beginning with usage on and after January 1, 1999, 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 0.171¢/kWh, excluding gross receipts tax, or a 0.177¢/kWh decrement, including gross receipts tax;

2. That an EMF Rider decrement (Rider B) of 0.009¢/kWh, excluding gross receipts tax, or a 0.009¢/kWh decrement, including gross receipts tax, shall be instituted and remain in effect for usage from January 1, 1999 until December 31, 1999;

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 23rd day of December 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. E-22, SUB 376

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 23, 1998, after public hearings, approving an $1,381,222 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, 1999. 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, 1998, 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 $0.42 per month from the previously effective rates.

ISSUED BY ORDER OF THE COMMISSION.

This the 23rd day of December 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-7, SUB 614
DOCKET NO. E-13, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Corporation and Nantahala Power and Light Company for Authorization Under North Carolina General Statute Section 62-111 to Combine Nantahala Power and Light Company and Duke Power, a Division of Duke Energy Corporation	))))))))	ORDER APPROVING COMBINATION OF NANTAHALA POWER AND LIGHT COMPANY AND DUKE ENERGY CORPORATION AND TRANSFER OF NANTAHALA FRANCHISE

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27611

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners Ralph A. Hunt and J. Richard Conder

APPEARANCES:

For Duke Energy Corporation and Nantahala Power and Light Company:

William Larry Porter, Deputy General Counsel, Duke Energy Corporation, P.O. Box 1244, Charlotte, North Carolina 28201-1244

and

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

For the Using and Consuming Public:

A. W. Turner, Jr., Staff Attorney, Public Staff, North Carolina Utilities Commission, P.O. Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On December 5, 1997, Duke Energy Corporation (Duke) and Nantahala Power and Light Company (Nantahala) filed with the Commission a Joint Application pursuant to G.S. 62-111(a) seeking approval to combine Duke's wholly owned subsidiary, Nantahala, into Duke's electric operations. Nantahala would then become a part of Duke Power, the division of Duke Energy Corporation encompassing its electric operations.

The Public Staff presented this matter at the Commission's Staff Conference on January 20, 1998. The Commission issued an Order on January 20, 1998, requiring public notice to the customers in the Nantahala service area, scheduling a public hearing in Franklin, North Carolina on March 5, 1998, subject to cancellation, and scheduling a hearing in Raleigh on March 16, 1998 to receive testimony from Duke, Nantahala, the Public Staff, and any other intervenors.

On February 9, 1998, Duke filed the testimony, including two exhibits, of William A. Coley, Group President of Duke Power, and the testimony, including one exhibit, of Norman E. Tucker, Jr., President of Nantahala. On February 23, 1998, the Public Staff filed the affidavit of Michael C. Maness, Supervisor, Electric Section, Accounting Division.

On February 25, 1998, the Commission issued its Order canceling the March 5, 1998, public hearing in Franklin due to the lack of significant protests from the public. The Commission also required Nantahala to publish the Notice Canceling Hearing as soon as possible in a local newspaper and file an affidavit of publication at the March 16, 1998, hearing. The required proof of publication of notices was filed with the Commission.

The case was heard on March 16, 1998. The testimony of William A. Coley and Norman E. Tucker, Jr. was admitted into evidence along with the verified application and the affidavit of Michael C. Maness. No other party presented witnesses and no public witnesses appeared at the hearing.

Based upon the 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 a corporation duly organized and existing under the laws of the State of North Carolina. It is duly authorized by its Articles of Incorporation to engage in the business of generating, transmitting, distributing and selling electric power and energy and in the business of operating water supply systems. It also holds a certificate of authority to transact business in the State of South Carolina and is authorized to conduct and carry on business, and is conducting and carrying on the business above-mentioned in each of said States. It is a public utility under the laws of North Carolina and its operations in this State are subject to the jurisdiction of this Commission. It is also a public utility under the laws of the State of South Carolina, and its operations in that State are subject to the jurisdiction of the Public Service Commission of South Carolina. It is a public utility under the Federal Power Act, and certain of its operations are subject to the jurisdiction of the Federal Energy Regulatory Commission. The division of Duke responsible for its electric operations is known as Duke Power.

2. Nantahala was founded in 1929 to operate as a public utility providing electric service in the mountainous regions of western North Carolina. Nantahala today serves customers in parts of five western North Carolina counties (Cherokee, Graham, Jackson, Macon and Swain) with power from its own hydroelectric projects in the region, supplemented with purchases from Duke. Nantahala is also a public utility under the laws of North Carolina and its operations in this State are subject to the jurisdiction of the Commission.

3. In 1987, Duke filed for and received Commission approval to purchase Nantahala from Aluminum Company of America (ALCOA) which, at the time, owned all of the outstanding

common stock of Nantahala. Since 1988, Duke has held Nantahala as a separate subsidiary. Nantahala has operated as a separate utility serving the same area it served when it was owned by ALCOA.

4. Duke and Nantahala plan to combine the corporate structures of Duke and Nantahala. Under the Duke-Nantahala Merger Agreement, Nantahala will merge into Duke, with Duke as the surviving corporation. After the merger, Duke will continue to have the name "Duke Energy Corporation" and will continue to be a North Carolina corporation headquartered in Charlotte, North Carolina. Upon the merger's becoming effective, the corporate existence of Nantahala will cease, and the corporate existence of Duke will continue unchanged. The outstanding shares of Duke will not be converted, exchanged, or altered in any manner as a result of the merger and will remain outstanding shares of Duke. The outstanding shares of Nantahala, each of which is owned by Duke, will be canceled.

After the closing, Duke will reflect in its internal corporate organization the establishment of Nantahala as a division of Duke Power. Nantahala's utility assets and electric franchise will become Duke's. Nantahala's liabilities will become liabilities of Duke through assumption or replacement thereof. As a division, Nantahala's customer service and local management are expected to remain substantially the same and Nantahala will continue to dispatch its plants.

5. Duke is one of the nation's largest investor-owned electric utilities. Through the Duke Power operations, it delivers electricity to more than 1.8 million retail and wholesale customers within a 20,000 square mile service area in North Carolina and South Carolina. The operations of Nantahala, with approximately 55,000 retail customers, amount to less than 2% of Duke Power's revenues. The combination of Nantahala and Duke serves the interests of Nantahala, Duke and the customers of the two companies, providing more flexibility in operations and planning and more opportunity to meet the challenges of a changing and increasingly competitive electric utility industry. After the combination, Nantahala will also have more direct access to the resources of Duke which will benefit the customers of Nantahala.

6. The combination will not adversely affect Duke's or Nantahala's ability to provide electric service to its North Carolina customers. Since 1988, Duke has had control over Nantahala's operations through its ownership and that will continue after the combination. Duke has agreed to cap Nantahala's present retail base rates through December 31, 2000, subject to the adjustments made through the Purchase Power Cost Rider (Schedule CP), with any change thereafter to be subject to approval by the Commission. While the existing Interconnection Agreement between Duke and Nantahala will terminate as a result of the combination, Nantahala's retail rate Purchase Power cost Adjustments will continue to be calculated by using the terms and conditions of the current contract between Duke and Nantahala. During this period, Nantahala will continue to dispatch its own generation.

7. The combination will not adversely affect Duke's resulting financial condition because the results of Nantahala's operations are already combined into Duke's consolidated financial statements. Duke has indicated that Nantahala's operating and financial data will continue to be maintained separately, as long as those rates are maintained separately from Duke's, subject to future orders of the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 1-8

The evidence supporting these findings of fact is contained in the verified Application, testimony and exhibits of witnesses Coley and Tucker and the affidavit of Public Staff witness Maness. In their Joint Application, Duke and Nantahala committed to maintaining Nantahala's existing retail base rates at least through December 31, 2000, with any change thereafter to be approved by the Commission. This cap will be subject to adjustments made through the Purchase Power Cost Rider (Schedule CP). Although the existing Interconnection Agreement between Duke and Nantahala will not survive the combination, Duke has stated that Nantahala's retail rate Purchase Power Adjustments will continue to be calculated using the terms and conditions of that contract, and during the period through December 31, 2000, Nantahala will continue to dispatch its own generation. Witness Coley testified that these arrangements will insure that Nantahala retail customers will not be adversely affected by the proposed merger. Duke witness Coley testified that the proposed combination will have no adverse effect on Nantahala's North Carolina retail rates.

Nantahala witness Tucker testified that as a division of Duke Power, Nantahala will continue to be managed on a day-to-day basis by its management team and that the merger will not result in any reduction in human and other resources that Nantahala currently devotes to customer service. Witness Tucker further stated that Nantahala, as a division of Duke Power, will continue to have a separate local identity and the reputation of good standing of Nantahala in the localities in its service area will continue to be as important to Nantahala as it always has been.

In his affidavit, witness Michael C. Maness stated that the Public Staff does not oppose the proposed combination. Witness Maness stated that the Public Staff's decision was based on the fact that Nantahala will continue, at least through December 31, 2000, to operate under local management. Nantahala will continue to dispatch its own generation, there will be no reduction in its operation or its human resources, and customers will still be able to call a local Nantahala telephone number regarding outages and other concerns. Further, with regard to rates, Nantahala's rates will not be impacted by the merger at least through December 31, 2000, and cannot be changed after that date unless approved by the Commission. Duke has committed to capping Nantahala's non-purchased power rates at their existing levels through December 31, 2000, and to continue to determine Nantahala's purchased power costs in accordance with the currently existing contract between itself and Nantahala. Any direct or indirect merger-related costs would be charged to Duke shareholders. Finally, witness Maness stated that for as long as Nantahala's retail base rates are maintained separately from Duke's, Duke has committed to provide certain Duke Power and Nantahala financial information on a stand-alone basis.

The Commission concludes that the proposed business combination will not adversely affect Duke's or Nantahala's ability to provide electric service to its North Carolina customers. Duke has had control over Nantahala's operations since 1988 through its ownership and such control will continue after the combination. Therefore, the proposed combination is consistent with the public interest since Duke proposes to maintain Nantahala's existing retail base rates at least through December 31, 2000, with any change thereafter to be approved by the Commission. Further, Duke will cap Nantahala's present retail rates through such time period subject to the annual adjustments to the Purchase Power Cost Rider. The Commission concludes that the proposed combination is justified by the public convenience and necessity, and should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. Duke's and Nantahala's Joint Application to combine Nantahala into Duke's electric operations, as described herein and in the Application, and the transfer of Nantahala's electric utility franchise to Duke, are hereby approved upon the following conditions, and Duke is hereby ordered to comply with such conditions:

a. Nantahala's existing retail base rates will be maintained at least until December 31, 2000, with any change thereafter to be approved by the Commission, except that such base rates will be subject to adjustments through the Purchase Power Cost Rider (Schedule CP), and

b. That all direct and indirect merger related costs will be charged to Duke's stockholders.

ISSUED BY ORDER OF THE COMMISSION.
This 8th day of April 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. E-7, SUB 614
DOCKET NO. E-13, SUB 178

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of Duke Energy Corporation and Nantahala Power and Light Company for Authorization under North Carolina General Statute Section 62-111 to Combine Nantahala Power and Light Company and Duke Power, a Division of Duke Energy Corporation	)	ERRATA ORDER

BY THE PRESIDING COMMISSIONER: On April 8, 1998, the Commission issued an Order Approving Combination of Nantahala Power and Light Company and Duke Energy Corporation and Transfer of Nantahala Franchise in the above-captioned matter.

The Commission has discovered a typographic error in said Order. The Presiding Commissioner finds good cause to order the correction of that error.

IT IS, THEREFORE, ORDERED as follows:

1. That the heading on page 4 of the Order of April 8, 1998, is hereby amended to read "EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NO. 1-7."

2. That except as amended herein, the Order of April 8, 1998, shall remain in full force and effect.

ISSUED BY ORDER OF THE PRESIDING COMMISSIONER.
This the 15th day of April, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-38, SUB 3
DOCKET NO. G-40

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of Frontier Utilities of North Carolina, Inc., and Frontier Energy, LLC, for Approval of Final Financing Plan, to Transfer Certificates, and for Approval or Waiver of Security Bond	))))))	ORDER APPROVING FINAL FINANCING PLAN, TRANSFER OF CERTIFICATES, AND SECURITY BOND AND PRELIMINARILY APPROVING DEBT FINANCING

BY THE COMMISSION: Frontier Utilities of North Carolina, Inc. (Frontier Utilities), was granted a certificate of public convenience and necessity by this Commission to serve the Four-County area of Surry, Watauga, Wilkes, and Yadkin Counties by Order dated January 30, 1996, in Docket Nos. G-38 and G-9, Sub 357. The North Carolina Supreme Court affirmed this Order by opinion filed July 24, 1997, which became final on November 11, 1997, by the expiration of the deadline to file for review by the United States Supreme Court. Ashe and Allegheny Counties were added to Frontier Utilities' territory pursuant to G.S. 62-36A(b1) by Order dated August 16, 1996, in Docket No. G-100, Sub 69. The certificate to serve Warren County was awarded to Frontier Utilities by Order dated March 27, 1997. The Orders awarding the Four-County area and Warren County to Frontier Utilities required it to file its final financing plan within nine months of the date the Four-County Order became final.

On January 23, 1998, Frontier Utilities and Frontier Energy, LLC (Frontier Energy), filed an application (a) for approval of their final financing plan, including the participation of Frontier Pacific, Inc., as an equity partner and the formation of Frontier Energy; (b) for approval of approximately $12 million in equity investment, including $3.25 million in cash deposited on January 21, 1997, in Frontier Energy's account with NationsBank in Elkin, North Carolina, $5 million in transmission pipe that has already been ordered, and $3.25 million in capital and in-kind contributions by Frontier Utilities; (c) for preliminary approval to borrow up to $40 million principal in debt; (d) to transfer the certificates of public convenience and necessity awarded to Frontier Utilities to serve Surry, Watauga, Wilkes, and Yadkin Counties (the Four-County area), Ashe and Allegheny Counties, and Warren County to Frontier Energy; and (e) for approval or waiver of a security bond.

Under the proposed financing plan as filed, Frontier Utilities and Frontier Pacific, Inc., will be fifty-percent (50%) members of a newly formed entity, Frontier Energy, LLC. Frontier Pacific, Inc., is a wholly-owned subsidiary of Energy Pacific, LLC, which is a joint venture of two companies that have extensive experience in natural gas distribution.

By Order dated February 3, 1998, the Commission established a deadline of February 24, 1998, for petitions to intervene and the filing of written comments. The Public Staff and the Attorney General filed comments. One letter dated February 20, 1998, was filed on behalf of the Warren

County Economic Development Commission, and it raised concerns about the timing of service to Warren County.

The Public Staff's comments indicated that its investigation of Frontier Energy's market studies revealed that the Four-County project as proposed by Frontier Energy is comparable in scope and size to the project as originally proposed in 1994. Frontier Energy has already ordered transmission pipe and begun the process of right-of-way selection and acquisition. Construction will begin as soon as financing is closed.

In response to a Public Staff data request about its plans with respect to Warren County, Frontier Energy indicated that it had focused its resources on the Four-County area initially and that because of the substantial lead time involved in due diligence and the planning process, its plans for Warren County could not be implemented as soon as its plans in the Four-County area. Frontier Energy further indicated that it expects to file plans to build the Warren County system no later than August 11, 1998. In addition, it indicated that it had received a formal proposal for interstate pipeline capacity from Public Service Company of North Carolina, Inc., on February 20, 1998. Finally, it indicated that it intends to build the system substantially in conformance with Frontier Utilities' proposal as filed in 1996, and that based on (1) the assumption that a reasonable agreement for interstate pipeline capacity can be finalized and (2) weather conditions and other variables beyond its control, it expects to begin construction during the latter part of 1998, with completion during the first half of 1999.

With respect to Ashe and Alleghany Counties, Frontier Energy has indicated that it intends to serve Ashe County soon after it completes its Warren County project. Alleghany County will receive service as soon thereafter as possible.

With respect to the financing issues, the Public Staff's comments indicated that it is reasonable to grant approval of the debt financing in two stages as proposed by Frontier Energy, subject to certain specific requirements for information being imposed on the second stage of the approval process. In addition, the comments indicated that, with the Public Staff's recommended wording change, the equity financing should be approved.

Frontier Energy filed an executable security bond as required by the Commission in its Orders granting the certificates to Frontier Utilities for the Four-County area and for Warren County, but requested that the security requirement be waived. The purpose of the bond, as explained in those orders, is to provide funds if an emergency operator is appointed by the Commission and the funds are needed for the emergency operator to reliably run the system. Frontier Energy requested that the bond requirement be waived because the reputation, experience, financial strength, and other resources of Energy Pacific and its corporate parents obviate the need for such security. In its comments, the Public Staff did not make a recommendation as to the security requirement and stated that it would not object to the Commission waiving the security requirement

Finally, the only outstanding issue at the time the Public Staff filed its comments was whether Frontier Energy could be considered to be part of a registered holding company under the Public Utility Holding Company Act of 1935 (PUHCA). The Attorney General's comments also stated concerns about the potential PUHCA issue and about the books and records of Frontier Energy and its affiliates being subject to full disclosure. A stipulation between the Public Staff and Frontier Energy, Frontier Pacific, its ultimate parent companies, and Frontier Utilities on both of these issues was filed on Monday, March 9, 1998.

The Public Staff presented this matter to the Commission at its Staff Conference on Monday, March 9, 1998. Allen Kimball of the Warren County Economic Development Commission made a statement along the lines of his February 20, 1998 letter.

Based on Frontier Energy's agreement to the changes and conditions recommended by the Public Staff and the stipulation, the Public Staff recommended that the Commission (a) approve Frontier Utilities' and Frontier Energy's final financing plan, including the participation of Frontier Pacific, Inc., as an equity partner and the formation of Frontier Energy; (b) approve $11.5 million in equity investment; (c) preliminarily approve up to $40 million in debt financing that is consistent with the terms outlined in its application; and (d) approve the transfer of the certificates of public convenience and necessity awarded to Frontier Utilities to serve Surry, Watauga, Wilkes, and Yadkin Counties (the Four-County area), Ashe and Allegheny Counties, and Warren County to Frontier Energy. The Public Staff further recommended that if the Commission grants preliminary approval of the debt financing as proposed, it should be subject to Frontier Energy (1) filing the Commitment Letter(s) and Term Sheet(s) of the final debt financing and (2) providing all requested additional information with respect thereto. Finally, the Public Staff recommended that, if the Commission decided to continue the requirement for the security bond, a security bond of a short-term nature should be all that is required. The Public Staff therefore recommended that, if the Commission requires a security bond, it be set up so that it expires (i.e., has a sunset provision) two years from the date the first customer is served unless the Commission takes affirmative action to require that it be renewed.

Based on the foregoing, the Commission concludes that the January 23, 1998, application should be approved as recommended by the Public Staff and as discussed herein. With respect to the security requirement, the Commission concludes that the requirement of a security bond should not be waived. However, given the experience and financial strength of Energy Pacific and its parents, the security bond required in this case should be of a short-term nature. Frontier Energy should file an executable bond within 30 days of this Order that is set up so that it expires (i.e., has a sunset provision) two years from the date the first customer is served unless the Commission takes affirmative action to require that it be renewed. Frontier Energy is required to execute the bond by the date on which its first natural gas utility customer is served and to file copies of such executed security within ten (10) days of such execution.

IT IS THEREFORE ORDERED as follows:

1. That Frontier Utilities' and Frontier Energy's final financing plan, including the participation of Frontier Pacific, Inc., as an equity partner and the formation of Frontier Energy, and the stipulation between the Public Staff and Frontier Energy with respect to PUHCA and access to utility-related books and records are approved;

2. That the capitalization of Frontier Energy with an equity investment of $11.5 million is approved;

3. That $40 million in debt financing that is consistent with the terms outlined in the January 23, 1998, application is preliminarily approved;

4. That the transfer of the certificates of public convenience and necessity awarded to Frontier Utilities to serve Surry, Watauga, Wilkes, and Yadkin Counties (the Four-County area), Ashe and Allegheny Counties, and Warren County to Frontier Energy is approved;

5. That the debt financing as approved herein is subject to Frontier Energy (1) filing the Commitment Letter(s) and Term Sheet(s) of the final debt financing and (2) providing all requested additional information with respect thereto within 60 days of the date of this Order;

6. That the financing is required to be closed as soon as possible after the Commission grants approval of Frontier Energy's final debt financing, but no later than 60 days following the date such approval becomes final; and

7. That Frontier Energy shall file an executable bond within 30 days of this Order that is set up so that it expires (i.e., has a sunset provision) two years from the date the first customer is served unless the Commission takes affirmative action to require that it be renewed. Frontier Energy is required to execute the bond by the date on which its first natural gas utility customer is served and to file copies of such executed security within ten (10) days of its execution.

This the 9th day of March, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-41, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by the City of Toccoa,	)	
Georgia, and the Municipal Gas Authority	)	ORDER GRANTING CERTIFICATE
of Georgia for a Certificate of Public	)	OF PUBLIC CONVENIENCE AND
Necessity to Construct, Own and Operate	)	AND NECESSITY TO THE CITY OF
an Intrastate Pipeline and Local Distribution	)	TOCCOA AND THE MUNICIPAL
System and for Approval of Rates	)	GAS AUTHORITY OF GEORGIA

HEARD IN: Macon County Courthouse, Five West Main Street, Franklin, North Carolina, on Thursday, September 17, 1998, and

Commission Hearing Room, Dobbs Building, 430 Salisbury Street, Raleigh, North Carolina, on Wednesday, October 14, 1998

BEFORE: Chair Jo Anne Sanford Presiding; Commissioners Ralph A. Hunt, Judy Hunt, J. Richard Conder, and Robert V. Owens Jr.

APPEARANCES:

For the City of Toccoa and Municipal Gas Authority of Georgia:

Nancy Bentson Essex, Attorney at Law, Poyner & Spruill, L.L.P., Post Office Box 10096, Raleigh, North Carolina, 27605, and Robert J. Middleton, Jr., Alston & Bird LLP, 1201 West Peachtree Street, Atlanta, Georgia 30309

For the Using and Consuming Public:

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

Margaret A. Force, Assistant Attorney General, NC Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On July 6, 1998, the City of Toccoa, Georgia (Toccoa) and the Municipal Gas Authority of Georgia (the Gas Authority) filed a joint application for a certificate of public convenience and necessity to construct, own and operate a natural gas pipeline and local distribution system and for the establishment of rates. The proposed project (the Toccoa Project) involves the construction of 58 miles of pipeline from Toccoa, Georgia, to Franklin, North Carolina, and the construction of a distribution system in Franklin, North Carolina, as well as in certain Georgia communities.

On July 20, 1998, Public Service Company of North Carolina, Inc. (PSNC), filed a Motion to Intervene and Comments. On August 7, 1998, the Attorney General filed Notice of Intervention. On September 21, 1998, the Town of Franklin filed a Motion to Intervene. These motions to intervene were subsequently allowed.

On July 22, 1998, the Commission issued an Order Scheduling Hearing, Requiring Public Notice, and Setting Procedural Schedule and an Order Revising Notice of Hearing.

A public hearing was held as scheduled in Franklin, North Carolina, on September 17, 1998. Twenty-three individuals spoke at the hearing and all supported the application and proposed project.

On October 14, 1998, Toccoa and the Gas Authority (the Applicants) and the Public Staff filed a Stipulation.

The matter came up for hearing in Raleigh on October 14, 1998, as previously noticed and scheduled.

Toccoa and the Gas Authority presented the testimony of a panel consisting of the following witnesses: Arthur C. Corbin, President and General Manager of the Gas Authority; Eric J. Habecker, Project Manager, Jordan, Jones & Goulding; William L. DeFoor, Jr., Toccoa Utilities Director; William E. Lewis, Toccoa City Manager, and Chris Strippelhoff, Director of Member Services for the Gas Authority.

The Public Staff presented the testimony of a panel consisting of the following witnesses: Eugene H. Curtis, Jr., Director, Natural Gas Division; Thomas W. Farmer, Jr., Director, Economic Research Division; and James G. Hoard, Supervisor, Natural Gas Section, Accounting Division.

Based on the application, the Stipulation between Applicants and the Public Staff and the testimony and exhibits offered at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. Toccoa is a municipal corporation created by the laws of the State of Georgia and is located in northeast Georgia, approximately 60 miles south of Franklin. Toccoa owns and operates a natural gas distribution system that serves not only its home county, Stephens County, but also portions of Elbert County, Hart County and Franklin County in Georgia. It has over 5,800 customers and 198 miles of distribution lines with an annual throughput of approximately 1.4 Bcf.

2. The Gas Authority is a public corporation and instrumentality of the State of Georgia, created pursuant to the Municipal Gas Authority of Georgia Act, O.C.G.A. § 46-4-80, *et seq.* It purchases natural gas from suppliers and sells the natural gas at wholesale to Toccoa and a number of other political subdivisions of the State of Georgia that own and operate gas distribution systems. It also provides natural gas at wholesale to political subdivisions in Florida and Alabama that own and operate gas distribution systems. Its total annual throughput is approximately 42 Bcf. It is the full requirements wholesale gas supplier for Toccoa.

3. There is a public demand and need for natural gas service in Macon County, particularly in the area within and surrounding the municipal boundaries of Franklin.

4. Macon County is assigned to PSNC but PSNC does not provide gas service anywhere in the county at this time and does not believe that expansion into Macon County is economically feasible for it at this time; nor will it be for the foreseeable future. PSNC does not object to having Macon County reassigned to Toccoa with a proviso that the county will be reassigned to PSNC *nunc pro tunc* if the Toccoa Project is not constructed and Toccoa fails to commence service within a reasonable time. There is no other gas distribution company in North Carolina in a position at this time to serve Macon County without the use of expansion funds.

5. It is the policy of the State of North Carolina, as evidenced by the enactment of G.S. § 62-2(9), § 62-36A and subsequent amendments, and § 62-158, to encourage and facilitate the extension of natural gas service into all counties in the State. It is also the policy of the State to encourage the expansion of natural gas service through traditional means of financing.

6. The Gas Authority proposes to construct approximately 58 miles of pipeline from Toccoa to Franklin, approximately 12 miles of which will be in North Carolina. The pipeline will run

from Toccoa north along a route generally paralleling U.S. Highway 441 to its terminus in Franklin. The Gas Authority will also build six distribution systems, five of which will be in Georgia cities and one in Franklin. It will lease the entire Toccoa Project to Toccoa and later convey it to Toccoa when the bonds sold to finance the project are paid. Toccoa will operate and maintain the Project.

7. After completion of the Toccoa Project, Toccoa will be in a position to offer natural gas throughout the areas of highest population density in Franklin. In addition, farm taps and/or limited distribution facilities will be constructed parallel to the pipeline so that Toccoa will be in a position to serve potential customers in southern Macon County. Toccoa will be willing to serve unincorporated areas of Macon County that are not in proximity to US 441 south of Franklin where such service is financially feasible.

8. The Toccoa Project can be constructed without the need for significant land acquisition. The pipeline will be laid in public easements along US 441. The pipe for the distribution system will be located in the right-of-way along public streets and roads.

9. Toccoa has a reasonable expectation of a significant customer base in Macon County and also other areas to be served by the lines constructed as part of the Toccoa Project.

10. The Gas Authority estimates that the cost of the Toccoa Project will be no more than $24,000,000, including the cost of construction and additional costs for capital equipment, financing costs, project management, and market development. This cost estimate is reasonable.

11. The Gas Authority proposes to finance the project through the issuance of revenue bonds and the lease payments from Toccoa will be used to pay the debt service. The Applicants' proposed financing plan is reasonable. The final debt financing will be considered in a separate docket.

12. Based on current estimates of costs and revenues, the Toccoa Project is an economically feasible project.

13. The Gas Authority intends to begin construction of the Project within a reasonable time and has a construction timetable that is realistic and will allow Toccoa to commence providing service in Franklin by the fall of 1999.

14. The design of the proposed system allows sufficient capacity to provide for the anticipated need for natural gas within the next 20 years. In addition, the design provides for a system that will be reasonably reliable and durable.

15. The Applicants have the technical ability to install, maintain and repair the proposed system and operate it reliably.

16. The Toccoa Project will meet all federal and state pipeline safety requirements.

17. The Stipulation between Applicants and the Public Staff provides reasonable estimates of revenues and expenses. Based on the estimated revenues and expenses, the rates described in the

Stipulation would be fair and reasonable rates for Toccoa's North Carolina customers and would be competitive with alternate fuels. In fact, Toccoa intends to offer initial rates that are equal to those offered to its out-of-city customers in Georgia, which rates are significantly lower than the rates set forth in the stipulation agreement.

18. The Gas Authority has the ability to obtain adequate, reliable and reasonably priced interstate capacity, peaking services and gas supplies.

19. The Applicants should be granted certificates of public convenience and necessity to construct, operate and maintain the Toccoa Project and to provide natural gas service in Macon County and the certificate assigning Macon County to PSNC should be withdrawn. The Maximum Rates as filed in the Stipulation, are fair and reasonable rates for Toccoa. In accordance with Paragraph 7 of the Stipulation, the Maximum Rates will be revised and filed 30 days after the closing of the debt financing to reflect rates based on the actual cost of debt. In addition, Toccoa's tariff must be revised to conform with all Commission rules regarding the procedures to be followed in charging customers for service.

20. To accommodate the fact that Toccoa is regulated locally in Georgia, and not regulated at the state level except for safety jurisdiction, and thus can make rate adjustments in that state without having to obtain prior approval from any state regulatory body, it is reasonable to allow Toccoa to adjust its rates without Commission approval as long as the rates are not above the rates set forth in the Stipulation (which rates will be referred to as the Maximum Rates). However, if Toccoa intends to offer rates lower than the Maximum Rates when it commences services, it should be required to give clear, explicit notice to all prospective customers of the fact that it has authorization to charge any rates up to and at the level of the Maximum Rates. In addition, it should be required to give notice to its customers and to the Commission before it increases its rates. Further, it is required to seek approval from the Commission pursuant to the Commission's established rules and regulations to charge any rates above the level of the Maximum Rates.

21. Toccoa changes the purchased gas component of its rates each month based on a rolling 12-month average of incurred gas costs. This procedure insures that its rates reasonably reflect gas costs, and accordingly Toccoa should not be required to file a request with the Commission pursuant to Commission Rule R1-17(k) for permission to change the gas cost elements in its rate schedule. In addition, it should not be required to give notice to customers or the Commission before adjustments are made to the purchased gas component of its rates. Also, it should not be required to maintain a deferred gas cost account.

22. Toccoa may discount its Alternate Fuel rate as needed to compete with alternate fuels. This method of adjusting rates to compete with alternative fuels is reasonable and should be approved.

23. The proposal to have Toccoa lease, operate and maintain the Toccoa Project facilities is reasonable and should be approved.

24. There is no need to have the Gas Authority and Toccoa post a bond to secure the performance of their obligations to construct and operate the proposed system.

25. The Gas Authority should be given twelve (12) months from the time this Order becomes final in which to issue the proposed bonds and commence construction of the Toccoa Project. In the event the Gas Authority is unable to arrange financing for the project and commence construction within this time, the certificate issued hereby should expire and become null and void, and the Commission should issue an order reinstating the certificate of PSNC *nunc pro tunc*.

26. Toccoa should be given twenty-four (24) months in which to commence service of natural gas in Macon County. If it is unable to commence service within this time and the time is not extended by the Commission, the certificate issued hereby should expire and become null and void, and the Commission should issue an order reinstating the certificate of PSNC *nunc pro tunc*.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1-2

The evidence supporting these findings of fact is contained in the application and the testimony filed by the Applicants and is uncontroverted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

There is no question about the public need for natural gas in Macon County. There is no local distribution company serving the county at this time and never has been. The county is assigned to PSNC, but in filings with this Commission, PSNC has indicated it is not economically feasible for it to expand its lines into Macon County. Meanwhile, the testimony of the public witnesses at the hearing in Franklin on September 17, 1998, showed the public need for natural gas. At this hearing, 23 witnesses from Macon County testified in support of the application and no one spoke against it. Among the witnesses were elected representatives of the Town of Franklin and Macon County. Some witnesses stated they owned businesses and desire to use natural gas in their production process. Several witnesses who are experienced in economic development also testified that the availability of natural gas would encourage other industries to locate in the area. The testimony also showed a demand for natural gas on the part of residential customers. The witnesses at the hearing stated that natural gas would be cheaper than propane gas, would be cleaner, and would have other benefits.

In addition, Applicants included in their application a letter from the president of Nantahala Power & Light Company (Nantahala), the electric supplier in Macon County, stating that the power company supports the project because it believes the availability of natural gas will enhance the prospects for economic development in the area. Nantahala sponsored a witness at the hearing to testify in this regard.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

The Commission assigned Macon County to Public Service in Docket G-100, Sub 70 when it implemented a directive from the legislature requiring it to assign all previously-unassigned counties to a local distribution company. However, as stated above, Public Service has informed the Commission that it is not economically feasible for it to expand into Macon County at this time; nor will it be until there is substantially more development in the county. In Docket G-100, Sub 70, no other company expressed a desire to serve Macon County, with or without the use of expansion funds. Public Service filed a motion to intervene in this docket in which it stated that it is willing to relinquish its certificate to serve Macon County if Toccoa is willing to serve the county without the use of monies from an expansion fund and if Toccoa actually provides service within the time specified by the Commission. Public Service stated that any order authorizing Toccoa to serve the county should provide that Public Service's certificate of public convenience and necessity will be reinstated *nunc pro tunc* if the Gas Authority and Toccoa do not construct the Toccoa Project and commence service within the time specified by the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

The General Assembly has for years been investigating ways to promote the expansion of natural gas infrastructure in North Carolina. In 1989, it enacted G.S. § 62-36A to enable it to explore the status of natural gas service in the State and the reasons that certain areas remained unserved. This statute requires the LDCs to submit reports every two years detailing their plans for providing natural gas service to areas of their territories in which such service is not available. The Commission and the Public Staff are required to analyze and summarize these reports independently and provide their analyses to the General Assembly. Following the receipt of reports and analyses in 1990, the General Assembly enacted G.S. § 62-2(9), which states that it is the policy of North Carolina "[t]o facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State." and G.S. § 62-158, which authorizes the Commission to order a natural gas local distribution company to create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas within the company's franchised territory that otherwise would not be feasible for the company to construct. In 1995, the General Assembly enacted amendments to G.S. § 62-36A which required the Commission to assign all areas of the State to a local distribution company. The General Assembly also provided that if the franchised local distribution company had not extended service into a county within its franchised territory within three years of the time it was assigned the territory, it would forfeit its exclusive franchise rights in that county. Finally, in 1998, the legislature decided to submit a proposal to the State voters that the State sell bonds to raise funds that could be used for gas expansion in the unserved areas of the State.

The Commission has found previously that it is in the public interest and in accordance with the public policy goals of this State to pursue gas expansion through traditional financing means if such an alternative is reasonably available. See the Commission's Order dated January 30, 1996, in Docket G-38 and G-9, Sub 357, where the Commission granted a certificate of public convenience and necessity to Frontier Utilities of North Carolina, Inc. (Frontier) authorizing it to provide natural gas service in Surry, Watauga, Wilkes and Yadkin Counties. Frontier had not previously provided natural gas service in this State. Piedmont Natural Gas Company, Inc., had also applied for authority to serve the four counties in question, but had indicated it would use expansion funds to expand its lines into this area. The Commission found that it would be inappropriate to grant a certificate premised on the use of expansion fund financing where another applicant for a certificate to serve the same area has offered credible evidence that adequate service can be provided without such non-traditional financing. In addition, it took note of the Public Staff's testimony showing a limited availability of expansion funds and a need for alternate sources of funding, such as sources available to new local distribution companies not presently serving in the State.

The Commission finds that it would be consistent with this public policy to authorize the Gas Authority and Toccoa to bring natural gas service into Macon County, rather than requiring PSNC to use expansion funds to expand its lines into this territory.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACTS NO. 6-9

The evidence for these findings of fact is contained in the testimony of the Applicants. According to this testimony, Toccoa retained the engineering firm of Jordan, Jones & Goulding, Inc. (JJ&G) to help evaluate the physical requirements of the project. The plans call for construction of approximately 58 miles of 8-inch diameter steel pipeline for the transmission of natural gas from Toccoa, Georgia, north along a route generally paralleling U.S. Highway 441 to its terminus in Franklin, North Carolina. Approximately twelve miles of the supply line will be in North Carolina. The North Carolina portion of the pipeline will be laid along the North Carolina Department of Transportation's right-of-way and, therefore, very little, if any, private easements will be required. In addition to the construction of the natural gas transmission line, the Project entails the construction of six distinct gas distribution systems, five in the Georgia communities of Tallulah Falls, Tiger, Clayton, Mountain City, Dillard, and one in Franklin, North Carolina. The Franklin distribution system will be constructed with approximately 119,980 linear feet of 4-inch medium density polyethylene pipe and approximately 154,180 linear feet of 2-inch medium density polyethylene pipe. The pipe will be laid in the public right-of-way along streets and roads.

The 4-inch pipe in Franklin will divide the town into zones and 2-inch pipe will extend into each zone. The distribution system will be designed to serve the principal commercial, industrial and residential areas and will have the capability to be extended to other interested industrial, commercial and residential customers in the future. In addition, the Gas Authority will construct farm taps and/or limited distribution facilities parallel to the transmission line in southern Macon County where there is sufficient population density at this time. Unincorporated areas of Macon County that are not in proximity to US 441 south of Franklin will be served where it is financially feasible.

The Gas Authority will own the facilities constructed in the Toccoa Project and lease them to Toccoa. The lease payments will be used to pay the debt service on the bonds that will be sold to finance the project. When the bonds have been paid, the facilities will be conveyed to Toccoa.

Toccoa engaged the consulting firm of Resource Management International, Inc. (RMI), to conduct a market assessment study of the areas to be served by the Toccoa Project. This market assessment study indicated that Toccoa could add over 4,000 customers and nearly 0.5 Bcf of annual load within the first three years of operation; 6,000 customers and 671,000 Mcf of annual load within five years and over 7,500 customers and 825,000 Mcf of annual load within ten years. Since then, Toccoa has revised its projections so that it expects to have 4,397 customers by the end of year five. In Franklin, Toccoa expects to have 3,633 customers by year five. These projections were made without anticipating the existence of any interruptible loads from industrial customers since there is limited industrial development in the area at this time.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

The Gas Authority presented the projected cost of the Toccoa Project in its application and testimony. A revised summary of capital costs dated September 14, 1998, predicted a cost of $19,965.426, with $17,884,868 of the cost attributable to the North Carolina portion of the construction. After review by the Public Staff, the Applicants and the Public Staff filed a Stipulation that estimated the projected cost of the project at $20,857.184, with $17,255,301 attributable to the North Carolina portion. The Applicants presented testimony showing that the construction cost estimate was developed using input from contractors and material suppliers, as well as third party reviewers. JJ&G retained RMI to perform a cost and engineering oversight review and R. Powell & Associates to perform a technical review. Aspects of both reviews were incorporated into the final cost estimate. In the Stipulation, the Public Staff agreed that the cost estimate as revised in that Stipulation was a reasonable cost estimate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence regarding the proposed method of financing is contained in the application and testimony of the Applicants. The Gas Authority intends to issue revenue bonds totaling up to $24,000,000 to finance the project. Toccoa will make lease payments to pay the debt service on the bonds. The bonds will have a term of 20 to 25 years and will be sold by A.G. Edwards & Sons, Inc. to institutional and retail buyers on a local, regional and national basis.

The Gas Authority already is an active participant in the tax-exempt bond marketplace with over $800 million in bonds issued since 1991 representing 17 separate transactions. The Gas Authority has also served as a financial consultant for over $174 million in gas revenue bonds for another joint-action agency, the Tennessee Energy Acquisition Corporation. No testimony was presented raising any question about the ability of the Gas Authority to sell the bonds needed to finance the project. Applicants filed an application for approval of the bond proposal, and this application was assigned to Docket G-41, Sub 1.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The Applicants represented in their application that the Toccoa Project was economically feasible. The Public Staff reviewed the construction cost estimates, market projections and financial data, and presented a net present value computation based on the information from Toccoa. This computation indicated that the project is economically feasible, with a positive net present value of $2,424,700 after 30 years.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The witnesses for the Applicants stated that the Gas Authority intends to begin construction of the transmission facilities in early 1999 and construction of the distribution facilities in North Carolina in mid-1999. The proposed in-service date for the Toccoa Project is Fall 1999. However, the witnesses also said that service will be made available as sections of the Toccoa Project are completed. The supply line and Franklin distribution system will be awarded in separate contracts. There was no testimony presented raising any question about the feasibility of the construction schedule.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The witnesses presented by the Applicants showed that the Toccoa Project was designed to meet the projected demand for the next twenty years. Using the projected flow requirements, JJ&G determined that a 6-inch diameter pipe would be unable to handle the future load and that a 10-inch pipe would not be cost-effective. Thus, it was determined that an 8-inch diameter pipe would be the optimum pipe size. This design appears to be reasonable. Witness Habecker testified that the Applicants have had no discussions with Public Service about using the line to serve other western counties but he said the system was designed so that the capacity could be expanded if there were a need to accommodate additional growth in Macon County.

The Applicants' witnesses presented extensive information about the nature of the materials that will be used in the construction and the Public Staff indicated it is satisfied that the system will be durable and reliable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Toccoa will be supervising the construction of the Toccoa Project. According to the testimony of the Applicants, Toccoa has experience in the construction of natural gas transmission lines. When it first established its gas system, it had to construct a 32-mile transmission line to interconnect with Transco's mainline in Elbert County, Georgia. Since then, it has constructed over 198 miles of distribution line. The Gas Authority provides services that will assist Toccoa in the development of the Project, such as market planning and project management. Toccoa also has ample experience in the operation of a local distribution system. It presently serves over 5,800 customers with an annual throughput of approximately 1.4 Bcf. Its natural gas department has approximately 20 employees. It has restructured its staff so that its utility director will be able to devote all of his time to the gas department, whereas he previously also worked on water and sewer matters. Toccoa also has a finance department, accounting department, planning department and a City Engineer. In addition, it can call on the Gas Authority and JJ&G for assistance as needed. The Gas Department handles new main installations and repairs, new service installation, valve, regulator and meter installation, maintenance and repair; cathodic protection installation, maintenance and repair; and minor appliance service and repair. Major construction and repair projects are normally accomplished using outside contractors. Large meters are tested annually by an outside contractor. Toccoa plans to establish a satellite Gas Department office between Clayton, Georgia and Franklin and a local contact point in Franklin. It will provide 24-hour on-call service for emergency service and will have service technicians in Franklin, as well as in Toccoa, which is less than one hour away. The Commission finds that the Applicants have the experience and expertise necessary to provide adequate service and will have the ability to adequately handle installations, maintenance and repairs.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

The testimony presented by the Applicants indicated the Toccoa project is being designed in accordance with the U.S. Department of Transportation's Pipeline Safety Regulations C.F.R. 49 Parts 191-192. The Public Staff testified that it was satisfied all federal and state pipeline safety requirements would be met in conjunction with the design and construction of the system.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 17

In their application, the Applicants provided estimates of the revenues and expenses Toccoa will experience in the first five years of operating the North Carolina system and asked the Commission to approve certain rates (called Maximum Rates) on the basis of those revenue and expense estimates. They stated that Toccoa intends initially to charge lower rates that are equal to those charged to customers in Georgia who do not live within the Toccoa city limits; but that it sought authority to charge any rates at or below the Maximum Rates. The Public Staff witnesses raised certain questions about the projections of the Applicants and recommended adjustments in the Maximum Rates. However, in the Stipulation filed with the Commission, the Applicants and the Public Staff stated that they had reached agreement on an appropriate level of Revenue Requirement and Maximum Rates. No parties objected to these revised Maximum Rates and the Commission finds that the Maximum Rates reflected in the Stipulation or any rates lower than the Maximum Rates would be fair and reasonable rates for North Carolina customers. The Toccoa out-of-city rates will be charged initially and are substantially lower than the Maximum Rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 18

The evidence to support this finding of fact was presented by the Applicants in their testimony. This testimony showed that the Gas Authority has in excess of 200 Bcf of long-term gas supply purchased from major suppliers to meet the needs of its members. Its suppliers include Apache Corporation, Acquila Energy, Columbia Energy Services and Texaco, all of which have a record of providing reliable service. The Gas Authority supplements these gas supplies as needed. The Gas Authority has also negotiated firm transportation, storage and peaking supplies for its members.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

In the proceeding concerning the application of Frontier to serve Warren County, the Public Staff identified twelve factors that should be evaluated to determine whether an application to serve an unserved county should be approved. The evidence discussed above covers all of these factors and the Commission has made positive findings with respect to all factors. Accordingly, the Commission finds that it is in the public interest to grant a certificate of public convenience and necessity to the Applicants for the construction and operation of the Toccoa Project and for the sale of natural gas to customers to be served by the Toccoa Project. Since the certificate will give Toccoa a franchise to serve Macon County, the existing certificate assigning the county to Public Service should be withdrawn.

The Maximum Rates described in the Stipulation are reasonable and will be revised subsequent to the execution of the debt financing. The final cost of debt will be set at the actual cost of debt that results from the closing of the long-term debt for the project, which is expected to be early 1999. The final cost of equity will be 400 basis points above the final cost of debt. The Revenue Requirement and Maximum Rates will be revised and filed with the Commission to reflect these final debt and equity cost rates no later than 30 days after the closing of the long-term debt. In addition, Toccoa has represented to the Commission that it will revise its proposed tariff to conform with all statutes and Commission rules governing the procedures to be followed in charging for service to customers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 20

The Applicants presented testimony showing that in Georgia, they are not regulated by the state's commission that regulates other public utilities. Thus, Toccoa does not have to seek approval before it can increase its rates and does not maintain a staff to handle rate approval submissions. It asked this Commission to approve a procedure that would allow it to have some flexibility to adjust the rates charged to its North Carolina customers without having to seek approval from this Commission. Applicants and the Public Staff both endorsed a proposal that would allow Toccoa to charge any rates at or below the level of the Maximum Rates without having to seek approval from the Commission. This proposal was explained in the Stipulation between the Applicant and the Public Staff as follows:

> **Adjustment of Initial Rates.** The Stipulating Parties agree that Toccoa should be allowed to adjust its Initial Rates upward or downward without securing prior approval from the Commission, so long as the rates charged by Toccoa remain at or below the Maximum Rates. Toccoa shall provide notice to the Commission of changes in the rates from the Maximum Rates by filing new rate schedules and their proposed effective date at least 60 days prior to the proposed effective date of the new rates. Toccoa shall also notify its customers of rate increases by way of a bill insert which shall be included in the billing cycle that begins 45 to 60 days before the effective date of the decrease in the discount. Notice of an increase in the discount (rate decrease) may just be printed on the bills. The foregoing shall apply to adjustments to Toccoa's: (I) Monthly Facilities Charge (Basic Service Charge), and (ii) Non-Gas Energy Charge Per dt (Volumetric Charge). It is the intention of the Stipulating Parties that Toccoa's twelve-month rolling average Purchase Gas Adjustments (PGA) clause will be used to adjust the gas cost portion of its customers' bills each month without prior approval of the Commission.

Although this procedure has not been approved previously by this Commission and differs from the requirements of Commission Rule R1-17, the Commission finds that it has authority under the General Statutes to approve such a procedure and that this procedure would be reasonable and in the public interest in these unique circumstances. The Commission agrees with the Public Staff that Toccoa should be required to give public notice before it commences offering service in North Carolina that it has the authority to increase its rates up to the level of the Maximum Rates. Toccoa should also be required to provide written notice to customers in a bill insert before a rate increase, and also to provide written notice to the Commission. The Public Staff or any other interested person could petition the Commission at any time for an investigation into whether the level of the Maximum Rates should be changed. In addition, Toccoa would have to seek approval from this Commission, under the procedures set forth in Rule R1-17, for any rates higher than the Maximum Rates approved in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 21-23

The local distribution companies (LDCs) presently providing natural gas service in North Carolina follow the procedures set forth in Rule R1-17(k) with regard to adjustments in their rates to reflect changes in the cost of gas. This rule requires the LDCs to seek approval of rate adjustments to reflect changes in Purchased Gas Costs. The LDCs keep track of their actual gas costs and the Commission conducts an annual review to compare the actual costs to the costs recovered from the utility's customers. If the prudently incurred costs are greater or less than the recovered costs, the Commission may allow or order appropriate adjustments in the utility's rates to refund overcharges or to collect for undercharges. Toccoa has a practice of adjusting its rates monthly to include as the cost of gas the average cost during the past 12 months. The Commission agrees with the Public Staff that with these procedures, the Toccoa rates reasonably reflect actual gas costs. Thus, the Commission concludes that it is appropriate for Toccoa to adjust its rates monthly to reflect changes in gas costs as reflected by the rolling average during the preceding 12-month period and that rates adjusted for this purpose and pursuant to this procedure will be fair and reasonable. The Commission finds that the Applicant's proposed procedure is reasonable and Toccoa should not be required to maintain a deferred gas cost account.

Presently, LDCs in North Carolina own their facilities. Given the unique circumstances of the arrangement between Toccoa and the Gas Authority, the Commission finds that the public interest will not be harmed by allowing the facilities to be owned by the Gas Authority and leased to Toccoa.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 24-26

The Public Staff did not propose that the Applicants be required to provide security for the project given the experience, expertise, and stability of the Applicants. The Commission agrees with this and accordingly does not believe it necessary to require the Applicants to post a bond to secure their performance. However, the Commission does believe that the Applicants should be given a restricted amount of time in which to complete the Toccoa Project and commence service in North Carolina. If the Applicants find it difficult to meet the time limits and have good reason for an extension, they may apply to the Commission for additional time. However, if the time limits are not extended and the Applicants fail to meet the time limits, their certificate issued pursuant to this order should be terminated and the franchise for Macon County should revert to PSNC. Based on the testimony regarding the proposed construction schedule, the Commission believes it is reasonable to require that construction should commence within twelve (12) months of the date of this Order and service should commence within twenty-four (24) months of the date of this Order. Since the Applicants are being granted a certificate to serve Macon County, the certificate of PSNC should be withdrawn.

IT IS, THEREFORE, ORDERED as follows:

1. That the Gas Authority and Toccoa are hereby awarded a certificate of public convenience and necessity, attached to this Order as Appendix A, to construct and own natural gas pipeline and distribution facilities in Macon County and to provide natural gas service in Macon County.

2. That the certificate issued to PSNC in Docket G-100, Sub 70, to provide natural gas service in Macon County is withdrawn.

3. That the Gas Authority and Toccoa shall have twelve (12) months from the date of this Order to arrange for the financing of the Toccoa Project and commence construction of the pipeline that will bring natural gas to North Carolina. If the Gas Authority and Toccoa do not meet this deadline and the time is not extended by the Commission upon a showing of good cause, the certificate of public convenience and necessity issued under this Order shall expire and the certificate assigning Macon County to PSNC shall be reinstated *nunc pro tunc.*

4. That Toccoa shall have twenty-four (24) months from the date of this Order to commence natural gas service in Macon County. If Toccoa does not meet this deadline and the time is not extended by the Commission upon a showing of good cause, the certificate of public convenience and necessity issued under this Order shall expire and the certificate assigning Macon County to PSNC shall be reinstated *nunc pro tunc.*

5. That Toccoa be authorized to charge North Carolina customers rates equal to or below the Maximum Rates as revised and filed with the Commission in accordance with Paragraph 7 of the Stipulation and this Order. This authorization is contingent on the filing of a tariff that conforms with all statutes and the rules of the Commission regarding the procedures to be followed in charging for service to customers.

6. That Toccoa is hereby required to give ample public notice before it commences offering service in North Carolina that it has the authority to increase its rates up to the level of the Maximum Rates.

7. That Toccoa be exempt from the provisions of Commission Rule R1-17(k) and also not required to maintain a deferred gas account. Toccoa is required to file monthly its new average cost of gas prior to beginning to charge rates that reflect those new gas costs. Further, that Toccoa be allowed to discount its Alternate Fuel rate as needed to compete with alternate fuels.

ISSUED BY ORDER OF THE COMMISSION
This the 8th day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. G-41, SUB 0

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

CITY OF TOCCOA, GEORGIA
AND THE
MUNICIPAL GAS AUTHORITY OF GEORGIA

are granted this

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

to provide natural gas utility service in Macon County, North Carolina

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

ISSUED BY ORDER OF THE COMMISSION.

This the 8th day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-3, SUB 211

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of NUI Corporation d/b/a NUI North Carolina Gas, for Approval of Gas Costs and Gas Purchasing Policies for the Period May 1, 1997 through April 30, 1998.	)))))	ORDER ON ANNUAL REVIEW OF GAS COSTS

HEARD IN: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on September 3, 1998.

BEFORE: Chair Jo Anne Sanford, Presiding; Commissioner Ralph A. Hunt and Commissioner Robert V. Owens, Jr.

APPEARANCES:

For NUI North Carolina Gas

James H. Jeffries IV, Amos, Jeffries & Robinson, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For the Public Staff:

Paul Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On July 1, 1998, NUI Corporation d/b/a NUI North Carolina Gas ("NUI North Carolina Gas" 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) for the period May 1, 1997 through April 30, 1998.

On July 13, 1998, the Commission issued its Order Scheduling Hearing and Requiring Public Notice. This Order established a hearing date of Thursday, September 3, 1998, set prefiled testimony dates, and required NUI North Carolina Gas to give notice to its customers of the hearing on this matter.

On August 18, 1998, Carolina Utility Customers Association, Inc. ("CUCA") filed a Petition to Intervene in this proceeding, and the Petition was subsequently granted by the Commission on August 19, 1998.

The direct prefiled testimony and exhibits of Company witnesses Raymond A. DeMoine and Darryl P. DeLauro were filed on July 1, 1998. Witness DeMoine filed a revision to his prefiled direct testimony and Exhibit "C" on July 15, 1998. Witness DeMoine subsequently prefiled rebuttal testimony on August 27, 1998. The direct prefiled testimony of Public Staff witnesses Eugene H. Curtis, Jr. and Henry Mbonu were filed on August 19, 1998. No other party filed testimony.

On September 3, 1998, the matter came on for hearing as scheduled in Raleigh, at which time the Commission was advised that there were no outstanding issues between the Company and the Public Staff, and that the Public Staff agreed that NUI North Carolina Gas' gas costs were properly accounted for and prudently incurred. The Commission was further informed that all parties had agreed to stipulate to the admission of all prefiled testimony and exhibits into the record without the appearance of witnesses and had further agreed to waive cross-examination with respect to such testimony and exhibits. Counsel for the Company and the Public Staff then offered, and the Commission accepted into evidence, 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 Corporate Reporting, Planning and Analysis.

For the Public Staff: (1) Eugene H. Curtis, Jr., Director, Natural Gas Division and (2) Henry Mbonu, Staff Accountant, Accounting Division.

Based on the testimony and exhibits received into evidence and the record as a whole, the Commission makes the following:

FINDINGS AND CONCLUSIONS

3. NUI North Carolina Gas 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.

4. NUI North Carolina Gas 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.

5. NUI North Carolina Gas 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).

6. NUI North Carolina Gas' 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.

7. The test period for review of gas costs in this proceeding is the 12 months ended April 30, 1998.

8. During the period of review, the Company incurred fixed gas costs of $2,304,408 and collected $2,406,232 in revenues attributable to these gas costs. Commodity gas costs incurred were $6,130,862 with related benchmark commodity cost collections equaling $7,153,566. Total gas costs collected were more than costs incurred by $1,481,890.

9. During the period of review, NUI North Carolina Gas incurred $329,567 in negotiated sales losses, returned $91,114 to its customers through existing temporary decrements and accrued $1,636 in interest income.

10. NUI North Carolina Gas' gas purchasing policies are prudent and NUI North Carolina Gas' gas costs and collections from customers during the review period were prudently incurred and properly accounted for.

11. NUI North Carolina Gas should be permitted to recover 100 percent of its prudently incurred gas costs.

12. The correct balances for the All Customer Deferred Account and the Sales Only Deferred Account at April 30, 1998 were credits of $188,982 and $ 509,801 respectively.

13. NUI North Carolina Gas currently has in place a temporary increment of $0.1201/dt relating to sales only customers and the following temporary decrements relating to all customers: 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).

14. Based upon the balances of the Company's deferred accounts at April 30, 1998, the current temporary increment and decrements in NUI North Carolina Gas' rates should be discontinued and a decrement of ($0.1411/dt) for sales only customers should be implemented and temporary decrements should be implemented for all customers as follows: Rate Schedule 101 (Residential) - ($0.0869/dt); Rate Schedule 102 (Small General) - ($0.0850/dt); Rate Schedule 104 (Large General) - ($0.0473/dt); Rate Schedule 105 (Interruptible) - ($0.0250/dt).

13. NUI North Carolina Gas has long term agreements with one customer to provide transportation services at below tariff rates.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 1-4

The findings of fact and conclusions set forth in Findings and Conclusions 1 through 4 are jurisdictional and informational and were not contested by any party. They are supported by the petition, the testimony and exhibits of the various witnesses, the records of the Commission in other proceedings and the Affidavits of Publication filed with the Commission in this proceeding.

EVIDENCE FOR FINDING AND CONCLUSION NO. 5

The review period for annual prudency periods is established by Commission Rule R1-17. The review period designated for NUI North Carolina Gas under Rule R1-17(k)(6)(a) in this proceeding is the 12-month period ending April 30, 1998.

GAS - RATES

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 6-7

The Company's fixed gas costs ($2,304,408), commodity costs ($6,130,862) and other gas costs ($3,217,197) were presented in the prefiled testimony of Company witness DeLauro. These amounts were confirmed in the testimony of Public Staff witness Mbonu.

Company witness DeLauro testified that the amount of funds returned to customers through the existing temporary increment and decrements during the review period was $91,114 and that the amount of negotiated sales losses and interest income during the period of review were $329,567 and $1,636 respectively. Public Staff witness Mbonu did not directly address these amounts but did testify that he had reviewed the Company's temporary increments and decrements, gas cost true-ups and interest accrual in determining that the Company's gas costs were properly accounted for.

No other party presented evidence on these issues.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 8-9

Company witness DeLauro testified that NUI North Carolina Gas 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 NUI North Carolina Gas' gas purchasing policy was designed to meet four primary objectives: (1) maintain secure supplies for firm customers; (2) diversify supply sources to ensure reliability; (3) obtain lowest reasonable cost; and (4) enhance flexibility. Company witness DeMoine also testified that NUI North Carolina Gas' gas costs during the review period were consistent with this policy and were prudent. During the period of review, NUI North Carolina Gas' gas supplies were provided primarily through long-term firm supply contracts whose pricing was tied to a spot market index. Public Staff witness Curtis testified that he conducted a review of NUI North Carolina Gas' gas purchases during the period of review, including NUI North Carolina Gas' gas purchasing practices, design day estimates, forecasted load duration curves, historical and forecasted gas supply needs, and projected capacity additions and supply changes, and he had concluded that the Company's gas costs were prudently incurred.

No other evidence was presented on these issues.

EVIDENCE FOR FINDING AND CONCLUSION NO. 10

Company witness DeLauro's testimony indicated end of period deferred account balances as credits of $188,982 in the All Customer Deferred Account and $509,801 in the Sales Only Deferred Account. Public Staff witness Mbonu testified that the Company had properly accounted for its gas costs and Public Staff witness Curtis agreed with these balances in the Company's deferred accounts. No other party presented evidence on this issue.

EVIDENCE FOR FINDINGS AND CONCLUSIONS NOS. 11-12

Company witness DeMoine testified that the existing deferred account temporary adjustments established by the Commission in Docket No. G-3, Sub 202 were: (1) an increment of $0.1201/dt relating to the Sales Only Deferred Account and (2) decrements of: Rate Schedule 101 (Residential) - ($0.0585/dt); Rate Schedule 102 (Small General) - ($0.0572/dt); Rate Schedule 104 (Large General) - ($0.0318/dt); and Rate Schedule 105 (Interruptible) - ($0.0168/dt) relating to the All Customers Deferred Account. This testimony is undisputed and is consistent with the Commission's October 14, 1997 Order on Annual Review of Gas Costs in Docket No. G-3, Sub 202.

Company witness DeMoine also testified that based on the Company's deferred account balances at April 30, 1998, the existing increment and decrements should be discontinued and a temporary decrement of ($0.1411/dt) for sales only customers should be instituted and new temporary decrements for all customers should be implemented as follows: Rate Schedule 101 (Residential) - ($0.0869/dt); Rate Schedule 102 (Small General) - ($0.0850/dt); Rate Schedule 104 (Large General) - ($0.0473/dt); Rate Schedule 105 (Interruptible) - ($0.0250/dt). Public Staff witness Curtis agreed with these proposed decrements in NUI North Carolina Gas' rates.

No other party presented evidence on this issue.

EVIDENCE FOR FINDING AND CONCLUSION NO. 13

The evidence supporting this finding is contained in the testimony of Public Staff witness Mbonu. He testified that the Company has long term agreements with one customer to provide transportation services at below tariff rates and that neither of these agreements had been filed with the Commission for approval. He also stated that negotiated losses to meet alternative fuel prices are routinely placed in the deferred account, but these long-term contracts raised other issues.

The Public Staff did not recommend any adjustment in this case with regards to the negotiated losses arising from these agreements. The Public Staff stated that it intends to bring this matter back before the Commission in a later proceeding to deal explicitly with the amounts that the Company is currently deferring and to consider how these types of contracts should be handled.

The Commission concludes that it is appropriate to address issues related to these long term agreements in another proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That the $2,304,408 in fixed gas costs and $6,130,862 in commodity gas costs and $3,217,197 in other gas costs incurred by NUI North Carolina Gas during the period of review be, and they hereby are, determined to be prudently incurred.

2. That NUI North Carolina Gas' accounting for all such gas costs as set forth in this Order be, and the same hereby is approved.

3. That NUI North Carolina Gas be, and it hereby is, authorized to recover 100 percent of its prudently incurred gas costs during the period of review.

4. That NUI North Carolina Gas shall implement in its next billing cycle after the date of this Order a temporary decrement of ($0.1411/dt) relating to sales only customers and temporary decrements relating to all customers of ($0.0869/dt) for Rate Schedule 101 (Residential) customers; ($0.0850/dt) for Rate Schedule 102 (Small General) customers; ($0.0473/dt) for Rate Schedule 104 (Large General) customers; and ($0.0250/dt) for Rate Schedule 105 (Interruptible) customers simultaneously with the removal of the increment/(decrement) from its G-3, Sub 202 filing.

ISSUED BY ORDER OF THE COMMISSION.

This 29th day of September, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-5, SUB 386

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Application of Public Service)
Company of North Carolina, Inc.) ORDER GRANTING
For an Adjustment of Its Rates) PARTIAL RATE INCREASE
and Charges)

HEARD IN: Gastonia: Conference Room, Gaston County Public Library, 1555 East Garrison Street, Gastonia, North Carolina, Wednesday, July 15, 1998, at 7:00 p.m.

Asheville: Commissioners' Chambers, Room 204, Buncombe County Courthouse, 60 Courthouse Plaza, Asheville, North Carolina, Thursday, July 16, 1998, at 7:00 p.m.

Raleigh: Commission Hearing Room 2115, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Monday, August 24, 1998, at 7:00 p.m.

Commission Hearing Room 2115, Second Floor, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, Tuesday-Thursday, August 25-27, 1998

BEFORE: Chairman Jo Anne Sanford, Presiding, and Commissioners Judy Hunt, William R. Pittman, and J. Richard Conder

APPEARANCES:

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 Carolina Utility Customers Association, Inc.:

Keith R. McCrea, Sutherland, Asbill & Brennan, LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004-2404

For Southeastern Gas & Power Company:

M. Gray Styers, Jr., and Ben Kuhn, Kilpatrick Stockton, Attorneys at Law, 4101 Lake Boone Trail, Suite 400, Raleigh, North Carolina 27607

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Amy Barnes Babb and A. W. Turner, Staff Attorneys, North Carolina Utilities Commission - Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520

For the Using and Consuming Public:

Margaret A. Force, Assistant Attorney General and Kevin Anderson, Associate Attorney General, North Carolina Department of Justice - Utilities Section, Post Office Box 629, Raleigh, North Carolina 27602

BY THE COMMISSION: On April 2, 1998, Public Service Company of North Carolina, Inc. (PSNC or Company), filed an application with the North Carolina Utilities Commission (Commission) seeking authority to adjust its rates and charges for natural gas service in North Carolina and to make certain changes to its rules, regulations, and tariffs. PSNC requested that the proposed rates be effective on and after May 1, 1998.

On April 28, 1998, the Commission issued an Order suspending the proposed rates, declaring the matter to be a general rate case, setting the matter for investigation and hearing, establishing the test period, requiring public notice, and establishing dates for the prefiling of testimony.

Carolina Utility Customers Association, Inc. (CUCA), and Southeastern Gas & Power Company (SG&P) filed Motions to Intervene which were allowed by the Commission. The Attorney General filed Notice of Intervention, and the Public Staff intervened through its appearance at the hearing.

Public hearings were held as scheduled. The following public witnesses appeared and testified:

Gastonia: No public witnesses

Asheville: Donald Fauble

Raleigh: Morton Lurie, Derek Leadbetter, June Horvitz

Witnesses for the parties presented evidence in Raleigh beginning on August 25, 1998.

PSNC presented the testimony and/or exhibits of the following witnesses: Charles E. Ziegler, Jr., Chairman, President and Chief Executive Officer of PSNC; Jack G. Mason, Vice-President - Treasurer and Chief Financial Officer of PSNC; Bruce P. Barkley, Director - Rates and Regulatory Administration of PSNC; Sharon D. Boone, Controller and Assistant Secretary of PSNC; and Victor L. Andrews, Professor Emeritus of the Faculty of the College of Business Administration of Georgia State University and Chairman Emeritus of the College's Department of Finance.

The Public Staff presented the testimony and exhibits of the following witnesses: Frankie H. Carrigan, Staff Accountant in the Public Staff's Accounting Division; Harish L. Rangwani, Staff Accountant in the Public Staff's Accounting Division; Kirk Kibler, Staff Accountant in the Public Staff's Accounting Division; James G. Hoard, Supervisor, Natural Gas Section in the Public Staff's Accounting Division; John R. Hinton, Financial Analyst in the Public Staff's Economic Research Division; Jan A. Larsen, Utilities Engineer in the Public Staff's Natural Gas Division; and Jeffrey L. Davis, Utilities Engineer in the Public Staff's Natural Gas Division.

CUCA presented the direct and rebuttal testimony and/or exhibits of Donald W. Schoenbeck, Regulatory & Cogeneration Services, Inc., and Kevin W. O'Donnell, President of Nova Utility Services, Inc.

PSNC presented rebuttal testimony and exhibits of Bruce P. Barkley, Jack G. Mason and Victor L. Andrews.

Following the hearing, late-filed exhibits were filed by PSNC on August 31, 1998, and by the Public Staff on September 2, 1998.

Based on the application, the testimony and exhibits, and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

GENERAL MATTERS

1. PSNC is duly organized as a corporation under the laws of North Carolina with its principal place of business located in Gastonia, North Carolina.

2. PSNC is engaged in the business of transporting, distributing, and selling natural gas in a franchised area which consists of all or parts of 32 counties in central and western North Carolina.

3. PSNC is a public utility as defined in G.S. 62-3(23) and is subject to the jurisdiction of this Commission and is lawfully before this Commission upon its application for an adjustment in its rates and charges for retail natural gas service pursuant to G.S. 62-133.

4. The Company's application, testimony, exhibits, affidavits of publication, and published hearing notices are in compliance with the provisions of the Public Utilities Act and the Rules and Regulations of the Commission.

5. The appropriate test period for use in this proceeding is the twelve months ended December 31, 1997, adjusted for certain known and measurable changes occurring after the end of the test period and before the conclusion of the hearing as permitted by G.S. 62-133(c).

6. The quality of service being provided by the Company is adequate.

7. In its initial application, PSNC sought to increase its North Carolina retail rates by $23,455,126. In its prefiled rebuttal testimony, PSNC amended the requested increase to $11,843,472. At the hearing, through witness Boone's supplemental testimony, PSNC revised the requested increase from $11,843,472 to $14,045,773, of which $551,285 was the effect of updated end-of-period net investment for PSNC's utility plant in service to July 31, 1998, and $1,651,016 was the effect of updated revenue, operating and maintenance expenses, gross receipts taxes and the cost of gas based on PSNC's revision of sales and transportation volumes through July 31, 1998.

8. In its prefiled testimony filed on August 5, 1998, the Public Staff recommended an increase in PSNC's North Carolina retail rates of $11,843,472. At the hearing, the Public Staff did not object to PSNC's updating end-of-period net investment for PSNC's utility plant in service as of July 31, 1998, which resulted in a revenue requirement increase of $551,285, but did object to the inclusion in retail rates of an $1,651,016 increase based upon PSNC's revised cost of gas volumes through July 31, 1998. The Public Staff's final recommendation was an increase in the retail rates of $12,394,757.

VOLUMES

9. The appropriate level of adjusted sales and transportation volumes for use herein is 69,176,130 dekatherms (dts), which is composed of 35,823,629 dts of sales volumes and 33,352,501 dts of transportation volumes.

10. PSNC sold and transported 65,976,654 dts under its various sales and transportation rate schedules during the test period.

11. PSNC's test period sales and transportation volumes should be adjusted to reflect negotiated sales, weather normalization, customer growth, and the cessation of operations by an existing customer.

GAS - RATES

12. The appropriate volume level for lost and unaccounted for gas is 1,172,703 dts.

13. The appropriate volume level for Company use gas is 109,622 dts.

14. The gas supply required to generate the appropriate sales level is as follows:

Sales and Transportation	69,176,130	dts
Less: Transportation	(33,352,501)	
Sales	35,823,629	
Lost and Unaccounted For	1,172,703	
Company Use	109,622	
Gas Supply	37,105,954	dts

COST OF GAS

15. The appropriate level for total fixed gas costs in this proceeding is $52,911,417.

16. It is appropriate to use the most current information relating to fixed gas costs billed by interstate pipelines to determine the total fixed gas costs in this proceeding.

17. The appropriate level for the commodity cost of gas is $78,811,984 based on an estimate of $2.20 per dt for the benchmark.

18. The appropriate amount for lost and unaccounted for gas is $2,759,947.

19. The amount of Company use gas is $241,168, and this amount is appropriate for use in this proceeding.

20. The Company's appropriate pro forma total cost of gas expense under present rates is $134,544,516.

RATE BASE

21. For the purposes of this proceeding, the reasonable rate base used and useful in providing service is $444,839,259, which consists of the following:

Gas Plant in Service	$723,444,411
Accumulated Depreciation	(222,666,318)
Net Plant in Service	500,778,093
Working Capital	(1,659,300)
Natural Gas Inventory	17,036,940
Materials & Supplies	5,641,103
Customer Deposits	(2,730,783)
Cost-Free Capital	(12,374,664)
Accumulated Deferred Income Taxes	(61,852,130)
Rate Base	$444,839,259

OPERATING REVENUE

22. The appropriate level of end-of-period pro forma revenues under present rates is $291,707,056, which is composed of $290,159,294 of sales and transportation revenues and $1,547,762 of other operating revenues.

SONAT PSC

23. Sonat Public Service Company (Sonat PSC) is a joint venture of Sonat Marketing Company and PSNC Production, which is a wholly owned subsidiary of PSNC.

24. Sonat PSC was created in December, 1996.

25. The contracts creating the joint venture were approved by the Commission in Docket No. G-5, Sub 366.

26. Prior to the creation of Sonat PSC, the employees of PSNC Production were also employees of PSNC's regulated utility operations.

27. A portion of PSNC Production's value is attributable to the knowledge gained by the employees while working for PSNC's regulated utility operations.

28. It is appropriate to reduce end-of-period expenses by $150,000 to reflect the ratepayers' portion of the value of PSNC Production's business unit that was transferred to Sonat PSC.

OPERATING REVENUE DEDUCTIONS

29. The appropriate level of operation and maintenance expense for use in this proceeding is $63,742,187.

30. The appropriate level of depreciation expense for use in this proceeding is $28,204,035.

31. The appropriate level of general taxes for use in this proceeding is $16,417,536.

32. The appropriate level of state income tax expense under present rates is $2,325,630.

33. The appropriate level of federal income tax expense under present rates is $10,018,929.

CAPITAL STRUCTURE AND RATE OF RETURN

34. The appropriate capital structure to employ in determining the Company's revenue requirement in this proceeding is 51.91% common equity, 4.02% short-term debt, and 44.07% long-term debt.

35. The proper embedded cost rate for long-term debt is 8.30%.

36. The proper embedded cost rate for short-term debt is 5.91%.

37. 'Company witness Andrews' applications of the Discounted Cash Flow (DCF) method and the Risk Premium methods, including the Capital Asset Pricing Model (CAPM), should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

38. CUCA witness O'Donnell's application of the DCF method and the Comparable Earnings method should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding.

39. Application of the PSNC company-specific DCF method presented by Public Staff witness Hinton should be given the greatest weight for determining the cost of common equity for purposes of this proceeding.

40. The appropriate cost of common equity for use in this proceeding is 11.40%.

41. The overall fair rate of return which the Company should be allowed the opportunity to earn on its rate base is 9.82%.

ADDITIONAL REVENUE REQUIREMENT

42. PSNC should be authorized to increase its annual level of operating revenues by $12,394,757. After giving effect to the approved increase, the annual revenue requirement for PSNC is $304,101,813, which will allow the Company a reasonable opportunity to earn the rate of return on its rate base which the Commission has found just and reasonable.

COST OF SERVICE

43. The results of twenty estimated cost-of-service studies were presented in the testimony in this docket (two by PSNC, four by the Public Staff, and fourteen by CUCA). Six of these studies were performed using current rates, and these studies gauge the estimated rates of return by customer class under current rates. The other studies reflected the estimated rates of return if a certain proposed rate design is adopted.

44. Various cost-of-service studies presented by the parties differed in the overall level of revenues, expenses, and rate base amounts assumed. Differences in these assumptions alone will yield different rates of return by customer class.

45. Other than the overall level of revenues, expenses, and rate base amounts, the major differences between these studies were the allocation of fixed costs that cannot be directly assigned, the allocation of fixed gas costs, and the customer and demand cost components for distribution mains and services. Different assumptions and methodologies proposed by the parties with respect to these matters yield drastically different rates of return.

GAS - RATES

46. It is appropriate to allocate costs according to how the services are utilized by the various customer classes.

47. Both PSNC and the Public Staff used the Peak and Average Method or Seaboard Method for the allocation of fixed costs that cannot be directly assigned, while CUCA used the Peak Responsibility Method and, alternatively, an Imputed Load Factor Method for this purpose.

48. The Peak and Average allocation methodology used by PSNC and the Public Staff recognizes that PSNC's facilities provide service on an annual as well as a peak basis.

49. In recent years, PSNC has imposed relatively little curtailment upon most of its interruptible customers. The Peak Responsibility methodology proposed by CUCA improperly relieves interruptible customers of responsibility for costs that are incurred to provide service to them.

50. While CUCA alternatively proposed the use of an Imputed Load Factor methodology, it did not adequately describe or support the use of such methodology.

51. The Commission concludes that it is more appropriate to use the Peak and Average methodology to allocate costs than it is to use the Peak Responsibility or Imputed Load Factor methodologies proposed by CUCA.

52. The next issue presented by the cost-of-service studies is whether to calculate the customer and demand components of PSNC's distribution mains and services using the minimum pipe size methodology used by PSNC and CUCA or the zero-intercept methodology used by the Public Staff.

53. The zero-intercept methodology as used by the Public Staff produced negative values in some situations, and, as negative values are not possible, the Commission concludes that the minimum pipe size methodology proposed by PSNC and CUCA is more appropriate to determine the customer and demand components of PSNC's distribution mains and services.

54. An estimated cost-of-service study using the Peak and Average methodology to allocate costs and using the minimum pipe size method for determining the customer and demand components of distribution mains and services is the appropriate method to use, along with other factors, in designing rates in this proceeding.

RATE DESIGN

55. Cost-of-service studies are subjective and imprecise and are useful only as a guide along with other factors in setting natural gas rates.

56. Rates designed solely with the objective of equalizing rates of return among customer classes based on estimated cost-of-service studies are not reasonable.

57. Factors that must be considered in rate design in addition to cost of service include the value of service to the customer, the type and priority of service received by the customer, the

quantity of use, the time of use, the manner of use, the competitive conditions relating to the acquisition of new customers and to existing customers, the historical rate design and differentials between the various classes of customers, the revenue stability of the utility, and the economic and political factors which are inherent in the ratemaking process, including the encouragement of expansion.

58. The ability of large commercial and industrial customers to negotiate and force PSNC to meet the prices of their alternate fuels gives them bargaining power not enjoyed by other classes of customers.

59. Residential and small commercial rates have been increased over the last several rates cases, while industrial rates have been decreased.

60. All parties in this rate case proposed to reduce rates to the large commercial and industrial customer classes and to raise rates to the residential and small general service customers.

61. The Commission has historically concluded that individual customer classes should not receive rate increases which, in light of all the surrounding facts and circumstances, result in rate shock.

62. The cost-based rate design proposed by CUCA would place an unreasonable burden on certain classes of customers relative to historical rates.

63. The rate design proposed by the Public Staff, with the exceptions noted in this Order, takes into consideration all of the appropriate factors and results in rates that are just and reasonable for all customer classes.

64. It is appropriate to eliminate the winter/summer differentials in rates.

65. The Company renders service to year-round residential customers under Rate Schedule No. 105, to seasonal residential customers under Rate Schedule No. 110, to outdoor lighting customers under Rate Schedule No. 120, to year-round small general service customers under Rate Schedule No. 125, to large general service sales customers under Rate Schedule No. 145, to interruptible commercial and industrial sales customers under Rate Schedule No. 150, to customers otherwise eligible for service under Rate Schedule No. 145 who desire to transport customer-owned gas under Rate Schedule No. 175, and to customers eligible to receive service under Rate Schedule No. 150 who transport customer-owned gas under Rate Schedule No. 180. In this docket, the Company initially proposed to render service to residential customers who use gas space heating and water heating on a year-round basis in the Gas Advantage program under Rate Schedule No. 104, but subsequently withdrew that proposal. It is appropriate to establish a new Rate Schedule No. 126 - Small General Service - Cooling and to expand Developmental Rate Schedule 190 to include other types of engine-driven technology.

66. It is appropriate to increase the monthly facilities charge for Rate Schedules 145 (Large Quantity General Service) by $75.00 and to increase the monthly facilities charge for Rate

Schedule 150 (Large Quantity Interruptible Commercial and Industrial Service) by $150.00 per month.

67. SG&P witness Johnson proposed to allocate a portion of PSNC's total fixed gas costs rather than the 100% load factor equivalent of Transco's Zone 3 to Zone 5 FT rate to the commodity cost of gas sold under PSNC's Rate Schedules 145 and 150. Witness Johnson also proposed to allocate a portion of PSNC's administrative and general costs to the commodity cost of gas sold under those rate schedules.

68. In his rebuttal testimony, PSNC witness Barkley stated that "[t]he commodity cost of gas is simply that – the cost of the gas" and the Commission had never included any administrative and general costs in the commodity cost of gas.

69. Witness Johnson's proposals are not consistent with this Commission's practice regarding the costs that are included in the commodity cost of gas under sales rate schedules.

70. The commodity cost of gas sold under an LDC's sales rate schedules is limited to the cost of the gas itself.

71. Costs such as administrative and general costs are to be recovered through the LDC's non-gas rates.

72. Witness Johnson's proposals to increase the level of fixed gas costs included in, and to allocate a portion of PSNC's administrative and general costs to, the commodity cost of gas under PSNC's Rate Schedules 145 and 150 are rejected.

TRANSPORTATION RATES

73. The full-margin concept is based on the principle that the responsibility for utility costs by a class of customers is the same whether those customers procure their own gas supplies or buy under the Company's sales rates.

74. The Commission has consistently calculated full-margin transportation rates by subtracting the benchmark commodity cost of gas, applicable gross receipts taxes, and any temporary increments and/or decrements from the sales rate schedule under which the transportation customer would otherwise be buying natural gas from PSNC.

75. PSNC's bifurcated benchmark, by which large commercial and industrial customers receive monthly market based rates, does not affect the use of the full-margin concept for transportation in this case.

76. The Commission concludes that the transportation rates for PSNC in this docket should be based on the full-margin concept. The Commission will issue an Order in the near future on the transportation rate study phase of this docket.

77. The transportation rate design proposed by the Public Staff is based on the full-margin concept and is just and reasonable.

FIXED GAS COST RECOVERY RATES

78. The appropriate basis for allocating fixed gas costs is how the services are utilized. This allocation basis results in fixed gas cost recovery rates (in $/dt) as follows:

Rates 105/120	Rate 110	Rate 125	Rates 145/175	Rates 150/180
$1.1180	$1.2662	$0.9681	$0.6589	$0.3723

79. The allocation of fixed gas costs results in the following fixed gas cost apportionment among the various rate classes:

Rates 105/120	Rate 110	Rate 125	Rates 145/175	Rates 150/180
44.05%	3.08%	24.80%	10.58%	17.49%

MISCELLANEOUS

80. The fixed gas recovery rates approved herein are appropriate for use in computing the R_i factors that are required for the proper functioning of the Weather Normalization Adjustment.

81. PSNC proposed to discontinue the requirement that customers must have installed facilities capable of using an alternate fuel as a condition to receiving service under an interruptible rate schedule.

82. PSNC proposed Rider F to recover any margin losses resulting from customers switching from firm to interruptible rate schedules due to the elimination of the alternate fuel requirement. PSNC further proposed to recover the margin lost for this reason during the 24-month period following the effective date of the Order in this docket through the deferred cost of gas account for all customers.

83. Public Staff witness Davis recommended that PSNC's tariff language be clarified or modified to provide that customers on interruptible rates without the installed capability to use an alternate fuel shall not be allowed to negotiate the purchase price for natural gas under PSNC's Rate Schedule 160. The Commission finds that this clarification or modification is appropriate and hereby orders PSNC to incorporate this recommendation in the revised tariffs to be filed in this proceeding.

84. It is appropriate to eliminate the alternate fuel requirement for interruptible customers and implement the proposed margin recovery mechanism in Rider F, subject to the clarification proposed by the Public Staff.

85. The appropriate increases in PSNC's after-hours service calls, non-residential reconnection charges, and residential reconnection charges are as follows:

	Present Charge	Proposed Charge
After-Hours Service Calls:		
Monday - Saturday (After 5:00 p.m.)	$50.00	$73.50
Sundays and Holidays	$50.00	$98.00
Non-Residential Reconnection Charges:		
Monday - Saturday (After 5:00 p.m.)	$75.00	$100.00
Sundays and Holidays	$75.00	$100.00
Residential Reconnection Charges:		
Monday - Saturday (After 5:00 p.m.)	$50.00	$75.00
Sundays and Holidays	$50.00	$75.00

86. PSNC shall recover the costs of the existing Cardinal Pipeline as a gas cost prospectively from the effective date of the Order in this proceeding.

87. The costs associated with Cardinal Pipeline are $2,628,718.

88. PSNC's net operating income should not be affected by the inclusion of the Cardinal Pipeline costs as a gas cost.

89. PSNC's request to recover the margin that it would otherwise have lost as a result of classifying the Cardinal Pipeline costs as a gas cost rather than a non-gas cost through a monthly entry in its deferred cost of gas account for all customers is appropriate and approved.

90. Such deferred account entries shall cease upon the commencement of billings to PSNC from Cardinal Pipeline, LLC, which is currently expected to occur on November 1, 1999.

91. The Company and the Public Staff have discussed changes to the tariff language, riders, and rules and regulations, and PSNC shall file and serve a revised version of these for review, comment and approval of the Commission.

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, the Commission's Orders scheduling hearings, the testimony and exhibits of the Company and the Public Staff, the schedules filed subsequent to the hearing at the request of the Commission, and the testimony of the public witnesses. These findings are essentially informational and noncontroversial.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 9-14

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Barkley and Public Staff witness Davis. Mr. Barkley offered evidence that the actual test period volumes were 65,950,865 dts in the G-1 Minimum Filing Requirements, Item 4, Workpaper 1-A and in Barkley Exhibit No. 1.

After adjusting this test period of 65,950,865 dts for negotiated sales reclassification, annualization, weather normalization, customer growth, and adjustments to volumes for removing Granite Finishing, an industrial customer that had ceased operations, PSNC's adjusted level of sales and transportation volumes are 68,579,735 dts.

Public Staff witness Davis testified that he performed a similar evaluation of the test year volumes, and that he agreed with PSNC's adjustments with two exceptions: (1) the omission by PSNC of the bills and volumes associated with Rate Schedule 190 - Large Tonnage Air-Conditioning Rate and Rate Schedule 195 - Natural Gas Vehicle Development Rate and (2) the growth adjustment.

In his testimony filed on August 5, 1998, Mr. Davis stated that it was appropriate to include the bills and volumes associated with Rate Schedule 190 and 195 for proper customer and volume determination to recognize that service was being furnished under these rate schedules during the test year. Mr. Davis' adjustment has the effect of increasing the end-of-period bills by 100 bills and increasing the end-of-period volume level by 25,789 dts. This adjustment was not contested by any party.

Mr. Davis also stated, in his August 5, 1998 testimony, that the differences between the Company's and the Public Staff's calculations of customer growth are attributable to his discovery of an aberration in the number of customers reported in February, 1996 by the Company. He stated that due to a computer error some customers were double counted in that particular month, which distorted the twelve-month average customer number for 1996, so that when the 1996 customer number was subtracted from the 1997 customer number, it resulted in the Company's calculation of a lower growth percentage than was actually experienced. Mr. Davis testified that with the exception of this reporting error, the Company and the Public Staff were in agreement on the growth calculation methodology at the time that the Public Staff filed testimony. The growth calculation methodology filed by Mr. Barkley in his April 2, 1998 testimony and by Mr. Davis in his August 5, 1998 testimony used normalized volumes for the test year ended December 31, 1997, adjusted for growth through July 31, 1998.

On August 19, 1998, Company witness Barkley filed rebuttal testimony proposing a new methodology for the growth calculation. In his rebuttal testimony, Mr. Barkley stated that PSNC was now recommending using normalized volumes for a twelve month period ending July 31, 1998, adjusted by a growth factor that equals one-half of the customer growth that occurred during the year ended July, 31, 1998. Mr. Barkley stated that the methodology used in both his and Mr. Davis' prefiled testimonies used estimates to determine the appropriate ongoing level of volumes to a greater extent than the methodology that he advocated in his rebuttal testimony. He further testified that the new methodology resulted in approximately 35,586 fewer dts than in Mr. Davis' methodology, which is a reduction of 0.05%. On redirect, Mr. Barkley testified that the Company was willing to use the new methodology in its next filed rate case regardless of whether the new methodology was to the Company's financial advantage or not.

Through additional direct testimony, Mr. Davis indicated that volume determination is a time consuming, many faceted process. He testified that he began working on the growth factor within a week of the Company's April 2, 1998 filing, and that it took him two weeks to first discover the aberration in the growth factor, and until June 8, 1998, to provide a number to the Accounting Division for use as a starting point for their accounting calculations. He further testified, that at the July 28-29, 1998 meetings between PSNC and the Public Staff, PSNC indicated concern about the amount of the growth adjustment and indicated that they would contact Mr. Davis if they could not agree with the number which he had submitted. Mr. Davis heard nothing further from the Company between July 29, 1998, and their rebuttal filing deadline of August 19, 1998. Mr. Davis testified that he received information from the Company that it was filing a new methodology approximately 15 minutes before the 5:00 p.m. deadline for filing rebuttal testimony. Mr. Davis testified that even though the Company offered data to corroborate the new methodology, there were only four business days between the filing of rebuttal testimony and the hearing. The Commission notes that there were actually only three business days. Mr. Davis testified that due to the time restrictions, he could not verify the numbers. Mr. Davis also testified that the methodology which he used and which PSNC submitted with its application was the methodology the Commission had approved in all prior rate cases.

Upon cross-examination, Mr. Davis reiterated that because of the amount of time necessary to check the numbers, the method was non-verifiable by the Public Staff in time for the scheduled hearing. He testified that even though the total difference in the Public Staff projected volumes and those resulting from PSNC's new methodology was only 0.05%, there was a substantial difference in the customer mix which allegedly had occurred since the rate case filing. This change in customer mix, caused by customer changes in rate schedules and reclassifications, resulted in an increase in the revenue requirement of approximately $1.6 million.

The Commission concludes that the last-minute presentation of PSNC's proposed new methodology and the fact that the intervening parties therefore had limited opportunity to evaluate or verify PSNC's new proposed volume level are factors to consider in weighing this evidence. Traditional test periods are set to afford all parties adequate time for equitable and fair evaluation of rate case data. While no party questioned the validity of the methodology's mathematical determination, the Commission is of the opinion that the parties had inadequate time for verification. In rate case proceedings, verification of numbers is essential, and this was not allowed as a result of the late filing of PSNC's new methodology. Notwithstanding PSNC's offer to use its new methodology in its next case, it is first necessary that the methodology be verified in this case, which has not been done. The Commission concludes, therefore, that the methodology as proposed by the Public Staff and by PSNC in its initial application is the appropriate methodology for determining volumes in this proceeding.

Based on the customer and volumetric growth through July 31, 1998, Davis Exhibit A shows that the appropriate pro forma total customer bills should be 3,824,936 and the volume level should be 69,176,130 dts. This volume level is composed of 35,823,629 dts of sales volumes and 33,352,501 dts of transportation volumes.

There is no disagreement as to the level of Company use gas and lost and unaccounted for volumes among the parties. Based on the foregoing, the Commission concludes that the appropriate level of gas supply volumes required is as follows:

Sales and Transportation	69,176,130	dts
Less: Transportation	(33,352,501)	
Sales	35,823,629	
Lost and Unaccounted For	1,172,703	
Company Use	109,622	
Gas Supply	37,105,954	dts

The Commission notes that the Company use gas and lost and unaccounted for gas are to be trued-up and accounted for as provided in NCUC Rule R1-17(k)(4)(c).

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACTS NOS. 15-20

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Barkley and Public Staff witness Davis. The levels of the cost of gas proposed by the Company and the Public Staff are set forth in the schedule below:

	PSNC	Public Staff	Difference
Commodity Cost of Gas	$77,641,060	$78,811,984	$1,170,924
Fixed Gas Costs	52,911,417	52,911,417	0
Lost & Unaccounted For	2,579,947	2,579,947	0
Company Use	241,168	241,168	0
	$133,373,592	$134,544,516	$1,170,924

As can be seen from the above schedule, the Company and the Public Staff agree as to the level of Company use gas amount, the lost and unaccounted for amount and the fixed gas costs amount.

The $1,170,924 difference in the commodity cost of gas is due solely to the previously discussed positions of the Company and the Public Staff regarding the volume level. Based on our previous finding regarding the appropriate volume level, we conclude that the appropriate commodity cost of gas is the $78,811,984 amount recommended by the Public Staff.

Based on the foregoing, the Commission concludes that the appropriate level of the cost of gas in this proceeding is $134,544,516, made up of the following components:

Commodity Cost of Gas	$78,811,984
Fixed Gas Costs	52,911,417
Unaccounted For Gas	2,579,947
Company Use Gas	241,168
Total Cost of Gas	$134,544,516

The Commission concludes that the benchmark commodity gas cost is $2.20 per dt in this proceeding, and no party offered contrary evidence.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 21

The evidence supporting this finding of fact was set forth in the Company's original application, the direct testimony and exhibits and supplemental direct testimony and exhibit of PSNC witness Boone, the direct testimony and exhibits of Public Staff witnesses Rangwani and Carrigan, and the revised Carrigan Exhibit I schedules. The Public Staff and PSNC agree that the original cost rate base is $444,839,259. No other party to this proceeding contested as incorrect or inappropriate the level of rate base presented by the Company and the Public Staff. The Commission has carefully reviewed the Company's application and the direct and supplemental testimony and exhibits of both PSNC and the Public Staff witnesses and concludes that the Company's rate base used and useful for purposes of this proceeding is $444,839,259, composed of the following:

Gas Plant in Service	$723,444,411
Accumulated Depreciation	(222,666,318)
Net Plant in Service	500,778,093
Working Capital	(1,659,300)
Natural Gas Inventory	17,036,940
Materials & Supplies	5,641,103
Customer Deposits	(2,730,783)
Cost-Free Capital	(12,374,664)
Accumulated Deferred Income Taxes	(61,852,130)
Rate Base	$444,839,259

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witnesses Davis and Carrigan and PSNC witness Barkley.

The Company's filed end-of-period revenue level was $287,482,883, which was composed of $285,982,596 of sales and transportation revenues and $1,500,287 of other operating revenues. (G-1 Minimum Filing Requirement, Item 4, Workpaper 1-A, and Barkley Exhibit No. 1.)

In witness Barkley's supplemental testimony, PSNC amended its end-of-period revenue level to $288,840,174, which was composed of $287,292,412 of sales and transportation revenues and $1,547,762 of other operating revenues.

Public Staff witness Davis testified that the appropriate end-of-period revenue level is $291,707,056, of which $290,159,294 is associated with sales and transportation revenues and $1,547,762 is related to other operation revenues. Witness Davis testified that the adjustments that he made to the volume determination, as discussed in the Evidence and Conclusions for Findings of Fact Nos. 9-14, are used in the revenue calculation.

The Public Staff and the Company are in agreement concerning the level of other operating revenues. No other party to this proceeding contested the level of other operating revenue presented by the Company and the Public Staff.

The Commission concludes that the appropriate end-of-period other operating revenues is $1,547,762. The Commission further concludes that because it has found that the appropriate volume level is 69,176,130 dts based on the Public Staff's growth projections in the Evidence and Conclusions for Findings of Fact Nos. 9-14, the appropriate end-of-period revenue level is $291,707,056, being composed of $290,159,294 of sales and transportation revenue and $1,547,762 in other operating revenue.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23-28

The evidence supporting these findings of fact is found in the testimony of Public Staff witness Hoard. Witness Hoard testified that Sonat Public Service Company (Sonat PSC) was formed in December, 1996 as a joint venture of Sonat Marketing Company and PSNC Production, which is a wholly owned subsidiary of PSNC. The Commission approved the joint venture in Docket No. G-5, Sub 366. Witness Hoard testified that prior to the formation of Sonat PSC, several key employees of PSNC Production were also employees of the regulated utility. He, therefore, reasoned that a portion of the value of PSNC Production is attributable to the detailed knowledge that these employees gained of the utility's operations and customers prior to the establishment of the joint venture. To compensate ratepayers for this value, which they helped create, witness Hoard recommended that end-of-period expenses be reduced by $150,000. PSNC did not oppose this adjustment.

The Commission agrees with the Public Staff that an adjustment is appropriate.

Based upon the evidence presented, the Commission concludes that end-of-period expenses should be reduced by $150,000 to reflect the ratepayers' portion of the value of PSNC Production's business unit that was transferred to the Sonat PSC joint venture.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 29-33

The evidence supporting these findings of fact was set forth in the Company's original application, the direct testimony and exhibits and supplemental direct testimony and exhibit of PSNC witness Boone, the direct testimony and exhibits of Public Staff witnesses Hinton, Larsen, Kibler, Davis, Hoard, and Carrigan, and the revised Carrigan Exhibit I schedules. The final positions of the Company and the Public Staff regarding the appropriate levels of operating revenue deductions are set forth in the following schedule:

Item	Company	Public Staff	Difference
Cost of gas	$133,373,592	$134,544,516	$1,170,924
Operation and maintenance	63,727,508	63,742,187	14,679
Depreciation	28,204,035	28,204,035	0
General taxes	16,326,720	16,417,536	90,816
State income taxes	2,210,323	2,325,630	115,307
Federal income taxes	9,502,622	10,018,929	516,307
Total	$253,344,800	$255,252,833	$1,908,033

As can be seen from the above schedule, the Company and the Public Staff agree on the level of depreciation expense. No other party to this proceeding contested as incorrect or inappropriate the level of depreciation presented by the Company and the Public Staff. The Commission, based on the evidence presented, concludes that the appropriate level of depreciation expense is $28,204,035.

The remaining differences between the Company and the Public Staff all relate to the end-of-period revenues difference that is a result of the volume difference that was discussed in Findings of Fact Nos. 9-14. Because the Commission has previously found that the appropriate level of end-of-period revenues is $291,707,056, the Company's proposed levels of operating expenses must be rejected.

The level of operating revenue deductions proposed by the Public Staff, except for the difference related to the end-of-period revenues difference previously addressed, were not challenged by any party in this proceeding. No evidence was presented by any party in this proceeding that the adjustments recommended by the Public Staff and agreed to by PSNC, as indicated by PSNC witness Boone in her supplemental testimony, were not appropriate. After a careful review of the testimony, exhibits, and the evidence presented at the hearing, the Commission concludes that the overall level of operating revenue deductions under present rates appropriate for use in this proceeding is $255,252,833.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 34

The evidence for this finding is contained in the testimony and exhibits of Company witnesses Mason and Andrews, CUCA witness O'Donnell, and Public Staff witness Hinton.

In prefiled direct testimony, Company witness Mason originally requested a capital structure for ratemaking purposes consisting of 52.33% common equity, 3.66% short-term debt, and 44.01% long-term debt. The Company's requested capital structure was based on a 13-month projected capital structure ending July 31, 1998.

The capital structure employed by Company witness Andrews was consistent with the capital structure originally proposed by Company witness Mason. Witness Andrews noted in his Exhibit No. 15, which presents a summary of his overall cost of capital recommendation, that all of the data, except for the cost of common equity, was supplied by the Company.

CUCA witness O'Donnell disagreed with the Company's requested capital structure. He testified that such capital structure was inappropriate in that it did not include all of the short-term debt utilized by the Company. His proposed capital structure included the average amount of short-term debt utilized by PSNC during the test period. Witness O'Donnell's recommended capital structure consisted of 48.81% common equity, 9.76% short-term debt, and 41.43% long-term debt. As an alternative to the foregoing capital structure, witness O'Donnell suggested that the Commission might wish to consider reducing the amount of short-term debt in his initially proposed capital structure by an amount equal to PSNC's average investment in construction work in progress during the test period. That alternative capital structure consisted of 50.15% common equity, 7.28% short-term debt, and 42.57% long-term debt. Witness O'Donnell's alternative capital structure recommendation, presumably, was made in recognition of the fact that short-term debt is used, at least in part, to finance construction work in progress, which was not being proposed for inclusion in rate base in this proceeding.

Public Staff witness Hinton also disagreed with the capital structure originally requested by the Company. Witness Hinton recommended a capital structure consisting of 51.91% common equity, 4.02% short-term debt, and 44.07% long-term debt. For the long-term debt and common equity components of his recommended capital structure, witness Hinton used an average of such capital components for the 13-month period ending June 30, 1998. Further, witness Hinton noted that, consistent with past Commission practice, he had reduced the common equity component of the capital structure by $258,000 to remove certain Transco refunds, which the Company had treated as common equity capital. Witness Hinton, in essence, argued that such refunds were cost free to the Company and as such should be treated accordingly. With respect to short-term debt, witness Hinton testified that setting the level of such debt equal to the Company's average investment in gas inventory was the best approach to follow in determining the reasonable amount of short-term debt to be included in the capital structure. In substance, it was his opinion that short-term debt was used to finance the Company's investment in stored gas inventory. He therefore contended that the cost of such financing could best be provided for by inclusion of a level of short-term debt in the capital structure equal to the Company's investment in stored gas inventory. Witness Hinton noted that his use of the average investment in stored gas inventory appropriately accounted for inventory fluctuations that inherently occur due to the manner in which seasonal changes impact the Company's operations.

In support of his position, CUCA witness O'Donnell, in essence, among other things, testified that (1) the Commission originally adopted the gas inventory balance as its touchstone for determining the level of short-term debt to be included in the capital structure for PSNC in 1989, but that, in recent years, PSNC's use of short-term debt had consistently and greatly exceeded the Company's investment in gas inventory; (2) there is no credible evidence in this proceeding that adoption of the capital structure recommended by CUCA will have any effect on PSNC's creditworthiness since bond rating agencies already have taken into account the fact that the debt/equity ratio for PSNC over the past 5 years has averaged 58% debt and 42% equity; (3) PSNC readily acknowledges that most of its short-term debt will be replaced next year with long-term debt and thus, at most, PSNC's plans might justify using a higher percentage of long-term debt in the capital structure, but do not justify in any way a higher percentage of equity; and (4) attempts by PSNC to justify its recommended amount of short-term debt by referring to the deferred gas account arising out of Rider D are to no avail since the Company failed to establish any long-term link between Rider D balances and short-term debt.

During the hearing, Company witness Mason acknowledged that PSNC was willing to accept Public Staff witness Hinton's recommended capital structure. On rebuttal, witness Mason testified, essentially, among other things, that (1) short-term debt in excess of that used to finance stored gas inventories is periodically refinanced with equity capital generated through PSNC's stock plans or is refinanced through the issuance of long-term debt, depending upon interest rates and general market conditions; (2) the Commission's use of CUCA witness O'Donnell's capital structure recommendation would put the Company at risk of losing its "A-" credit rating and of being assigned a credit rating of "BBB" (Such a result would lead to additional interest costs; for example, under such a scenario, the Company would incur additional interest costs of $4.5 million on a $50 million bond offering with a life of 30 years. PSNC currently plans to issue approximately $50 million of unsecured debentures during the second quarter of fiscal 1999 to retire the then outstanding balance of short-term debt. Even after that issuance, PSNC projects its common equity ratio to be approximately 52%); and (3) after completion of the aforementioned long-term debt financing, PSNC does not expect the level of short-term debt to increase to recent levels. The relatively high levels of short-term debt experienced over the past four years were due, in large measure, to extraordinary projects which required the use of substantive capital resources. Those projects have now been or soon will be completed. As a result of their completion, the Company expects to experience a decline in annual capital expenditures, and consequently a decline in the use of short-term debt, by an amount in the range of $20 million.

The Company also contended that, in recent years, short-term debt had been used extensively to finance deferred gas costs and that, due to recent (November 6, 1997) changes in the pricing of the commodity cost of gas for large volume customers, deferred gas costs have declined dramatically and are expected to remain at their existing low levels. Therefore, according to the Company, the need for short-term debt to finance those costs has been significantly diminished, and, most likely, will not, in the foreseeable future, increase to the relatively high levels experienced in the recent past. Through PSNC O'Donnell Cross-Examination Exhibit No. 1, it was shown that the balance in PSNC's deferred accounts had declined from a high of $22 million at the end of November 1997 to $6.3 million as of the end of June 1998.

After careful consideration of the foregoing and the entire evidence of record, the Commission concludes that the capital structure proposed by the Public Staff, and accepted by Company witness Mason, is the most appropriate for use in this proceeding. Such capital structure is composed of 51.91% common equity, 4.02% short-term debt, and 44.07% long-term debt. That capital structure reflects a level of short-term debt that is approximately equal to the level of gas inventory included in rate base.

The foregoing conclusion is based on the Commission's having found the Public Staff's and PSNC's evidence and arguments most persuasive, particularly the evidence offered in support of the position that use of witness O'Donnell's proposed capital structure would jeopardize the Company's "A-" bond rating. That position is supported and underscored by witness O'Donnell's acknowledgment that his recommended equity ratio was in the middle of the range for a "BBB" rating. This decision, in conjunction with other findings and conclusions as set forth herein, should allow PSNC the opportunity to maintain its current "A-" bond rating so as to enable it to attract capital on reasonable terms to fund its expansion of natural gas service, which the Company is being urged to do.

Based on the foregoing and the entire evidence of record, the Commission concludes that the appropriate capital structure for purposes of this proceeding is as follows: 51.91% common equity, 4.02% short-term debt, and 44.07% long-term debt.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 35 AND 36

The evidence for these findings is contained in the testimony and exhibits of Company witnesses Boone and Andrews, CUCA witness O'Donnell, and Public Staff witness Hinton. All of the witnesses supported the embedded cost of long-term debt cost rate of 8.30%, as of June 30, 1998. The Commission, therefore, concludes that such cost rate is appropriate and should be adopted for purposes of this proceeding.

In prefiled testimony, Company witnesses Boone and Andrews recommended an embedded cost rate for short-term debt of 5.86%. CUCA witness ODonnell recommended a cost rate of 5.92%, for such debt, based upon his understanding of the cost at which PSNC is normally able to obtain such capital. Public Staff witness Hinton recommended a short-term debt cost rate of 5.91%. Witness Hinton's 5.91% was based on the then current prime rate of 8.50% less 2.59%. The 2.59%, or 259 basis points, according to witness Hinton, represented the difference between the prime rate and the interest rate PSNC paid to satisfy its short-term financing requirements during the test period. At the hearing, Company witness Boone accepted witness Hinton's recommendation of 5.91%.

After careful consideration, the Commission concludes that the short-term debt cost rate of 5.91% is the most reasonable and appropriate for use herein. Simply put, the Commission has found the evidence, particularly the methodology employed in determining the cost rate, presented by witness Hinton most persuasive.

Based on the foregoing and the entire evidence of record, the Commission concludes that the appropriate short-term debt cost rate for use in this proceeding is 5.91%.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 37-41

The evidence for these findings, which concern the cost of common equity and fair rate of return, is contained in the testimony and exhibits of Company witness Andrews, CUCA witness O'Donnell, and Public Staff witness Hinton.

Company witness Andrews recommended that the Commission establish 12.1% as the cost of common equity. CUCA witness O'Donnell, in his prefiled testimony, recommended 10.60% as the cost of common equity. In supplemental testimony, witness O'Donnell updated that recommendation to 10.80%. Public Staff witness Hinton recommended that the Commission find 11.40% to be the cost of common equity.

Company witness Andrews employed three different methodologies in his cost of common equity analysis: the Discounted Cash Flow (DCF) model; a risk premium approach, which he characterized as a Hybrid Premium DCF-Over- Debt analysis; and the Capital Asset Pricing Model (CAPM), which is also a risk premium approach.

Company witness Andrews applied the DCF methodology in two separate analyses. His first analysis incorporated a group of 22 LDCs. The group was composed of PSNC and 21 companies, which he considered to be comparable to PSNC. This DCF analysis focused entirely on historical dividend data. Out of the 22 companies, witness Andrews selected four companies, which he referred to as the first quartile. The four companies selected were those with the highest costs of common equity based on witness Andrews' DCF analyses. This approach, which included averaging the cost of common equity for these four companies, yielded a cost of common equity of 9.33%. In his second application of the DCF model, which he characterized as a "rolling 5-years" approach, witness Andrews, using the previously identified four companies, averaged the 4-company average results for the years 1993 - 1997. That approach yielded an average cost of common equity of 11.21%.

The second method used by witness Andrews was a hybrid approach which incorporated the DCF model into a risk premium analysis. Witness Andrews used the cost of common equity results from his DCF rolling 5-years approach, as discussed above, to develop risk premiums over annual returns to treasury bills and annual income-component returns to long- and intermediate-term government bonds for the 5-year period 1993-97. The average risk premiums thereby derived were then added to current returns on the aforementioned bills and bonds to derive the costs of common equity. The resulting estimates were as follows: risk premium plus return on treasury bills, 11.74%; risk premium plus income-component return to intermediate-term bonds, 11.26%; and risk premium plus income-component return to long-term bonds, 11.12%.

In his third approach, witness Andrews performed CAPM analyses for PSNC and two groups of LDCs. In his application of the CAPM, witness Andrews used an expected return on the market of 18.87%. That return was derived by averaging the annual returns of the S&P 500 for the years 1988 through 1997. His risk-free rate was based on the income-component of long-term treasury returns over the same ten-year period. With respect to the beta parameter of the CAPM equation, witness Andrews performed a number of analyses using both S&P Betas and *Value Line* Betas. Based on his various CAPM applications, he concluded that the cost of common equity ranged from 11.41% to 14.35%.

Overall, witness Andrews concluded that the cost of common equity was in a range from 11.6% to 12.6%. As previously indicated, his recommended point-specific cost of common equity was 12.1%.

CUCA witness O'Donnell employed two different methodologies in developing his recommendation as to the cost of common equity. He utilized the DCF model and the Comparable Earnings approach.

From his analyses, witness O'Donnell initially estimated the cost of common equity to be 10.60%. However, as previously indicated, in supplemental testimony, he updated his recommendation to 10.80%. Witness O'Donnell noted that his point-specific recommendation was at the top end of his 9.80% to 10.80% range of cost rates derived from use of the DCF model and near the low end of his 10.50% to 11.50% range derived from use of the Comparable Earnings approach.

Public Staff witness Hinton also based his recommendation as to the cost of common equity on the DCF model and the Comparable Earnings approach. He performed a PSNC-specific DCF analysis and DCF analyses of two groups of companies which he considered comparable to PSNC. Witness Hinton employed the Comparable Earnings approach as a reasonableness check of his DCF results.

Witness Hinton's PSNC-specific and comparable group DCF analyses indicated a cost of common equity in the range of 10.50% to 11.50%. The Comparable Earnings approach indicated a cost of common equity range of 11.00% to 12.00%. Based on his analyses, witness Hinton recommended that the Commission establish 11.40% as the cost of common equity for PSNC.

The determination of the fair rate of return for the Company is of great importance and must be made with great care since the return 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, it must balance the interest 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 profit 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 reasonable and which are fair 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.

<u>State ex rel. Utilities Comm. v. Duke Power Co.</u>, 285 N.C. 277, 388, 206 S.E.2d 269, 276 (1974).

The Commission has carefully considered all of the relevant evidence presented in this case with the constant reminder that whatever return is allowed will have an immediate impact on the Company, its stockholders, and its customers and that the Commission must use its impartial judgment to ensure that all parties involved are treated fairly and equitably. Based on the entire evidence of record, the Commission concludes the following:

(1) Witness Andrews' DCF analyses, Hybrid Premium DCF-Over-Debt analyses, and his CAPM analyses should be accorded only minimal weight in determining the cost of common equity for purposes of this proceeding. The Commission has reached this conclusion with respect to witness Andrews' DCF analyses and his Hybrid Premium DCF-Over-Debt Analyses due largely to the manner in which he selected the four companies, which he referred to as the first quartile, from his composite group of 22 companies, including PSNC. Initially, at least, he considered the 21 companies in his composite group, i.e., those companies other than PSNC, to be comparable to PSNC based on a broad array of financial criteria. However, out of the composite group of 22 companies, witness Andrews selected only four companies for use in developing PSNC's cost of common equity under the instant approaches. The four companies selected were those with the highest costs of common equity based on witness Andrews' DCF analyses. The four companies, or first quartile, were initially selected for use in witness Andrews' DCF analyses. However, they were also used in his Hybrid Premium DCF-Over-Debt analyses.

The Commission has very serious misgivings as to the appropriateness of witness Andrews' 4-company selection process. His decision to consider only the first quartile of his 22-company composite group clearly and unequivocally, and the Commission believes inappropriately, skews his results to a higher cost of common equity and undermines the objectivity of his overall comparable companies selection process.

The Commission also has concerns regarding witness Andrews' sole use of historical dividend data in his DCF analyses. The Commission believes, as argued by Public Staff witness Hinton, that investors incorporate both historical and forecasts of earnings, dividends, and book value when assessing a company's expected dividend growth rate.

In consideration of the foregoing and the entire evidence of record, the Commission concludes that witness Andrews' DCF approaches are significantly deficient and, accordingly, are entitled to only minimal weight.

As indicated earlier, witness Andrews' Hybrid Premium DCF-Over-Debt approach incorporated the DCF model into a risk premium analysis. Witness Andrews used the cost of common equity results from his DCF rolling 5-years approach to develop the risk premiums under the Hybrid Premium DCF-Over-Debt approach. The Commission, for reasons stated above, has found witness Andrews' DCF approaches to be flawed. The Commission, therefore, finds witness Andrews' Hybrid Premium DCF-Over-Debt approach to be defective for the same reasons. Said approach will, therefore, be assigned only minimal weight in determining the cost of common equity.

Witness Andrews in applying his third approach, the CAPM, used an expected return on the market of 18.87%. Public Staff witness Hinton and CUCA witness O'Donnell both testified that it is unrealistic to assume that market returns will continue to average 18.87% in the foreseeable future. Witness Andrews' 18.87% average return was derived by averaging returns of the S&P 500 over the last ten years. Returns of the S&P 500 are typically used as proxies for market returns under the CAPM approach.

The time period over which one calculates an equity risk premium can dramatically alter the results. CUCA witness O'Donnell stated that:

> The stock market has been on a tremendous bull market run over the past three years. At no time since 1926 has the stock market produced three consecutive years in which the returns have exceeded 20% in each year. This string of three incredibly bullish years has produced a stock market average return [over the 10-year period] from 1988 through 1997 of 18.87%, as compared to an average stock market return of 13.0% from 1926 through 1997.

The data utilized by witness Andrews to develop his market-wide rate of return is from the S&P 500 stock returns reported by Ibbotson and Associates (Ibbotson) for "Large Stocks". As indicated by witness O'Donnell that data is published by Ibbotson for a period of more than 60+ years. As previously noted, witness Andrews used the Ibbotson data in developing his 10-year average market return. However, he ignored Ibbotson's recommendation that the risk premium be evaluated over a much longer period, essentially, a period going back to the 1920's.

Based on the foregoing and the entire evidence of record, the Commission concludes that witness Andrews inappropriately and substantively biased his CAPM analyses by virtue of the period he selected for use in developing the CAPM's market return parameter. Therefore, the Commission will accord only minimal weight to witness Andrews' CAPM analyses for purposes of this proceeding.

(2) Witness O'Donnell's application of the DCF method and Comparable Earnings method should be accorded only minimal weight for determining the cost of common equity for purposes of this proceeding. CUCA witness O'Donnell employed the DCF model and the Comparable Earnings approach in developing his recommendation as to the cost of common equity. Based on his PSNC-specific DCF analysis, witness O'Donnell determined that the cost of common equity was in the range from 10.30% to 11.30%. From his comparable group DCF analysis he determined such cost to be in the range from 9.80% to 10.80%. Witness O'Donnell's comparable earnings approach yielded a cost of common equity range of 10.50% to 11.50%. His overall recommendation was that the Commission adopt 10.80% as the cost of common equity.

After careful consideration of the entire evidence of record, the Commission has concluded that the results of witness O'Donnell's analyses are entitled to little weight because of the downward bias of his procedures. As PSNC witness Andrews pointed out, in certain instances witness O'Donnell ignored data in his own exhibits to arrive at his result.

Witness Andrews showed that witness O'Donnell's dividend growth rate for his comparable group DCF of 5.0% to 6.0% ignored *Value Line*'s 5 and 10 year averages for compound growth rates for earnings per share of 7.4% and 7.1%, respectively, and for book value per share of 5.7% and 6.5%, respectively, as shown in Exhibit KWO-3. Substituting this data for the selected range of 5.0% to 6.0% increases witness O'Donnell's comparable group DCF results to 10.3% to 12.0% for the comparable group. Similarly with respect to his PSNC-specific DCF, witness O'Donnell used a dividend growth rate of 5.5% to 6.5%, while Exhibit KWO-4 shows a Zack's forecasted growth of

7.4% for earnings per share. Substituting this forecasted growth rate for the rate used by witness O'Donnell raises the calculated return on equity to 11.8%.

The Commission also notes that witness O'Donnell inappropriately included certain companies with poor earnings and growth records in his comparable group DCF analysis. He included companies which had negative earnings growth (Southwest Gas, Cascade Natural Gas, NUI, Providence Energy, and UGI), companies for which *Value Line* reported "no meaningful figure" for one or more financial results (Southwest Gas), and companies for which no data was reported or was reported as "not available" (Laclede Gas, MCN Corp., Southwest Gas, UGI). By including these companies in his comparable group without any adjustment for the misleading results indicated above, witness O'Donnell inappropriately biased the results of his analyses downward and reduced the resulting cost of common equity.

In consideration of the foregoing and the entire evidence of record, the Commission concludes that witness O'Donnell's DCF approaches are inappropriate and, accordingly, should be assigned only minimal weight for purposes of this proceeding.

Witness O'Donnell also performed a comparable earnings study on all industries covered by *Business Week*, his group of comparable companies, and PSNC. He stated that the average returns on the book value of equity for all business covered by *Business Week* for the past five-year (1993 to 1997) and ten-year periods (1988 to 1997) were 15.5% and 13.6%, respectively, and the ten-year return on natural gas utilities was 8.7% with 11.8% being earned in 1997. The average returns for the comparable group and PSNC for 1994 through 1997 were 12.0% and 12.6%, respectively, with the comparable group and PSNC earning 12.4% and 12.7%, respectively, in 1997. Witness O'Donnell then excluded the most recent three-years from his study, deeming them to be "exceptionally good years," to produce an average return of 12.3% for all industries for the 10-year period 1988 to 1997. He then stated, presumably based upon his judgment, that a 12.75% average return for all industries is more indicative of the returns investors expect over the long-term since it tempers the exhilaration of recent earnings reports with the realities of realized earnings over a longer time period. Witness O'Donnell also noted that over the most recent 4-year period his comparable group earned 11.2% on common equity and PSNC earned 12.6%. Then, arguing that investors do not expect PSNC to earn returns as high as those available in the market, he concluded that PSNC's cost of equity using the Comparable Earnings methodology is in the range of 10.5% to 11.5%.

The Commission's concern, as discussed above, regarding the appropriateness of companies with poor earnings having been included in witness O'Donnell's comparable group, also apply here with respect to his comparable group Comparable Earnings approach. Moreover, the Commission has considerable concern as to the propriety of witness O'Donnell findings, based on this approach, due to the level of subjectivity embodied in his analyses and thus his overall conclusion, including results derived from his use and evaluation of data from *Business Week*.

In consideration of the above and the entire evidence of record, the Commission concludes that it should assign only minimal weight to witness O'Donnell's Comparable Earnings analyses.

Overall, witness O'Donnell recommended a point-specific cost of common equity of 10.8%. He stated that such recommendation would produce an interest coverage of 3.15 times, a coverage ratio near the bottom of the 3.0 to 4.25 times range that Standard & Poor's Credit Rating Agency deems consistent with an "A" bond rating. Such an interest coverage ratio would place the Company's current "A-" rating at considerable risk for a possible downgrade, a consequence that ultimately translates into increased interest costs to both the Company and its customers. As stated previously, the Commission believes that it is reasonable and appropriate for the Company to maintain its existing bond rating so as to enable it to attract capital on reasonable terms to fund its expansion of natural gas service. Therefore, the potential adverse impact of witness O'Donnell's cost of common equity on the Company's ability to raise capital on reasonable terms provides additional support to the propriety of the Commission's having determined that his approaches should be accorded only minimal weight.

(3) Application of the PSNC company-specific DCF method presented by Public Staff witness Hinton is reasonable and should be given the greatest weight in determining the cost of common equity for purposes of this proceeding. Witness Hinton used the DCF model and the comparable earnings approach to determine the cost of common equity. His DCF analyses produced cost of equity ranges as follows: PSNC-specific, 10.5%-11.5%; Comparable Group-LDCs, 10.4%-11.4%; and Comparable Group-nonutilities, 11.0%-12.0%.

For his Comparable Group-LDCs DCF analysis, witness Hinton selected companies from *Value Line*'s gas distribution and gas diversified classifications that had sufficient dividend histories to calculate 10-year *Value Line* growth rates and passed other criteria specified in his testimony. He also performed a Comparable Group-nonutility DCF analysis. Those companies were selected using the same criteria as for his group of comparable LDCs, with the exceptions of the Safety Rank, which was limited to a ranking of 1 and 2, and a *Value Line* beta in the range of 0.55 to 0.85.

Witness Hinton considered *Value Line*'s compound growth rates in earnings per share (EPS), dividends per share (DPS), and book value per share (BPS) over five and ten year periods and *Value Line*'s forecasts for growth rates for EPS, DPS, and BPS. He also considered the five-year projections of EPS growth rates prepared by the Institutional Brokers Estimate Service (IBES) and AG Edwards and Sons, Inc.'s estimated long-term dividend growth.

From this data, as indicated above, witness Hinton derived a company-specific range for PSNC of 10.5% to 11.5%, with a dividend yield of 4.5% and an expected growth rate of 6.0% to 7.0%. The range for the comparable gas companies was 10.4% to 11.4%, with a dividend yield of 4.3% and a range of growth rates of 6.1% to 7.1%. The range for the comparable nonutility companies was 11.0% to 12.0% based on a dividend yield of 2.0% and expected growth rates of 9.0% to 10.0%.

Witness Hinton's comparable earnings analysis, on comparable LDCs with at least a "B+" S&P Stock Ranking, indicated a range of historical returns of 11.0% to 12.0%. He performed this analysis as a check on his DCF analyses.

Overall, witness Hinton recommended a point-specific cost of common equity of 11.4%. He testified that such cost rate would produce a level of interest coverage consistent with Standard & Poor's recommended interest coverage ratio range for a single "A" bond rating.

Based on the entire evidence of record, the Commission concludes that witness Hinton's Company-specific DCF is the most reasonable and appropriate for use herein and, accordingly, should be accorded the greatest weight in determining the cost of common equity for purposes of this proceeding. The Commission has reached this decision because it is persuaded by the weight of the evidence that this approach is, by far, the most credible. The Commission's conclusion as to its credibility is based on the Commission's having concluded that the instant approach, far more so than any other approach presented, was performed in the most objective manner.

(4) The appropriate cost of common equity to PSNC for use in this proceeding is 11.40%. Based upon the entire evidence of record, the Commission finds and concludes that the cost of common equity appropriate for use in this proceeding is 11.40%. In reaching this decision, the Commission, as previously discussed, has placed the greatest weight on the cost of common equity derived by the Company-specific DCF analysis performed by witness Hinton.

This conclusion is above witness O'Donnell's recommendation and below that of witness Andrews. However, their recommendations are entitled to little, if any, weight because of the bias and other deficiencies the Commission believes to have been incorporated into their analyses. Those shortcomings have been previously discussed and need not be repeated here.

(5) The overall fair rate of return which the Company should be allowed the opportunity to earn on its rate base is 9.82%. Based on the Commission findings with respect to the proper capital structure and the appropriate cost rates for each component of capital structure, the Commission further concludes that, for purposes of this proceeding, the overall fair rate of return that PSNC should be afforded the opportunity to earn on its rate base is 9.82%.

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 must consider all of the evidence, make its own independent conclusion as to the appropriate rate of return on equity, and set forth its reasoning supported by substantial evidence, State ex rel. Utilities Commission v. Carolina Utility Customers Association, 348 N.C. 452, 500 S.E. 2d 693 (1998), all of which the Commission has done herein.

The Commission cannot guarantee that PSNC 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 rates 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 concludes that the rate of return approved in this Order will afford the Company a reasonable opportunity to earn a reasonable return for its stockholders while providing adequate and economical service to its ratepayers.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 42

The Commission has previously discussed its findings and conclusions regarding the fair rate of return which PSNC should be afforded an opportunity to earn.

The following schedules summarize the gross revenue and the rate of return which the Company should have a reasonable opportunity to achieve based upon the determinations made herein. These schedules, illustrating the Company's gross revenue requirement, incorporate the findings and conclusions made by the Commission in this Order.

SCHEDULE I
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
DOCKET NO. G-5, SUB 386
STATEMENT OF NET OPERATING INCOME
Twelve Months Ended December 31, 1997

Item	Present Rates	Approved Increase	Approved Rates
Gas operating revenue	$291,707,056	$12,394,757	$304,101,813
Operating revenue deductions:			
Cost of gas	134,544,516		134,544,516
Operation and maintenance	63,742,187	45,822	63,788,009
Depreciation	28,204,035		28,204,035
General taxes	16,417,536	408,750	16,826,286
State income taxes	2,325,630	865,662	3,191,292
Federal income taxes	10,018,929	3,876,082	13,895,011
Total operating revenue deductions	255,252,833	5,196,316	260,449,149
Net operating income for return	$36,454,223	$7,198,441	$43,652,664

SCHEDULE II
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
DOCKET NO. G-5, SUB 386
STATEMENT OF RATE BASE AND RATE OF RETURN
Twelve Months Ended December 31, 1997

Item	Amount
Gas plant in service	$723,444,411
Accumulated depreciation	(222,666,318)
Net gas plant in service	500,778,093
Allowance for working capital	5,913,296
Accumulated deferred income taxes	(61,852,130)
Rate base	$444,839,259
Rate of return	
Present rates	8.20%
Approved rates	9.82%

SCHEDULE III
PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.
DOCKET NO. G-5, SUB 386
STATEMENT OF CAPITALIZATION AND RELATED COSTS
Twelve Months Ended December 31, 1997

Item	Capital-ization Ratio	Original Cost Rate base	Embedded Cost Rate	Net Operating Income
	Present Rates			
Long-term debt	44.07%	$196,040,661	8.30%	$16,271,375
Short-term debt	4.02%	17,882,538	5.91%	1,056,858
Common equity	51.91%	230,916,059	8.28%	19,125,990
Total	100.00%	$444,839,259		$36,454,223
	Approved Rates			
Long-term debt	44.07%	$196,040,661	8.30%	$16,271,375
Short-term debt	4.02%	17,882,538	5.91%	1,056,858
Common equity	51.91%	230,916,059	11.40%	26,324,431
Total	100.00%	$444,839,259		$43,652,664

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 43-54

The evidence supporting these findings of fact is contained in the testimony and exhibits of Company witness Barkley, Public Staff witness Larsen, and CUCA witness Schoenbeck.

In its application, PSNC filed the results of cost-of-service studies based on the pro forma end-of-period levels using its existing rates and its proposed rates in this docket. The Public Staff filed cost-of-service studies based on PSNC's existing rates and the Public Staff's recommended rates. Public Staff witness Larsen's cost-of-service study reflected the recommendations of other Public Staff witnesses regarding volumes, number of customers, revenues, investment, and expenses. The Public Staff's cost-of-service study developed 33 allocation factors and specifically showed the line item allocation of more than 160 revenue or cost numbers. CUCA filed the results of cost-of-service studies based on the Company's existing rates and several recommended rate designs. CUCA made adjustments to the Company's cost-of-service study in only two places: the fixed gas cost allocation factors, which CUCA recommended all be allocated on peak day demand, and the demand component of the mains and services as well as transmission mains, which CUCA also recommended be allocated on peak day demand rather than on peak and average demand as in PSNC's and the Public Staff's studies. CUCA also presented the results of various cost-of-service studies based on the Public Staff's study modified with different assumptions.

One of the first steps in performing a cost-of-service study is to choose which method to utilize. Both PSNC and the Public Staff utilized the Peak and Average Method (also referred to as the Seaboard Method). According to Public Staff witness Larsen, this method uses direct allocations of costs that can be directly assigned and allocates fixed costs that cannot be directly assigned on the basis of 50% peak day demand and 50% annual sales. Mr. Larsen testified that his cost-of-service study accurately depicts the utilization of the services associated with these costs.

CUCA witness Schoenbeck recommended the Peak Responsibility Method, which assigns demand-related costs to the peak demand. Witness Schoenbeck also recommended the Imputed Load Factor Method as the cost-of-service method, but testified that he preferred the Peak Responsibility Method.

Witness Schoenbeck criticized the Seaboard Method. He testified that no fixed gas supply or related costs should be assigned to interruptible sales customers in a cost-of-service study since these fixed costs are attributable to providing reliable gas supplies for firm sales customers at times of peak demand. He also objected to the Peak and Average Method being used to assign, ". . . transmission-related costs and the demand-related portion of distribution mains. . . ." He asserted that the Peak and Average Method penalizes high load factor customers and off-peak customers and is completely devoid of any cost of service justification. Witness Schoenbeck quoted Bonbright in Principles of Public Utility Regulation (Second Edition) as describing the Seaboard approach as, . . . utterly ridiculous if viewed as attempts at actual cost determination. These apportionments . . . can be justified, if at all, only on 'fairness' or value of service 'considerations'."

The Seaboard Method was established in a 1952 Federal Power Commission (FPC) decision, *Atlantic Seaboard Corp.*, 11 FPC 43 (1952). In that decision, the FPC stated that it was unable

> . . . to accept the premise that merely because certain costs do not vary with use they automatically become *in toto* demand or capacity costs. A pipeline would not normally be built to supply peak service, that is to say, service on the peak days only.

Witness Schoenbeck testified that "[t]he use of this [Seaboard Method] factor is tantamount to classifying 50% of these costs as related to sales or throughput and only the remaining 50% as related to the peak demands used to obtain the necessary capacity and size of these facilities." He is correct. The *Seaboard* case placed half of the fixed cost of the pipeline system in the demand charges paid by the firm users and put the other half in the volumetric commodity charge paid by all gas buyers. Seaboard's 50/50 split of fixed costs between demand and commodity charges may seem subjective, if not arbitrary. However, in a later decision (*ANR Pipeline Co.*, 37 FERC ¶ 61,263 (1986)), the Federal Energy Regulatory Commission (FERC), noted that the FPC's *Seaboard* decision was

> . . . a result of its recognition that a pipeline serves the dual purpose of providing peak capacity service and annual service. Since neither peak usage nor annual service was found to be the predominant function of the system, half of the fixed costs were classified to demand with the other half being classified to the commodity component.

This Commission notes that, as Professor Bonbright alluded, fairness was the issue in the *Seaboard* case. The federal regulators were concerned that it was unfair to allow interruptible customers to enjoy the benefits of the pipeline system while making absolutely no contribution to fixed costs.

Witness Schoenbeck pointed out that FERC no longer uses the Seaboard Method for designing gas rates:

> The "Seaboard" method replaced the Peak Responsibility approaches employed by the Federal Power Commission (the predecessor to the FERC) in the 1950s. Subsequently, the approach was replaced with the "United" method, which in turn was replaced by the "Modified Fixed-Variable" approach. Currently, the FERC prefers a "Straight Fixed-Variable" approach, which is comparable to the peak responsibility methods used prior to "Seaboard" for designing gas rates in the unbundled, competitive gas industry.

While witness Schoenbeck correctly states that FERC has returned to the Straight Fixed-Variable (Peak Responsibility) method, he does not mention an important fact. This Commission notes that FERC's radical restructuring of the gas industry in Order 636 and subsequent orders was, as witness Schoenbeck testified, marked by a return to a Peak Responsibility method. However, FERC also allowed peak users, for the first time, to release (resell) unneeded capacity. FERC required firm customers--whose payment of pipeline demand charges reserves pipeline capacity--to pick up all the interstate pipeline's fixed costs. However, the FERC also set up a market in which those firm customers could resell capacity on days when they didn't need it to recoup whatever they can. Witness Schoenbeck pointed to the return to Peak Responsibility without commenting on the quid pro quo. His inference that FERC has endorsed shifting the full weight of fixed costs onto the firm customers and leaving it there is quite simply incorrect.

Witness Schoenbeck's rough chronology also does not address the reasons the federal regulators changed rate design methods. The reason behind the change from Seaboard to the United Method is damaging to his arguments. Witness Schoenbeck testified that cost of service "outranks" all other ratemaking considerations. He supports the theory of cost causation that puts all costs on the parties that "caused" them. In *United*, federal regulators used rate design to accomplish public policy goals, subordinating cost-of-service issues. To encourage conservation during a gas shortage, they shifted 75% of fixed costs to the commodity portion of rates, making it more expensive for gas users to consume incremental volumes of gas. And, as the shortage gave way to surplus, federal rate design changed back in the opposite direction, once again to implement a public policy. While this Commission, working under North Carolina law, looks to cost-of-service studies as an important guide, federal authorities clearly have not agreed with witness Schoenbeck's premise that cost of service reigns supreme.

In support of the Peak Responsibility Method, witness Schoenbeck testified that "...a peak design day criterion is used to determine the amount of needed capability and in the engineering and design of transmission and distribution facilities in order to satisfy the peak demands of the customers utilizing the system." PSNC witness Barkley confirmed that the Company uses peak day criteria as a basis for designing its system.

During cross-examination by the Public Staff, however, witness Schoenbeck was asked about this cost-of-service methodology as follows:

> Q. [Mr. Turner] If you have an interruptible customer who gets service 364 days a year but is interrupted on the peak day, then he gets allocated no cost under your preferred methodology; is that true?
>
> A. [Mr. Schoenbeck] That's correct.

While both methodologies are subjective, we find that the Peak and Average methodology is more appropriate than the Peak Responsibility methodology. The Peak Responsibility methodology would allow PSNC's interruptible sales and transportation customers which have faced relatively little curtailment on PSNCs system in recent years, to escape responsibility for costs associated with providing that reliable service to them. As PSNC witness Barkley stated,

> The peak and average methodology recognizes that most customers receive service most days of the year. It is also my opinion that the methodology traditionally employed by the Commission more closely resembles peak and average than the peak day method that PSNC has used in filed testimony in the past.

Witness Barkley explained "that PSNC has imposed only minimal levels of curtailment for the past two winter seasons and slightly higher levels of curtailment for the 1995-1996 winter season." He then explained

> This information indicates that many of PSNC's interruptible customers receive service during the winter season on all but the coldest days. As a result, to allocate costs solely on a peak basis relieves these customers of costs that are incurred to provide service to them.
>
> As long as the peak day is determined as a single day, many customers will receive service during the winter season without paying some of the costs attributable to providing that service. While peak and average is subjective, as are all allocation methodologies, it recognizes that many interruptible customers receive service on most days during the winter season.

The use of the Peak Responsibility methodology would allow an industrial transportation or sales customer that receives service 364 days a year, but is curtailed only on the one peak day, to avoid all responsibility for the costs associated with transmission and distribution facilities. While subjective, by allocating 50% of the fixed costs that cannot be directly assigned to peak responsibility and the remaining 50% to annual usage, the Peak and Average methodology recognizes that service is provided throughout the year and not merely on a peak day.

CUCA witness Schoenbeck also proposed, as a "second best alternative," that an Imputed Load Factor Method should be used to allocate demand-related delivery costs. He testified that the Imputed Load Factor Method had been used by the FERC for many years and stated

> . . . the demand-related allocation factor is derived using the peak or contractual demands of all firm customer classes plus an imputed load for the interruptible customers. The imputed interruptible load is calculated using the annual throughput for this class coupled with a load factor reflective of the quality of service being provided these customers. The lower the quality of service--reflecting more interruptions--the higher the load factor used in the calculation. More importantly, however, is the fact that under the Imputed Load Factor Method all other firm classes are assigned demand-related costs using their full expected peak or contractual demand which the customers can impose on the utility.

Witness Schoenbeck, having presented the arguments in support of the Peak Responsibility Method, offers the Imputed Load Factor Method as an alternative method if the Commission is not inclined to accept his "preferred alternative" and wishes to assign some of the costs in question to the interruptible customers. Witness Schoenbeck testified as follows:

> By assigning costs in this manner, the cost allocation process is used to directly determine cost responsibility while at the same time recognizing the lower quality of service provided to interruptible customers. This allocation method explicitly recognizes that by designing a system to serve peak day demand, in a non-peak weather condition, both firm and interruptible throughput can be serviced.

Witness Schoenbeck presented a summary of class rates of return under three cost-of-service studies based on exiting rates: (1) the Public Staff's study, (2) CUCA's calculation using Peak Responsibility Method, and (3) CUCA's calculation using an Imputed Load Factor approach.

Rate Schedule	Public Staff[1]	CUCA Peak[2]	CUCA Imputed[3]
104	11.45%	9.73%	10.66%
105	9.78%	8.37%	9.13%
110	10.74%	8.99%	9.77%
125	10.94%	9.46%	10.58%
145/175	7.27%	8.51%	9.74%
150/180	4.41%	25.08%	6.35%
Overall	9.81%	9.81%	9.81%

[1]Larsen Exhibit B, Page 12 of 12

[2]Schoenbeck Rebuttal Testimony, Page 29

[3]Schoenbeck Rebuttal Testimony, Page 29

He testified that he used a 100% load factor for deriving Rate Classes 150 and 180 demand levels, but added that that load factor was "extremely conservative" and was used

> . . . to illustrate the inappropriateness of the company's Peak and Average Method. A higher assumption, such as 200% to more accurately reflect the quality of service being provided to these customers, would increase the rates of return for the higher load factor classes and, at the same time, lower the returns indicated for the temperature sensitive classes.

On cross examination by PSNC, witness Schoenbeck agreed that FERC generally prefers a 100 percent load factor and, in a few cases, has allowed 125 percent and 150 percent. He agreed that interruptions or curtailments would be examined under this methodology but testified that FERC has used 100 percent for historical periods in which there were no interruptions and PSNC did have some interruptions, as shown in Barkley Rebuttal Exhibit 1. He maintained that the 100 percent load factor was conservative, even if the customers were purchasing gas under a negotiated rate.

PSNC witness Barkley testified about the Company's curtailment policy and recent curtailment history. He stated that PSNC curtails its interruptible customers only when necessary to provide firm service to its firm customers. He stated that curtailment is based on margin, with the customers paying the lowest rate curtailed first.

He examined curtailment information from the last three winters and found that the Company imposed what he termed "minimal levels of curtailment" for the past two winter seasons and "slightly higher" levels of curtailment during the November 1, 1995 to March 31, 1996 season. He testified that, during the 1995 - 1996 winter season, PSNC curtailed 52 customers for 40 days or more, with 36 of these being interrupted for 50 days are more. The maximum curtailment was for 57 days, and only two customers saw that amount of curtailment. Arguably, 40, 50 or more than 50 days represents a significant amount of interruption. However, witness Barkley points out that, during the 1995 - 1996 winter season, PSNC had approximately 500 large interruptible customers. It is clear from witness Barkley's testimony that the level of curtailment varies from winter to winter and from customer to customer in a given winter.

The Commission has analyzed each cost-of-service method presented in this docket. Based on this analysis, the Commission concludes that the Peak and Average or Seaboard Method sponsored by both PSNC and the Public Staff is the best cost-of-service study method available. The Commission believes that the Peak and Average Method properly allocates fixed costs between annual use and peak day utilization. The Commission believes that the use of the Peak Responsibility Method, which assigns all demand-related costs based on a single peak day, is unfair in that it gives interruptible customers a "free ride" on the utility system that provides them with natural gas service for the vast majority of the year. The Imputed Load Factor Method assigns interruptible customers some of these costs. However, witness Schoenbeck never fully and clearly explained the Imputed Load Factor Method. The cost-of-service study summaries presented by witness Schoenbeck indicated that there is a very significant difference in class rates of return between the Peak and Average Method and the Imputed Load Factor Method. While witness Schoenbeck presented a rate-of-return summary of his cost-of-service study using Imputed Load Factor Method, he did not present the cost-of-service study itself. Therefore neither this Commission nor any of the other parties to this docket could adequately analyze, scrutinize or criticize the method. Given the long-standing use of Peak and Average Method, it would not be reasonable for the Commission to change without more support. Accordingly, the Commission concludes that the Peak and Average or Seaboard Method is the appropriate method to use in this proceeding.

The next step in developing a cost-of-service study is to determine which specific allocation factor(s), developed from the methodological approach selected, are to be used in allocating the various categories of costs. The controversy in this case can be described as the fundamental difference between two general principles: assigning costs on the basis of which customer classes caused the cost to be incurred, the so-called cost causation theory, or assigning costs on the basis of how the customer classes utilized the system.

CUCA advocates the cost causation theory, which assigns cost to customers who supposedly cause the system or service to exist. When addressing fixed gas costs, witness Schoenbeck testified that "based on cost causation theory, these [fixed gas] costs should be assigned to the firm sales customers for whom they were incurred." Witness Schoenbeck also testified that "all demand-related costs, including fixed pipeline costs, transmission investment and the portion of distribution mains recognized as being demand-related should be allocated on this same measure [peak design day criterion] consistent with cost causation theory."

Witness Larsen, on the other hand, used the principle of system utilization for selecting allocation factors. In explaining how he chose allocation factors for the various fixed gas costs, witness Larsen testified that his method of "allocation of demand and storage charges accurately depicts the utilization of the services associated with these costs." Mr. Larsen further explained this principle, as follows:

> For example, those services utilized only on peak days are allocated on peak day send out. If the service is utilized only in the winter, it is allocated based on normalized winter sales. Costs associated with services utilized all year, such as Firm Transportation (FT), are allocated on the combination of peak day and annual sales.

The Commission has carefully evaluated the two general costing principles presented here and has determined that the system utilization principle should be adopted. In reaching this decision, the Commission notes that the cost causation theory leaves unanswered the questions of which customer class actually caused the system to be built (or the service to be contracted for) and to what degree those customers are responsible for paying for these services. If the cost causation theory is adopted, industrial customers could utilize the system free and ride on the backs of the firm market customer who supposedly caused the cost. In contrast, the system utilization principle fairly allocates costs on the basis of which customer classes are actually using the system. In determining which classes are utilizing the system, actual known data such as annual sales and winter sales volumes, as well as peak day utilization, accurately direct costs to the very customer classes that are utilizing the system. Thus, the system utilization principle is more accurate and reasonable and should be adopted.

The last issue of disagreement concerning the cost-of-service studies is the calculation of the customer and demand components of the distribution mains and services accounts. Two commonly used methodologies were discussed, the minimum pipe size method and the zero-intercept or zero-inch method. PSNC and CUCA used the minimum pipe size methodology, while the Public Staff used the zero-intercept methodology.

The premise underlying both approaches is that a portion of the distribution main investment is associated with simply connecting a customer to the LDC so that the customer can elect to take service if the customer chooses. This portion of the investment is considered to be the customer-related component since it is dependent upon the number of customers connected and is assigned directly to the customer class. The remaining portion of the distribution main investment is classified as being demand-related in recognition of the fact that the utility spends additional capital to provide added capacity to meet the highest demands placed on the system by the customers. This is assigned using a demand allocation factor.

In general terms, the minimum pipe size method looks at the cost of laying the smallest pipe. The zero-intercept method calculates the theoretical zero-inch pipe by plotting the historical costs of laying various sizes of pipe. Typically, the x-axis is the diameter and the y-axis is the unit cost per foot. The analyst uses regression analysis to fit a line that minimizes the accumulated distances between the various points. Where this line crosses the y-axis, the theoretical cost of laying a zero-inch pipe can be found.

CUCA witness Schoenbeck testified that both approaches are valid if properly applied. He stated that proponents of the minimum size method argue that it is readily understandable that mains of at least a minimum size are required to serve all customers and that the zero-inch method can produce unreliable or statistically invalid results. Proponents of the zero-inch method argue that the minimum size can, in fact, serve some demand and therefore should be viewed as demand-related.

Witness Schoenbeck testified that the two methods generally will yield similar results when properly applied. He explained that this is

> . . . because most of the costs associated with installing distribution mains is related to labor and trenching. Consequently, in the current age of plastic mains (or services) and higher labor costs, the direct material cost of the minimum size main (or service) is a relatively small component of the total installation cost. Thus, similar results should occur under either approach.

Public Staff witness Larsen used the zero-intercept method in determining the customer and demand cost components. He testified that the zero-intercept method yields "a true customer component that is not a function of volume of gas received by the customer." Witness Larsen compared the two methods and concluded that the zero-intercept method "more accurately isolates the true customer cost component from any volumetric considerations" than does the minimum pipe size method. Witness Larsen's choice of the zero-intercept method does not incorporate any volumetric considerations into the calculation of the customer component. For distribution mains, witness Larsen performed three separate regressions for cast iron, steel and plastic mains. For classifying services, he again performed separate regressions for two types of services, steel and plastic.

The Company and CUCA criticized Public Staff's application of the zero-intercept method, contending that it substantially understates the customer cost component of distribution mains and services. Witness Larsen testified that the calculated customer cost component for distribution mains was 34.65% compared to PSNC's 66%, and for services, it was 43.18% while PSNC's was 89.70%. Witness Schoenbeck testified that the zero-intercept method should result in the customer cost component being 40% to 70% of mains and 60% to 90% of services.

Witness Schoenbeck examined the manner in which Public Staff performed its regressions and analyzed the results. Although the plastic service regression analysis resulted in 45% of the investment being classified as customer-related, the regression analysis for steel data resulted in a customer-related component of 163.4% which is an unsupportable result. The Public Staff then performed a regression analysis based upon combined plastic and steel data. However, this analysis also yielded a customer-related component of 160% of the combined investment, again an indefensible result. Next, the Public Staff performed a regression using the combined data, but eliminated all services larger than two inches in diameter. The result of this selective regression indicated a customer-related component of 33.7%. After performing these four regressions, the Public Staff chose to calculate a weighted average customer-related component using results of two of the regressions (the plastic-only regression and the combined steel and plastic regression using only the smaller size services). Further, the investment cost used to determine to the weighted average from these two regressions was solely the plastic investment in services and the steel investment in services. The Commission notes that the steel services data is based on PSNC's G-1 filing, Item 3, Workpaper B2 and involves approximately thirty-four million dollars. Further, the Commission notes, based on this same information, that the total services equal one hundred and thirty-nine million dollars and the distribution mains equal two hundred and eighty-four million dollars for a combined four hundred and twenty-three million dollars. Therefore, the steel services make up only 8% of the total services account and total distribution mains account, which are the accounts that are subject to the regression analysis.

The Commission does not fault the Public Staff for rejecting two regressions that witness Schoenbeck deemed "unsupportable" and "indefensible." It does note that the decision to eliminate data points based on steel services two inches or greater in diameter had a drastic effect on the steel regression. Even if those points could and should be dismissed as statistical outliers, the impact on the regression analysis serves as a warning of the extreme impact of a subjective decision regarding what data points to leave in the regression and what points to take out.

With regard to the service regressions, witness Schoenbeck criticized the Public Staff's assumption that the length of service for each customer was 90 feet, regardless of the size or type of customer. He stated that this assumption was used to estimate the "foundational per unit cost values." Witness Schoenbeck argued that the length of service might well vary with customer class, stating, "It is not unusual to see residential class services average 50 - 70 feet while industrial services can average several hundred feet." He complained that it appeared that the Public Staff, ". . . has made no attempt to investigate the sensitivity of this assumption."

Witness Schoenbeck criticized other assumptions found in the Public Staff service regressions. He concluded that the Public Staff gave no consideration to or recognition for technological advances or inflation in performing its zero-inch analysis. In light of his assertion that the two methods should produce similar results, he criticized the Public Staff for accepting the results of its main analysis indicating a customer-related component of less than 34% when the PSNC minimum size method relying on the same data produced a customer-related component of 66%. He argues that, given this degree of difference, the Public Staff should have undertaken a further investigation. Witness Schoenbeck also found that the Public Staff's exclusion of mains larger than two inches was completely arbitrary and unjustified.

Witness Schoenbeck testified that he performed a zero-inch analysis which corrected the problems found in the Public Staff approach. He used the current costs for mains being installed by the utility in order to address the problems caused by inflation and technological issues. Performing a regression on the revised data yielded a customer-related component of 56% for distribution mains as being customer-related, a figure close to the Company's results obtained under its minimum-size approach. Similarly, for distribution services, witness Schoenbeck used an incremental approach to obtain a figure of 83% of services of being customer-related.

Witness Schoenbeck testified that the method used for classifying distribution mains and services has a major impact on the results of the cost-of-service study. He presented the following table which reflects the class rates of return which would be achieved under the Public Staff cost-of-service study if only the method for classifying distribution mains and services is changed:

Public Staff Cost-of-Service
Distribution Main/Service Classification Comparison
Rate-of-Return Under Public Staff Proposed Rates

Rate Schedule	Staff Study (Zero-Inch)	Minimum Size Study
104	11.45%	9.16%
105	9.78%	6.98%
110	10.74%	7.29%
125	10.94%	13.70%
145/175	7.27%	14.78%
150/180	4.41%	10.90%
Total:	9.81%	9.81%

Although PSNC has used the zero-intercept method in the past, in its recent rate cases the Company has used the minimum pipe size methodology to determine the customer and demand components of mains and services. PSNC no longer uses the zero-intercept methodology because it "produced negative values, a physical impossibility." 84 N.C.U.C. at 224. The Public Staff's zero-intercept presentation in this case also produced negative values.

Witness Schoenbeck agreed that PSNC had correctly classified these facilities using a minimum size study. As a result of this analysis, PSNC classified 66% of these costs as being customer-related and the remaining 34% as peak or demand-related. In contrast, the Public Staff used the zero-inch or zero-intercept method for classifying mains and services which produced an exactly opposite ratio with 34% of the facilities being deemed as customer-related and 66% classified as demand-related.

The Public Staff criticized PSNC's and CUCA's use of the minimum size approach by pointing out that the Company did not use the minimum pipe size for distribution mains. According to a quotation in witness Schoenbeck's testimony taken from the National Association of Regulatory Utility Commissioners (NARUC) Gas Distribution Rate Design Manual, "[u]nder the minimum size main theory, all distribution mains are priced out at the historic cost of the smallest main installed in the system, and assigned as customer costs." While both PSNC and CUCA chose a two-inch distribution main as the minimum size, this is not the "smallest main installed in the system." Public Staff witness Larsen explained this inconsistency in his testimony stating that "PSNC has chosen all main sized up to 2-inch in diameter (including $^3/_4$-inch, 1-inch, $1^1/_4$-inch, and $1^1/_2$-inch) in determining the customer cost component."

Parties argued that there were flaws in both methods of classifying distribution mains and services. However, the obvious theoretical nature of the zero-intercept method, the questions raised about Public Staff's assumptions and approaches by witness Schoenbeck, his unrefuted assertion that similar results should be produced by the two methods because the cost of the pipe is a relatively small component of the total installation cost, and the fact that PSNC has chosen to move away from the zero-intercept method and adopt the minimum pipe size method, all lead the Commission to conclude that minimum pipe size is the preferable method for use in classifying distribution mains and services in this docket.

In summary, the Commission has determined that the Seaboard or Peak and Average Method is the proper cost-of-service method to use for allocating fixed costs and that the minimum pipe size method is the preferred method for determining the customer and demand components of the distribution mains and services accounts. The Commission notes that none of the full cost-of-service studies herein incorporated both of these principles, while at the same time utilizing the revenue requirement approved by the Commission in this docket, and the Commission does not have the technical resources to produce such a study within the time constraints imposed by statute for this decision. However, CUCA witness Schoenbeck did prepare a summary of the rates of return that used the Peak and Average methodology with the minimum pipe size methodology and a revenue requirement similar to that approved herein. The result of that summary is an appropriate guide to use along with other factors in determining rate design this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 55-66

The evidence concerning rate design is found in the testimony of PSNC witness Barkley, Public Staff witness Davis, and CUCA witnesses Schoenbeck and O'Donnell.

Witness Barkley testified that the first requirement of rate design is to develop rates that will recover the revenue requirement allowed by the Commission. Witness Barkley stated that, in designing the Company's proposed rates, he considered several factors in addition to the estimated cost-of-service study. These factors included (1) value of service or competitive conditions existing in the marketplace, (2) historical rate structure and relationships among the various rates, (3) consumption characteristics of the different classes of customers, (4) future prospects of maintaining sales and transportation levels to the various classes of customers, (5) national and State policies, and (6) ease of administration. Witness Barkley further stated that in applying these factors he considered the ability to negotiate rates, quantity of natural gas used, time of use, manner of use, and the facilities that PSNC must provide and maintain in order to satisfy the requirements of its customers.

Witness Barkley asserted that cost-of-service studies are useful as a tool to estimate the return on each rate schedule but that such studies are somewhat subjective since they reflect many judgments of the preparer, and no two cost-of-service studies prepared independently by different individuals will arrive at the same results. Therefore, according to witness Barkley, cost-of-service studies should be used only in combination with other factors in arriving at the final rate design. Witness Barkley stated, however, that the end-of-period returns for PSNC's various rates schedules should be more nearly equal to the overall return than they are presently. He further stated that, because a large portion of PSNC's investment in utility plant serves residential customers, PSNC believes residential rates should provide a return closer to the average return allowed for all rate schedules.

Witness Barkley also testified that the Company is proposing several changes in rate design. A new rate schedule, Rate Schedule No. 126 - Small General Service - Cooling, was proposed. All of PSNC's current small general service customers who use natural gas for air conditioning are billed under Developmental Rate Schedule 190, which has a three-year eligibility limit. Therefore, PSNC requested a permanent rate schedule for this natural gas application. Witness Barkley further testified that the Company is proposing to expand its existing developmental rate for natural gas air conditioning (Rate Schedule 190) to include other types of engine-driven technology but that this rate schedule would remain a developmental rate with a maximum of 50 customers. Two other new rate schedules were proposed but withdrawn in PSNC witness Barkley's rebuttal testimony.

Witness Barkley explained that the Company is proposing to eliminate the winter/summer differential from its rate schedules. He stated that, while charging higher rates during the winter billing period is theoretically valid, PSNC's customers are often confused by the automatic increases and decreases associated with the winter/summer differential. According to witness Barkley, the annual increase each November is especially troublesome as it typically coincides with the time of increased consumption by the heat-sensitive customers.

PSNC proposed to increase the facilities charges to Rate Schedules 145 and 150 in this proceeding by 100%. Under PSNC's proposal, the facilities charge for Rate Schedule 145 would increase from $150 to $300 per month, and the facilities charge for Rate Schedule 150 would increase from $300 to $600 per month. PSNC witness Barkley testified that the costs of remote meter reading have increased PSNC's fixed investment associated with serving these customers, however, he did not quantify that cost.

PSNC proposed to continue its Riders A, B, D, and E, with only minor revisions and to add a new rider to its tariffs, Rider F, which is discussed hereinafter.

GAS - RATES

Under the Company's rate design proposal, the percentage increases and/or decreases to its customers for the initially proposed revenue requirement increase of $21,518,027 would be as follows:

Rate Schedule No.	Customer Class	Percent Inc./(Decr.)
104	Residential - Gas Advantage	5.6%
105	Residential - Year Around	12.1%
110	Residential - Seasonal	12.2%
125	Small General Service	10.4%
145/175	Large Quantity General	(1.8)%
150/180	Large Quantity Interruptible	(0.7)%

Public Staff witness Davis testified that cost-of-service studies are subjective and judgmental at best, and that he did not depend on them solely for the magnitude of rate increases or decreases necessary to design rates. Witness Davis indicated that the Public Staff's estimated cost-of-service study is useful as a guide but, like other cost studies, cannot objectively show the returns paid by each customer class. For example, he noted that cost studies incorporate filed tariff rates. The end-of-period or proposed revenue calculations do not reflect discounts to industrial customers that were negotiated during the test year, which result in an overstatement of industrial returns and an understatement of returns in other customer classes.

According to witness Davis, there are other important factors that must be considered in designing rates. Among these are (1) value of service, (2) the type of service, (3) the quantity of use, (4) the time of use, (5) the manner of service, (6) competitive conditions relating to acquisition of new customers, (7) historical rate design, (8) the revenue stability of the utility, and (9) economic and political factors. Witness Davis stated that he considered all of these factors in designing rates for PSNC in this case.

Witness Davis explained that value of service recognizes that the price paid for natural gas service cannot be significantly greater than the price of a satisfactory alternative fuel as well as the fact that gas is cleaner burning and easier to use. Witness Davis stated that type of service, quantity of use, time of use, and manner of service are considered by reviewing customer characteristics. Heat-sensitive residential and commercial customers need more security of service during peak winter days and contribute more margin to pay for storage services than do non-heat-sensitive customers. There are also distinctions among industrial customers: some require a more firm supply than others, who may use gas only as boiler fuel, and some may decide not to have an alternative fuel. According to witness Davis, rate design should reflect all of these kinds of differences.

Witness Davis also testified that rates should be attractive to new customers. He noted that some industrial customers are energy intensive and therefore very conscious of their choice of fuels, while residential customers are concerned with their long-term commitment to their energy choice. He recommended that rates be designed to be appealing to all classes of customers for the benefit of both the utility and its customers.

Witness Davis further testified that considering historical rate design involves evaluating the results of past rate design and anticipating the response to proposed rate design. He noted that residential rates have been increased substantially compared to industrial rates in the Company's last several general rate cases.

In reviewing the revenue stability of the utility, witness Davis stated that he considered whether the rates would enable the Company to attract new customers and keep the customers it has. He further stated that dramatic changes in rate design can result in unpredictable revenue shifts and should generally be avoided.

Finally, with regard to economic and political factors, witness Davis testified that economic growth in the Company's service territory may be encouraged through rate design.

Witness Davis disagreed with PSNC's proposed doubling of the facilities charge for Rate Schedules 145 and 150. He recommended increasing the facilities charge for Rate Schedule 145 from $150 to $200 per month and for Rate Schedule 150 from $300 to $350 per month. On cross-examination by the Company, witness Davis stated that even though CUCA had agreed with the increase, other industrial customers not represented by CUCA may not approve. He explained that his responsibility was to represent the using and consuming public and that the Public Staff generally does not advocate an increase of this magnitude for any class of customers, preferring gradualism instead.

Witness Davis testified that he agreed with the proposed Rate Schedule 126 - Small General Service Cooling and Rate Schedule 190 - Natural Gas Equipment Developmental Rate.

Finally, witness Davis agreed with PSNC on the elimination of the winter/summer differentials in this case and reflected this change in his proposed rate design.

Under witness Davis' proposed rate design, as prefiled on August 5, 1998, the percentage increases and decreases based on the Public Staff's recommended $11,843,472 increase in annual revenues would be as follows:

Rate Schedule No.	Customer Class	Percent Inc./(Decr.)
104	Residential - Gas Advantage	
	Rate 104 & 105 Combined	5.01%
105	Residential - Year Around	
110	Residential - Seasonal	5.98%
125	Small General Service	4.53%
145/175	Large Quantity General	(0.92)%
150/180	Large Quantity Interruptible	(3.30)%

On August 19, 1998, Company witness Barkley filed rebuttal testimony. Witness Barkley stated that, excluding the effect of PSNC's proposed new growth methodology, PSNC amended its revenue requirement request to $11,843,067 which was to be subsequently updated for additional utility plant. Based upon the $11,843,067, the percentage rate changes proposed by PSNC were as follows:

GAS - RATES

Rate Schedule No.	Customer Class	Percent Inc./(Decr.)
105	Residential - Year Around	5.17%
110	Residential - Seasonal	6.83%
125	Small General Service	5.25%
145/175	Large Quantity General	(4.53)%
150/180	Large Quantity Interruptible	(4.99)%

On August 25, 1998, witness Barkley submitted supplemental testimony, which included the Company's updated revenue increase proposal of $14,045,773. This update included not only the inclusion of additional plant, with which the Public Staff agreed, but also an additional amount of $1,651,016 associated with PSNC's new growth methodology. Witness Barkley testified that with the new proposed revenue requirement, the percentage increases and decreases by customer class were as follows:

Rate Schedule No.	Customer Class	Percent Inc./(Decr.)
105	Residential - Year Around	5.53%
110	Residential - Seasonal	8.45%
125	Small General Service	6.32%
145/175	Large Quantity General	(2.81)%
150/180	Large Quantity Interruptible	(2.21)%

On August 25, 1998, Public Staff witness Davis submitted revised testimony and exhibits that reflected the revenue increase of $12,394,757. Witness Davis indicated that his revisions reflected only the agreement between the Public Staff and PSNC to update certain plant additions and that otherwise his original prefiled testimony was the same. Witness Davis' recommended the following percentage increases and decreases by customer class:

Rate Schedule No.	Customer Class	Percent Inc./(Decr.)
104	Residential - Gas Advantage	
	Rate 104 & 105 Combined	5.11%
105	Residential - Year Around	
110	Residential - Seasonal	6.07%
125	Small General Service	4.67%
145/175	Large Quantity General	(0.43)%
150/180	Large Quantity Interruptible	(2.23)%

CUCA, through its witness Schoenbeck, recommended that the Commission adopt cost-based rates. Witness Schoenbeck also recommended that transportation rates include only transmission and distribution costs and that no supply related costs, such as firm interstate capacity, storage, or peaking facilities, be assigned to transportation customers.

Specifically, witness Schoenbeck recommended that the Commission adopt the principle of moving each customer class one-third of the way to a cost-based level in this proceeding. He recommended the following percentage changes based on the Public Staff's original recommended increase of $11.7 million:

GAS - RATES

Rate Schedule No.	Customer Class	Percent Inc./(Decr.)
104/105	Residential - Year Round	6.8%
110	Residential - Seasonal	7.4%
125	Small General Service	3.8%
145/175	Large Quantity General	(8.0)%
150/180	Large Quantity Interruptible	(10.0)%

The Commission has consistently held that it would not be appropriate to design natural gas rates solely on the basis of cost-of-service studies. The Commission agrees with witness Davis that such studies are subjective and judgmental and cannot objectively show the returns paid by customer classes. For example, the cost-of-service studies presented in this case show the following differences in returns by customer class at existing rates:

Rate Schedule	PSNC[1]	CUCA[2]	Public Staff[3]
105	5.38%[4]	3.26%[5]	8.76%
110	5.03%	2.89%	8.53%
125	10.22%	7.09%	8.76%
145/175	17.17%	29.64%	7.40%
150/180	15.65%	253.25%	5.06%

Furthermore, as witness Davis noted, such studies overstate large industrial and commercial returns because they do not reflect negotiated rate discounts. For some time now, PSNC has been allowed to pass margin lost in negotiated discounts through to firm customers in the Rider D. Furthermore, in this rate case, the Company has proposed to allow customers in Rate Schedule 145 to switch to Rate Schedule 150 without having an alternate fuel backup. Rider F has been proposed to allow the Company to pass margin lost through such a shift of large industrial and commercial customers through to other users. The rates of return shown in a cost-of-service study do not necessarily reflect the actual return the Company garners from each class. This, by itself, is reason enough not to place too great an importance on class rates of return calculated in cost-of-service studies.

Witness Barkley testified that the rate designs used by the electric companies in North Carolina tend to group the returns from all rate classes within a much narrower band than those that have been approved for PSNC in the past. However, the Commission notes that electric utilities are not allowed to negotiate rates with large industrial and commercial customers and pass lost margins through to other customer classes.

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[1]Barkley Exhibit 2, Page 1 of 2

[2]Exhibit ___(DWS-1), Page 3 of 4

[3]Revised Larsen Exhibit A, Page 12 of 12

[4]Rate Schedule No. 104 incorporated into Rate Schedule No. 105.

[5]Rate Schedule No. 104 incorporated into Rate Schedule No. 105.

The Supreme Court of North Carolina also has noted that factors other than cost of service should be considered. In Utilities Commission. v. N.C. Textile Manufacturers Assoc., 313 N.C. 215, 222, 238 S.E.2d 264, 269 (1985), the Court stated:

> In determining whether rate differences constitute unreasonable discrimination, a number of factors should be considered: '(1) quantity of use, (2) time of use, (3) manner of service and (4) cost of rendering the two services.' Utilities Commission. v. Oil Co., 302 N.C. 14, 23, 273 S.E.2d 233, 238 (1980). Other factors to be considered include 'competitive conditions, consumption characteristics of the several classes and the value of service to each class, which is indicated to some extent by the cost of alternate fuels available.' Utilities Commission. v. City of Durham, 282 N.C. 308, 314-15, 193 S.E.2d 95, 100 (1972).

The Supreme Court examined this matter again in State ex rel. Utilities Commission. v. Carolina Utility Customer Association, 323 N.C. 238, 372 S.E.2d 692 (1988). In that case, CUCA and other parties challenged the Commission's conclusion in a North Carolina Natural Gas Corporation rate case that the differences in rates of return among that utility's various customer classes were not unreasonably discriminatory nor unjust and unreasonable. The Court found that the Commission had made adequate findings and conclusions and that the Commission had drawn "legitimate distinctions" which justified maintaining large industrial rates of return at a higher level than residential, commercial, and small industrial rates of return. The Court held, "While an assessment of the Commission's Order based simply of the cost-of-service evidence might suggest the adopted rates are unreasonably discriminatory, the Commission's analysis of the non-cost factors permitted in our case law is sufficient to justify the Commission's decision." Id. at 252. The Supreme Court also examined this matter in State ex rel. Utilities Commission. v. Carolina Utility Customers Association, 328 N.C. 37, 399 S.E.2d 98 (1991). In this case, the Court again held that the Commission did not have to establish rates based solely on cost-of-service considerations. In its most recent opinion on the subject, State ex rel. Utilities Commission. v. Carolina Utility Customers Association, 348 N.C. 452, 500 S.E. 2d 693 (1998), the Supreme Court emphasized that the Commission must provide its independent comparative thought, analysis or weighing process measuring the disputed positions of the parties and determining a fair allocation of costs between various customer classes and thus a fair and nondiscriminatory rate design.

The Commission agrees with witnesses Barkley and Davis that it is appropriate to consider a number of factors in addition to cost-of-service when designing rates. Such other factors include value of service, quantity of natural gas used, the time of use, the manner of use, the equipment which the Company must provide and maintain in order to meet the requirements of its customers, competitive conditions and consumption characteristics. Furthermore, even if equalized returns could be achieved over several rate cases, as recommended by Mr. Schoenbeck, the resulting impact on Rate Schedule 105 customers would be significant. These customers cannot easily switch fuels. The long-established expectations of these customers at the time they bought their heating systems should be taken into consideration in setting rates.

Furthermore, the Commission declines to adopt the rationale supporting witness O'Donnell's rate of return analysis. While his discussions of various risk factors for each rate class were a helpful exercise, they were also general in nature. His conclusions were based largely on opinion. His recommendation that customer class rates of return should all be within two percentage points of the overall rate is arbitrary and unsupported by facts. The same could be said for the specific recommended rates of return for each customer class. Particularly questionable is the recommendation that large interruptible customers provide a rate of return no greater than 11.00% from a system average of 9.15%. It is true that these customers can be interrupted and that reduces the risk PSNC faces. However, in light of testimony that these customers can negotiate rates and might be able to bypass PSNC, such a narrow distance from the system return does not seem reasonable. The assertion that these recommended rate of return ranges can be established with no regard for the cost of service is also questionable.

Based on the Commission's findings with regard to the cost-of-service study most appropriate for use in this proceeding, one prepared by PSNC is best for judging rates of return by customer class using existing rates. PSNC prepared a study based on existing rates, generally using the Peak and Average Method to assign fixed costs that cannot be directly assigned and the minimum pipe size method of classifying the customer and demand components of distribution mains and services. Under that cost-of-service study, Rate Schedule No. 105 customers (modified to merge proposed Rate Schedule No. 104 and Rate Schedule No. 105) provide the Company with a 5.83% return, customers served under Rate Schedule No. 110 provide the Company with a 5.03% return, customers served under Rate Schedule No. 125 provide the Company with an 10.22% return, customers served under Rate Schedule Nos. 145 and 175 provide the Company with a 17.17% return, and customers served under Rate Schedule Nos. 150 and 180 provide the Company with 15.65% return. The overall return under existing rates was 7.51%. That cost-of-service study leads the Commission to conclude that rates of residential customers should be raised and rates of industrial customers should be reduced.

The Commission has adopted the Public Staff's revenue requirement which calls for a revenue increase of $12,394,757. As the following table shows, the Public Staff's proposed rate design essentially places the entire increase on residential and small general service customers, while decreasing the revenue burden on large commercial and industrial customers.

	Rate Schedule/Class	$ Change	% Change
110	Residential - Seasonal	$ 710,986	6.07%
104/105/120	Residential - All Other	8,403,170	5.11%
	Total Residential	9,114,156	5.17%
125	Small General Service	3,644,065	4.67%
145/175	Large Quantity General Service	(63,550)	- 0.43%
150/180	Lg Qty Interruptible Comm'l and Industrial Service	(472,709)	- 2.23%
190	Large Tonnage Air Conditioning	22,842	27.95%
195	NGV Development Rate	0	-
	Miscellaneous Revenues	149,221	9.64%
	Total	$12,394,025	4.25%

Since the Public Staff's cost-of-service studies used the zero-intercept method of classifying the customer and demand components of distribution mains and services, the Public Staff's cost-of-service studies using proposed rates are of limited use for analyzing the impact of Mr. Davis' rate design.

GAS - RATES

CUCA has prepared a modification of the Public Staff's estimated cost-of-service study, which reflects rates similar to that proposed by the Public Staff and employs the Seaboard Method of allocation and the minimum pipe size determination of the customer and demand cost component of distribution mains and services. Of the cost-of-service study results presented, that one is the most appropriate to judge the impact of rate design on customer class rates of return in this proceeding. It still breaks out the proposed Rate Schedule 104 which the Company has withdrawn.

Rate Schedule No.	Customer Class	Rate of Return
104	Residential - Gas Advantage	9.16%
105	Residential - Year Round	6.98%
110	Residential - Seasonal	7.29%
125	Small General Service	13.70%
145/175	Large Quantity General	14.78%
150/180	Large Quantity Interruptible	10.90%
	Overall	9.81%

The percentage returns represent increases in the rates of return produced by Rate Schedules 105, 110, and 125 and decreases in the rates of return produced by Rate Schedules 145/175 and 150/180.

The Commission notes that the proposed rate design, when viewed in the most appropriate cost-of-service study available, yields class rates of return that are closer to the overall return than have been seen in the past. The Commission is persuaded by the testimony of Public Staff witness Davis that this rate design appropriately weighs all of the factors discussed in his testimony, and the Commission concludes that the proposed rate design, as modified, is based on proper consideration of all of the appropriate factors and is fair to all customer classes.

PSNC proposed to eliminate the summer/winter differentials in its rates, saying the differentials, while theoretically valid, confuse customers and cause rates to go up at the beginning of the heating season. The Public Staff supported the change and no other party opposed it. The Commission concludes that it is appropriate to eliminate the winter/summer differentials in PSNC's rates.

The Public Staff supported the Company's proposal to establish a new Rate Schedule 126 - Small General Service - Cooling. This will allow customers who use gas air conditioning to have a permanent rate schedule. Currently, they are billed under Rate Schedule 190, which has a three-year eligibility limit. The Public Staff also agreed with PSNC's proposal to expand Developmental Rate Schedule 190 to include other types of engine-driven technology. No other party opposed these changes. The Commission concludes that it is appropriate to approve the Rate Schedule 126 and the modifications to Rate Schedule 190.

With regard to PSNC's proposal to increase the facilities charges in Rate Schedules 145 and 150, the Commission notes that both CUCA and PSNC favor the increase. However, the Public Staff's point that CUCA does not represent all industrial customers is well taken. The Public Staff does not oppose the increase; it simply "prefers gradualism." The Commission concludes that it would not be appropriate to grant the full increase, but in light of the testimony about remote meter reading costs, would like to move further than the $50 advocated by Mr. Davis. The Commission will therefore approve half of the demand charge increase requested by PSNC, a $75 per month increase to $225 in Rate Schedule 145 and a $150 per month increase to $450 in Rate Schedule 150.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 67-72

The evidence supporting these findings of fact is found in the testimony of SG&P witness Johnson and the rebuttal testimony of PSNC witness Barkley.

SG&P witness Johnson proposed to allocate a portion of PSNC's total fixed gas costs rather than the 100% load factor equivalent of the Zone 3 to Zone 5 FT rate for Transcontinental Gas Pipe Line Corporation (Transco), and a portion of PSNC's administrative and general costs to the commodity cost of gas for PSNC's Rate Schedules 145 and 150. As set forth below, the Commission rejects witness Johnson's proposal to allocate a portion of PSNC's administrative and general expenses to the commodity cost of gas for PSNC's Rate Schedules 145 and 150 and to increase the level of fixed gas costs included in the commodity cost of gas for those rate schedules.

The Commission declines to include any of PSNC's administrative and general expenses in the commodity cost of gas under PSNC's Rate Schedules 145 and 150. PSNC witness Barkley stated in his rebuttal testimony,

> The commodity cost of gas is simply that – the cost of the gas. The Commission has never included Administrative and General Costs in the commodity cost of gas sold under any rate schedule offered by PSNC. Also, to the best of my knowledge, the Commission has never included such costs in the commodity cost of gas sold by any LDC in North Carolina.

Witness Barkley further stated that because PSNC is unable to project the volumes that may be sold under Rate Schedules 145 and 150 with any accuracy, the assignment of any administrative and general costs to those rate schedules ". . . would almost certainly lead to either over-collections or under-collections as actual sales volumes. . ." varied from whatever estimates of sales quantities PSNC used to assign administrative and general costs to those rate schedules.

Witness Barkley's testimony is consistent with the Commission's determinations of the commodity cost of gas for the various gas utilities operating in this state. The commodity cost of gas for the various gas utilities have always been limited to the cost of the gas itself. Witness Johnson has not provided a convincing reason to deviate from that practice.

Witness Johnson also proposed to increase the level of fixed gas costs included in the commodity cost of gas for these rate schedules. The Commission declines to increase the level of fixed gas costs included in the commodity cost of gas for these rate schedules. The declines in the sales that PSNC is making under these rate schedules refutes SG&P's claim that the commodity cost of gas poses a threat to the competitive market. Since the new pricing mechanism was implemented for these rate schedules on December 1, 1997, through July 31, 1998, PSNC has sold only 1,148,231 dekatherms under these rate schedules, or less than 5% of the total volumes of 22,789,916 dekatherms that PSNC sold to, or transported for, its large volume customers. As PSNC witness Barkley explained,

> If these services were subsidized and priced lower than the services that independent marketers such as Southeastern can offer, the quantities sold would have been a much larger portion of this total.

Furthermore, the Commission notes that in November 1997, in Docket No. G-5, Sub 379, the Commission approved the mechanism for calculating the commodity cost of gas for these rate schedules on an experimental basis for two years. The mechanism has been in effect for less than a year, and PSNC has not yet submitted its first report under that program. The Commission is reluctant to change an experimental program that has been in effect only a short time and has not been shown to have an adverse impact on the competitive market.

In summary, the Commission finds that SG&P has failed to demonstrate that a portion of PSNC's administrative and general costs should be allocated to PSNC's commodity cost of gas for Rate Schedules 145 and 150. The Commission also finds that SG&P has failed to demonstrate that the level of fixed gas costs included in that commodity cost of gas should be increased.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 73-77

The evidence for these findings of fact is contained in the testimony of PSNC witness Barkley, Public Staff witness Davis, and CUCA witness Schoenbeck.

Both the Company and the Public Staff advocated the continuation of full-margin transportation rates, which the Commission has consistently adopted in prior cases. PSNC witness Barkley testified that the term full-margin typically has been used to describe transportation rates that are calculated by simply deducting the commodity cost of gas from Commission-approved sales rates. He stated that under PSNC's bifurcation rate program, as approved in Docket No. G-5, Sub 379, this process is reversed. Witness Barkley explained that sales rates for Rate Schedules 145 and 150 are calculated by adding a market-based commodity rate to the established companion transportation rates. He asserted that the proposed transportation rates will differ from the sales rates by the amount of the commodity costs and therefore are indisputably full-margin rates.

Public Staff witness Davis testified that he also had designed rates to be based on the full-margin concept. Witness Davis stated that determining the appropriate transportation rates is an integral part of rate design, which involves reviewing rate design principles and policy as well as arriving at specific rates. He explained that the full-margin concept reflects that the responsibility for utility costs by a class of customers is the same whether those customers procure their own gas supplies or buy under the Company's sales rates. Witness Davis asserted that transportation customers are responsible for the same level of utility plant investment, operation and maintenance expense, depreciation, taxes, and fixed gas costs as sales customers. He also asserted that, because these types of customers have the ability to switch between sales and transportation services, the utility must stand ready to provide the desired option.

CUCA witness Schoenbeck testified that transportation rates, like natural gas sales rates, should be based primarily upon cost-of-service considerations. He stated that full-margin rates contain fixed gas costs that are incurred to obtain the delivery of natural gas volumes to the Company's city gate, while entities transporting their own customer-owned gas are required to separately contract and pay for the delivery of that gas to PSNC's city gate.

The full-margin concept is well established. It has been adopted in all recent natural gas utility rate cases, including the Company's last litigated general rate case (Docket No. G-5, Sub 327) and the most recent natural gas utility rate cases decided for the other three natural gas companies regulated by the Commission, and it has been affirmed by the North Carolina Supreme Court, most recently in State ex rel. Utilities Commission v. Carolina Utility Customers Association, 348 N.C. 452, 500 S.E. 2d 693 (1998). The Commission is of the opinion that CUCA's position should be rejected for the same reasons set forth above regarding the use of cost-of-service studies in rate design. In addition, the Commission continues to find no justification for a difference between the margins earned on the Company's sales rate schedules and its transportation rate schedules. The Commission concludes that the services performed by the Company are substantially the same whether service is provided under the sales rate or transportation rate, especially given the customer's option to select monthly which service is more desirable. Consistent with our conclusions in the transportation rate phase of this proceeding, which will be set forth more fully in a separate Order to be issued in the near future, the Commission concludes that the Public Staff's proposed transportation rates based on the full-margin concept are just and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 78 AND 79

The evidence for these findings of fact is contained in the testimony of Public Staff witnesses Davis and Larsen, Company witness Barkley, and CUCA witness Schoenbeck.

While witness Davis provided the volumes by rate class and the total cost of gas schedule, witness Larsen provided the allocation factors between rate classes. Witness Larsen testified that he calculated the fixed gas cost recovery rates by ". . .summing the demand and storage services from my cost of gas schedule and dividing this number by the volume from each rate schedule." Witness Larsen further testified that the results ". . .range[d] from $1.2662 per dekatherm (dt) for Residential Heat Only Customers (Rate Schedule 110) to $0.3723/dt for Interruptible Industrial Customers (Rate Schedule 150)." As cited earlier in this Order, Mr. Larsen allocated these fixed gas costs based on how these services were utilized.

Company witness Barkley performed a calculation similar to witness Larsen's. On cross-examination by the Public Staff, witness Barkley explained the similarities and his agreement with the Public Staff on this issue:

Q. [Mr. Turner] And if you take out those revised volumes, then the fixed gas cost recovery rates that we come up with and the ones that you have are virtually identical, are they not?

A. [Mr. Barkley] That is correct.

Q. [Mr. Turner] Okay, and so you would not have any problem if the Commission went with ours rather than yours on that?

A. [Mr. Barkley] I would agree with that statement, Mr. Turner, because they are, again, so close that I don't think that with an immaterial difference there would be any need for us to oppose that small difference.

CUCA witness Schoenbeck, on the other hand, calculated fixed gas cost recovery rates that were significantly different from those calculated by the Public Staff and PSNC. Witness Schoenbeck's recommendation included his position that "no fixed gas costs should be allocated to transportation customers" and the use of his Peak Responsibility cost-of-service method. Witness Schoenbeck's fixed gas cost recovery rates ranged from $1.7500/dt for Residential Heat Only customers to $0.5750/dt for Firm Industrial customers (sales customers on Rate Schedule 145) to zero for both PSNC's transportation customers (Rate Schedules 175 and 180) and PSNC's Interruptible Industrial customers (Rate Schedule 150).

The Commission has already discussed the cost-of-service methodology in this Order and has rejected CUCA's Peak Responsibility Method. Also, the Commission has already discussed the issue of full-margin transportation rates and, based on its decision on that topic, rejects witness Schoenbeck's recommendation to allow transportation customers to escape the responsibility of these recovery rates.

In summary, the Commission notes that although the cost-of-service study is subjective and judgmental, Mr. Larsen's Cost of Gas Exhibit contains known volumes and dollar figures and is allocated as accurately as possible. The Commission also notes that PSNC's method is very similar to the Public Staff's in this regard and that PSNC has agreed to the Public Staff's recommendation for this issue. The Commission concludes that although the purchased gas expense allocations may not be exact, they are accurate and are the best available tool for the calculation of the fixed gas cost recovery rates. Based on the Commission's previous findings regarding the cost-of-service study and volumes, the Commission concludes that the following fixed gas rates and apportionments are appropriate:

Rates 105/120	Rate 110	Rate 125	Rates 145/175	Rates 150/180
$1.1180	$1.2662	$0.9681	$0.6589	$0.3723
44.05%	3.08%	24.80%	10.58%	17.49%

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 80

The evidence for this finding of fact is in the testimony and exhibits of PSNC witness Barkley and Public Staff witness Davis.

The Commission recognizes that the R_i factors utilized in the Companys' Rider E - Weather Normalization Adjustment are determined from the proposed rates for Rate Schedules 105, 110, and

125 less commodity and fixed gas costs, adjusted for gross receipts taxes. Therefore, based on the Commission's conclusion based on Findings of Fact Nos. 43 - 54 and 78 and 79, the Commission concludes that the Company should submit the R_i factors computed based on the Commission's conclusion related to rate design and the fixed gas cost recovery rates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 81-84

The evidence supporting these findings is contained in the testimony and exhibits of Company witness Barkley and Public Staff witness Davis.

PSNC proposed to add a new rider to its tariffs, Rider F, to capture any margin loss associated with an anticipated, but unpredictable, shift in large quantity customers from firm large commercial and industrial service (Rate Schedules 145 and 175) to interruptible service (Rate Schedules 150 and 180) after the effective date of the Order in this docket.

Mr. Barkley testified that Rider F was necessary because several customers have recently requested interruptible service, but do not meet the requirement of sales Rate Schedule 150 and its companion transportation Rate Schedule 180, because they do not have and do not want to install an alternative fuel system. These customers received firm service under sales Rate Schedule 145 and its companion transportation Rate Schedule 175 during the test year. According to Mr. Barkley, PSNC believes that these customers should be allowed to receive interruptible service, provided that their respective account meets the volumetric requirements, and further provided that the customers are willing to accept curtailment despite their lack of an alternate fuel system. However, PSNC also contends that it has been unable to determine how many customers will shift from firm to interruptible service due to the deletion of the alternate fuel requirement of Rate Schedules 150 and 180. Therefore, PSNC proposes the tracking mechanism proposed in Rider F to recover the margins which are set by the Commission in this proceeding, in the event of any shifting that may occur within a 24-month period following the effective date of the Order in this case.

Public Staff witness Davis testified that he had reviewed the proposed Rider F and that he agreed with Rider F in principle. He stated that historically, only sales Rate Schedule 150 and its companion transportation Rate Schedule 180 could negotiate rates base on alternate fuel capability. Mr. Davis testified that the requirement for alternate fuel capability ensured fair negotiations. He recommended that the Rider F language be clarified to indicate that Rate Schedule 145 customers without alternate fuel electing to move to Rate Schedule 150 are ineligible to negotiate rates.

The Commission concludes that Rider F should be allowed and that the language in the rider should be modified to indicate that those Rate Schedule 145 customers that switch to Rate Schedule 150 are not eligible to negotiate.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 85

The evidence for this finding of fact is found in the testimony and exhibits of Company witness Barkley.

Witness Barkley testified that PSNC is proposing certain changes to its fees. PSNC proposes to increase fees for reconnections that are requested by customers after 5:00 p.m. each day and at any time on weekends and holidays as well as the after-hours service call fees for Monday through Saturday and to a greater degree for Sundays and holidays. All of these increases are designed to bring the fees more in line with the cost of providing these services. These proposed changes are shown in Barkley Exhibit 4, Page 2 of 51.

No other party offered any testimony in opposition to these requested changes. The Commission also notes that the Public Staff incorporated the effect of these revenue changes in its recommended cost-of-service and also in designing rates. The Commission further notes that these proposed changes only affect customers who use these services after normal working hours and, consequently, do not affect customers who pay their bills on time or who schedule these services during normal business hours. The Commission concludes that these proposed rates and charges should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 86–90

The evidence for these findings is found in the testimony of PSNC witness Barkley and Public Staff witness Davis.

Public Staff witness Davis recommended that the costs associated with the existing Cardinal Pipeline be recorded prospectively as a cost of gas. As support, he cited Ordering Paragraph No. 9 of the Commission's Order in Docket Nos. G-39, G-37, G-5, Sub 327, and G-9, Sub 351, issued November 6, 1997. PSNC witness Barkley stated that he concurred with the Public Staff's proposed treatment of these costs. No other witnesses offered any testimony of this subject, and the Public Staff's proposal, which PSNC accepted, is approved.

PSNC witness Barkley further stated in his supplemental testimony that PSNC and the Public Staff had agreed upon a methodology to ensure that PSNC "will not lose the margin associated with the existing Cardinal Pipeline by refunding it to customers as a gas cost over collection." The Commission agrees that the reflection of these costs as a gas cost rather than a non-gas cost should not affect PSNC's financial results. The deferred account entries recommended by PSNC witness Barkley, and accepted by the Public Staff, are approved.

All entries to PSNC's deferred cost of gas accounts shall continue to be subject to review by the Public Staff on a monthly basis and approval by the Commission in PSNC's annual gas cost review proceedings in accordance with Commission Rule R1-17 (k) (5).

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 91

The evidence for this finding of fact is contained in the testimony of Public Staff witness Davis and in the testimony and exhibits of PSNC witness Barkley and is uncontradicted.

Witness Davis testified that the Public Staff had reviewed the proposed language changes to the Company's Rules and Regulations, tariffs, and riders to the tariffs and had made recommendations on certain changes to PSNC. He stated in his testimony that he understood that the Company would be submitting revisions reflecting those changes.

It is not clear from the testimony why the proposed changes were not presented at the hearing. The Commission cannot approve tariff changes discussed by two of the parties but not presented in evidence. Still, assuming that the changes are relatively minor matters of grammar and punctuation, not affecting the revenue requirement and rate design decisions herein, the Commission will permit PSNC to file and serve the revised Rules and Regulations, tariffs, and riders to the tariffs, incorporating the changes agreed upon with the Public Staff within ten days from the date of this Order. All parties shall have one week from the date of filing to submit comments, and the revisions will be subject to approval by further order of the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That PSNC is authorized to adjust its rates and charges effective for service rendered on and after November 1, 1998, so as to produce an annual level of revenue of $304,101,813 from its retail customers based upon the adjusted test year level of operations found reasonable herein. This amount represents an increase of $12,394,757 more than would be produced from the rates in effect prior to this Order, based upon the test year level of operations.

2. That increases in the monthly facilities charge for Rate Schedules 145 (Large Quantity General Service) and 150 (Large Quantity Interruptible Commercial and Industrial Service) to $225.00 and $450.00 per month, respectively, are approved effective on and after November 1, 1998.

3. That the increases in PSNC's miscellaneous fee schedule of after-hours service calls, after-hours non-residential reconnection charges, and after-hours residential reconnection fees are approved effective on and after November 1, 1998.

4. That changes to the General Rules and Regulations are approved as discussed herein and shall be effective for service rendered on and after November 1, 1998. The Company shall file revised General Rules and Regulations for review and approval by the Commission not later than ten days from the date of this Order.

5. That PSNC shall file appropriate tariffs and riders, including the R_i factors needed for proper functioning of the WNA, in conformity with the provisions of this Order with the parties for review and revisions and then with the Commission for approval, properly adjusted for all approved increments and decrements. These tariffs and riders shall be filed within ten days from the date of this Order, and shall be effective for service rendered on and after November 1, 1998.

6. That PSNC shall prepare a notice for its customers of the rate changes ordered in this docket and shall give notice to its customers by appropriate bill insert in the next billing cycle.

ISSUED BY ORDER OF THE COMMISSION.
This the 30th day of October, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-5, SUB 386

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Public Service Company of North Carolina, Inc., for an Adjustment of its Rates and Charges and Study of Transportation Rates	))))	ORDER ON TRANSPORTATION RATE STUDY

HEARD IN: Commission Hearing Room 2155, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Monday, August 31, 1998, and Tuesday, September 1, 1998

BEFORE: Chairman Jo Anne Sanford, Presiding, and Commissioners Judy Hunt, William R. Pittman, and J. Richard Conder

APPEARANCES:

For the Aluminum Company of America:

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For North Carolina Natural Gas Corporation:

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For Piedmont Natural Gas Company, Inc.:

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For Public Service Company of North Carolina, Inc.:

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For Southeastern Gas & Power, Inc. and Dynegy, Inc.:

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For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, and Amy Barnes Babb, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, NC 27626-0520

Margaret A. Force, Associate Attorney General, Kevin Anderson, Associate Attorney General, North Carolina Department of Justice - Utilities, Post Office Box 629, Raleigh, NC 27602

BY THE COMMISSION: Chapter 22, Section 15, of the 1998 Session Laws provides that the Utilities Commission "shall study the transportation rates charged by the local distribution companies to transport piped natural gas from the interstate pipeline to the consumer." The Commission issued an Order on July 8, 1998, concluding that good cause existed to conduct the transportation rate study in this docket, a pending general rate case of Public Service Company of North Carolina, Inc. (PSNC). The Order found this appropriate "[s]ince the issue of appropriate rates for transportation of customer-owned gas by an LDC is already pending before the Commission in this general rate case." The Order went on to explain that "[c]onducting the study in this docket will allow the Commission to conduct the study required by the General Assembly without prejudging the matter in the context of the rate case..." and that "conducting the study in this docket will allow the Commission to set transportation rates for PSNC consistent with the conclusions reached in the study." To avoid disruption of the rate case, the Order provided that transportation matters would be addressed in a separate phase of the hearing to begin on August 31, 1998. By Order dated August 26, 1998, the Commission elaborated on the scope of the transportation study. The Commission specifically concluded that Chapter 22 "does not direct the Commission to study or otherwise consider restructuring of the natural gas industry in North Carolina." Instead, the Commission defined the proper scope of the transportation rate study to embrace "the appropriate method for designing and setting transportation rates under the present regulatory structure of the industry."

Petitions to intervene were filed by Dynegy, Inc.; Southeastern Gas & Power, Inc. (SG&P); Aluminum Company of America (ALCOA); North Carolina Natural Gas Corporation (NCNG); National Energy Marketers Association (NEMA); Piedmont Natural Gas Company, Inc. (Piedmont); NUI North Carolina Gas (NUI NC Gas); Frontier Energy, L.L.C. (Frontier); Duke Energy Trading and Marketing, L.L.C. (DETM). The Attorney General filed notice of intervention pursuant to statute, and the Public Staff intervened through its appearance at the hearing.

The matter came on for hearing as scheduled. SG&P presented the testimony of Ralph W. Johnson. PSNC witness Bruce P. Barkley, Piedmont witness Chuck W. Fleenor, and NCNG witness Gerald A. Teele testified as a panel for the LDCs. The Public Staff presented the testimony of Jeffrey L. Davis of its Natural Gas Division. Kevin O'Donnell and Donald W. Schoenbeck testified as a panel for CUCA. Stephen M. Watson of Ball-Foster Glass Container Company, on behalf of CUCA, and Stephen David Moritz, a Senior Energy Consultant with Strategic Energy Ltd., on behalf of ALCOA, also testified as a panel. The testimony of Peggy R. Claytor with The Timken Company, on behalf of CUCA, was entered into the record by stipulation.

On October 30, 1998, the Commission issued its Order Granting Partial Rate Increase dealing with the general rate case aspects of this docket and noting that an order on the transportation rate study would be issued soon.

Based on the foregoing, and the entire record in this matter, the Commission makes the following findings of fact with respect to the transportation rate study in this docket:

FINDINGS OF FACT

1. Chapter 22, Section 15 of the 1998 North Carolina Session Laws directs this Commission to study the transportation rates charged by the local distribution companies to transport piped natural gas from the interstate pipeline to the consumer.

2. Chapter 22, Section 15 of the 1998 North Carolina Session Laws does not direct this Commission to study or otherwise consider restructuring of the natural gas industry in North Carolina.

3. All of the North Carolina LDCs except Frontier are currently engaged in the business of transporting, distributing, and selling natural gas pursuant to tariff in their respective service areas.

4. Transportation of customer-owned gas in North Carolina is currently available only to large industrial and large commercial customers.

5. Tariff rates for the transportation of customer-owned gas have historically been based on the concept of full margin or rate neutrality in relation to the corresponding sales rates.

6. The Supreme Court has affirmed the use of the full margin concept in each case in which it has been asked to review the use of that concept to design transportation rates.

7. Full margin refers to the fact that the serving LDC receives the same margin per dekatherm of gas delivered to the customer regardless of whether the LDC or the customer procures the gas supply.

8. The Commission has consistently calculated full margin transportation rates by subtracting the commodity cost of gas, gross receipts taxes, and temporary increments or decrements from the sales rate which the transportation customer would otherwise be charged for natural gas service.

9. The objection to the use of the full margin concept to design transportation rates is that it requires transportation customers to pay some portion of the transporting LDC's upstream fixed gas costs in the transportation rates, in addition to the fixed gas costs that are included in the price they pay for released interstate capacity.

10. Under the full margin approach, LDCs recover the same fixed gas costs and non-gas costs regardless of whether customers elect sales or transportation service.

11. The LDCs incur both fixed gas costs and non-gas costs to serve customers who elect to transport their own gas supply.

12. Transportation customers receive daily balancing and uninterrupted deliveries of gas from their LDCs even when their suppliers fail to deliver the required quantities of gas for re-delivery, without having to pay additional charges for these services.

13. The LDCs are responsible for acquiring and maintaining sufficient interstate pipeline capacity to ensure deliverability of gas supplies to the firm customers on their distribution systems.

14. Many customers who are able to secure their own gas supply and elect transportation service switch back to sales service when there are restrictions on the interstate pipelines, when their suppliers fail to deliver, or when they are unable to obtain gas at attractive prices, while others switch to alternative fuels.

15. The LDCs are authorized to negotiate rates with customers who are able to use alternative fuels and to recover negotiated losses through their deferred accounts.

16. Some customers have been able to "game" the system by switching between sales service and transportation service depending on the relationship of the LDCs' sales price to market prices, leaving the remaining customers to bear the LDCs' unrecovered gas costs.

17. PSNC's amended PGA procedure, a bifurcated benchmark approach under which large commercial and industrial customers receive gas at monthly market-based rates, is aimed at inducing customers to transport and not to "game" the system.

18. Broad comparisons of transportation costs in North Carolina and other states are of limited value in a study of transportation rates.

19. Some industrial customers have indicated a willingness to commit to transport for a minimum period in order to avoid responsibility for certain fixed gas costs.

20. Some industrial customers have suggested a degree of service unbundling under which they would purchase released capacity as well as their own gas supply and would receive credits from the LDCs for the cost of pipeline capacity that would otherwise be included in the transportation rates.

21. An immediate reduction in transportation rates would result in either a shortfall to the LDCs or an increase in sales rates or both.

22. Under current North Carolina law and Commission rules, LDCs are entitled to recover 100% of their prudently incurred fixed gas costs through rates charged to all customers.

23. The Commission has approved a procedure under which the LDCs' customers receive 75% of the net compensation from secondary market transactions involving the sale of unused pipeline capacity by the LDCs.

24. The full margin concept is an appropriate method for designing and setting transportation rates in North Carolina under current conditions.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

In conducting the study of transportation rates in this docket, the Commission has tried to accommodate all parties interested in the study, but has refrained from embarking on a broad, general investigation of the structure of the natural gas industry. Accordingly, we struck portions of the prefiled testimony which we believed went beyond the scope of our legislative mandate and have attempted to remain focused on the issue before us, namely, the appropriate method for designing and setting transportation rates under the present regulatory structure of the industry. We believe that the record clearly supports continuation of full margin transportation rates at the present time.

The parties in this proceeding represent several diverse interests, as reflected in their testimony. Intervenor SG&P is a marketer of natural gas whose business depends on protecting and expanding a market niche. The LDCs have long-standing public service obligations and have made substantial investments in order to provide natural gas service to the various classes of customers in their franchise areas. Some of them also have unregulated marketing affiliates. Like the Attorney General, the Public Staff represents the using and consuming public and is the primary voice of residential and small commercial customers who lack both the ability to switch to fuel sources and the market power to negotiate below tariff rates. CUCA, on the other hand, is comprised of large industrial customers who are sophisticated in the management of their energy requirements and aggressive in the pursuit of low cost energy options. They are also a strong force in the State's economy and in the economic well-being of all citizens. The Commission's task is to weigh the evidence presented by all of the parties and to reach decisions that are in accordance with State policy and the public interest.

SG&P witness Johnson testified that the current rate design allows PSNC to effectively offer a cost-subsidized service which competes with marketers for city gate sales. He stated that the computation of the commodity gas cost does not include an adequate level of fixed gas costs and advocated allocating a portion of PSNC's administrative and general (A&G) expenses from the transportation rate to the appropriate sales rate. Mr. Johnson also stated that he perceives PSNC's bifurcation of the benchmark commodity gas costs under sales Rate Schedule Nos. 145 and 150 as a competitive threat. That bifurcation, which the Commission allowed in Docket No. G-5, Sub 379 was intended to enable PSNC's commodity gas costs to its residential and small commercial customers to remain relatively stable, while gas costs to its larger industrial customers were tied to a monthly index. The monthly indexed commodity cost to industrials is determined by the sum of \$0.003 per therm plus the NYMEX price for Henry Hub Natural Gas contracts, the 100% load factor equivalent of Transcontinental Gas Pipe Line Corporation's (Transco's) Zone 3 to Zone 5 maximum Firm Transportation (FT) rate, fuel, other gas supply charges, and gross receipts taxes. While some parties argued that this determination was too high, Mr. Johnson contended that it did not foster competition among marketers, since no A&G expenses are included. He stated on cross-examination, however, that he was not aware of the Commission ever allocating A&G costs to gas costs. In addition, he agreed that marketers purchase gas in the same marketplace under the same conditions and on the same basis as LDCs. He also agreed that a reduction in transportation rates would necessitate a shifting of costs to other classes of customers. By the Order entered in this docket on October 30, 1998, wherein PSNC was granted a partial rate increase, the Commission also rejected, for the reasons set forth therein, SG&P's proposal to increase the level of fixed gas costs included in, and to allocate a portion of PSNC's administrative costs to, the commodity cost of gas under PSNC's Rate Schedules 145 and 150.

The Commission believes that marketers might play a useful role in maintaining a free and competitive market for natural gas to the benefit of all customers. In this regard, the Commission has invited comments on whether we should adopt a code of conduct to address the relationship between the LDCs and their marketing affiliates, as suggested by SG&P. While we are mindful that ratemaking decisions like the ones before us in this proceeding will impact marketers, we do not understand our statutory responsibilities to require us to set rates at levels that purposely create or maintain margins within which unregulated entities may profitably operate. Instead, our goal should be to ensure that regulated entities provide adequate service at rates that are just, reasonable, and non-discriminatory.

Each of the LDC witnesses endorsed the full margin concept. Mr. Fleenor testified that this proceeding was not the proper forum in which to propose rate changes, as any cost shifting would have an impact on other customer classes. He contended that such changes should occur in the companies' respective general rate cases. Mr. Fleenor further testified that Piedmont's customers have the option monthly to elect sales or transportation services and that this type of arrangement requires the Company to incur certain unavoidable costs on behalf of these customers. According to Mr. Fleenor, Piedmont's PGA-stabilized sales service (which is an average market price over an extended period of time) is sometimes more expensive than monthly spot prices of gas and sometimes less expensive than market alternatives. He stated that in light of the ability of some customers to call upon Piedmont's PGA standby sales service during any month, transportation service at full margin rates is not only justified but it provides significant value to the customer in the form of security and gas cost savings. Responding to questions from the Commission, Mr. Fleenor testified that Piedmont operates in three states and that all of these states have full margin transportation rates.

Regarding transportation customers who would be willing to agree to long-term commitments not to switch back and forth to sales service in order to avoid using the LDC as a standby service, Mr. Fleenor testified that Piedmont would be willing to meet with the parties to formulate the design of services that Piedmont may be able to offer. He cautioned, however, that it would be unfair to talk about a transportation-only service without considering how the gas would be delivered, how imbalances would be treated, and what would happen if a customer's supply fails.

GAS - RATES

NCNG witness Teele testified that full margin transportation rates are appropriate and should be continued. He stated that rates set only on the basis of estimated cost-of-service would be below most industrial customers' cost of alternative fuels, at least until demand out-paces supply, which then drives up natural gas commodity prices to the benefit of producers and marketers but to the detriment of natural gas consumers, especially residential and other captive customers. He further stated that since the Federal Energy Regulatory Commission (FERC) Order No. 636 became effective in November 1993, transportation service on NCNG's system has grown from about 14% of total throughput in 1992 to about 50% in 1998. He indicated that this increase in transportation volumes demonstrates that full margin transportation rates which exceed estimated cost-of-service are no deterrent to customers who desire to purchase their own supply and transport on NCNG's system. Mr. Teele stated that if full margin transportation rates are discontinued, rates for residential and small commercial customers would have to be increased to the point that they would no longer be competitive with electricity and heating oil, thus leading to erosion of NCNG's customer base and even higher rates to the remaining customers. In response to questions by the Attorney General, he stated that of approximately $28 million in total fixed gas costs collected by NCNG annually, approximately $5.6 million was paid by transportation customers.

Mr. Teele explained that transportation customers have various options open to them. Not only can these customers opt for sales service, but they can and do negotiate sales and transportation rates. When asked on cross-examination about allowing customers to lock into a one-year transportation contract, he responded that most of NCNG's industrial customers would prefer to keep their options open and typically will choose the lowest energy costs. He stated that customers presently have more interest in locking in rates for the long term because of low natural gas prices, although sometimes they do not want to commit for fear that if they do, the price of their alternate fuel will go lower. He further stated that some industrials will hedge prices if necessary to meet a budget, and others are always under pressure to achieve the lowest possible cost.

On cross-examination by counsel for ALCOA, Mr. Teele testified that ALCOA has a long-term contract with NCNG, signed September 1, 1993, and continuing until the year 2008. He explained that this contract is for a buy/sell arrangement and that under the terms of the contract, ALCOA does not pay any fixed charges for using Transco's FT capacity.

PSNC witness Barkley testified that transportation customers utilize auxiliary services other than just capacity. He explained that the present method of fixed gas cost allocation recognizes that these customers are responsible for less utilization of storage and peaking services, which is why industrial customers pay the least per unit fixed gas cost compared to other customer classes. According to Mr. Barkley, transportation customers who tend to stay in balance on their nominations use less of these auxiliary services than others.

Mr. Barkley testified in response to questions by the Attorney General that of approximately $53 million in total fixed gas costs incurred by PSNC, approximately $15 million is paid by the large industrials. He stated that if the Commission were to abandon full margin principles and transportation customers were not assigned any fixed costs, the residential and small commercial customers would have an increase in their rates of approximately $0.40 per dekatherm.

Responding to questions from the Commission, Mr. Barkley testified that in his experience not all industrial customers have the same needs. He explained that there is already a cap on rates that can be charged to industrial customers with alternate fuel before they choose other options and that these are the customers who tend to be the most vocal about needing auxiliary services. On the other hand, he stated that he had heard many firm customers express appreciation for being able to count on the LDC whether it is in cold weather, or to stabilize the price, or to deal with problems and conflicts on the pipeline. Stating that the industrials' contention is not with full margin but the amount of the rate itself, he asserted that PSNC is providing an appropriate service through its transportation rates and noted that PSNC proposed a decrease in industrial rates in its general rate case in this docket.

Public Staff witness Davis outlined the history of transportation rates in North Carolina and described the basis for the full margin concept. He stated that determining appropriate transportation rates is an integral part of rate design in every general rate case investigation and that this process involves reviewing rate design principles and policy as well as arriving at specific rates. Mr. Davis explained that the responsibility for utility costs by a class of customers is the same whether those customers procure their own gas supply or buy under the utility's sales rates. In other words, transportation customers are responsible for the same level of utility plant investment, operation and maintenance expenses, depreciation, taxes, and fixed gas costs as sales customers, because transportation customers have the ability to switch between sales and transportation and the utility must stand ready to provide the desired option.

On cross-examination by counsel for CUCA, Mr. Davis stated that a customer's willingness to waive the LDC's obligation to provide the customer with gas as a commodity may justify a different rate treatment depending on the length of time the customer is willing to commit to transport and not to fall back on the LDC for standby service. He also stated that, under this type of approach, it would be possible to price standby service as a separate service to recover the cost, adding that he would not necessarily restrict such unbundling to one class of customer.

CUCA witnesses O'Donnell and Schoenbeck contended that the full margin concept is unreasonable and unfair and that use of full margin rates, as opposed to cost based rates, has resulted in North Carolina's having among the highest transportation rates in the country. They also contended that the current policy of full margin rates has resulted in transportation customers paying twice for interstate pipeline capacity. They recommended that transportation service be offered for a minimum term of one year to allow both the LDCs and the customers to minimize and effectively manage gas costs. They further recommended that the LDCs offer additional gas-related services, such as an optional monthly sales service based upon the current spot market price of gas, to provide additional service opportunities in today's competitive market.

On cross-examination by counsel for the Public Staff, Mr. O'Donnell explained that he had conducted a transportation rate survey of various states and provided the responses to the Public Staff. He indicated that, for simplicity, his survey form requested aggregate transportation revenues and the associated volumes for various LDCs in each state surveyed and that he developed a composite or gross transportation cost for each state responding. He also indicated that he could not verify from the information that he had requested whether the data included volumetric charges only or whether contract demand charges were also included. Nor could he determine from the surveys whether the transportation services were for firm or interruptible service or whether the services were pursuant to tariff or long-term contract. He further stated that he could not determine whether the transportation data was for a municipality, a gas district, an electric generation facility, or a commercial or industrial end user. Lastly, Mr. O'Donnell stated that he was not familiar with tariffs or the ancillary services associated with providing transportation in other states or whether the costs associated with these services were included in the data he received and that he could not discern whether other revenues associated with riders to tariffs, transition surcharges, and contract commitment surcharges were present in the survey data. Further cross-examination revealed that average transportation costs calculated by Mr. O'Donnell for individual LDCs in some states that do not use the full margin concept to set rates exceeded transportation costs of the LDCs in this state. For example, Michigan, which was touted as having among the lowest transportation rates in the nation, had a range of transportation costs from $0.22 per dekatherm to $1.12 per dekatherm.

The Commission noted that some states showing lower transportation rates in Mr. O'Donnell's transportation rate survey were also served by a number of different interstate pipelines. On examination by the Commission, Mr. O'Donnell agreed that only one interstate pipeline has a significant footprint in North Carolina. CUCA witnesses O'Donnell and Schoenbeck both acknowledged that the cost of building LDC lines away from the interstate pipeline increases transportation rates.

Mr. O'Donnell also agreed during cross-examination by counsel for PSNC that there was a wide range of transportation costs reported within the aggregate totals by state. For example, data compiled for Illinois indicated that People's Gas Light and Coke Company had reported transportation rates that were higher than PSNC's transportation rate by 25%, while the aggregate for the state was lower. Thus, an industrial customer could be faced with a wide variety of rates in states that purportedly have aggregate rates lower than North Carolina.

On cross-examination by counsel for Piedmont, Mr. Schoenbeck agreed that storage and swing services are utilized by transportation customers. He disagreed, however, on the amount of unit fixed cost necessary to provide these types of ancillary services. According to Mr. Schoenbeck, CUCA's recommendation in this proceeding would be for PSNC to remove the fixed interstate pipeline gas costs from the unit rate for transportation customers. He asserted that, even with these costs removed, the rate would still be sufficient to cover balancing costs.

CUCA witness Watson testified that the LDCs' defense of full margin relies on backward-looking, largely legalistic arguments that amount to saying full margin transportation rates should apply in the future because they have applied in the past. He stated that such arguments ignore the impact of pro-competitive changes in the gas markets brought about by unbundling at both the national and state levels and the fact that, whatever their past use, full margin transportation rates now limit or negate future cost savings available to North Carolina ratepayers through the national, competitive natural gas market. He asserted that in other states where unbundling had occurred, his company could tailor services to best meet the needs of the plant and produce a good economic result.

According to Mr. Watson, in situations where his company has been unable to obtain LDC service responsive to its needs, it has bypassed LDCs in Massachusetts, Pennsylvania, Louisiana, Oklahoma, and Texas and installed direct connections with upstream pipelines, while plants in Illinois and Indiana have negotiated non-standard transportation services from their LDCs in lieu of pursuing bypass opportunities. He further stated that Ball-Foster plants in North Carolina have some of the highest transportation costs compared to other Ball-Foster plants around the country. He stated that plants with excessive energy costs are less likely to remain competitive, not only with respect to their competitors in the marketplace but also in comparison to sister facilities.

On cross-examination by counsel for Piedmont, Mr. Watson stated that he would support North Carolina's enabling its LDCs to negotiate non-standard contracts with industrials and commented that the ability to negotiate a contract that would give a fixed price over several months would be favorable. He further stated on redirect examination that if rates in North Carolina were cost-based, the need to negotiate based on alternate fuels would essentially be non-existent.

CUCA witness Claytor testified that service unbundling by interstate pipelines and other LDCs has created an environment of competitiveness in natural gas markets and that this increased competition provides consumers with significant opportunities for cost savings. She stated that, in her experience, full margin transportation rates frustrate her company's ability to realize these savings in North Carolina. She further stated that transportation rates paid to LDCs by Timken's North Carolina facilities far exceed rates paid by other Timken plants, and threaten the future competitiveness of those facilities. Ms. Claytor asserted that a customer who arranges its own gas supplies and interstate pipeline capacity receives no "break" on the rate charged by its North Carolina LDC, but instead pays for both its own interstate pipeline capacity and the LDC's pipeline capacity.

ALCOA witness Moritz argued that firm industrial customers in North Carolina should have direct access to upstream facilities such as pipeline capacity, storage facilities, and receipt points that have been supported in rates paid to the LDC. His chief contention was that LDCs presently maintain control of upstream capacity, which prevents companies like ALCOA with buy/sell agreements, who are similarly situated, from releasing their portion of capacity to other markets and thereby realizing profits from such transactions. According to Mr. Moritz, ALCOA controls interstate pipeline transportation capacity, and ancillary services, on at least twenty other interstate pipelines, but its North Carolina facility is the only one where ALCOA cannot manage the capacity necessary to serve its own natural gas load.

On cross-examination by counsel for PSNC, Mr. Moritz testified that industrial customers all over the country, ". . . are more than willing to make long-term commitments to fixed costs if it is in their best interest and can obtain the lowest gas cost. ALCOA has signed numerous long-term contracts in that regard." He testified that ALCOA holds no capacity on Transco even though ALCOA had reviewed the open seasons that have taken place on Transco, where Transco offered shippers such as ALCOA the opportunity to purchase capacity.

On cross-examination by counsel for Piedmont, Mr. Moritz stated that LDCs in North Carolina should have some incentive to reduce upstream capacity costs. On cross-examination by NCNG's counsel, he agreed that Rate Schedule T-7 under which ALCOA receives its transportation services applies to large aluminum smelters and conceded that he knows of no other such smelters in North Carolina besides ALCOA. He also agreed that ALCOA does not pay a full margin transportation rate under Rate Schedule T-7, but instead pays a rate that contains no reimbursement for interstate pipeline demand costs under its buy/sell agreement with NCNG. He contended, however, that it would not be appropriate for ALCOA to pay demand charges because the buy/sell agreement allows for NCNG to interrupt ALCOA's volumes.

The Commission finds nothing in the record to indicate that the method of designing and setting transportation rates in North Carolina is inappropriate. To the contrary, we believe that the full margin concept continues to have validity for transportation rates under current conditions. As long as the LDCs are responsible for providing auxiliary services such as storage and load balancing for transportation customers, sound ratemaking policy fully justifies recovering the cost of these services through the applicable rates. To remove these costs from transportation rates without making some other provision for their recovery would result in a revenue shortfall to the LDCs. To shift these costs to sales rates while continuing to provide auxiliary services to transportation customers would place an unreasonable burden on customers who do not transport gas. To make fundamental changes affecting rates and services for one class of customers without carefully considering the effects of those changes on rates and services for all other classes would be irresponsible.

Furthermore, we find no support for the assertion that transportation rates in North Carolina compare unfavorably with those in other states. The information underlying Mr. O'Donnell's "cost" survey is clearly lacking in the level of detail necessary to compare rates for similar services and is virtually unusable for studying the full margin concept. On the other hand, the testimony of Mr. Moritz tends to support the LDC witnesses, who indicated that industrial customers are able to negotiate non-standard services and competitive prices in North Carolina under existing procedures and thereby avoid some of the costs of which they complain.

Parties opposed to the full margin concept apparently recognize that a wholesale reduction in rates with no change in transportation service is not justified at this time. Instead, they have proposed an incremental concession in the form of capacity release credits. Mr. Fleenor was asked on cross-examination by CUCA's counsel whether, if Piedmont were to enter into a pre-arranged capacity release agreement with a customer who directly paid Transco for the released capacity, Piedmont would reciprocate by crediting that customer's bill for the same amount. This, in essence, would address CUCA's contention that its members are paying twice for capacity under the full margin concept. Mr. Fleenor responded that procedures presently in place require revenue from capacity release situations to be shared between the utility and customers at a percentage of 25% and 75%, respectively. Even assuming a modification to current procedures, Mr. Fleenor stated that transportation customers receive other benefits from the utility besides capacity, for example, balancing services, storage services, and, to an extent, peaking services. Moreover, he stated that Piedmont enters into capacity arrangements for its firm customers only and does not purchase capacity for interruptible customers and that there is essentially no capacity to release to industrial customers on an annual basis.

Regarding the possibility of assigning capacity to industrial customers and crediting them for payment for that capacity if they are willing to lock in for a one-year transportation term, Mr. Teele stated,

> Basically, NCNG has already done that in at least two occasions, although the customers have the option to both transport their gas or buy from us. Under the

> present tight capacity situation we're under I doubt that we could do it for the upcoming winter. Now, next year may be a different scenario. As a matter of fact, we'd probably look for opportunities to talk to industrials about locking in a long-term transportation deal. That would be good for them and for us.

He further stated, however, that this arrangement would have to be limited to only a few smaller or medium size industrials because there is no capacity to release given NCNG's system capacity constraint in the winter months. In addition, he noted that capacity is not constrained in other states to the extent experienced by the North Carolina LDCs.

Responding to questions from ALCOA's counsel, Mr. Teele testified that NCNG retains the right to recall the capacity under its buy/sell agreement with ALCOA and ALCOA cannot release any of it to other markets. Thus, he stated that the service to ALCOA is essentially firm except for force majeure or a peak-day situation. According to Mr. Teele, the LDC must have control of capacity to serve other essential needs and there is not enough system capacity on NCNG's system to allow industrials to control portions of it.

Mr. Davis disagreed with the proposition that capacity release to an industrial customer on a recallable basis would not shift cost to other classes of customers. He testified,

> Under the current arrangement if capacity release was granted or assigned to a particular customer and that customer received a credit for paying that on Transco's system, essentially you have denied the other classes 75 percent of the capacity release transaction.

The Commission understands the complaint of CUCA's witnesses that their companies are required to pay more than once when they obtain their own pipeline capacity. It does not necessarily follow, however, that they are entitled a credit on their bills for the cost of capacity purchased from the LDCs. Assuming that such an arrangement would be permissible under FERC rules, the Commission perceives several problems with this proposal. First, the LDCs have indicated that they do not have capacity to release to the industrials. Mr. Teele was emphatic in his assertion that NCNG must retain control of its capacity in order to serve its other customers. In addition, the entire cost of capacity purchased by the LDCs is currently recovered from their ratepayers through the PGA procedures pursuant to Commission Rule R1-17(k). To encourage the LDCs to sell excess capacity whenever possible, the Commission has allowed the LDCs to retain 25% of the net compensation from secondary market transactions while requiring that the remaining 75% be used to offset the costs recovered through the deferred account. The offsets have been substantial in some cases and have reduced the cost of gas to all customers. CUCA's proposal would transfer to a select group of transportation customers the benefits of the capacity release credits that are currently shared by all customers. Finally, the Commission considers the proposal to be nothing more than a form of transportation rate unbundling, which we believe should be addressed systematically in a general rate case or other comprehensive ratemaking proceeding.

Full margin transportation rates recognize the cost responsibilities of industrial customers and industrial customers' ability to choose between sales, transportation, or negotiated sales options to realize savings. Transportation customers benefit from the LDCs' upstream transportation and storage contracts as well as gas supplies. These contracts and gas supplies enable the LDCs to provide more reliable service to transportation customers and enable the transportation customers to avoid having to contract separately for services such as balancing and back-up. Given this reliance upon the LDCs' contracts and gas supplies, it is appropriate that transportation customers pay a portion of those costs. The full margin concept requires transportation customers to pay a portion of those costs by requiring them to pay the same margin that they would pay as sales customers. The evidence shows that transportation customers can switch between sales and transportation service to take advantage of the lowest monthly price. The evidence further shows that the LDCs discount sales and transportation rates when necessary to meet or beat the price of competitive fuels and keep a customer with alternate fuel capability on gas, thereby recovering some margin. The evidence further shows that discontinuing the use of the full margin concept to design transportation rates would lower those rates by removing the upstream fixed gas costs now allocated to those rates, making the least expensive energy source (in most cases) even less expensive and increasing other rates by the amount of the upstream fixed gas costs removed from transportation rates. The totality of the evidence demonstrates that transportation customers receive benefits from the LDCs' upstream transportation contracts and some supply contracts. As transportation customers receive these benefits, they should provide a portion of the fixed costs required to maintain these contracts as the price of the benefits they receive.

As the record demonstrates, the nature of the natural gas market in North Carolina has been steadily changing over the past twenty-five years. Throughout this period, the Commission has allowed and indeed encouraged the use of all legal options to enable the LDCs to provide low cost service to their customers. The State's LDCs have historically responded to customer needs by offering transportation of gas, negotiations based on alternate fuel, and in some instances special non-traditional contracts with specific customers. Although relatively isolated with effectively only one interstate pipeline, North Carolina has seen its natural gas throughput grow dramatically since the end of curtailment during the 1970s, and much of this growth has been in transportation volumes.

The Commission recognizes that the regulatory environment is continuing to evolve, particularly in the wake of FERC Order No. 636. We are aware of a number of activities in other states ranging from partial unbundling to wholesale restructuring of the natural gas industry, as in Georgia. We are also aware of the desire of many North Carolina customers, including high priority customers, for additional choices in meeting their energy needs, and we are aware of their frustration with current service offerings. This limited proceeding has been a useful and perhaps necessary preface to further discussions, but it does not provide an evidentiary basis for the kind of regulatory initiatives that are underway in some other states, nor does it provide a basis for altering the rates of our LDCs at this time, outside normal ratemaking procedures. Nevertheless, we would not be surprised to see one or more of the LDCs propose new transportation service and rate options. Furthermore, we note with approval the dialogue between counsel for Piedmont and CUCA witness Schoenbeck regarding the potential for CUCA and representatives of the other parties to meet and determine if some of their issues can be worked out. Mr. Schoenbeck stated that a workshop type of environment, as opposed to an adversarial one, would likely lead to rates acceptable to all parties. PSNC, in its proposed order, also suggested that transportation rates should be studied in a non-adversarial proceeding.

In conclusion, the Commission finds that there is no evidence in this proceeding that would justify abandonment of full margin or revenue neutrality principles in designing transportation rates at this time under current operating conditions. We believe that the customers who transport their own gas have enjoyed significant flexibility in minimizing their costs under current tariffs as well as individual contracts with the LDCs. At the same time, the LDCs have been able to provide reliable service to other classes of customers at rates that have remained affordable and competitive. Finally, the Commission finds that the current structure of natural gas rates and services in North Carolina is by no means static and will no doubt continue to evolve in response to regulatory and market changes.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This the 2nd day of December, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt filed a concurring opinion.

Docket No. G-5, Sub 386

Commissioner Judy Hunt, Concurring:

I agree, based on the evidence allowed in this case, with the conclusions reached by the majority.

However, I do not believe that the transportation study should have been a part of Public Service's rate case. When the General Assembly enacts a law requesting that the Commission undertake a certain study, I believe that warrants a thorough and separate study.

\s\ Judy Hunt
Commissioner Judy Hunt

DOCKET NO. G-5, SUB 390

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Public Service Company of	)	ORDER ON
North Carolina, Inc., for Annual Review	)	ANNUAL REVIEW
of Gas Costs Pursuant to G.S. 62-133.4(c)	)	OF GAS COSTS
and Commission Rule R1-17(k)(6)	)	

HEARD: Monday, September 21, 1998, 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 J. Richard Conder and Ralph A. Hunt

APPEARANCES:

FOR PUBLIC SERVICE COMPANY OF NORTH CAROLINA, INC.:

J. Paul Douglas, Vice President – Corporate Counsel, Public Service Company of North Carolina, Inc., P.O. Box 1398, Gastonia, North Carolina 28053

FOR THE USING AND CONSUMING PUBLIC:

Antoinette R. Wike, Chief Counsel, Public Staff – North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION: On June 1, 1998, Public Service Company of North Carolina, Inc. ("PSNC" or "Company") filed the direct testimony and exhibits of William C. Williams, Director – Industrial Marketing and Gas Supply, and Bruce P. Barkley, Director – Rates and Regulatory Administration, in connection with the annual prudence review of PSNC's gas costs pursuant to General Statutes ("G.S.") § 62-133.4(c) and Commission Rule R1-17(k)(6).

On June 18, 1998, the Commission issued its "Order Scheduling Hearing And Requiring Public Notice" ("Hearing Order"), ordering a public hearing to commence on September 22, 1998; 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 PSNC to give public notice of these matters by causing the form of notice attached to the Hearing Order to be published in newspapers of general circulation. By "Order Rescheduling Hearing" issued August 7, 1998, the Commission granted PSNC's motion to reschedule the hearing in this proceeding and provided that the hearing previously scheduled for September 22, 1998, would commence at 2:00 p.m. on September 21, 1998.

On July 22, 1998, the Carolina Utility Customers Association, Inc. ("CUCA") filed a "Petition to Intervene." This petition was allowed by "Order Granting Petition To Intervene" issued July 27, 1998. On July 21, 1998, 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 September 8, 1998, the Public Staff filed the direct testimony of James G. Hoard, Supervisor – Natural Gas Section in the Accounting Division of the Public Staff, and Jan A. Larsen, Utilities Engineer in the Natural Gas Division of the Public Staff. No other party filed any testimony.

By agreement of the parties, PSNC witnesses Williams and Barkley and Public Staff witnesses Hoard and Larsen were not required to appear at the hearing and, without objection, their testimony was copied into the record at the public hearing on September 21, 1998.

No party to this proceeding objects to the entry of this order.

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. Public Service Company of North Carolina, Inc. 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 325,000 winter-peak customers within a franchised area consisting of all or parts of thirty-two (32) 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 review period for this proceeding is the twelve months ending March 31, 1998.

5. As of March 31, 1998, PSNC had a balance of $1,677,763 recoverable from customers in its sales-only deferred account and a $2,583,087 balance recoverable from its 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. All 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. The rate increment of $0.03929 per therm established in Docket No. G-5, Sub 377, to collect the March 31, 1997 balance in the sales-only deferred account will be discontinued, resulting in a rate decrease of $0.03929 per therm for all sales customers. Pursuant to PSNC's request, no rate increments will be established to collect the March 31, 1998 balances in the all-customers deferred account or the sales only deferred account; those amounts will remain in those deferred accounts and will be considered part of the activity for PSNC's next review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 2

These findings are essentially informational, procedural, or jurisdictional in nature, and were not contested by any party. They are supported by information in the Commission's public files and records, the testimony, and exhibits and schedules, filed by the witnesses for PSNC and the Public Staff, and matters which may be judicially noticed.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 3 - 4

The evidence for these findings of fact is contained in the testimony of PSNC witnesses Williams and Barkley and Public Staff witnesses Hoard and Larsen, and the findings are based on G.S. § 62-133.4(c) and Commission Rule R1-17(k)(6). *See* Rule R1-17(k)(6)(a).

The relevant statute, G.S. § 62-133.4, requires PSNC to submit to the Commission specified information and data for a historical 12-month test period, including its actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. In addition, Commission Rule R1-17(k)(6)(c) requires the filing of weather-normalized sales volume data, work papers, and direct testimony and exhibits supporting the information filed.

Commission Rule R1-17(k)(6) requires PSNC to submit to the Commission the required information based on a 12-month test period ending March 31. An examination of Mr. Barkley'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. Barkley 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 Hoard 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, 1998.

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 Barkley and Public Staff witness Hoard.

PSNC witness Barkley testified that the balance in PSNC's sales-only deferred account as of March 31, 1998, was $1,677,763 owed to PSNC. He summarized the activity in the sales-only deferred account during the twelve months ending March 31, 1998, as follows:

Beginning balance, April 1, 1997	$15,713,980
Commodity cost overcollections	(4,204,342)
Negotiated margin losses	2,839,110
G-5, Sub 361 and Sub 377 increments	(13,571,725)
Accrued interest	900,740
Ending balance, March 31, 1998	$1,677,763

The balance in the all-customers deferred account as of March 31, 1998, was $2,583,087 recoverable from customers. Mr. Barkley summarized the activity in the all-customers deferred account for the twelve months ending March 31, 1998, as follows:

Beginning balance, April 1, 1997	$1,165,588
Demand cost undercollections	5,326,624
True-up of unaccounted-for and company-use gas	(221,043)
Buy/sell credits	(1,406,480)
Capacity release credits	(862,468)
Other secondary market transaction credits	(1,949,499)
Accrued interest	530,365
Ending balance, March 31, 1998	$ 2,583,087

Witness Hoard testified that the Public Staff had examined PSNC's accounting for gas costs during the review period ending March 31, 1998, and concluded that PSNC had properly accounted for its gas costs during this review period.

Based upon the testimony, and exhibits and schedules, of the witnesses, the monthly filings by PSNC as required by Commission Rule R1-17(k)(5)(c), and the findings of fact set forth above, the Commission concludes that PSNC has properly accounted for its gas costs during the review period.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 - 11

The evidence supporting these findings of fact is found in the testimony of PSNC witness Williams and Public Staff witness Larsen.

Mr. Williams testified that approximately 47% 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.

GAS - RATES

Mr. Williams 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. Williams 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. Williams 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. Williams 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. Williams testified that this is done by using pricing provisions that reference market indices. Mr. Williams 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") and Columbia Gas Transmission. 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 Washington Gas Light Company 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. Williams 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 250,000 dekatherms 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. Williams 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. Williams 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 three 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. Larsen, testifying for the Public Staff, stated that he had reviewed PSNC's gas supply contracts to determine how the commodity or variable costs were determined and then reviewed any fixed gas cost fees that might apply. Mr. Larsen also reviewed PSNC's responses to the Public Staff's data requests regarding PSNC's gas purchasing philosophies, customer requirements, and gas portfolio mixes. Mr. Larsen further testified that he considered other information received in response to the Public Staff data requests concerning PSNC's future needs, including (i) design day estimates, (ii) historical and forecasted load duration curves, (iii) historical and forecasted gas supply needs, (iv) company purchasing practices, and (v) projection of capacity additions and supply changes. Mr. Larsen stated that, based upon his review of this information, PSNC's gas costs were prudently incurred during the review period.

As previously noted, the testimony of all witness was copied into the record without objection at the hearing, as no party had any questions for any witness and all parties had waived cross-examination of all witnesses.

Based upon the foregoing, the Commission concludes that the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1998, 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, 1998, was $1,677,763 owed to PSNC, and the all-customers deferred account balance was $2,583,087 owed to PSNC. Mr. Barkley stated that the March 31, 1998, balance due PSNC in both the sales-only and the all-customers accounts should remain in those deferred accounts and be treated as activity during the next review period. He also requested that the increment of $0.03929 per therm established in Docket No. G-5, Sub 377, to recover the balance due PSNC in the sales-only customers deferred account as of March 31, 1997, be discontinued.

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, 1998, be, and the same hereby is, approved; and

2. That the gas costs incurred by PSNC during the twelve-month review period ending March 31, 1998, were reasonable and prudently incurred, and PSNC be, and hereby is, authorized to recover its gas costs as provided herein; and

3. That the increment of $0.03929 per therm established in Docket No. G-5, Sub 377, to recover the balance due PSNC in the sales-only customers deferred account as of March 31, 1997, be discontinued effective upon implementation of new rates and charges as a result of PSNC's pending general rate case proceeding in Docket No. G-5, Sub 386; and

4. That PSNC give notice to all of its customers of the changes in rates approved in this order by appropriate bill messages in the first billing cycle following the date of this rate change.

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of October, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. G-9, SUB 407

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Petition by Piedmont Natural Gas	)	ORDER APPROVING
Company, Inc., for Approval of an	)	ECONOMIC DEVELOPMENT
Economic Development Rider Tariff	)	RIDER TARIFF

BY THE COMMISSION: On May 18, 1998, Piedmont Natural Gas Company, Inc. (Piedmont), filed a petition with the Commission, pursuant to G.S. 62-134, G.S. 62-138, and Commission Rule R6-5.1, to implement a new Economic Development Rider tariff. On June 10, 1998, Piedmont amended its filing.

Piedmont's proposed Economic Development Rider, as amended, would be made available to any customer that (1) locates a new plant or expands an existing plant or facility in Piedmont's franchised territory in the State of North Carolina; (2) qualifies for the purchase or transportation of gas under Rate Schedules 103, 104, 113, or 114; and (3) contracts for natural gas consumption of not less than 50,000 Mcf (thousand cubic feet) per year of new or expanded load, at a single delivery address, for a minimum term of five years.

Piedmont proposes that a customer must make a written application to Piedmont and be approved by it in order to qualify for the rider. The following information is required to be included in the application: (a) a description of the gas-using facility, including its location and the nature of the business(es) to be conducted at such location; (b) an affirmation that the availability of this rider was a significant factor in the customer's decision to locate the new or expanded load on the Company's system; (c) the number of full time employees to be employed at the facilities at the end of the first, second, and third years of operation; (d) the new capital to be invested at the facility; and (e) a description of the natural gas equipment, including the usage characteristics of the new or expanded gas load, to be installed at the facility. This rider will apply only to the amount of the additional load added in the case of a facility expansion.

Piedmont proposes to provide the following monthly credits, which will be applied only to the non-gas margin part of the bill for the new or expanded load:

First Year	-----	45% Reduction
Second Year	-----	25% Reduction
Third Year	-----	15% Reduction

Throughout the five-year contract period, the customer may still negotiate with Piedmont under the provisions of Rate Schedule 108 because of alternate fuel prices.

In situations involving expanded load, Piedmont will furnish an additional meter at no additional cost to the customer and will read the meter monthly in order to verify that the annual minimum natural gas consumption requirement of 50,000 Mcf is being met.

The Public Staff presented this matter at the Commission's regular Staff Conference on June 29, 1998. The Public Staff stated that it had reviewed the proposed rider and recommended that it be approved.

Based on the foregoing and the recommendation of the Public Staff, the Commission concludes that Piedmont's Economic Development Rider should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That the request by Piedmont Natural Gas Company, Inc., to implement an Economic Development Rider tariff (attached as Appendix A) is approved.

2. That Piedmont shall notify the Commission in writing when any new customer begins to use this Rider. Such notification shall include the following:

(a) a description of the gas-using facility, including its location and the nature of the business(es) to be conducted at such location;

(b) an affirmation that the availability of this rider was a significant factor in the customer's decision to locate the new or expanded load on the Company's system;

(c) the number of full time employees to be employed at the facilities at the end of the first, second, and third years of operation;

(d) the new capital to be invested at the facility; and

(e) a description of the natural gas equipment, including the usage characteristics of the new or expanded gas load, to be installed at the facility.

3. That Piedmont shall file a report with the Commission, on or before July 1, 1999, and annually thereafter, showing the annual volumes of new or additional load to which this Rider is applicable and the dollar amount of the discount from the otherwise applicable rate.

ISSUED BY ORDER OF THE COMMISSION.
This the 1st day of July, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

For Appendix A, see the Official Order in the Chief Clerk's Office.

DOCKET NO. G-21, SUB 368

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of North Carolina Natural Gas	)	
Corporation for Annual Review of Gas	)	ORDER ON ANNUAL REVIEW
Costs Pursuant to G.S. 62-133.4(c) and	)	OF GAS COSTS
Commission Rule R1-17(k)(6)	)	

HEARD: Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina on Tuesday, April 14, 1998, at 10:00 a.m.

BEFORE: Commissioner William R. Pittman, Presiding, and Commissioners J. Richard Conder and Robert V. Owens, Jr.

APPEARANCES:

For North Carolina Natural Gas Corporation:

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

For Carolina Utility Customers Association, Inc.:

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

For the North Carolina Department of Justice:

Margaret A. Force, Assistant Attorney General, North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina 27602-0629

BY THE COMMISSION: On January 30, 1998, North Carolina Natural Gas Corporation (NCNG or Company), filed the direct testimony and exhibits of Gerald A. Teele, Senior Vice President, Treasurer and Chief Financial Officer, and the direct testimony of John M. Monaghan, Jr., Vice President - Gas Supply and Transportation, relating to the annual review of NCNG's gas costs pursuant to G.S. 62-133.4(c) and Commission Rule R1-17(k)(6).

On February 3, 1998, the Commission issued its Order scheduling a public hearing, setting dates for pre-filed testimony and intervention and ordering NCNG to publish notice of these matters in a form of notice attached to the Commission's Order.

On February 9, 1998, the Attorney General filed its Notice of Intervention.

On February 18, the Carolina Utility Customers Association, Inc. (CUCA), petitioned to intervene, and the Commission granted that petition on February 20, 1998.

On March 30, 1998, the Public Staff filed the testimony of Kirk Kibler, Staff Accountant with the Accounting Division, and the testimony and exhibit of Jan A. Larsen, Utilities Engineer with the Natural Gas Division. On April 9, 1998, NCNG filed the rebuttal testimony of witness Teele. Neither the Attorney General nor CUCA filed testimony in this proceeding.

The matter was heard as scheduled on April 14, 1998. NCNG introduced the testimony and exhibits of witnesses Teele and Monaghan, and the Public Staff introduced the testimony and exhibits of witnesses Kibler and Larsen.

Based on the evidence adduced at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG is a public utility as 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-owner gas) to more than 159,000 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 that statute and rule.

4. The review period in this proceeding is the twelve months ended October 31, 1997.

5. During the review period, NCNG incurred gas costs of $119,292,493 and recovered $121,215,262 for gas costs through its rates, resulting in an over-recovery of $1,922,769. In addition, during the review period, NCNG recovered $6,017,579 through rate increments and refunded $4,255,874 through rate decrements for a net amount collected from its customers of $1,761,705.

6. At October 31, 1997, NCNG had on its books a net debit balance (payable from customers to NCNG) of $2,970,491 in its deferred gas cost accounts, consisting of a debit balance of $4,508,378 in the Sales-Only Deferred Account and a credit balance (payable from NCNG to customers) of $1,537,887 in the All-Customers Deferred Account.

7. NCNG advises the Commission that it expects to experience what it calls a "reserve margin" of 13.23% during the 1999/2000 winter season as a result of the Pine Needle LNG plant and Cardinal Pipeline beginning service during that winter season.

8. The Public Staff's adjustment to the ST-1 margin results in a credit of $34,532 to the All-Customers Deferred Account.

9. The Company's tariff requires that all excess margins earned on sales under the ST-1 rate schedule be recorded in the deferred account.

10. The Company's tariff computes excess margin by comparing all revenues received by the Company less gross receipts taxes to the revenues less gross receipts taxes that would have been received if the quantity of gas had been sold under the customer's regular sales rate schedule.

11. The Company's current accounting for ST-1 margins results in a sharing ratio of 87.78% to 12.22% between the customers and the shareholders respectively.

12. The ST-1 rate schedule was made effective in the Company's last general rate case, Docket No. G-21, Sub 334. No volumes or revenues for the ST-1 service were included in the rate case.

13. The ST-1 service utilizes capacity in the Company's LNG plant. All expenses related to the LNG plant were included in the Company's last general rate case.

14. The Company's calculation of the ST-1 excess margin is not in compliance with its tariff.

15. The Public Staff's adjustment to correct for the ST-1 margin is based on the tariff definition of excess margin.

16. The Public Staff's adjustment to the General and Administrative (G&A) expenses related to secondary market transactions results in a credit of $13,463 to the All-Customers Deferred Account.

17. The Company did not challenge the adjustment for the G&A expenses.

18. It is appropriate to credit the All-Customers Deferred Account $13,463 to disallow the G&A expenses.

19. The Public Staff reclassified $1,702,565 in negotiated losses from transportation customers from the Sales-Only Deferred Account to the All-Customers Deferred Account.

20. The tariffs for Public Service Company of North Carolina (PSNC) and North Carolina Gas Service (NC Gas) both require that negotiated losses from transportation customers be accounted for in the All-Customers Deferred Account.

21. Piedmont Natural Gas Company (Piedmont) accounts for its negotiated losses from transportation customers in the All-Customers Deferred Account. This accounting treatment was approved by the Commission in Piedmont's last annual gas cost review, Docket No. G-9, Sub 393.

22. The Company is allowed under its tariff to negotiate with transportation customers. The tariff also allows any losses from these negotiations to be recovered through the deferred account. The tariff does not specify which deferred account should include the negotiated losses.

23. All customers benefit from Company negotiations with its transportation customers.

24. The Company includes the benefits from the negotiations in the All- Customers Deferred Account, while the losses are included in the Sales-Only Deferred Account.

25. The facts and circumstances surrounding NCNG's negotiated losses are similar to those of all LDCs in North Carolina.

26. It is appropriate to include the benefits and the losses from negotiations with transportation customers in the All-Customers Deferred Account.

27. The Public Staff reclassified $524,087 in gains from secondary market transactions involving commodity sales transactions from the Sales-Only Deferred Account to the All-Customers Deferred Account.

28. NCNG was placing capacity-related credits in the All-Customer Deferred Account and commodity sales-related credits in the Sales-Only Deferred Account.

29. It is appropriate to place commodity sales-related credits in the Sales-Only Deferred Account.

30. The Public Staff's proposal to reclassify $524,087 in gains from secondary market transactions from the Sales-Only Deferred Account to the All-Customers Deferred Account is inappropriate.

31. With the adjustments and reclassifications approved by the Commission, NCNG should have a net debit balance (payable from customers to NCNG) of $2,922,496 in its deferred accounts, consisting of a debit balance of $2,805,813 in the Sales-Only Deferred Account and a debit balance of $116,683 in the All-Customers Deferred Account.

32. The Company's treatment of reservation fees paid for Transco FS service was appropriate.

33. NCNG has transportation and supply contracts with interstate pipelines that transport gas directly to NCNG's system and long-term supply contracts with other suppliers.

34. NCNG's Gas Supply Acquisition Policy adopted by its Board of Directors states that the primary objective is "To ensure that the Company has adequate volumes of competitively-priced

natural gas to meet peak-day demand of all firm customers and to provide maximum service possible to all customers during other times throughout the year."

35. NCNG's gas costs during the review period were prudently incurred.

36. NCNG should be permitted to recover 100% of its prudently incurred gas costs.

37. NCNG does not propose to change its rates.

38. No other party to this proceeding is recommending that the temporary rate increment and decrements that are used to collect and refund deferred account balances be changed.

39. As of the date of the hearing, NCNG has a temporary increment of $.1364 per dekatherm (dt) in the Sales-Only Deferred Account, effective November 1, 1997, and in the All-Customers Deferred Account rate decrements ranging from $(.0678)/dt for some industrial customers to $(.2933)/dt for residential-heating only customers, also effective November 1, 1997. Both increment and decrements were proposed to be in the Company's rates for twelve months ending October 31, 1998.

40. It is just and reasonable to continue the current temporary rate increment and decrements until further order of the Commission.

41. NCNG has long-term agreements with two customers to provide transportation services at below tariff rates.

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 NCNG witness Monaghan. 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 NCNG witness Teele and Public Staff witness Kibler.

G.S. 62-133.4(c) requires that each natural gas utility submit to the Commission information and data for a 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.

Witness Teele testified that the purpose of his testimony was to respond to Rule R1-17(k)(6). Pursuant to that rule, he presented schedules reflecting the information for the period November 1, 1996, through October 31, 1997. He also stated that NCNG had filed information with the

Commission on a monthly basis during the test period and provided copies to the Public Staff. Witness Kibler confirmed that the Public Staff had reviewed the filings.

The Commission therefore concludes that NCNG 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 AND 6

The evidence supporting these findings is contained in the testimony of NCNG witness Teele and Public Staff witness Kibler.

In his prefiled testimony, witness Teele indicated that, as of October 31, 1997, NCNG had a net debit balance (payable from customers to NCNG) of $2,970,491 in its deferred accounts, consisting of a debit balance of $4,508,378 in the Sales-Only Deferred Account and a credit balance (payable from NCNG to customers) of $1,537,887 in the All- Customers Deferred Account. Public Staff witness Kibler testified that, besides two adjustments and two reclassifications between deferred accounts proposed by the Public Staff, NCNG had properly accounted for its gas costs during the review period.

Based on the foregoing, the monthly filings by NCNG pursuant to Commission Rule R1-17(k)(6)(c), and the findings of fact set forth above, the Commission concludes that, except for the adjustments and the reclassification between deferred accounts approved by the Commission, NCNG properly accounted for its gas costs during the review period and that the deferred account balances as reported are correct as amended in Finding of Fact Number 31.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence for this finding is contained in the testimony of Company witness Teele. On cross-examination by Mr. Turner of the Public Staff, witness Teele testified about NCNG's "reserve margin." Witness Teele testified that the reserve margin percentages will range between 0.34% and 1.07% for the 1996/97 through 1998/99 winter seasons and will increase precipitously to 13.23% during the 1999/2000 winter season before trailing off to 7.89% during the 2001/2002 winter season. Witness Teele explained that the increase in the reserve margin percentage for the 1999/2000 winter season is the result of the additional supply that the Company will receive from the Pine Needle LNG and Cardinal Pipeline projects that begin service during the 1999/2000 winter season. The Commission concludes that NCNG expects to experience what Mr. Teele calls a "reserve margin" of 13.23% during the 1999/2000 winter season as a result of the Pine Needle LNG plant and Cardinal Pipeline beginning service during that winter season.

The Commission notes that, in Docket No. G-9, Sub 384, Piedmont Natural Gas Company requested a reserve margin. In that Docket, "reserve margin" was defined as, "the amount by which available firm supply resources under contract . . . exceed the estimated firm requirements during a period of 'design day' conditions." Public Staff witness Curtis testified that he neither agreed nor disagreed with the reserve margin proposed but stated that the Public Staff will be reviewing Piedmont's capacity needs and purchases in each annual gas cost proceeding. Under G.S. 62-133.4 and Commission Rule R1-17(k), a gas local distribution company can collect 100% of its prudently incurred gas costs, including demand charges paid to secure capacity. In his Brief, the Attorney General argued that it is not clear that the recovery of costs for additions to capacity related to a reserve margin is allowable under G.S. 62-133.4. The Commission concluded that it was not necessary to approve Piedmont's 5% reserve margin "at this point in time." The Commission's Order simply took note that Piedmont had "advised" the Commission of its intent to phase in a 5% reserve margin.

In this Docket, the Commission does not attempt to address the question raised by the Attorney General in G-9, Sub 384, nor does it offer the Company pre-approval of future gas costs. The Commission will address the appropriateness of so-called "reserve margins" for future periods in future proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8 - 15

The evidence supporting these findings is contained in the testimony of NCNG witness Teele and Public Staff witness Kibler and the Company's tariff.

In determining the appropriate calculation of the ST-1 excess margin, the Commission must consider the history of the ST-1 service and its treatment in the Company's last general rate case. Witness Teele explained that the ST-1 service "is a relatively new service that was made effective in the Company's last general rate case in Docket No. G-21, Sub 334, which was effective November 1, 1995." The purpose of the service, according to witness Teele,

> . . . is to provide customers who are willing to enter into a service contract for Rate ST-1 and to pay the associated demand, capacity and volumetric charges for the five-month winter period, beginning November 1 and ending March 31, the opportunity to avoid interruptions of service for up to five full days during the winter period. The Company has approximately ten industrial customers either on Rate Schedules 3A or 3B and two municipal customers on Rate RE-2 served under ST-1 rate schedule. The industrial customers use it because they do not want to incur additional expenses associated with the maintenance of alternative fuel systems and the purchase and storage of alternative fuels. The municipal customers use Rate ST-1 in a manner very similar to the way NCNG itself used Transco's LGA service, which is an LNG service available for up to five days of the winter. This enables the municipals to meet their peak-day demands without incurring year-round demand charges under Rate Schedules RE-2 or T-6.

According to both Company witness Teele and Public Staff witness Kibler, the Company utilizes its LNG facility as the source of the gas supply for the ST-1 customers.

An explanation of the treatment of the ST-1 revenues and volumes in the Company's last rate case is crucial to understanding the proper calculation of the ST-1 excess margins. Both witnesses testified that no volumes and no revenues were included in the last general rate case for the ST-1 sales. Both witnesses also stated that all the known expenses associated with the LNG facility at the time of the last rate case were included in the rate case expense level, and thus are being fully recovered through rates. Witness Teele testified that, since the rate case, ". . . we have added another vaporizer at the LNG plant. We've made other improvements. We made some system strengthening to help get more gas from the plant out in the system." He further stated that NCNG is having to liquefy gas for the purpose of supporting this ST-1 service and therefore there are additional costs. However, with regard to the situation at the time of the rate case, he conceded that, ". . . the costs of the LNG, that we had then, are being recovered."

In his testimony, Witness Kibler proposed an adjustment of $34,532 related to the calculation of the excess margin from ST-1 sales. He explained that the Company did not correctly calculate the excess margin from the ST-1 sales. The incorrect calculation resulted from the Company's deduction of "revenues associated with the volumes that each [ST-1] customer had contracted for instead of deducting the 'regular sales rate' revenues based on the volumes of gas that were actually sold under the ST-1 tariff." He further explained that the "Company should not have reduced the margins for gas that was not purchased."

Both Public Staff witness Kibler and Company witness Teele relied on the definition of excess margin that is included in the Company's tariff. The applicable tariff language is found in Rider B, paragraph 3.7, which reads:

> The Company shall record in the Deferred Gas Cost Account all excess margins earned on sales under Rate Schedules E-1 and ST-1 to all customers excluding all PSVA volumes as defined in Rider A. The excess margins are computed by comparing all revenues received by the Company, less gross receipts tax, to the revenues less gross receipts taxes which would have been received if the quantity of gas had been sold under the customer's regular sales rate schedule.

Kibler Exhibit 1 calculates the excess margin as defined above. In that exhibit, the total revenues received by the Company, which include a demand charge, a capacity charge, and a volumetric charge, are reduced by the "regular sales rate schedule" revenues for any volumes sold.

Witness Kibler testified that the Company's current rates include recovery of all the expenses related to the LNG facility. Therefore, the Company does not need to collect additional revenues from the ST-1 customers to recover any costs. He also testified:

> that the Company should make the same amount of money whether this [ST-1] customer buys its gas under its normal tariff rate, under the ST-1 tariff rate or under the E-1 gas rate. And what it would get under each of those three different tariffs is its normal tariff rate. That's what the Company would be allowed to keep, and any excess from ST-1 to E-1 gas would go to the deferred account.

Witness Kibler further testified that the methodology used by the Company results in a sharing of revenues between the ratepayers and the shareholders, which is not in accordance with the Company's tariff.

The Company did not agree with the Public Staff's adjustment to the ST-1 margin calculation. In his rebuttal testimony, witness Teele stated two primary reasons and several secondary reasons why the Public Staff's adjustment should not be made. The primary reasons included: (1) The Public

Staff's adjustment was not "in accordance with the Company's tariff, . . . [and] (2) NCNG has treated the Rate ST-1 revenues and excess margins exactly the same way since November 1, 1995."

Witness Teele also testified that ST-1 is a standby service and not a commodity-type service. The primary costs NCNG incurs to offer this service are the capital costs in its LNG facilities. He further testified that ST-1 is a standby service that is triggered only occasionally and never in warm weather. Nearly all of the revenues are from the demand and capacity charges which are, in essence insurance against not having gas supplies on the coldest days of the year. Witness Teele therefore concluded that the contracted-for capacity volumes should be used to calculate the reserve margin rather than the volumes of gas actually sold.

Witness Teele also gave several secondary reasons why the Commission should not approve the Public Staff's adjustment. The first of these secondary reasons dealt with the issue of fairness or equity. Teele testified that, "NCNG's method results in 87.78% of Rate ST-1 margin being credited to the All-Customers Deferred Account. Public Staff Witness Kibler's adjustment takes it up to 100%. Clearly, that is inequitable, no matter how you define 'excess margins'."

Another secondary reason cited by witness Teele is that all customers of NCNG are benefiting from the Company's current calculation of the excess margin. He testified that the specific customers using the ST-1 service benefit because, ". . . they can avoid interruptions of service and, in turn, avoid the additional costs of expensive alternative fuel systems and storage of alternative fuels and/or the payment to NCNG of more expensive emergency gas rates." In addition witness Teele stated that all other customers win because they receive more credits from the ST-1 sales than they would from sales of E-1 gas. Finally, witness Teele stated that the Company wins because it retained "$34,000 in revenues based on the margins of Rate ST-1 customers."

The final secondary reason given by the Company relates to the elimination of any incentive for the Company to provide the service if witness Kibler's adjustment is approved by the Commission. Witness Teele testified that if the Commission approves the adjustment, ". . . NCNG is obviously worse off than if it merely relied on Rate E-1." Witness Teele added that there are, ". . . incremental cost in reserving LNG inventories for the ST-1 service because the ST-1 service is firm, as opposed to E-1, which is best efforts." Witness Teele further explained that, "The Company might have to operate its LNG plant more than it planned, or in the case of a warm winter, NCNG incurs additional carrying costs of the LNG inventory not sold from one warm winter to the next winter." In reference to this point, witness Teele concluded that Commission approval of the Public Staff's adjustment, ". . . would send a strong signal to NCNG not to be innovative in offering services customers want, but instead rely on the old way of doing things because that would provide a better bottom-line result for our shareholders."

After reviewing the evidence discussed in the testimony of the various witnesses, the Commission concludes that the Public Staff's adjustment to the ST-1 excess margin calculation is appropriate. There are several reasons for this decision.

First, the Company's tariff requires that "all excess margin" from the ST-1 sales be placed in the deferred account. Witness Teele testified that the Company was "sharing so that the customers get over 88 percent of the revenues." The Company would then receive approximately 12 percent of the revenues under Witness Teele's method. The tariff clearly does not include provisions for a sharing of the ST-1 revenues. The tariff explicitly requires "all" excess margins to be included in the deferred account. The Company is unilaterally attempting to modify the tariff language to implement a sharing mechanism when no such mechanism exists in the tariff. The Commission agrees with Public Staff witness Kibler that the Company's calculation is not in agreement with its tariff.

On cross-examination, witness Teele agreed that, in the settlement negotiations in the last general rate case, the Public Staff at first proposed to keep all of the revenues, and NCNG wanted to keep ten percent. Those two parties then reached the compromise embodied in the tariff, and the Commission approved that settlement. Teele Rebuttal Exhibit Number 4, however, shows NCNG now keeping about twelve percent. That division of revenues does not appear to carry out the intent of the settlement.

In arriving at its conclusion, the Commission has also considered the treatment of the ST-1 revenues and volumes in the Company's last general rate case. As both witnesses testified, no revenues and no volumes from the ST-1 rate schedule were included in the rate case revenue calculations, which is a key fact. The inclusion of the excess margin in the deferred account was necessary to keep the Company from receiving revenues that were not incorporated into the rate design approved by the Commission. Any revenue received from the ST-1 service, above the normal tariff rate that is allowed under the company's tariff, can be described as excess earnings. The Company's calculation of the excess margins results in excess earnings, while witness Kibler's calculation does not.

That the Company is receiving excess earnings can be easily identified when reviewing Kibler Exhibit 1 and Teele Exhibit 3. During the review period, 74 dts were sold under the ST-1 tariff. As shown on Kibler Exhibit 1, line 5, the normal sales tariff revenue for those 74 dts is $334, which is what NCNG would have received if the 74 dts had been sold under the normal tariff rates. Teele Exhibit 3, Line 17, shows what the Company actually included as revenues from the ST-1 sales, which was $33,166. Because the calculation of rates developed in the Company's last general rate case did not include revenues and volumes from ST-1 services and only included regular revenues and volumes, the Commission concludes that the only revenue associated with the 74 dts to be included in the current rates is the $334. The $33,166 collected by the Company was not incorporated into the rate structure in the rate case and therefore would be excess earnings.

Another important factor that the Commission reviewed is the treatment of the excess margins from Rate Schedule E-1. The Company's tariff requires that excess margins from both Rate Schedules ST-1 and E-1 be included in the deferred account. The reason for this requirement is that it keeps the Company from receiving earnings in excess of the normal tariff rate. The Commission finds that revenues from the ST-1 rate schedule should be revenue neutral to the Company, in the same manner that rate Schedule E-1 revenue is. The Commission concludes that the calculation of the excess margin currently employed by the Company does not result in revenue neutrality for the Company. As calculated by Teele, the Company has retained $33,166 of revenue instead of the $334 it should have retained.

The Commission does not agree that the Company must have an "incentive" to provide this service. Both witnesses testified that the LNG facility is used to provide the gas supply for the ST-1 customers and both witnesses agreed that the expenses from the LNG facility, that were known at the time of the last general rate case, were included in the approved rates and are therefore being fully recovered. Witness Teele attempted to justify the recovery of additional revenues from the ST-1 customers to cover possible incremental expenses. Under cross examination, however, witness Teele agreed that in addition to any new expenses that the Company may be incurring, the Company also has added new customers and new volumes. Teele stated that, "you set rates for the future" and, "you don't really spend a lot of time looking back." He also agreed that one possible remedy for recovering new expenses was to come in for a rate case. Moreover, while the Commission must establish an overall revenue requirement that will allow the Company to remain viable, not every single service must be profitable. E.g., State ex rel. Utilities Commission v. Atlantic Coast Line Railroad Company, 235 N.C. 273 (1952). In this case, there is no question of offering a service at a loss, and NCNG's overall profitability is hardly in question. As long as NCNG or any other utility is regulated by this Commission, the public interest will be a factor in determining whether a service is offered and at what price.

The Commission concludes that the Company is indeed recovering its costs related to the LNG facility and that the Company should not be allowed to keep additional revenue to recover expenses that it is already recovering.

Witness Teele testified that one primary reason to disallow the Public Staff's adjustment was that NCNG has always calculated the margin in the same manner and that the Public Staff did not challenge it in the last annual review. This argument advances the idea that an error cannot be corrected by the Commission or the Public Staff. If there is an error, or if the incorrect accounting treatment is being used, it must be corrected once discovered. The Commission notes that the Public Staff is not recommending that the accounting treatment used in last years' annual review period be changed.

In his testimony, witness Teele gave several additional reasons why the Public Staff's adjustment should not be approved. These reasons included that all the customers benefit from the ST-1 calculation as currently being made by the Company, that the ST-1 customers benefit from having the service available, and that all the customers benefit from the credits to the deferred account that are generated from the ST-1 service. The Commission notes that all of these groups of customers will still continue to receive the same benefits stated by the Company even though the Commission is approving the Public Staff's adjustment.

Both the Public Staff and the Company pointed to the language of Rider B. In its Brief, CUCA expresses some sympathy for the Company, but argues that the plain language of the tariff suffices to decide this question in favor of the Public Staff's position. The Commission agrees. The tariff speaks of ". . . the quantity of gas sold . . ." and not ". . . the quantity of gas contracted for."

In its Brief, CUCA observes that, "CUCA strongly suspects that the Company and the Public Staff failed to come to a meeting of the minds." The Commission cannot help but come to the same conclusion. The Commission suggests that, in the future, the parties may want to consider working through sample calculations to ensure that there is no confusion.

In conclusion, the Commission has determined, based on the evidence presented in this case, that the Company's calculation of the ST-1 excess margin is not in compliance with its tariff. The Public Staff's adjustment to correct for the ST-1 margin is based on the tariff definition of excess margin and should be allowed. In its next rate case application, the Company may request that revenues and expenses for this rate schedule be included in calculating its rates.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 16 - 18

The evidence supporting these findings is contained in the testimony of Public Staff witness Kibler.

The Public Staff recommended an accounting adjustment related to the margin on certain secondary market transactions. This adjustment is the result of the Company deducting certain G&A expenses from revenues before the resulting margin is shared with the ratepayers. The Company did not challenge this Public Staff adjustment. The Commission agrees with witness Kibler's explanation of why these G&A expenses should not be included in the calculation of the margin from secondary market transactions. Therefore, the Commission concludes that it is appropriate for the Company to credit the deferred account $13,463. This amount should be included in the All-Customers Deferred Account as discussed in Finding of Fact No. 31.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 19 - 26

The evidence supporting these findings is contained in the testimony of NCNG witness Teele and Public Staff witnesses Kibler and Larsen.

In its testimony, the Public Staff reclassified $1,702,565 in negotiated losses from transportation customers from the Sales-Only Deferred Account to the All-Customers Deferred Account.

Public Staff witness Kibler explained the negotiated losses from transportation customers' transactions and how the Company currently accounts for them as follows:

> The Company is allowed to negotiate transportation rates with certain customers to avoid the loss of deliveries to those customers. All customers benefit from retention of the negotiating transportation customers due to the contribution towards fixed gas costs provided by the customer. The Company presently accounts for negotiating transportation customers by recording a credit in the all-customers deferred account for the fixed gas cost true-up as if the customer paid the full tariff rate and recording a debit in the sales account for the discount off the tariff rate.

Witness Kibler further explained how the Company's current accounting treatment does not match the benefits and costs from these transactions with the appropriate customer classes. He testified that:

> The effect of this accounting treatment is that the all customers deferred account reflects more contribution towards fixed gas costs than is actually provided by the

customer and that the sales customers deferred account reflects all of the costs and none of the benefits resulting from this discount.

Witness Kibler concluded that, "it is only reasonable that the full effect of the discounts be recorded in one account instead of recording the benefits in one account and the costs in the other." Witness Kibler recommended that these negotiated losses be reclassified by recording them in the All-Customers Deferred Account because "these transactions are unrelated to commodity cost" and because it is "not logical to require only customers who buy sales gas from the Company to pay for losses unrelated to gas sales."

During cross-examination from CUCA, when Public Staff witness Larsen was asked whether NCNG's accounting for negotiated losses was in accordance with its Rider B, he acknowledged that, "It [Rider B] does not state whether it should be . . . [the] Sales-Only customer account or the All-Customers account . . . It does not specify." When pressed on the issue of whether NCNG was acting consistently with the language in its Rider B by placing these negotiated losses in the Sales-Only Deferred Account, witness Larsen pointed out that "If they put it [the negotiated losses] in the All-Customers account, they'd be acting consistently, too."

Also, during cross-examination from NCNG, witness Kibler stated that the current handling of the negotiated losses is not necessarily in violation of its rules and regulations. Witness Kibler concluded that, "I just think that what I am proposing will just be a better way of handling those losses."

The Public Staff also discussed how other LDCs handle negotiated transportation losses in their deferred accounts. Witness Kibler stated that the tariffs of both NC Gas and PSNC require that the negotiated losses from transportation customers be included in the All-Customers Deferred Account. He explained that the Commission ruled on this very issue in the most recent annual review involving Piedmont:

> In Piedmont's most recent annual review, Docket No. G-9, Sub 393, the appropriateness of including the discount on the transportation volumes in the All-Customers account was explored during the cross examination of both Piedmont's and the Public Staff's accounting witnesses. Both witnesses testified to the appropriateness of including the losses in the All-Customers account. The Commission's order in that docket affirmed the witnesses' recommendations [to keep the negotiated transportation losses in the All-Customers Deferred Account].

NCNG witness Teele testified that the Company's method of accounting for negotiated transportation losses has been consistently handled in the same manner since the deferred account was split into its two subaccounts of Sales-Only and All-Customers in 1991. Now, the Public Staff wants NCNG to change its methodology to conform with what other LDCs have just recently done. Witness Teele testified that NCNG has several of the largest and most price-sensitive industrial gas users in the State and often the granting of a negotiated transportation rate discount has been necessary to retain the load on NCNG's system. He added that,

> ... those customers can, and do, swing between sales and transportation service quite often and the granting of discounts is effectively the same whether the service is sales or transportation. Therefore, because the discounts are effectively the same (i.e., a reduction in NCNG's margin, not gas cost) and the fact that Rider B makes no distinction between sales rate and transportation rate discounts, there is no need to make such a distinction in the deferred accounts.

Witness Teele further testified that it is NCNG's transportation service bundled in the sales rate that is being discounted and that there should be no distinction between a discount offered under a transportation service and, "... an equivalent all-in, bundled sales rate."

NCNG also argued that the Public Staff claimed that NCNG's method was unfair to Sales-Only customers but other proposed Public Staff adjustments would have the effect of raising rates to residential customers.

The Public Staff offered Larsen Exhibit A, which showed the potential effect of the recommended reclassifications on the various customer classes. Witness Larsen explained that the reclassification, "... is neutral to NCNG, it neither increases nor decreases the overall account balance. It is merely a shifting from one account to another."

Witness Kibler explained that which class of customers pay for the correct classification of these negotiated losses is not the proper way to go about determining this adjustment. Witness Teele agreed with Mr. Kibler that the effect on the various customers classes from the reclassification is not the primary reason to be considered.

CUCA generally agreed with and supported the Company's position. CUCA's brief did include a slight twist on the Company's argument that it had been using the same method since the subaccounts were set up. CUCA reasoned that NCNG has a good understanding of the interests of all its customers and in light of its experience and understanding and the vagueness in the rules and statutes, NCNG's decision to debit the transportation losses to the Sales-Only account should be allowed to stand. The Commission notes that the Public Staff, whose duty it is to represent the using and consuming public, is challenging this method. The industrial users represented by CUCA may be comfortable with this arrangement, but it would appear that "all customers" are not.

The Commission has carefully weighed all the evidence discussed in the testimony of the various witnesses and has determined that three main factors should be considered in deciding this issue: the interpretation of NCNG's Rider B, and the consistency of how NCNG has handled the issue over time and how other LDCs handle this issue and the nature of the transactions.

The first factor is whether NCNG is accounting for these losses in accordance with the language contained in its Rider B. Witness Larsen stated that the Rider does not specify which account, Sales-Only or All-Customers, should be debited for these negotiated losses. The Commission concludes that although NCNG is not necessarily debiting the wrong account (Sales-Only), there is no evidence to suggest that this is the correct account to debit either. The Commission agrees with witness Larsen's statement that if NCNG had debited the All-Customers Deferred

Account instead of the Sales-Only Deferred Account that, too, would be consistent with its Rider B. Therefore, the Commission concludes that this factor does not support either party's position.

The second factor is consistency. The Company argues that its method has been consistently applied since the two subaccounts came into being and therefore should not be changed. The Commission acknowledges that consistency is desirable. However, consistency, devoid of any other support, does not justify the perpetuation of an error. As was noted earlier in this order, the failure of the Public Staff and other parties to raise this issue in earlier proceedings does not preclude them from doing so now. Mistakes can and should be corrected. The question before the Commission is whether the method used by the Company during the period under review was proper. The Commission notes that a change in method will have no financial impact on NCNG.

Two other LDCs, NC Gas Service and PSNC, are required by their tariffs to record these losses in the All-Customers Deferred Account, which is in contrast to NCNG recording these transactions in its Sales-Only Deferred Account. The Commission also takes notice of its ruling in Piedmont's last annual review proceeding in Docket No. G-9, Sub 393, where this issue was debated. The Commission concluded that these negotiated transportation losses belonged in the All-Customers Deferred Account. While the Commission recognizes that there is some room for different approaches among different LDCs, it concludes that both the manner in which other LDCs handled these transactions as well as its own ruling in a recent annual review proceeding lead it to agree with the Public Staff's recommendation to reclassify theses negotiated losses from the Sales-Only Deferred Account to the All-Customers Deferred Account.

The Commission recognizes that the transactions involve a discount off the transportation rates and are not related to commodity gas costs. The Commission agrees with witness Kibler that the Sales-Only Deferred Account reflects all of the costs and none of the benefits under the current accounting method used by the Company. The Commission concludes that using this criterion alone, the reclassification recommended by the Public Staff is warranted. NCNG argues that certain customers receiving these transportation discounts swing between sales and transportation services and that there is no practical difference between a transportation discount and an equivalent sales. Those arguments do nothing to convince the Commission that transportation discounts should be recorded in the Sales-Only account. All customers benefit from these transactions, and all customers should bear the costs.

Therefore, the Commission agrees with the Public Staff to reclassify the negotiated transportation losses from the Sales-Only Deferred Account to the All-Customers Deferred Account. The Company will be required to make a $1,702,565 credit to the Sales-Only Customers Deferred Account and a corresponding debit to the All-Customers Deferred Account. The Company will also reclassify any debits regarding the negotiations of transportation customers that were made to the Sales-Only Customers Deferred Account, plus applicable interest, since the end of the review period and make the appropriate accounting entries to the deferred accounts. Furthermore, the Company will record all negotiated transportation losses in the All-Customers Deferred Account from the date of this order forward.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 27 - 30

The evidence supporting these findings is contained in the testimony of NCNG witness Teele and Public Staff witnesses Kibler and Larsen.

In its testimony, the Public Staff reclassified $524,087 in secondary market transactions credits from the Sales-Only Deferred Account to the All-Customers Deferred Account. NCNG opposed this reclassification.

In Docket No. G-100, Sub 67, the Commission ordered that 75% of the net compensation received from secondary market transactions be attributed to customers as a credit to the deferred account. The Order in that Docket did not specify which deferred account subaccount should be credited. During the review period, NCNG included the ratepayers' share of net compensation associated with the release of interstate capacity and buy/sell transactions in the All-Customers Deferred Account. NCNG credited the net compensation for certain transactions involving commodity sales by Cape Fear Energy Corporation (Cape Fear) and NCNG-Energy to the Sales-Only Deferred Account. Both Cape Fear and NCNG-Energy are subsidiaries of the Company.

In his rebuttal testimony, NCNG witness Teele explained:

> . . . certain transactions where the credits have been made to the Sales-Only Deferred Account involve only commodity sales made by NCNG subsidiaries. Many of them were off-system sales to other marketers when excess gas supplies under NCNG's long-term contracts were available. Because NCNG gas supplies were utilized to make these sales, the 75%/25% sharing mechanism was in effect so that customers received 75% of the profits and NCNG's subsidiary retained 25% The remainder of these transactions involved subsidiary sales of gas to NCNG customers for which the subsidiary or its customer was also charged for the capacity by NCNG for the delivery of the gas under "Buy/Sell" arrangements. The customers' share of capacity revenues was properly credited to the All-Customer Deferred Account, while the customers' share of the subsidiary margins earned on the sale of the gas was properly credited to the Sales-Only Customers Deferred Account.

Witness Teele further argues that the credits to the Sales-Only Customer Deferred Account are proper because they are commodity sales only and do not involve margin from capacity release or buy/sell arrangements. He adds that they are, ". . . in effect, a recoupment of some of the reservation charges that NCNG pays producers and marketers to firm up these supplies.

The Public Staff contends that all net compensation from secondary market transactions should be recorded as credits to the All-Customer Deferred Account. Witness Kibler explained two reasons for his recommendation to reclassify these transactions.

> The Public Staff believes that the ratepayer's share of the margin derived from all secondary market transactions should be included in the all customer account (1) to be consistent with the original rationale for sharing the margins on secondary market transactions, which was to allow the LDCs to offset the fixed gas cost with margins

> from secondary market transactions, and (2) to avoid the necessity of examining each transaction to determine whether any contracted transportation or storage was utilized in connection with the transaction.

The Public Staff's first position is flawed because it presumes that all fixed gas costs are assigned to the All-Customers Deferred Account. They are not. Witness Teele testified that the credits involved are a recoupment of some of the reservation charges. The Commission notes that reservation charges are fixed gas costs that are paid to producers and marketers to ensure the right to buy the commodity. Reservation charges paid to producers and marketers to secure gas supplies are commodity-related and are placed in the Sales-Only Deferred Account. Therefore the "original rationale for the sharing of margins on secondary market transactions" does not determine in which deferred account subaccount these credits should be placed.

Witness Kibler further stated that when examining secondary market transactions that include both gas supplies and capacity, "it is unclear which account should be credited for these transactions." Witness Kibler also stated that this determination could become cumbersome.

> With the possibility of hundreds of transactions occurring each month, it would be unproductive for the Public Staff and overburdensome on the LDCs for the Public Staff to review each transaction to verify which asset of the LDC was used to ensure that the correct deferred account was credited.

The Commission has been sensitive in the past to the need to consider ease of administration as an important factor in deciding such issues. In Public Service Company's 1995 annual gas cost review (G-5, Sub 346), the Commission rebuffed a request by CUCA for more detailed accounting of various transactions going into the All Customer account. The Order in that Docket stated, "The Commission believes that due to the significant, additional administrative burden and the considerable uncertainty involved in determining a proper allocation basis for each transaction, it is inappropriate and impractical to allocate each type of deferred account transaction to the rate schedules on a specific allocation basis." The Commission notes, however, that in that Docket, the issue was the manner in which amounts were allocated within a deferred account and not to which deferred subaccount the amounts should be assigned.

Further, the Commission notes that the credits for secondary market transactions are unique in nature. The incremental revenues from secondary market transactions spring from fundamental changes in the federal regulatory environment brought about by FERC's Order 636. In Docket No. G-100, Sub 63, this Commission ruled that the LDCs should be allowed to retain 10% of the net compensation from "buy/sell" transactions. In Docket No. G-100, Sub 67, the Commission allowed the LDCs' share of net compensation to increase to 25%. The LDCs and the Public Staff filed a Stipulation in that Docket, supporting the 25%/75% sharing. The Attorney General argued that all secondary market transactions use assets that have been fully paid for by the ratepayers and that 10%/90%. was "generous."

In the Stipulation in Docket No. G-100, Sub 67, the LDCs acknowledged that the Public Staff is authorized by G.S. 62-51, ". . . to inspect the books and records of Corporations affiliated with public utilities . . . where such books and records relate either directly or indirectly to the provision of intrastate service by the utility . . . ." The Commission concluded that the terms of the Stipulation were just and reasonable. In this Docket, the Public Staff finds the thorough examining of secondary market transactions--to the extent necessary to break out commodity-related transactions--to be "unproductive" and "burdensome."

It is evident that the Company does not find it burdensome to break out these transactions. The Company does not benefit from placing the credits in one account or another. The Company is acting to assign sales-related costs to the Sales-Only Deferred Account. The Commission concludes that NCNG's treatment of these credits was proper and that no reclassification is warranted.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 31

Based upon the Commission's decisions regarding the Public Staff's two adjustments and two reclassifications discussed in this Order, the Commission has determined that the Sales-Only Deferred Account should have a debit balance of $2,805,813 and that the All-Customers Deferred Account should have a debit balance of $116,683 as of the end of the review period.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 32

The evidence supporting this finding is contained in the testimony of NCNG witnesses Teele and Monaghan.

CUCA once again is before this Commission arguing that the reservation fee paid to Transco for its FS service should be reclassified from the All-Customer Deferred Account to the Sales-Only Deferred Account. Little, if anything, has changed since CUCA last broached this issue.

Witness Monaghan testified that the Transco FS service is a swing-supply contract. The reservation fee allows NCNG to take as much or as little gas as it needs under the contract.

Witness Teele testified that there are variances every day between the volumes of gas that customers consume and the volumes that NCNG takes into its system. As an example, witness Teele explained that some industrial customers operate their plants five days a week but buy gas on a seven day a week basis. He further testified that, ". . . the FS is a very handy tool in doing this physical balancing." Under cross-examination by counsel for CUCA, witness Teele testified about the financial balancing of customers' gas accounts. It has been and remains clear to the Commission that Transco FS service is a physical balancing service essential to the operation of NCNG's system. It is clear that it benefits all customers. The fact that customers' financial accounts with NCNG are balanced in no way diminishes the need for physical balancing. The Commission concludes that NCNG properly accounted for the Transco FS reservation fee in assigning it to the All-Customers Deferred Account.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 33 - 36

The evidence supporting these findings is contained in the testimony of NCNG witness Monaghan and Public Staff witness Larsen.

Witness Monaghan testified that NCNG's Gas Supply Acquisition Policy adopted by its Board of Directors states that the primary objective is "to ensure that the Company has adequate volumes of competitively-priced natural gas to meet peak-day demand of all firm customers and to provide maximum service possible to all customers during other times throughout the year." This policy's key features include that NCNG maintain a portfolio mix of long-term supply contracts, that they maintain backup peak-day gas supplies (primarily gas in storage), that long-term contracts provide for periodic renegotiation to keep the contracts market-responsive, and that firm gas supplies be acquired primarily to meet their peak-season firm requirements.

Witness Monaghan testified that although NCNG's Gas Supply Acquisition Policy has been in effect for several years, the policy was revised and updated during the review period. The main changes to the policy were: to include intermediate-term contracts in the "portfolio mix" of firm supplies, in addition to long-term supply contracts; to increase the percentage of the Company's flowing gas supply which can be acquired from a single supplier during the winter heating season; to decrease the required minimum number of gas supplies on the Company's working vendor list; and to revise the requirement for back-up gas supplies in storage to permit late winter withdrawals of supplies from storage.

He described NCNG's policy as a "best cost" gas purchasing policy where NCNG strives to give due consideration to price, security of supply, and flexibility of supply arrangements. NCNG has also added another factor which deals with supplier relations, which includes accuracy and timeliness of the supplier's invoicing, the competence of their marketing and gas scheduling personnel, and their willingness to tailor services to NCNG's specific needs.

NCNG sells or transports gas to two groups of customers, its firm and its interruptible markets. NCNG's firm market is mainly comprised of residential, commercial, and small industrial as well as customers who have firm contracts for the purchase or transportation of volumes of gas and demand charges in their rates. This latter group includes NCNG's four municipal customers.

Witness Monaghan testified that NCNG has 10 long-term gas supply contracts, including the Transco FS (Firm Sales) service, representing a total firm supply of 182,067 dts per day for the winter delivery period and lesser amounts in the remainder of the year. He also testified that of these 10 contracts, four were multi-year, winter only contracts that are utilized only during the five winter months and reservation fees are payable only during the winter months. In addition, witness Monaghan testified that two of the contracts provide for a higher winter quantity than in the summer months, and the remaining four contracts have a level quantity year-round.

Witness Monaghan testified that in addition to its firm-supply gas supply contracts, NCNG continued to have 5,199 dts per day of Rate Schedule FSS (Firm Storage Service) and related transportation from Columbia Gas Transmission Corporation, 2,070 dts per day of GSS (General Storage Service) from Transcontinental Gas Pipeline Corporation (Transco), and 5,320 dts per day of Transco's LG-A peaking service, as well as NCNG's own LNG peaking facility which can provide in excess of 90,000 dts on peak day.

Witness Monaghan testified that NCNG exercised its right to request renegotiation of contract pricing under one long-term contract and was able to obtain a lower reservation charge from that supplier, to be effective November 1, 1997. NCNG also allowed one long-term contract to expire and replaced it with three contracts that contained more favorable pricing and terms than under the expired contract.

Witness Larsen 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, Larsen 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. He stated that, in the Public Staff's opinion, NCNG's purchasing practices were reasonable and prudent.

Based on the foregoing, the Commission concludes that NCNG's gas costs during the review period were reasonable and prudently incurred and should be recovered.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 37 - 40

The evidence supporting these findings is contained in the testimony of NCNG witness Teele and Public Staff witness Larsen.

Witness Teele testified that the Commission should not adjust any of NCNG's existing temporary rate increment and decrements in this proceeding. He testified that NCNG had implemented the temporary rate increment and decrements effective November 1, 1997, based on the balances of the accounts at that time and that there is no compelling reason to change them now. Witness Teele also stated that NCNG's handling of their increment and decrements is consistent with the way they have done it in the past and that this method has worked well.

Witness Larsen testified that although the Public Staff recommended changes to NCNG's deferred accounts due to adjustments and reclassifications, he did not recommend that the Commission change any of NCNG's current increment/decrements in this proceeding. Witness Larsen reiterated that NCNG had changed its increment and decrements effective November 1, 1997, under Docket No. G-21, Sub 365, which was a Purchased Gas Adjustment (PGA) procedure. Witness Larsen further testified that "NCNG typically adjusts its temporaries in one of its PGAs, generally effective in November, and manages its deferred account balances well."

Based on NCNG's fairly recent implementation of rate increment/decrements, which were effective November 1, 1997, and the Public Staff's testimony that NCNG has a good history of managing its deferred account balances well, the Commission concludes that changes in rate increment/decrements are not necessary in this proceeding. The Commission realizes that NCNG typically adjusts its temporaries in a PGA filing, rather than an annual review proceeding, and that when the deferred account balances indicate a change is necessary, NCNG will pursue a rate change at the appropriate time. The Commission is also confident that the Public Staff is current in its on-going investigation of the deferred account balances and will monitor and evaluate the necessity of changing the temporary rates.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 41

The evidence supporting this finding is contained in the testimony of Public Staff witness Kibler. He testified that the Company has long-term agreements with two customers to provide transportation services at below tariff rates and that neither of these agreements had been filed with the Commission for approval. He also stated that negotiated losses to meet alternative fuel prices are routinely placed in the deferred account, but these long-term contracts raised other issues.

The Public Staff did not make any adjustments in this case with regards to the negotiated losses arising from these agreements. The Public Staff stated that it intends to bring this matter back before the Commission in a later proceeding to deal explicitly with the amounts that NCNG is currently deferring and to consider how these types of contracts should be handled.

The Commission concludes that it is appropriate to address issues related to these long-term agreements in another proceeding.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's accounting for gas costs during the twelve months ended October 31, 1997, with the adjustments and reclassifications discussed herein, is approved;

2. That NCNG is authorized to recover 100% of its gas costs incurred during the twelve months ended October 31, 1997; and

3. That NCNG shall adjust its deferred accounts to reflect the adjustments and reclassifications discussed in this Order.

ISSUED BY ORDER OF THE COMMISSION
This the 6th day of August, 1998

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-9, SUB 408

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the matter of Application of Piedmont Natural Gas Company, Inc., for Authorization to (1) Transfer Supplier Refunds and Interest to its Natural Gas Expansion Fund and (2) Use Expansion Funds to Provide Service to Avery, Mitchell and Yancey Counties	)	ORDER APPROVING TRANSFER OF SUPPLIER REFUNDS AND APPROVING EXPANSION PROJECT FOR FUNDING FROM EXPANSION FUND

HEARD IN: Spruce Pine Public Library Meeting Room, 304 Walnut Avenue, Spruce Pine, North Carolina on Wednesday, September 2, 1998, at 7:00 p.m., and in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, September 23, 1998, at 9:30 p.m.

BEFORE: Commissioner Judy Hunt, Presiding; Commissioner J. Richard Conder and Commissioner Robert V. Owens, Jr.

APPEARANCES:

For the Applicant:

Jerry W. Amos and James H. Jeffries IV, Amos, Jeffries & Robinson, L.L.P., Post Office Box 787, Greensboro, North Carolina 27402

For the Public Staff:

Antoinette R. Wike, Chief Counsel, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

BY THE COMMISSION. On September 27, 1994, Piedmont Natural Gas Company, Inc. (Piedmont or the Company), filed an amended application in G-9, Sub 328, for the creation of an "Expansion Fund" for Piedmont. On April 4, 1996, the Commission ordered that an Expansion Fund for Piedmont be created and authorized certain supplier refunds, plus applicable interest, to be transferred to the Expansion Fund. Pursuant to the Commission's Order, Piedmont transferred $16,388,890.15 to the Expansion Fund on May 3, 1996. As of April 30, 1998, the balance in the Expansion Fund had increased to $18,571,101.30. Through March 28, 1998, Piedmont has received additional supplier refunds and applicable interest in the amount of $8,220,807.78. These monies are being held in escrow and are awaiting transfer to Piedmont's Expansion Fund. The transfer of these monies to the Expansion Fund would bring the balance to $26,791,909.08.

On June 17, 1998, Piedmont filed an application requesting the Commission to (1) allow Piedmont to transfer the additional supplier refunds and applicable interest in the amount of

$8,220,807.78 being held in escrow to its Expansion Fund, and (2) authorize Piedmont to use proceeds from its expansion fund to partially fund the provision of natural gas service to Avery, Mitchell and Yancey Counties which have been assigned to Piedmont and are currently without natural gas service (the "Three County Project"). The Three County Project consists of approximately 85 miles of transmission line and 25 miles of distribution mains. Piedmont intends to construct the transmission systems in three geographic segments. The first segment includes Burnsville, Spruce Pine, Bakersville and Micaville and will extend along the U.S. Highway 19E and N.C. Highway 226 corridor. The second segment includes Linville, Pineola, Newland and Banner Elk and will extend along the corridors of N.C. Highway 181, N.C. Highway 184 and N.C. Highway 105. The third segment, composed mainly of private right-of-way, will extend from Morganton adjacent to N.C. Highway 181 and beyond N.C. Highway 183. Maps of the proposed systems are shown on Exhibit 2 of the application. Piedmont estimates the total cost of the Three County Project to be $31,949,196. Piedmont submitted a summary of the net present value (NPV) analysis of the Three County Project, calculated in a generally accepted manner as required by Rule R6-84(a)(3), in Exhibit 8 attached to the application and in a supplemental filing made on July 20, 1998. Based on Piedmont's NPV model, the amount of Expansion Fund monies necessary to make the Three County Project economically feasible (NPV=0) is $26,260,530. In addition, Piedmont would make an investment of $5,688,666. Piedmont requests that the Commission approve the use of $26,260,530 of Expansion Funds for the Three County Project.

By the Order Requiring Notice for Transferring Monies to Expansion Fund and Scheduling Public Hearing, Requiring Public Notice, and Setting Procedural Schedule for Expansion Project issued July 8, 1998, the Commission ordered a hearing on Piedmont's application, required public notice, and established a procedural schedule for this proceeding.

On July 15, 1998, the Commission issued an Order Requiring Filing of Net Present Value Analysis. On July 21, 1998, Piedmont filed an NPV Analysis.

On August 12, 1998, the Commission issued an Order requiring Piedmont to file supplemental testimony. Piedmont filed supplemental testimony on August 27, 1998.

On August 18, 1998, the Carolina Utility Customers Association, Inc., filed a Petition to Intervene, and on August 19, 1998, the Commission issued an order granting the petition.

On September 3, 1998, the Public Staff filed the Affidavit of Eugene H. Curtis, Jr., Thomas W. Farmer, Jr., and James G. Hoard supporting the transfer of supplier refunds and interest totaling $8,220,807.78 to Piedmont's Expansion Fund and Piedmont's use of $26,260,530 to fund the Three County Project.

On September 2, 1998, this matter was heard in Spruce Pine. Fourteen public witnesses testified in support of the Three County Project: Don Baker, Avery County Manager; Dave Inscoe, Executive Director of the Mitchell County Economic Development Commission and the Mitchell County Chamber of Commerce; Rick Herndon, Region "D" Council; Shannon Baldwin, Town Manager of Banner Elk; Phillip Frye, Mayor of Spruce Pine; Marvin Holland, Mayor of Burnsville; Dale Carroll, President of Western North Carolina Regional Economic Development; Jeff Van Jahnke, Zemex Mica Corporation of Bakersville; Mike Robinson, Mitchell County Manager; Tommy

Burleson, Avery County Economic Development and Planning Commission; David R. McIntosh, Chairman of Yancey County Commissioners; Kelly Pipes, Yancey County Manager; Wanda Proffitt, Chairman of Yancey County Economic Development Commission; and Charles Vines, Mayor of Bakersville.

On September 23, 1998, the matter came on for hearing in Raleigh as scheduled. Four public witnesses testified in support of the Three County Project: Charles Monroe Buchanan, House Representative of Mitchell and Avery Counties; Annette Bryant, House Representative of Yancey County; Greg Thompson, House Representative of Mitchell and Avery Counties; and Mike Robinson, Mitchell County Manager.

Piedmont presented the testimony and exhibits of witness Kevin M. O'Hara, Vice President of Corporate Planning. Piedmont also introduced Hearing Exhibit 1 consisting of resolutions of local governments regarding financial assistance to facilitate the Three County Project.

The Public Staff presented the Affidavit of witnesses Eugene H. Curtis, Jr., Director of the Public Staff's Natural Gas Division; Thomas W. Farmer, Jr., Director of the Public Staff's Economic Research Division; and James G. Hoard, Supervisor of the Public Staff's Natural Gas Section of the Accounting Division.

All witnesses, including the witnesses who testified by affidavit, were presented for cross-examination.

Based upon the application and exhibits described above, the Public Staff's affidavit, the testimony and exhibits, evidence adduced at the hearing and the record as a whole, the Commission makes the following:

FINDINGS OF FACT

1. Piedmont, a North Carolina corporation with its principal office in Charlotte, North Carolina, is engaged primarily in the business of transporting, distributing and selling natural gas to customers in North Carolina, South Carolina, and Tennessee. Piedmont now holds the franchises and is furnishing natural gas to 54 cities and towns located in 18 counties in North Carolina.

2. The Company is a public utility as defined in Chapter 62 of the North Carolina General Statutes subject to the jurisdiction of this Commission.

3. The Company is before the Commission upon its application for approval to (1) allow Piedmont to transfer additional supplier refunds and applicable interest now in escrow to its Expansion Fund, and (2) approval for Piedmont to use proceeds from its Expansion Fund to partially fund the provision of natural gas service to Avery, Mitchell and Yancey Counties pursuant to G.S. 62-158 and Commission Rule R6-84.

4. The Company is currently holding in escrow $8,220,807.78 at March 28, 1998, in supplier refunds and applicable interest that is awaiting transfer to Piedmont's Expansion Fund.

5. The Three County Project will bring natural gas service to Avery, Mitchell and Yancey Counties, which currently have no natural gas service and constitute an "unserved area" as that term is defined in Commission Rule R6-81 and used in G.S. §§ 62-2(9) and 62-158.

6. The Three County Project consists of an intrastate transmission pipeline system with various distribution systems. The Company intends to construct the transmission systems in three geographic segments. The first segment includes Burnsville, Spruce Pine, Bakersville and Micaville and will extend along the U.S. Highway 19E and N.C. Highway 226 corridor. The second segment includes Linville, Pineola, Newland and Banner Elk and will extend along the corridors of N.C. Highway 181, N.C. Highway 184 and N.C. Highway 105. The third segment, composed mainly of private right-of-way, will extend from Morganton adjacent to N.C. Highway 181 and beyond N.C. Highway 183. Maps of the proposed systems are shown on Exhibit 2 of the application.

7. The Company estimates that the total cost of the Three County Project is $31,949,196.

8. Piedmont submitted a summary of the NPV analysis of the Three County Project, calculated in a generally accepted manner as required by Rule R6-84(a)(3), in Exhibit 8 attached to the application and a supplemental filing made on July 20, 1998. Based on Piedmont's NPV model, the amount of Expansion Fund monies necessary to make the Three County Project economically feasible (NPV=0) is $26,260,530. Piedmont requested that the Commission approve the use of $26,260,530 of Expansion Funds for the Three County Project.

9. The Company proposes to commence providing service to customers within 24 months after receiving Commission approval of the Three County Project.

10. The willingness of the local governments in the area to provide financial assistance in order to facilitate the expansion project is viewed as a positive factor by the Commission.

11. The proposed local government assistance payments are reasonable and appropriate sources of funds to be deposited into the Company's Expansion Fund as received. These local government assistance payments will be direct contributions to Piedmont's Expansion Fund.

12. The Public Staff has investigated the Company's application and supporting workpapers, performed a market study and conducted a field investigation of the three counties. The Public Staff supports the transfer of the additional supplier refunds and interest to the Expansion Fund and supports the Company's use of $26,260,530 from the Expansion Fund for funding the Three County Project.

13. There is currently $8,220,807.78 in supplier refunds and applicable interest that the Company is holding in escrow. The Commission authorizes the Company to transfer these monies to Piedmont's Expansion Fund.

14. The negative NPV of the Company's proposed Three County Project is $26,260,530, and the Commission will authorize Piedmont to withdraw up to that amount from its Expansion Fund in accordance under Commission Rule R6-85.

15. As of April 30, 1998, the balance in the Expansion Fund was $18,571,101.30. With the transfer of the additional supplier refunds and interest the balance in the Expansion Fund will be $26,791,909.08.

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

The evidence supporting these findings is contained in the official files and records of the Commission, Piedmont's application and exhibits and the testimony and exhibits of Piedmont witness O'Hara. 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. 4 THROUGH 9

The evidence supporting these findings of fact is contained in Piedmont's application and exhibits, the NPV Analysis Study filed by Piedmont and the testimony and exhibits of Piedmont witness O'Hara.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 10 THROUGH 11

The evidence supporting these findings of fact is contained in the testimony and exhibits of Piedmont witness O'Hara, the testimony of the public witnesses and the resolutions of certain local governments supporting the project which were filed with the Commission as Hearing Exhibit 1.

Pursuant to Commission Rule R6-84(b), one factor that the Commission may consider in deciding whether to approve funding from an expansion fund for a particular project is the extent of contributions from local governments. Spruce Pine, Burnsville, Mitchell and Yancey County all passed resolutions expressing their support for the proposed project and authorizing the provision of financial assistance to facilitate the project and its approval by the Commission. The Towns of Banner Elk, Newland and Bakersville and Avery County have pending resolutions stating their support for the proposed project and authorizing the provision of financial assistance to facilitate the project and its approval by the Commission.

The Commission believes that local government assistance payments in the form set forth in the resolutions are appropriate sources of funds for an expansion fund and should be approved.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding is contained in the affidavit filed by the Public Staff.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 13 THROUGH 15

The evidence supporting these findings is supported by information in Piedmont's application and exhibits, the NPV Analysis filed by Piedmont, the testimony and exhibits of Piedmont witness O'Hara and the Public Staff's affidavit. The Commission concludes that it is appropriate to authorize the transfer of the $8,220,807.78 in supplier refunds and interest to Piedmont's Expansion Fund and to authorize Piedmont to withdraw $26,260,530 from the Expansion Fund to fund the infeasible portion of the Three County Project.

At the hearing, Piedmont witness O'Hara testified that the NPV was based on the assumption that the National Forest Service would permit Piedmont to install a transmission pipeline in a more or less direct route through the Pisgah National Forest. He also testified that there was a possibility that the National Forest Service would require Piedmont to use an alternate route. Piedmont has investigated the possibility of installing the transmission pipeline along Highway 181 (which also runs through the Pisgah National Forest) and estimates that the alternate route would add approximately $1.5 to $2 million to the cost of the project.

The Commission urges Piedmont to resolve the route as soon as possible and to consider the alternative if it appears that permitting problems will unduly delay the project.

IT IS, THEREFORE, ORDERED as follows:

1. That Piedmont may transfer the $8,220,807.78 in supplier refunds and interest currently in escrow to Piedmont's Expansion Fund;

2. That Piedmont's proposed project to extend natural gas service to Mitchell, Avery and Yancey Counties is hereby approved for funding from Piedmont's Expansion Fund in the amount of up to $26,260,530, which is the negative NPV of the project;

3. That the local government assistance payments authorized in resolutions adopted by the local governments in the Three County Project area are hereby approved as a reasonable source of funding for Piedmont's Expansion Fund for the purpose of offsetting a like amount of expansion fund monies from other sources that would otherwise be necessary to make up the negative NPV of this project and such payments shall be deposited into Piedmont's Expansion Fund as received;

4. That if the National Forest Service should require Piedmont to select an alternate route through or around the Pisgah National Forest and such alternate route would increase the cost of the Three County Project, Piedmont shall file an affidavit with the Commission setting forth the additional amount of expansion funds, if any, that will be required to make the project feasible, and, upon receipt of such filing, the Commission will take appropriate action; and

5. That Piedmont shall file reports with respect to the Three County Project as required by the Commission's Rules.

ISSUED BY ORDER OF THE COMMISSION.
This the 19th day of November, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt filed concurring opinion.

DOCKET NO. G-9, SUB 408

COMMISSIONER JUDY HUNT, CONCURRING:

While I agree with the decision in this case, it would have been my preference to have an outside analysis of the negative net present value of this project. The only detailed NPV analysis was that filed by Piedmont Natural Gas Company, Inc.

The validity of NPV analysis for all gas companies is a continuing concern throughout this series of important gas expansion fund cases. Only with proper information regarding real cost and projected benefits can money be used most efficiently.

\s\ Judy Hunt
Commissioner Judy Hunt

DOCKET NO. G-21, SUB 330

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of
Petition by North Carolina Natural Gas Corporation for Approval of Use of Expansion Fund for a Certain Project) ORDER APPROVING ADDITIONAL FUNDING

HEARD: Thursday, April 23, 1998, at 9:30 a.m., Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chair Jo Anne Sanford, Presiding, Commissioners Ralph Hunt, Judy Hunt, J. Richard Conder and Robert V. Owens, Jr.

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:

Paul L. Lassiter, Staff Attorney, Public Staff - North Carolina Utilities Commission, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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: By Order dated August 28, 1995, the Commission authorized North Carolina Natural Gas Corporation (NCNG) to fund up to $12,422,000 from NCNG's expansion fund toward the cost of a project to provide gas service in the unserved counties of Duplin and Onslow. By petition dated November 25, 1997, NCNG requested permission for approval to use an additional $4,345,500 from the expansion fund for the project. In support of its petition, NCNG stated that it has encountered additional, unanticipated costs as a result of conditions imposed by state and federal environmental regulators. The primary increased costs arise from the requirement that NCNG use the horizontal directional drilling method to traverse wetlands instead of the normal open-cut construction technique. NCNG filed the direct testimony of Terrence D. Davis and Robert P. Evans as part of its petition.

By Order issued December 16, 1997, the Commission determined that interested parties should be allowed to comment on NCNG's petition and established a procedural schedule for filing initial and reply comments. On January 29, 1998, comments were filed by the Public Staff and Carolina Utility Customers Association, Inc. (CUCA). On February 10, 1998, NCNG and CUCA filed reply comments.

In its comments filed January 29, 1998, the Public Staff stated that NCNG's request should be reduced to $4,208,400 to reflect an adjustment to its net present value calculation. In its reply comments dated February 10, 1998, NCNG stated its agreement with the Public Staff's adjustment.

By Order dated February 11, 1998, the Commission scheduled an oral argument to allow parties to present their positions to the Commission and answer questions. The oral argument took place before the Commission as scheduled. Following the oral argument, by Order dated February 27, 1998, the Commission scheduled an evidentiary hearing and established a schedule for filing testimony. On March 24, 1998, NCNG filed the direct testimony of Hubert Glenn Tolson Dunn and the supplemental direct testimony of Robert P. Evans and Terrence D. Davis. The evidentiary hearing took place on April 23, 1998.

Woodrow Brinson, Jr., Executive Director of the Duplin County Economic Development Commission, testified as a public witness. NCNG presented the testimony and exhibits of the following witnesses: Terrence D. Davis, Senior Vice President - Operations and Marketing of NCNG; Robert P. Evans, Director - Statistical Services for NCNG; and Herbert Glenn Tolson Dunn of Poyner and Spruill, L.L.P.

Based on the testimony and exhibits presented at the hearing and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG is a public utility subject to the jurisdiction of this Commission, operating as a natural gas local distribution company (LDC) and furnishing natural gas service to the public within its franchised service area in North Carolina. NCNG's franchised service area covers forty-seven counties in southcentral and eastern North Carolina, eighteen of which have no natural gas service.

2. NCNG is properly before the Commission pursuant to Commission Rule R6-84(e), requesting permission to use $4,208,400 in additional money from its expansion fund for its previously approved expansion project to provide natural gas service to the unserved counties of Duplin and Onslow.

3. As of the close of the latest hearing in this docket, the balance in NCNG's expansion fund was $16,683,318, and NCNG had approximately $4,665,000 of supplier refunds that were available for inclusion in the expansion fund.

4. Many environmental regulatory programs apply to the Duplin-Onslow project. Two programs apply because wetlands must be crossed by the pipeline. The first is a federal permit program, administered by the U.S. Army Corps of Engineers (Corps), for regulating dredge and fill activities in wetlands. The second is the State of North Carolina's water quality program. Before the Corps can issue the necessary permit for dredge and fill activities in wetlands, the applicant must receive a certification from the State that such activities will not result in any violation of the Federal Clean Water Act. Under certain circumstances, in order to comply with these requirements, the applicant must delineate the wetlands that will be impacted and mitigate those impacts.

5. A portion of the pipeline will run through Onslow County, in which the State's Coastal Area Management (CAMA) program applies. CAMA requires that a permit be received for activities that will impact designated "areas of environmental concern" (AECs). A CAMA permit is required for the Duplin-Onslow project because the pipeline crosses several navigable waters and wetlands, which are AECs.

6. In addition, the submerged lands under navigable waters are owned by the State and easements must be obtained for crossing those from the State Department of Administration (DOA).

7. Construction of the portion of the project on the Camp Lejeune Marine Base makes applicable the requirements of the National Environmental Policy Act (NEPA). NEPA requires that the environmental impacts of any major federal action significantly affecting the quality of the environment be identified and evaluated. The "federal action" here is the grant of permission to construct a portion of the pipeline on federal property. Unless some categorical exclusion is applicable, NEPA requires preparation of an Environmental Assessment (EA), which generally discusses environmental impacts. Depending upon the outcome of the EA, an additional evaluation of environmental impacts may be required under NEPA in the form of an Environmental Impact Statement (EIS), which includes a study of alternatives to the project. One of the categorical exclusions to the requirement of an EA covers installation of utilities using existing utility easements, distribution systems and facilities.

8. There were two federal actions regarding the project that potentially could have required NCNG to complete an EA for the off-base portion of the project under NEPA. The first federal action was the Navy's grant of permission for construction of the on-base portion of the project, and the second was the Corps' issuance of the necessary permit for the pipeline to cross wetlands.

9. In addition, the North Carolina Environmental Policy Act (SEPA) also potentially applied to the off-base portion of the project. SEPA is similar to NEPA in purpose. SEPA requires State agencies to consider and report upon the environmental aspects and consequences of their actions involving the expenditure of public monies or use of public land.

10. NCNG initiated early dialogues with the several State agencies that had jurisdiction over some portion of the off-base portion of the project, explained the project to them, and solicited their positions regarding whether an EA under SEPA was necessary. NCNG analyzed the relevant "minimal impact criteria" under SEPA for each applicable regulatory program and modified the project where necessary to meet those criteria, resulting to date in no requirement of an EA for the off-base portion of the project.

11. Prior to submitting the application for the Duplin-Onslow expansion project to the Commission in 1995, NCNG met with Camp Lejeune Marine Base representatives and concluded that no environmental permitting would be required for the Camp Lejeune portion of the project other than the permits that NCNG had been required to obtain for similar construction projects in the past. In May 1995, the portion of the transmission line on Camp Lejeune was anticipated to be located within existing utility corridors, which would have qualified the project for a categorical exclusion from the requirement of an EA. NCNG relied on the representations of Camp Lejeune officials that no EA would be required on the basis of the existence of preexisting utility corridors. NCNG has had substantial experience in constructing natural gas pipelines in eastern North Carolina and through military bases, and prior to 1996 an EA had never been required.

12. After the Commission's August 28, 1995 Order approving the project, as plans became more definite and preliminary field work began, Camp Lejeune personnel learned that some of the existing corridors were too narrow to accommodate the proposed pipeline because some of the existing utility facilities were not located where the base personnel had first thought, thereby not leaving enough room for the proposed pipeline. This meant that the categorical exclusion would not apply. None of the other categorical exclusions to the EA requirement applied. Once it was determined that the project could not be located within existing utility corridors, Camp Lejeune legal staff felt that an EA was required in order to comply with NEPA. NCNG was unable to persuade Camp Lejeune officials to be more flexible, and an EA was required for the on-base portion of the pipeline.

13. On December 2, 1996, NCNG entered into a contract with Environmental Services, Inc. (ESI) to develop the EA and obtain the required permits. The final EA was submitted to Camp Lejeune's Environmental Review Board and the Commanding General in March 1998. This review was completed in April 1998 with a Finding of No Significant Impact (FONSI). The EA was submitted to the State Clearinghouse for review in April 1998. NCNG will apply for permits to begin construction when the comment period expires.

14. Permits and other governmental approvals include those from the Corps, the State DOA, the State Department of Cultural Resources and various divisions of the State Department of Environment and Natural Resources, including Coastal Management, Water Quality, Solid Waste and Land Resources. Permit approval is anticipated to be obtained in September 1998.

15. NCNG did not proceed with construction of Phase I (the segment from Mt. Olive to Warsaw) or Phase II (the segment from Warsaw to Jacksonville) while obtaining the environmental permits for Phase III (the Camp Lejeune on-base portion). Camp Lejeune officials expressed substantial sentiment to the effect that Phase III was not a separate project but only a section of the entire Duplin-Onslow project and that an EA should be conducted on the entire project. The North Carolina DOA initially concurred with this opinion. NCNG wished to limit the requirement of an EA to Phase III. NCNG felt that if it could limit its initial EA work to Phase III and if that work resulted in a FONSI, the probability was great that no EA would be required for Phases I and II. NCNG therefore deemed it unwise to expend resources on other phases of the project until work could proceed on the EA for Phase III to the point where NCNG could obtain a clear indication of whether a FONSI could be obtained. After NCNG received approval to treat Phase III as a separate project and enough work had been done to indicate it likely that a FONSI would be issued for Phase III, NCNG decided to proceed with work on Phase I. NCNG got permit approvals for Phase I and commenced construction in January 1998.

16. Approximately $54,000 in direct costs has been paid to date for ESI's work on the EA. These costs represent the additional costs NCNG has incurred arising from the unanticipated requirement of an EA for Phase III. NCNG was able to reduce the actual costs by persuading Camp Lejeune to conduct the threatened and endangered species study at Camp Lejeune's expense.

17. Since NCNG has received approval of all permits for Phase I, NCNG does not anticipate that it will be required to conduct an EA for Phase II, especially if the FONSI issued for Phase III is accepted by the North Carolina DOA and other State permitting agencies. It appears that the project will receive the necessary approvals from the relevant State agencies without the necessity of an EA under SEPA for the off-base portion of the project.

18. The North Carolina Department of Environment and Natural Resources (DENR) was considering adoption of minimum impact criteria by which issuance of the requisite CAMA permit for this project would not trigger the requirement that NCNG prepare an EA under SEPA. NCNG supported and encouraged adoption of these new minimum impact criteria, which were enacted. The issuance of the requisite CAMA permit should not trigger a requirement that NCNG prepare an EA under SEPA.

19. In the non-coastal counties through which the pipeline will pass, the only State approval of concern was the DOA's issuance of easements for submerged lands below navigable waters. NCNG plans to employ horizontal drilling under the relevant submerged lands. As a result, DOA's issuance of the necessary easements to cross submerged lands outside the coastal counties should not trigger the requirement for NCNG to undertake an EA for the off-base portion of the project.

20. The requirement of horizontal directional drilling (HDD) arises within the context of the Corps' Nationwide Permit 12 (NWP-12). NWP-12 is an umbrella permit that applies to construction of utility lines in wetlands. NWP-12 is less time consuming and costly than the Corps' other permit options for projects such as the Duplin-Onslow pipeline, and it is the permit option that NCNG has used in the past for similar projects. At the time the Duplin-Onslow project was planned and approved, it was not the practice of the Corps to require wetlands delineation for projects

completed under NWP-12. NCNG had constructed pipelines under NWP-12 prior to 1997 and had never been required to delineate wetlands.

21. On January 16, 1997, notice was published that the Wilmington Division of the Corps intended to alter the requirements for projects completed under NWP-12 in the area under its jurisdiction. The new requirements would mandate wetland delineation and mitigation. Delineating wetlands and mitigating damage generally involves determining the extent to which a particular project affects protected wetlands and implementing measures to ensuring either that the wetlands are not significantly disturbed by the construction or that new wetlands are created elsewhere.

22. NCNG sought to have the Duplin-Onslow line grandfathered under the old regulations. On May 14, 1997, NCNG along with other North Carolina LDCs and Transcontinental Gas Pipeline Corporation (Transco) met with representatives of the Corps in Atlanta. NCNG attempted to obtain relief from the proposed changes, but it became clear that the Corps intended to impose the wetland delineation and mitigation requirements and would not grandfather NCNG's project to avoid these requirements. NCNG was able to obtain some concessions as to the requirements.

23. On June 19, 1997, the wetland delineation and mitigation requirements were formally imposed. NCNG initiated wetland delineation and NCNG also began determining the additional costs for HDD in the wetland areas.

24. HDD involves boring pipe underneath the wetland. Costs can be more easily determined for HDD. In addition, HDD can avoid the requirement for an EIS, which is very costly and time consuming. HDD is a permissible procedure to avoid mitigation in wetlands. NCNG estimated that the cost to mitigate would range from $7.9 million to $17.9 million more than the cost of HDD.

25. After field visits on November 18, 1997, and January 8, 1998, the Corps determined which wetlands would be bored for Phase II.

26. NCNG availed itself of DENR's relevant general water quality certification. DENR issues general water quality certifications that mirror the Corps' nationwide permits for dredge and fill activities in wetlands. Like the Corps' nationwide permits, DENR's general water quality certifications include specific conditions and requirements that must be met to complete a project under the scope of the certification. In 1997, DENR revised the conditions and requirements in its general water quality certification for utility construction projects. As a result, NCNG had to address with DENR many of the same issues it had to address with the Corps.

27. NCNG cannot be certain whether there will be further changes in environmental requirements. NCNG's best estimate of the completion date of the Duplin-Onslow project is the last half of 1999.

28. The following table was submitted by NCNG to summarize the major cost changes with respect to the project, though it does not conform to the additional amount of funding now requested:

GAS - MISCELLANEOUS

	ITEM	AMOUNT OF CHANGE
1.	Contractor - Pipe Installation	$3,051,000
2.	Materials - Pipe	$ 606,000
3.	Timber Removal	$ 791,000
4.	Silt Fence	$ 669,000
5.	X-Ray	$ 284,000
6.	Right of Way Agent Fees	$ 273,000
7.	Overheads and Transmission Index for Transmission Mains	($ 767,000)
8.	Miscellaneous Minor Changes	$ 464,000
9.	Subtotal Cost Changes	$5,371,000
10.	Other Changes in Margins, Taxes and Present Value	($1,025,000)
		$4,346,000

29. The updated net present value (NPV) analysis for the Duplin-Onslow project was calculated by determining the present worth of a series of cash flows into, and out of, NCNG. The main source of cash inflows is revenue from customers; the primary element of cash outflows is the capital investment made to serve these customers. There are two additional steps necessary to complete the NPV analysis. The first is quantification of the income tax implications resulting from amounts used from the expansion fund. The other step in the NPV process is the quantification of the time value of money associated with receipts from the expansion fund.

30. In the updated NPV analysis, plant investment categories and corresponding levels of tax depreciation were reduced to reflect expansion funding of $455,400 already received by NCNG.

31. There are several differences between NCNG's updated NPV analysis and the previous study. The most significant is that of construction costs. However, changes in margin, O&M expenses, taxes, and the discount rate used have contributed to changes in the updated NPV.

32. Contributions from local governments will be made directly to NCNG's expansion fund. As a result, these contributions do not influence the calculation of the NPV. The contributions do influence the availability of funds for the project. Using the ad valorem tax rates associated with NCNG's analysis, it is estimated that approximately $900,000 will be contributed over the five-year period beginning in year two of the project.

33. The updated NPV is $16,630,400.

34. On August 28, 1996, NCNG filed a motion requesting an order waiving the requirement that construction of the Duplin-Onslow project begin within one year of approval. NCNG informed the Commission of the environmental obstacles causing delay. By Order dated September 17, 1996, the Commission granted the wavier but required NCNG to file a report within six months informing the Commission of the status of the project and the schedule for construction. By Order issued November 5, 1996, the Commission required NCNG to add more information to this report. On March 17, 1997, NCNG submitted a report as required.

35. On August 7, 1997, NCNG filed a motion for an order deferring the requirement that a final accounting be filed. NCNG informed the Commission of the status of its efforts to overcome environmental obstacles. NCNG informed the Commission of the wetland delineation and mitigation requirements of the Corps.

DISCUSSION OF EVIDENCE AND CONCLUSIONS

Commission Rule R6-84(e) provides that an LDC "may, at any time, based upon changes in circumstances, propose modifications with respect to Projects previously approved by the Commission." NCNG's request for approval to use additional money from its expansion fund was filed pursuant to this provision.

Questions have been raised concerning whether NCNG acted prudently when it submitted its initial request without anticipating the additional environmental costs and delays, whether NCNG took all reasonable steps to avoid such costs and delays, whether NCNG kept the Commission appropriately informed and whether NCNG's request is premature.

CUCA argues that it is not enough for NCNG to show that it has encountered additional, unanticipated costs as a result of conditions imposed by environmental regulators. CUCA argues that a "change in circumstances" of the type contemplated in Commission Rule R6-84(e) should involve two components: (1) an event which was not contemplated at the time of the initial funding decision and which materially affects the scope or cost of the project and (2) some development which the utility had no reason to anticipate at the time of the Commission's initial funding decision and which the utility could not have avoided through the use of prudent project construction management techniques. CUCA argues that allowing increased funding without finding that the LDC could not have avoided the increased cost "would unduly deprecate the importance of Commission orders" and would absolve the LDC from its obligation to act reasonably and prudently. The Commission disagrees. CUCA's argument is based on an interpretation of Rule R6-84(e) that the Commission finds unduly strict. Nothing in either the expansion fund statute or the Commission's Rules requires that such a strict standard be applied to this request.

The Commission believes that a sufficient showing of changed circumstances under Rule R6-84(e) is made if NCNG acted reasonably but ran into unanticipated costs. Based on the evidence presented in this case, the Commission determines that NCNG has acted prudently and reasonably, that NCNG encountered additional costs that could not have been anticipated, and that NCNG has adequately justified its request for additional funding from its expansion fund. Several issues are presented.

Requirement of an Environmental Assessment

The Commission will first address the issue of delay. The primary reason for the delay has been the requirement that NCNG undertake an EA for Phase III, the on-base portion of the project, and the uncertainties over what the EA would show and whether the EA would have to cover Phases I and II also. CUCA argues that there "may have been a lack of adequate planning" by NCNG and that, given the vital importance of the matter, NCNG should have undertaken to verify the accuracy of the Camp Lejeune maps. The Commission determines that NCNG had no reasonable way of knowing that it would confront the requirement of the EA and that NCNG has acted reasonably to deal with the requirement.

When NCNG initially requested expansion fund financing, NCNG acted on the assumption that no EA would be required for the Duplin-Onslow project. NCNG had constructed projects such as this before, some of which were installed through military bases, and NCNG had never faced the requirement that it undertake an EA. As it planned the Duplin-Onslow project, NCNG sought assurances that its construction activities on Camp Lejeune would not give rise to such a requirement. Camp Lejeune officials informed NCNG that the proposed pipeline could be located in existing utility corridors so as to qualify for a categorical exclusion under NEPA. It was with this understanding that NCNG acted when it first applied for expansion fund financing and projected the initial construction schedule. The Commission determines that NCNG acted prudently and reasonably in basing its initial request on the understanding that no EA would be required.

The Commission determines that NCNG has taken appropriate steps to reduce delays and the potential for substantially greater increased costs after finding that an EA would be required. NCNG has acted, to the extent it was able, to perform the EA for Phase III quickly and at the lowest possible cost and to take steps to ensure that the result of the EA was a FONSI. Had NCNG been unsuccessful in this effort, NCNG would have been required to undertake an EIS which would have required substantial additional expense, substantial additional delay and the potential for further modifications to the project to eliminate environmental concerns. NCNG has reduced the cost of the EA by obtaining Camp Lejeune's assistance in performing tasks such as the threatened and endangered species analysis.

The Commission concludes that NCNG acted reasonably when it determined to await clarification on the requirement of an EA for Phase III before proceeding further in Phases I and II. In order to proceed on Phases I and II, NCNG would have had to commit to the development of an EA for these phases, which would also have exposed the project to the possibility of an EIS. Also, acquiescence by NCNG to an EA at that time could have established a precedent for the permitting agencies to require EAs for similar projects in the future, thereby resulting in additional costs and delays for future projects both by NCNG and other LDCs in North Carolina. While Camp Lejeune officials and other state and federal officials were determining whether an EA was required for Phase III, these officials were considering whether the scope of the EA should include all phases of the project. NCNG acted reasonably to refrain from proceeding with Phases I and II in the hope that it could avoid conducting an EA for Phases I and II.

NCNG has worked with Camp Lejeune officials in preparing the EA for Phase III, and Camp Lejeune has processed the EA with a FONSI. The EA now is being circulated through the North Carolina Clearinghouse overseen by the DOA. Preliminary indications are that this process will also conclude with a FONSI.

NCNG has obtained the necessary permits to proceed with construction of Phase I, and, in fact, such construction is under way. NCNG's strategy has been to obtain a FONSI for Phase III and to obtain the permits for Phase I, where the pipeline route follows highway and railroad rights-of-way, in the hope of avoiding the requirement of an EA for Phase II. NCNG and its environmental consultants predict that no EA will be required for Phase II.

The Commission rejects CUCA's argument that NCNG should have proceeded with Phase I sooner, and that if it had, it may have been able to avoid the wetland delineation and mitigation requirements that became mandatory under NWP-12. NCNG was concerned that an EA for Phase I or Phase II would have been required if it had proceeded with Phase I sooner than it did. The Corps had discretion to require wetland delineation and mitigation before these requirements became mandatory. By this time, proposed changes to the regional conditions to NWP-12 were under active consideration. When changes are pending, the Corps customarily requires compliance even before the requirements become final. There is no reason to believe that the Corps would have permitted open-cut excavation through wetlands in Phase I if NCNG had sought to construct Phase I before the wetland delineation and mitigation requirements became mandatory.

The Commission concludes that NCNG has acted prudently and responsibly in undertaking measures to avoid the need for an EA for Phases I and II. To the extent that these measures may have delayed the completion of construction, the Commission determines that these consequences were justified by NCNG's efforts to reduce the possibility of even greater delays and substantially greater expense.

Requirement to Delineate Wetlands and Mitigate

The Commission will next address the issue of the increased costs. The increased costs arise primarily from the requirements of the Wilmington District of the Corps that NCNG delineate wetlands and undertake mitigation for dredge and fill operations under the regional conditions of NWP-12. At the time NCNG initially proposed its project, the customary practice of the Corps was not to require wetland delineation and mitigation for projects such as the Duplin-Onslow project. NCNG had constructed similar pipeline projects under NWP-12, and neither the Corps nor other environmental regulators had required delineation of wetlands and mitigation. While the Corps had discretion to impose these requirements in 1994-1995, it had refrained from doing so. At the time the Commission issued its order on August 28, 1995, based on the Corps's practice in 1994-1995 and NCNG's experience under NWP-12, NCNG had every reason to anticipate that delineation of wetlands and mitigation requirements and the resulting costs could be avoided.

The Wilmington Division of the Corps published notice of its intent to alter its practices that it had followed up until then on January 16, 1997. Upon receipt of this notice, NCNG learned that it might face requirements to delineate wetlands and mitigate. NCNG acted in a timely fashion to attempt to persuade the Corps to refrain from imposing these requirements. NCNG sought to have the Duplin-Onslow project grandfathered under the old requirements. NCNG formed a coalition with other North Carolina gas utilities and Transco to seek to persuade the Corps that the benefits of its delineation and mitigation requirements were outweighed by the burdens and increased costs and delays. Although the coalition was unable to dissuade the Corps from imposing the requirements, concessions were obtained that reduce the harmful consequences of the requirements.

The Commission concludes that NCNG acted prudently and reasonably in an attempt to eliminate or reduce the consequences to the Duplin-Onslow project from the decision of the Corps to impose wetland delineation and mitigation requirements.

Reasonableness of Increased Costs

CUCA argues that even if the Commission is inclined to grant additional funding, NCNG's request is based on a "virtually complete updating" of its initial NPV analysis and a considerable portion of the increase requested is unrelated to the changes in circumstances discussed above. CUCA argues that only cost changes directly related to the underlying changes in circumstances should be approved.

The Commission has reviewed NCNG's breakdown of the increased costs that compose its request for $4,208,400 in additional expansion funds and finds them reasonable. Most of these costs arise from NCNG's decision to engage in HDD in wetlands. After the Corps determined that open-cut installation for wetlands was impermissible, NCNG chose HDD over procedures for actual mitigation of wetlands. The costs of actual mitigation were substantially greater than HDD, were more difficult to quantify, and would have subjected NCNG to the potential for even greater permitting requirements and costs. In addition, NCNG was able to persuade the Corps that installation of anti-seep collars, which would have further increased costs, was not necessary with HDD.

The Commission has examined NCNG's itemization of other costs -- those not related to HDD – such as increased timber removal, x-raying, silt fence installation and right-of-way agent fees. No evidence was presented calling the reasonableness of these costs into question, and the Commission finds them reasonable and prudent. It has been argued by CUCA that only cost changes directly related to the underlying changes in circumstances should be approved. The Commission notes that the other cost changes are minor compared to the HDD costs, and that some of the other changes included in the calculation by NCNG are negative numbers that decrease the request for additional funding. Without intending to set a precedent for all cases, the Commission finds that on the facts of this request, all cost changes should be recognized and approved.

Reasonableness of Communications with the Commission

The Commission rejects the argument that NCNG has failed to keep the Commission appropriately informed of its activities subsequent to the August 18, 1995 Order approving expansion fund financing. NCNG has made filings indicating construction could not be completed within one year and indicating that a final accounting could not be submitted within three years. NCNG has made reports to the Commission as required, and NCNG has been in regular communication with the Public Staff.

The record is devoid of any evidence that construction activities would have proceeded differently had the Commission obtained more information or played a more active role in overseeing NCNG's efforts.

Timeliness of Request

The Commission likewise rejects the argument that NCNG may have failed to make its request for approval of additional funding from the expansion fund at the appropriate time. As indicated above, the primary cause of the increase in costs was the requirement that NCNG delineate wetlands and mitigate. NCNG learned with certainty that this requirement would be imposed in June 1997. NCNG immediately hired a consultant to determine the scope and cost of the work. After the costs became known, NCNG undertook the steps necessary to prepare its application for additional funding with the accompanying exhibits and testimony. The application was filed in November 1997. The Commission agrees with NCNG that it would have been premature to file the request sooner. Further, no costs or delays could have been avoided by filing sooner.

It has also been argued that NCNG's request may be premature. It has been argued that uncertainties remain and that the Commission should delay in acting on NCNG's request until all additional costs can be determined with certainty. The Commission rejects these arguments. NCNG has determined that it has made sufficient progress in its dealings with the environmental regulators to proceed with construction. NCNG has determined that to delay further, on the theory that environmental regulators may impose additional requirements resulting in further increased costs, is inadvisable and serves only to increase rather than reduce the likelihood of additional costs and delays. NCNG stresses that with the substantial level of overlap, uncertainty and evolution in the environmental regulations, it is impossible to identify in advance all contingencies that could arise. Only after the project is complete will NCNG know for sure that all unanticipated costs have been incurred and all environmental requirements met. The Commission concurs with NCNG's position on this issue and determines that it would be unwise to delay in acting on NCNG's request until all uncertainties have been removed.

With respect to this issue, the Public Staff has requested NCNG to make monthly progress reports to the Commission, and NCNG witness Davis agreed to this request. The Commission determines that monthly reports are appropriate and shall be required.

Updated Negative Net Present Value

In its November 25, 1997 petition, NCNG requested an additional $4,345,500 from the expansion fund, representing the amount to be added to the negative net present value of $12,422,000 for the project originally approved by the Commission. In its comments filed January 29, 1998, the Public Staff stated that NCNG's request should be reduced to $4,208,400 to reflect an adjustment to its NPV calculation. In its reply comments dated February 10, 1998, NCNG stated its agreement with the Public Staff's adjustment reducing the NPV. In his testimony, NCNG witness Evans testified that the Public Staff relied upon different assumptions as to the receipt of amounts from the expansion fund and that these differences impact the time-value-of-money calculations used in NCNG's respective studies.

Other than the differences discussed above, the Public Staff, after auditing the Company's request, recommended no additional adjustments. NCNG witness Evans has testified that the methodology for making the NPV calculation is basically similar to the original calculation approved by the Commission except where updates were necessary to recognize subsequent events.

Based on this evidence the Commission determines that $4,208,400 is the amount necessary to increase the $12,422,000 to equal the $16,630,400 negative NPV of the Duplin-Onslow project based on the increased costs supported by the testimony and exhibits in this case.

Other Forms of Relief

In its comments filed January 29, 1998, the Public Staff suggested that instead of authorizing additional money from the expansion fund, the Commission should grant NCNG authority to accrue a deferred rate of return on the unfunded negative NPV of this project, as permitted by Commission Rule R6-89. NCNG objected to this approach. At the February 24, 1998 oral argument the Public Staff withdrew this request, and the Commission concludes that it need not address the issue of Rule R6-89 in this docket.

In its brief, CUCA notes that the 1997 General Assembly authorized incremental rates to facilitate natural gas expansion into unserved areas, and CUCA argues that this is a more equitable approach. While GS 62-140(a) was amended to clarify that such incremental rates to facilitate natural gas expansion would not be unreasonably discriminatory, NCNG has submitted no proposal for incremental rates in this case, and the issue is not properly before the Commission.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's request for an increase of $4,208,400 in funding from its expansion fund, above the $12,422,000 approved by the Commission in its August 28, 1995 Order, is approved;

2. That total disbursements of up to $16,630,400 for this project from NCNG's expansion fund in accordance with applicable Commission rules and the Commission's orders in this docket are approved;

3. That all local government assistance payments approved by Duplin and Onslow Counties, 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 NCNG's expansion fund as received to offset expansion fund monies used to make up the negative NPV of this project; and

4. That NCNG shall file monthly progress reports with the Commission describing its construction activities and informing the Commission of any obstacles causing additional delays and additional expense.

ISSUED BY ORDER OF THE COMMISSION.
This the 7th day of August, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. G-21, SUB 371

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Petition by North Carolina Natural Gas Corporation for Approval of the Use of Expansion Fund for an Expansion into Unserved Areas of Bertie and Martin Counties	))))	ORDER APPROVING EXPANSION PROJECT FOR FUNDING FROM EXPANSION FUND

HEARD IN: North Carolina Utilities Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on Wednesday, September 9, 1998, at 9:30 a.m.

BEFORE: Commissioner William R. Pittman, Presiding, Commissioner Ralph A. Hunt, Commissioner Judy Hunt, and Commissioner Robert V. Owens, Jr.

APPEARANCES:

For the Applicant:

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

For the Using and Consuming Public:

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

BY THE COMMISSION: On April 29, 1998, North Carolina Natural Gas Corporation (NCNG) filed a petition pursuant to G.S. 62-2(9) and 62-158 and Commission Rule R6-84 for approval of partial funding from NCNG's Expansion Fund for an expansion project that would extend natural gas service into Bertie and Martin Counties, two unserved counties in NCNG's franchised service territory.

By Order issued June 2, 1998, the Commission scheduled the matter for public hearing, required public notice and established a procedural schedule. By Order issued June 15, 1998, the Commission required NCNG to file supplemental testimony on or before July 20, 1998, addressing three questions directed at several assumptions relied upon by NCNG in its net present value ("NPV") analysis. By letter dated July 8, 1998, NCNG informed the Commission of the Company's intent to amend its application to extend the proposed transmission line from Hamilton to Robersonville in Martin County. In its letter, NCNG requested that the Commission issue an order amending its public notice to include NCNG's intent to amend its application. By Order issued July 9, 1998, the Commission issued an Order amending its public notice informing interested parties of NCNG's intent to amend its application and increase the amount of monies to be used on the project from the Expansion Fund.

On July 30, 1998, NCNG filed a motion for leave to amend its petition to seek additional monies from its Expansion Fund to extend the line to Robersonville in Martin County. On July 31, 1998, the Commission allowed NCNG's motion.

On July 20, 1998, Carolina Utility Customers Association, Inc. (CUCA), filed a petition to intervene. The Commission granted CUCA's motion by Order dated July 27, 1998.

At the public hearings on July 22 and 23, 1998, and September 9, 1998, the following persons appeared and testified as public witnesses in support of the proposed expansion project to bring natural gas service to Bertie and Martin counties: Tim Ivey, Executive Director of the Bertie County Economic Development and Planning Commission; J. H. Dixon, Chairman of the Martin County Commissioners; Elmo Lilley, Martin County Commissioner; Mary Lilley, Northeast North Carolina Economic Development Partnership; Kathryn Roberson, Operations Manager, Guy's Snack Foods; George Bagley, a Williamston businessman and member of the Economic Development Commission in Martin County; Pauline Savage, Mayor of the Town of Everetts and Chairperson of the Martin County Economic Development Commission; and Bob Spivey, Mayor of the Town of Windsor and Chairman of the Bertie County Economic Development Commission.

NCNG presented the testimony and exhibits of the following witnesses: Terrence D. Davis, Senior Vice President - Operations and Marketing for NCNG; George M. Baldwin, Vice President - Marketing for NCNG; and Robert P. Evans, Director - Statistical Services for NCNG.

The Public Staff presented the testimony of James G. Hoard, Supervisor of the Natural Gas Section of the Accounting Division of the Public Staff; Public Staff Engineer Jeffrey L. Davis; and Thomas W. Farmer, Jr., Director of the Economic Research Division of the Public Staff.

Based on the petition as amended, the testimony and exhibits and the entire record in this proceeding, the Commission makes the following:

FINDINGS OF FACT

1. NCNG, a Delaware corporation with its principal office in Fayetteville, North Carolina, operates a natural gas local distribution system consisting of natural gas transmission pipeline, distribution mains and other facilities for furnishing gas to the public within its franchised service territory.

2. NCNG is a "public utility," as defined in G.S. 62-3(23), subject to the jurisdiction of this Commission.

3. NCNG's franchised service territory covers forty-seven counties in south central and eastern North Carolina including Bertie and Martin Counties.

4. NCNG is properly before the Commission having given the required notice of its petition for approval of partial funding for a proposed expansion project from its Expansion Fund.

5. The project will bring natural gas service to Bertie and Martin Counties, which currently have no natural gas service and constitute "unserved areas" as that term is defined in Commission Rule R6-81 and used in G.S. 62-2(9) and 62-158.

6. Bertie and Martin Counties currently have a combined population of 46,480 persons.

7. Due to existing infrastructure, natural resources and a favorable business climate, the unserved area covered by NCNG's proposed project in this docket has good industrial and economic growth potential.

8. Leaders from Bertie and Martin Counties believe that there is a strong need for natural gas service in Bertie and Martin Counties and that the lack of natural gas services has hampered industrial and economic development.

9. The proposed expansion facilities include a 10-inch transmission pipeline beginning northwest of Ahoskie at NCNG's interconnection with Transcontinental Gas Pipe Line Corporation, running in a southwesterly direction along N.C. Highway 11 through Lewiston-Woodville, then along N.C. Highway 903 to the north side of Hamilton, traversing Hamilton along the east side of town, running along SR 1429 and ending back on N.C. Highway 903 on the south side of Hamilton. The pipeline will then continue in a southerly direction along N.C. Highway 903 and terminate on the north side of Robersonville. The Ahoskie to Robersonville portion of the project will be approximately 40 miles in length. A four-inch transmission lateral, 3.7 miles in length, will connect to the 10-inch transmission line at Lewiston-Woodville and run through Lewiston-Woodville along N.C. Highway 308 to SR 1134, where it will proceed along SR 1134 to two industrial plants.

10. There is a reasonable prospect that the construction and operation of natural gas facilities in the unserved area covered by NCNG's proposed project in this docket will assist in industrial and economic growth in the area leading to increased throughput on NCNG's system.

11. The proposed project will facilitate future expansion into unserved areas.

12. The pipeline route proposed is the most direct, cost-effective route to serve the area covered by the expansion project and will also maximize potential attachments of gas customers and utilize existing corridors to facilitate construction.

13. NCNG's design and location of the proposed transmission pipeline and distribution mains for this project are appropriate.

14. To encourage the approval of this expansion project, Bertie and Martin Counties have submitted resolutions to the Commission committing to provide financial assistance to the project in the form of payments to NCNG's Expansion Fund as follows: in Bertie County, amounts equal to 75 percent of the ad valorem tax revenues collected on natural gas facilities constructed as part of the proposed project; in Martin County, $4,000 each year for five years ($20,000).

15. The willingness of the local governments in the area to provide financial assistance in order to facilitate the expansion project is viewed as a positive factor by the Commission.

16. The local government-assistance payments are reasonable and appropriate sources of funds to be deposited into NCNG's Expansion Fund as received. These local government-assistance payments will be direct contributions to NCNG's Expansion Fund and will, to the extent received, be designated as reimbursement for a portion of the funds expended on the proposed project.

17. The projected initial annual volumes from potential customers now located in the area to be served, margins from which are included in the net present value (NPV) calculation, are expected to be 1,025,382 dekatherms.

18. The nature and amount of natural gas usage by new industrial and large commercial facilities that may locate in the area covered by the expansion project, but which are not presently in existence, cannot be quantified to the degree of certainty appropriate for inclusion in the NPV calculation. To the extent industrial and large commercial growth occurs, NCNG's system will benefit.

19. The total cost of the proposed expansion fund project is estimated to be $12,620,624.

20. The NPV for the proposed Bertie and Martin Counties expansion project is a negative $7,493,800.

21. NCNG's shareholder investment in the project is estimated to be $5,126,824, and such amount is reasonably supported by margins estimated to be received on gas sales and transportation.

22. NCNG should have sufficient monies in its Expansion Fund when needed for the acquisition of the rights-of-way and the construction of the proposed project.

23. The Bertie and Martin Counties project proposed by NCNG is in accordance with N.C. Gen. Stat. 62-2(9) and 62-158 and should be approved for funding from NCNG's Expansion Fund.

24. The reasonable negative NPV of this project is $7,493,800. The negative NPV will be satisfied by disbursements of up to $7,493,800 from NCNG's Expansion Fund.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 THROUGH 4

The evidence for these findings is contained primarily in the verified petition as amended, the Commission's files and records in this proceeding and the testimony of NCNG witness Davis. These findings are essentially informational, procedural or jurisdictional in nature and are uncontradicted by any of the parties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 5 THROUGH 13

The evidence for these findings is found primarily in the testimony and exhibits of NCNG's witnesses Davis and Baldwin, NCNG's petition as amended, and the testimony of public witnesses at the July 22 and 23 and September 9, 1998, hearings.

NCNG witness Davis testified that Bertie and Martin Counties are two of the unserved counties in NCNG's service territory. Witness Davis testified that Bertie and Martin Counties had a population of 46,480 people.

The public witnesses testified concerning the infrastructure available in Bertie and Martin Counties to support economic development, including new industrial parks, shell building programs, and an available labor force.

The public witnesses discussed in detail the importance of natural gas to economic development. Public witnesses testified concerning lost opportunities in their area because of the lack of natural gas. Witness Davis noted that it takes months or years to plan and construct a natural gas extension project. Various public witnesses concluded that many industries are not willing to wait and that opportunities are being missed.

Witnesses expressed their belief that this project had an excellent opportunity for positively impacting economic development. In deciding on a proposed project to provide natural gas to Bertie and Martin Counties, NCNG witness Davis testified that NCNG placed weight on the potential for economic development in the area and the population base that could benefit from natural gas service, taking into consideration terrain and distance to maximize the project's feasibility. Mr. Davis testified that an additional benefit is that NCNG will be able eventually to tie the project into the existing laterals that serve Tarboro and Washington which will loop those systems. The Commission concludes that it was proper under the facts of this case to emphasize these factors which maximize the benefits of expanded natural gas service not only to the area served but also to NCNG's system through the potential for increased natural gas deliveries.

NCNG witness Davis provided a detailed description of the physical facilities, operating parameters, route selection, proposed rights-of-way arrangements and the location of distribution systems necessary for the revenues included in the NPV study.

The project proposed by NCNG includes a 10-inch transmission pipeline beginning northwest of Ahoskie at NCNG's interconnection with Transcontinental Gas Pipe Line Corporation, running in a southwesterly direction along N.C. Highway 11 through Lewiston-Woodville, then along N.C. Highway 903 to the north side of Hamilton, traversing Hamilton along the east side of town, running along SR 1429 and ending back on N.C. Highway 903 on the south side of Hamilton. The pipeline will then continue in a southerly direction along N.C. Highway 903 and terminate on the north side of Robersonville. The Ahoskie to Robersonville portion of the project will be approximately 40 miles in length. A four-inch transmission lateral, 3.7 miles in length, will connect to the 10-inch transmission line at Lewiston-Woodville and run through Lewiston-Woodville along N.C. Highway 308 to SR 1134, where it will proceed along SR 1134 to two industrial plants.

Public Staff witnesses testified that, based upon the Public Staff's on-site field investigation, the project as proposed by NCNG is appropriate.

NCNG witness Davis set forth the geographic location of the proposed facilities in Davis Exhibit 1. Witness Davis testified that other potential routes for providing service to Bertie and Martin Counties were considered before NCNG decided upon the route proposed to the Commission in this docket. The other routes were rejected on a cost versus benefit basis, economic development potential, and comparatively greater areas of wetland crossing which would also contribute to higher costs and less development potential. Witness Davis testified that the route selected was the most cost-effective choice given the goal of providing service to Bertie and Martin Counties.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 14 THROUGH 16

The evidence for these findings of fact is contained in the testimony and exhibits of NCNG witness Evans; the testimony of public witnesses Bob Spivey, Mayor of Windsor; Tim Ivey, Executive Director of the Bertie County Economic Development and Planning Commission; and the resolutions of certain local governments supporting the project which were filed with the Commission.

Pursuant to Commission Rule R6-84(b), one factor that the Commission may consider in deciding whether to approve funding from an expansion fund for a particular project is the extent of contributions from local governments. Bertie and Martin Counties passed resolutions expressing their support for the proposed project and authorizing the provision for financial assistance to facilitate the project and its approval by the Commission. These local governments recognized that there is a great demand for the extension of natural gas facilities throughout eastern North Carolina, but that funds available to pay for such extensions are limited.

Local government-assistance payments, which have been committed to provide reimbursement for costs incurred on the project, are viewed as a positive factor by the Commission.

The Commission believes that local government-assistance payments in the form set forth in the resolutions are appropriate sources of funds for an Expansion Fund and should be approved. These local government-assistance payments offset other Expansion Fund monies that would be needed to make up the negative NPV of this project.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 17 THROUGH 18

The evidence for these findings of fact is contained in the testimony and exhibits of NCNG witnesses Davis and Baldwin and the testimony of the Public Staff's witnesses.

The Public Staff's witnesses testified that their investigation supported NCNG's customer projections.

NCNG witness Baldwin testified concerning NCNG's marketing efforts in Bertie and Martin Counties. Initially, NCNG obtained information from the directors of the economic development commissions in the two counties and, as it proceeded in its efforts, it relied closely on relationships with other persons involved in economic development, including civic leaders. NCNG conducted mail surveys, on-site surveys and aerial reviews to locate potential customers along potential natural gas pipeline routes. Such information was used as part of the route selection. Witness Baldwin set forth in his exhibits the industries which were located in Bertie and Martin Counties and interested in natural gas and the characteristics of their fuel usage. Most of the individual facilities utilize propane, number 2 oil and number 6 oil. NCNG included in its proposed expansion project three large industrial facilities located in Bertie County in Lewiston and Woodville, three in Martin County located in Hamilton and Robersonville and approximately 15 commercial/agricultural customers located along the project route. Witness Baldwin provided information concerning the types of commercial customers included and their consumption characteristics. He testified that in his opinion, NCNG had included all the potential customers currently located along the project route which would positively impact the NPV calculation for this project. Baldwin exhibits 2 and 4 set forth the projected annual volumes from potential customers now located in the area to be served by this project.

NCNG did not include as a part of its NPV calculation any projected margins from industrial and large commercial facilities that may subsequently locate in the area to be covered by the expansion project. NCNG witness Evans and Public Staff witness Hoard explained the reasons why only quantifiable levels of natural gas usage were included in the NPV study. Witness Evans testified that although he believes the availability of natural gas will help attract new industrial customers to an area, there is no way to predict the characteristics of such growth or when it will occur. Natural gas usage by industrial and large commercial customers varies widely, and witness Evans testified that it is impossible for NCNG to know what the natural gas load will be or what additional natural gas facilities may be necessary in order to connect that load. Witness Evans pointed out that if substantial additional loads are added, the margin for such loads would be included in the Company's general rate case proceedings and NCNG's customers would receive the benefit of such loads at that time.

Public Staff witness Hoard concurred that loads for industrial facilities that do not presently exist should not be included in the NPV calculation due to the lack of reliable information indicating that the facilities will materialize, thus preventing a reasonable determination to be made as to the gas load.

Commission Rule R6-86 provides that if an expansion project is successful and economic development does occur, adding additional gas loads to the project, the utility may buy back, with Commission approval, the portion of the project that has become economically feasible. This rule recognizes that future growth in the previously unserved area, which is the goal of expansion projects, cannot be quantified at the time the project is approved and should not be included in the NPV study. The rule enables Expansion Fund monies to be rolled over for use on other projects, should expansion projects become feasible through economic growth and the addition of gas load. The Commission concludes that NCNG and the Public Staff have appropriately dealt with the prospect for growth along the pipeline route. The Commission further concludes that, based upon the evidence presented to it, the projected annual volumes from potential customers are reasonable.

NCNG witness Evans testified that once annual volumes for potential customers were projected, margins were determined based upon customer survey and/or NCNG's experience with the types of customers included in the project and their alternative fuel capabilities. The Commission believes that this is a reasonable method for determining margins for the purposes of the NPV calculation.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The evidence for this finding of fact is contained primarily in the testimony of NCNG witness Davis.

NCNG witness Davis testified that the total estimated cost of the project as proposed by NCNG in its modified petition was $12,620,624. Davis Exhibit 2 set forth a detailed breakdown of the plant costs for both transmission and distribution plant additions.

NCNG witness Davis testified that NCNG had reviewed the terrain of the proposed route from both the air and ground to determine the extent of wetland crossings and other impediments which could affect cost. NCNG then used unit costs from other gas construction projects in its service territory in recent years and was assisted in the estimation process by a contractor familiar with pipelines of this nature.

The Commission concludes that the total cost estimate for the project is reasonable and is appropriate for use in the Company's NPV calculation based upon the evidence presented to the Commission.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20 THROUGH 21

The evidence for these findings of fact is contained in the testimony and exhibits of NCNG witnesses Davis and Evans, and the testimony of Public Staff witnesses Hoard, Farmer and Davis.

NCNG witness Evans determined that the NPV for the proposed project was a negative $7,493,800. The Public Staff's NPV calculation differs from that of NCNG in limited areas that did not affect the level of the negative NPV.

Except as noted in the Public Staff's testimony, NCNG and the Public Staff agreed on the methods and adjustments utilized in the NPV calculation. For the reasons set forth in this Order and based upon the evidence as a whole, the Commission concludes that the Company's calculation of the negative NPV of the proposed project is fair and reasonable under the circumstances of this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 22

The evidence for this finding of fact is contained in the petition of NCNG as amended. As of March 31, 1998, the balance held by the State Treasurer for NCNG's Expansion Fund was approximately $15,568,596. NCNG was holding additional funds totaling approximately $4,421,808 for possible inclusion in its Expansion Fund. It appears to the Commission that Expansion Fund monies will be available as they are needed for the project the Commission is approving in this docket given the negative NPV of $7,493,800.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 23 THROUGH 24

The evidence for these findings of fact is contained in the testimony of all the witnesses taken together and their exhibits and workpapers filed with the Commission and received into evidence. For the reasons set forth in the foregoing paragraphs and based upon the undisputed evidence presented at the hearing, the Commission concludes that the proposed project is in accordance with the General Statutes and Commission Rules and is just, reasonable and fair and that funding from

NCNG's Expansion Fund in an amount up to the negative NPV for the project of $7,493,800 should be approved.

IT IS, THEREFORE, ORDERED as follows:

1. That NCNG's proposed project to extend natural gas service to Bertie and Martin Counties, is hereby approved for funding from NCNG's Expansion Fund in the amount of $7,493,800, the negative net present value of the project;

2. That disbursement of up to $7,493,800 for this project from NCNG's Expansion Fund in accordance with applicable Commission rules and this Order is hereby authorized;

3. That NCNG shall file reports as required by Commission Rules and shall request progress payments, for reimbursement for actual amounts paid by NCNG, pursuant to the provisions of Commission Rule R6-85(b) and such requests shall be handled as provided by that Rule; and

4. That the local government-assistance payments authorized in resolutions adopted by Bertie and Martin Counties are hereby approved as a reasonable source of funding for NCNG's Expansion Fund for the purpose of offsetting a like amount of Expansion Fund monies from other sources that would otherwise be necessary to make up the negative NPV of this project and such payments shall be deposited into NCNG's Expansion Fund as received.

ISSUED BY ORDER OF THE COMMISSION
This the 19th day of November, 1998

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt filed concurring opinion.

DOCKET NO. G-21, SUB 371

COMMISSIONER JUDY HUNT, CONCURRING:

While I agree with the decision in this case, it would have been my preference to have an outside analysis of the negative net present value of this project. The only detailed NPV analysis was that filed by North Carolina Natural Gas Corporation.

The validity of NPV analysis for all gas companies is a continuing concern throughout this series of important gas expansion fund cases. Only with proper information regarding real cost and projected benefits can money be used most efficiently.

\s\ Judy Hunt
Commissioner Judy Hunt

DOCKET NO. P-55, SUB 1027

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Interconnection Agreement Between	)	ORDER CONCERNING
BellSouth Telecommunications, Inc., and	)	RECIPROCAL COMPENSATION
US LEC of North Carolina, LLC	)	FOR ISP TRAFFIC

HEARD: Wednesday, December 17, 1997, at 9:30 a.m., in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Jo Anne Sanford, Chair, Presiding; Commissioners Ralph A. Hunt and William R. Pittman

APPEARANCES:

For BellSouth Telecommunications, Inc.:

A.S. Poval, Jr., General Counsel, BellSouth Telecommunications, Inc., Post Office Box 30188, Charlotte, North Carolina 28277

Edward L. Rankin, III, BellSouth Telecommunications, Inc., 675 W. Peachtree Street, NE, Atlanta, Georgia 30375

For US LEC of North Carolina, LLC:

Joseph W. Eason, Moore & Van Allen, PLLC, Post Office Box 26507, Raleigh, North Carolina 27611

Richard M. Rindler, Swidler & Berlin, 3000 K. Street N.W., Suite 300, Washington, D.C. 20007

For CaroNet, LLC, ICG Telecom Group, Inc., Intermedia Communications, Inc., KMC Telecom, Inc., and TCG of the Carolinas, Inc.:

Henry Campen, Parker, Poe, Adams & Bernstein, 150 Fayetteville Street Mall, Suite 1400, Raleigh, North Carolina 27601

For Teleport Communications Group:

Michael A. McRae, 1133 21st Street, NW, Suite 400, Washington, D.C. 20036

For Intermedia Communications, Inc.:

Jonathan E. Canis, Kelley, Drye & Warren, 1200 19th Street NW, Suite 500, Washington, D.C. 20036

For Time Warner Communications of North Carolina, L.P.:

Marcus W. Trathen, Brooks, Pierce, McLendon, Humphrey & Leonard, LLP, Post Office Box 1800, Raleigh, North Carolina 27602

BY THE COMMISSION: On October 24, 1997, US LEC of North Carolina, LLC (US LEC) filed a Petition with the Commission to enforce its Interconnection Agreement with BellSouth Telecommunications Inc. (BellSouth), which was approved by the Commission on January 29, 1997. US LEC contends that BellSouth has breached the contract by failing to pay reciprocal compensation for the transport and termination of local exchange traffic from BellSouth end users that is handed off by BellSouth to US LEC for termination to US LEC local exchange end users who are information service providers (ISPs).

The Commission held an oral argument on this dispute on December 17, 1997. The following companies intervened in the proceeding in support of US LEC — Time Warner Communications of North Carolina, L.P. (Time Warner), CaroNet, LLC (CaroNet), ICG Telecom Group, Inc. (ICG), KMC Telecom, Inc. (KMC), TCG of the Carolinas, Inc. (TCG), Teleport Communications Group (Teleport), and Intermedia Communications, Inc. (Intermedia) (collectively, intervenors).

I. Relevant Provisions of Interconnection Agreement

Section I.C. of the Interconnection Agreement defines "Local Traffic" as:

> any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff.

The Reciprocal Compensation provision in Section IV.A. of the Interconnection Agreement states:

> The delivery of local traffic between the parties shall be reciprocal and compensation will be mutual according to the provisions of this Agreement. The parties agree that the exchange of traffic on BellSouth's EAS routes shall be considered as local traffic and compensation for the termination of such traffic shall be pursuant to the terms of this section. EAS routes are those exchanges within an exchange's Basic Local Calling Area, as defined in Section A3 of BellSouth's General Subscriber Services Tariff.

Section IV.B. of the Interconnection Agreement states:

> Each party will pay the other for terminating its local traffic on the other's network the local interconnection rates as set forth in Attachment B-1, by this reference incorporated herein. The charges for local interconnection are to [be] billed monthly and payable quarterly after appropriate adjustments pursuant to this Agreement are made. Late payment fees, not to exceed 1% per month after the due date may be assessed, if interconnection charges are not paid within thirty (30) days of the due date.

II. Arguments of US LEC and Intervenors

US LEC and the intervenors argue that the Commission rather than the Federal Communications Commission (FCC) has jurisdiction since this is, according to US LEC, simply a contract enforcement action. All states that have had this issue presented to them have asserted jurisdiction.

US LEC and the intervenors contend that the calls at issue here are local, regardless of where and how the ISP provides the information service. US LEC cites the definition of "termination" in the Communications Standard Dictionary and that of the FCC in 47 CFR § 51.701(d).[1] Information services provided by an ISP are, moreover, wholly separate from the local exchange telecommunications service provided by US LEC. The FCC affirmed that enhanced service providers can continue to obtain services as end users under intrastate tariffs. The FCC in the Universal Service Order (USO) has also determined that Internet access consists of severable components. In sum, ISPs are not common carriers but end users who obtain requested information over a wholly separate packet-switched network.

US LEC and the intervenors note that BellSouth's position would lead to a class of calls for which no compensation would be provided. BellSouth itself charges its own ISP customers local business line rates and customers accessing ISPs within the local calling area are charged local rates. BellSouth treats the revenues as local for the purposes of separations and ARMIS reporting.

The Commission should require enforcement of negotiated contracts as a matter of sound public policy. BellSouth's position is highly anticompetitive. Considerable monies are being withheld by BellSouth. All states that have addressed this issue have rejected BellSouth's line of argument.

III. Arguments of BellSouth

BellSouth maintains that calls made by end users to ISPs do not constitute local traffic but rather are exchange access traffic that is jurisdictionally interstate. BellSouth's reasoning is that, for instance, a single Internet call may sprawl across interstate, intrastate, and even international jurisdictions, and is unseverable. The termination point, according to BellSouth, is not the ISP switch but the database or information to which the ISP provides access. Thus, ISP traffic is jurisdictionally interstate and ineligible for reciprocal compensation.

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[1]The FCC, for purposes of implementing the reciprocal compensation provisions of the 1996 Act, defined "termination" as "the switching of local telecommunications traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises."

BellSouth contends that the FCC has consistently rejected attempts to partition interstate calls into jurisdictionally intrastate segments. Moreover, the FCC has not held that ISP traffic is local for the purposes of reciprocal compensation. The ISP exemption from access charges is not dispositive. It is only treatment of ISPs as end users for the purposes of the access charge system.

BellSouth further contends that sound public policy requires that ISP traffic not be subject to reciprocal compensation because the traffic is not balanced. ISPs generate large volumes of inbound calls that are much longer in duration than typical calls.

IV. Other States

A number of other states have addressed the same issue either separately or in the context of arbitration proceedings. All have ruled that such traffic is local. The states that have ruled include: Arizona, Colorado, Minnesota, Oregon, Washington, West Virginia, New York, Maryland, Connecticut, Virginia, Michigan, and Texas.

An arbitrator in Texas ruled that the traffic was interstate, but was recently reversed by the Texas Commission.

FINDINGS OF FACT

1. BellSouth Telecommunications, Inc., a corporation a duly organized and existing under the laws of the State of Georgia, is a "public utility" within the meaning of the North Carolina Public Utilities Act. BellSouth is engaged in the provision of interstate and intrastate telecommunications service, including local exchange service, under the laws of the State of North Carolina and the United States, and as such is subject to the jurisdiction of this Commission.

2. US LEC, a limited liability company organized under the laws of North Carolina, is a "competing local provider" (CLP), as defined in G.S. 62-3(7a), of local exchange and exchange access services in the State of North Carolina pursuant to a certificate issued by this Commission, and as such is subject to the jurisdiction of this Commission.

3. US LEC and BellSouth negotiated the Interconnection Agreement filed with the Commission pursuant to Sections 251 and 252 of the Telecommunications Act of 1996 (the Act). The Commission approved the Interconnection Agreement by Order dated January 29, 1997, under authority granted by Section 252(e) of the Act.

4. Section 251 of the Act obligates all telecommunications carriers to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers . . ." and "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." Pursuant to the Act and the terms of their Interconnection Agreement, US LEC and BellSouth have interconnected their networks to enable an end user subscribing to US LEC's local exchange service to place calls to end users subscribing to BellSouth's local exchange service, and vice versa. Pursuant to the Act and Sections IV.A. and IV.B. of the Interconnection Agreement, BellSouth and US LEC agreed to pay reciprocal compensation to each other for

telephone exchange traffic that originates on one company's network and terminates on the other's network.

5. BellSouth provides local exchange services to end-user customers, including certain business customers operating as ISPs. US LEC likewise provides local exchange services through its facilities to end-user customers, including certain business customers operating as ISPs.

6. Section I.C. of the Interconnection Agreement defines "Local Traffic" as:

> any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service ("EAS") exchange. The terms Exchange, and EAS exchanges are defined and specified in Section A3 of BellSouth's General Subscriber Service Tariff.

7. Typically, a customer of an ISP connects to an ISP by means of a local phone call, using telephone exchange service. A call placed over the public switched telecommunications network is considered to be "terminated" when it is delivered to the telephone exchange service bearing the called telephone number.

8. BellSouth treats calls to ISPs interconnected to its network as local traffic and charges its own ISP customers local business line rates for local telephone exchange service, thereby enabling customers of BellSouth's ISP customers to connect to their ISP by making a local phone call. When a BellSouth telephone exchange service customer places a call to an ISP within the caller's local calling area, BellSouth treats this as a local call pursuant to the terms of its local tariffs.

9. The Commission has jurisdiction to interpret and enforce the provisions of interconnection agreements between telecommunication carriers and authority to hear and determine controversies concerning the interpretation and performance of such interconnection agreements under state and federal law and the terms thereof.

10. Calls that terminate within a local calling area, regardless of the identity of the end user, are local calls under Section I.C. of the Interconnection Agreement and Commission Rule R17-1, and nothing in the Interconnection Agreement or applicable law or regulations creates a distinction pertaining to calls placed to telephone exchange service end users which happen to be ISPs.

11. BellSouth's refusal to pay reciprocal compensation for calls made by BellSouth customers to ISPs served by US LEC is inconsistent with the reciprocal compensation terms of the Interconnection Agreement and BellSouth's obligation to provide reciprocal compensation under Section 251 of the Act.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The decision-making in this case is not an easy one. Forceful arguments have been made on both sides. The central issue involves whether traffic to an ISP from a caller within a local calling area is local. US LEC and the intervenors contend that it is; BellSouth contends that it is not.

A threshold question is whether the Commission has jurisdiction to hear and determine this controversy or to grant the relief requested by US LEC. After careful consideration, the Commission concludes that it has jurisdiction to rule and finds that the ISP traffic under dispute is local and that US LEC is entitled to reciprocal compensation in accordance with the contract terms.

There are several reasons for this decision:

1. The Interconnection Agreement speaks of reciprocal compensation for local traffic. There is no exception for local traffic to an end user who happens to be an ISP. For the purposes of reciprocal compensation, the Commission concludes that the call terminates when it is delivered to the called local exchange telephone number of the end-user ISP. Even if it is conceded, for instance, that much Internet traffic travels onward into cyberspace, it cannot be argued that all such traffic is non-local. For example, a resident of Wake County might access the Commission's web page, an undoubtedly local transaction. Neither BellSouth nor anyone else knows with precision where these calls go. It would therefore be wrong a priori to identify all ISP calls as interstate.

2. BellSouth treats calls from its own end-user customers to ISPs it serves with telephone numbers in the same local calling area as local traffic. BellSouth charges its own ISP customers local business line rates for local telephone exchange service. When a BellSouth telephone exchange service customer places a call to an ISP within that caller's local calling area, BellSouth treats this as a local call pursuant to the terms of its local tariffs. BellSouth also treats the revenues associated with the local exchange traffic to its ISP customers as local for purposes of separations and ARMIS reporting.

In addition, BellSouth's position would also appear to be inconsistent with this Commission's decision entered on December 23, 1997, in Docket No. P-55, Sub 1083, which BellSouth supported, concerning national directory assistance. In that docket, BellSouth conceded that the call bounced across state lines but should nevertheless be considered not an interexchange service but an adjunct to local service.

3. The FCC has not squarely addressed this issue, although it may do so in the future. While both sides presented extensive exegeses on the obscurities of FCC rulings bearing on ISPs, there is nothing dispositive in the FCC rulings thus far.

4. Every state that has ruled on this matter to date has ruled that such ISP traffic is local.

IT IS, THEREFORE, ORDERED as follows:

1. That the reciprocal compensation provision contained in the Interconnection Agreement between BellSouth and US LEC is fully applicable to telephone exchange service calls that terminate

to ISP customers when the originating caller and the called number are associated with the same local calling area, and BellSouth shall bill and pay reciprocal compensation for all such calls.

2. That BellSouth is directed to immediately forward to US LEC all sums currently due together with the required late payment charges, pursuant to the terms of the Interconnection Agreement as interpreted herein, and is further directed to pay all sums coming due in the future for such traffic pursuant to the terms of the Interconnection Agreement as interpreted herein.

ISSUED BY ORDER OF THE COMMISSION.
This the 26th day of February, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. P-55, SUB 1096

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of

Enforcement of Interconnection Agreement	)	ORDER CONCERNING
Between Intermedia Communications, Inc., and	)	RECIPROCAL COMPENSATION
BellSouth Telecommunications, Inc.	)	FOR ISP TRAFFIC

BY THE COMMISSION: On June 10, 1998, Intermedia Communications, Inc. (Intermedia), filed a Petition to Enforce Interconnection Agreement against BellSouth Telecommunications, Inc. (BellSouth).

Intermedia stated that it had an Interconnection Agreement with BellSouth approved by Order dated October 10, 1996, which included a provision that the Commission would have jurisdiction over disputes and which further provided for the payment of reciprocal compensation for the termination of local traffic on each other's network. (Sections IV.A. and IV.B.). The Agreement defines "local traffic" as "any telephone call that originates in one exchange and terminates in either the same exchange, or a corresponding Extended Area Service exchange." (Section I.D.). Intermedia alleged that in August 1997, BellSouth had announced that it had decided that telephone traffic placed within the same local calling area from a BellSouth end user to an Internet Service Provider (ISP) does not constitute "local traffic" within the meaning of that term under its various Interconnection Agreements and that it would not pay reciprocal compensation for such traffic.

Intermedia cited the Commission's February 26, 1998, decision in Docket No. P-55, Sub 1027 involving US LEC of North Carolina, LLC (US LEC) and BellSouth that ISP traffic does constitute local traffic for the purposes of the Interconnection Agreement between US LEC and BellSouth. BellSouth was ordered to pay US LEC for all ISP traffic terminated by US LEC. Intermedia pointed out that the provisions of its Interconnection Agreement were similar to those in the US LEC/BellSouth Agreement, and, as such, the decision in Docket No. P-55, Sub 1027 constitutes binding precedent for BellSouth's obligation to pay reciprocal compensation for the termination of ISP traffic.

Intermedia contended that BellSouth owes it $3,600,000 for reciprocal compensation and that this amount is increasing by more than $300,000 per month. Intermedia requested the Commission to grant expedited consideration to its Petition, enter an Order declaring BellSouth in breach of its Interconnection Agreement with Intermedia for failure to pay reciprocal compensation, order BellSouth to immediately pay Intermedia reciprocal compensation for the termination of past ISP traffic, order BellSouth to pay Intermedia reciprocal compensation for termination of future ISP traffic, and grant Intermedia such further relief as is just and proper.

On July 14, 1998, BellSouth filed a Response to Intermedia's Petition. BellSouth reiterated its well-known position that jurisdiction over ISP traffic is clearly vested in the Federal Communications Commission (FCC) and is interstate in nature. BellSouth said that the Commission should hold this matter in abeyance until such time as the FCC renders a decision--which the FCC intends to do. Should the Commission decide to consider Intermedia's Petition, it should set the matter for evidentiary hearing. BellSouth will show that the parties never reached the required meeting of the minds on whether ISP traffic would be subject to reciprocal compensation, and thus Intermedia's breach of contract claim must fail. BellSouth noted that the Commission's February 26, 1998, Order on this subject as between BellSouth and US LEC in Docket No. P-55, Sub 1027 is currently on appeal to the United States District Court for the Western District of North Carolina in Docket No. 3:98CV170MU. BellSouth has applied for a stay of this Order in that court. Thus, BellSouth insisted that the February 26, 1998, Order is not a final Order constraining the Commission from hearing the merits of this dispute between Intermedia and BellSouth.

On July 20, 1998, Intermedia filed a Reply to BellSouth's Response. As to the matter of FCC jurisdiction, Intermedia noted that BellSouth had made the same argument with respect to the US LEC complaint proceeding, but the Commission in Conclusion No. 3 of its February 26, 1998, Order had recognized that the FCC had not squarely addressed the ISP issue but might do so in the future. Thus, the Commission is free to proceed and should do so. Furthermore, BellSouth's argument concerning an evidentiary hearing is without merit. The parties' Interconnection Agreement is not ambiguous. Indeed, BellSouth stated in its Response that the language of the Interconnection Agreement "speaks for itself." Accordingly, there is nothing to consider at an evidentiary hearing because there is no issue of fact in dispute. The issue presented here is one of law, which can be summarily ruled upon. Intermedia requested the Commission to give expedited consideration to this matter and issue an Order requiring immediate payment for termination of ISP traffic.

On August 7, 1998, the Chair issued an Order Requesting Comments on Procedure. The Chair specifically requested that BellSouth provide specific and cogent arguments why an evidentiary hearing is required in this docket. Intermedia was allowed to respond to these arguments. The Chair stated that at this point she was unconvinced that such a hearing is necessary inasmuch as the dispute appears to involve solely a question of law and Section II of the Agreement states in part: "The parties desire to enter into this Agreement...and to repeal any and all other prior agreements, both written and oral...concerning the terms of the contract." Nevertheless, the Chair deemed it advisable to receive the arguments of the parties before the Commission rendered a final decision.

BellSouth Response

On September 3, 1998, BellSouth filed its Response as requested. First, BellSouth notified the Commission of a recent filing by the FCC that stated that it will reserve the question of whether calls to ISPs are subject to FCC jurisdiction by October 30, 1998, in the context of its consideration of the GTE DSL interstate access tariff. The Intermedia complaint should be held in abeyance pending resolution by the FCC of the GTE DSL investigation.

Should the Commission nevertheless desire to proceed, it should convene an evidentiary hearing to resolve the conflicting interpretations that the parties have attached to the term "terminate," a term that is not defined in the Agreement. The parties obviously attached different meanings to the term. Intermedia contends that the call terminates at the ISP switch; BellSouth maintains that the call does not terminate until it reaches its ultimate destination.

Because the term "terminate" is susceptible of two different meanings, the Commission should receive evidence on matters outside the language of the Agreement to ascertain the parties true intentions. This would include Intermedia presenting evidence to support its allegation that a telephone call allowing a North Carolina customer to interact with a computer in a foreign country terminates at an ISP's location and BellSouth presenting evidence to the contrary. BellSouth would also be able to present evidence of the situation of the parties when the Agreement was executed, the circumstances surrounding its execution, courses of dealings between the parties, and trade usages.

Intermedia Reply

Intermedia filed a Reply on September 17, 1998. Intermedia argued that its enforcement proceeding should not be delayed further. Intermedia suggested that BellSouth had not given a full picture of what the FCC had said in its filing in the proceeding in the U.S. District Court for the Western District of North Carolina. The FCC's filing was more equivocal than BellSouth portrayed. The FCC in its filing had acknowledged that its proceedings may not be relevant to the subject issue, and in any event any decision it makes may not be applied retroactively, nor does it want enforcement issues to be referred to it. Intermedia noted that nearly 23 state regulatory commissions and three federal courts have all ruled that reciprocal compensation should be paid.

Intermedia further argued that there is no need for an evidentiary hearing because the word "terminate" is not ambiguous. Absent such ambiguity, the court will look at the contract to find the parties' intent. The issue present here is a legal one. As to whether calls to ISPs are local calls, the Commission has already ruled on this legal issue, and it should proceed forthwith to issue a decision.

WHEREUPON, the Commission now makes the following

FINDINGS AND CONCLUSIONS

After careful consideration, the Commission finds and concludes the following:

1. That there is no basis or need for an evidentiary hearing in this docket.

2. That the reciprocal compensation provision contained in the Interconnection Agreement between BellSouth and Intermedia is fully applicable to telephone exchange service calls that terminate to ISP customers when the originating caller and the called number are associated with the same local calling area.

3. That BellSouth shall bill and pay reciprocal compensation for all such calls.

4. That BellSouth should be directed to immediately forward to Intermedia all sums currently due together with required late payment charges pursuant to their Interconnection Agreement, together with all sums coming due in the future for such traffic pursuant to the terms of their Agreement.

Discussion

The threshold question is whether the Commission should hold an evidentiary hearing in this docket. Intermedia argues that the question at hand is a legal question and susceptible to a summary decision without need for an evidentiary hearing. BellSouth argues otherwise maintaining that the term "terminate" is ambiguous.

The Commission agrees with Intermedia that the term "terminate" is not ambiguous for the reasons Intermedia has generally stated. The Commission furthermore agrees that the intent of the parties is to be derived from the contract itself. If BellSouth had wished the term "terminate" to have some meaning other than its plain meaning with respect to ISP traffic calls, it should have negotiated an exception for such calls in the contract itself. The Commission would further note the existence of a merger clause stating that the terms of the contract are to govern.

On the matters in dispute, given the Commission's February 26, 1998, decision in Docket No. P-55, Sub 1027, concerning substantially identical language in an Interconnection Agreement between BellSouth and US LEC, the Commission can reach no other conclusion but that such traffic is local and entitled to reciprocal compensation under the terms of the Interconnection Agreement. This conclusion should apply to any similarly-situated competing local provider (CLP), such as Intermedia. The Commission is not disposed to engage in lengthy evidentiary hearings for each and every docket of this nature where there is no genuine issue of material fact and the Commission has spoken quite plainly that, as a matter of law, such traffic is local - a decision which has been unanimously reached by every state regulatory commission and appellate court that has considered it.

IT IS, THEREFORE, ORDERED as follows:

1. That BellSouth's request for hearing in this docket be denied.

2. That the reciprocal compensation provision contained in the Interconnection Agreement between BellSouth and Intermedia is fully applicable to telephone exchange service calls that terminate to ISP customers when the originating caller and the called number are associated with the same local calling area and that BellSouth shall bill and pay reciprocal compensation for all such calls.

3. That BellSouth shall forward to Intermedia all sums currently due together with required late payment charges pursuant to their Interconnection Agreement, together with all sums coming due in the future pursuant to the terms of their Agreement.

ISSUED BY ORDER OF THE COMMISSION.

This the 4th day of November, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Judy Hunt did not participate in this decision.

DOCKET NO. P-118, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of ALLTEL Carolina, Inc. for Approval of a Price Regulation Plan Pursuant to N.C.G.S. §62-133.5(a)	))))	ORDER AUTHORIZING PRICE REGULATION

HEARD: Monday, April 27, 1998, in Dennis Wicker Civic Center, 1801 Nash Street, Sanford, North Carolina;

Thursday, April 30, 1998, in Aberdeen Middle School, Aberdeen, North Carolina; and

Wednesday, May 20, 1998, in Commission Hearing Room, Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina.

BEFORE: Chairman Jo Anne Sanford, Presiding, and Commissioners Ralph A. Hunt and Robert V. Owens, Jr.

APPEARANCES:

FOR ALLTEL CAROLINA, INC.:

Daniel C. Higgins, Attorney at Law, Burns, Day & Presnell, P.A., P.O. Box 10867, Raleigh, North Carolina 27605.

FOR AT&T COMMUNICATIONS OF THE SOUTHERN STATES, INC.:

Kenneth Lewis, Attorney at Law, Burford & Lewis, 719 West Morgan Street, Raleigh, North Carolina 27603.

FOR THE USING AND CONSUMING PUBLIC:

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:

> Upon 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 price regulation 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 90 days subject to an extension by the Commission for an additional 90 days, or a total of 180 days from the filing of the Application. The statute also requires the Commission to approve price regulation for a local exchange company upon finding that a proposed plan:

(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."

ALLTEL Carolina, Inc. ("ALLTEL") filed its proposed price regulation plan on October 15, 1997 (the "Original Plan"). In the petition accompanying the Original Plan, ALLTEL alleged that the Original Plan was substantially the same as price regulation plans previously approved by the Commission for the State's three largest LECs and the Concord Telephone Company.[1]

ALLTEL described the major features of the Original Plan as (a) an annual revenue reduction of approximately $2,100,000, (b) a rebalancing of its rates, (c) expansion of local calling scopes for its five exchanges that would experience rate increases, and (d) the elimination of separate charges for touch tone calling.

By order issued November 13, 1997, the Commission, among other things, required that ALLTEL file a proposed public notice regarding its proposed price regulation plan. On November 26, 1997, ALLTEL filed a request for an extension of time for filing its proposed public notice. This request was based on the fact that one facet of ALLTEL's proposed plan is to expand calling scopes for five of its exchanges by providing one way extended area service ("EAS") on routes originating in those exchanges and terminating in exchanges served by Carolina Telephone and Telegraph Company. At that point negotiations between those LECs regarding the provision of extended area service from the five ALLTEL exchanges had not been concluded.

On January 15, 1998, ALLTEL filed a Motion for a revision of the hearing schedule established in the Commission's order of November 13, 1997. In that filing ALLTEL reported that the EAS negotiations with Carolina Telephone had not been completed. In that filing ALLTEL also indicated its agreement to an extension of the time for the Commission to reach a final decision on ALLTEL's application by an additional 90 days, as provided for in N.C.G.S. §62-133.5(a). On January 20, 1998, the Commission issued an order postponing the scheduled hearings and extending the time for final decision in this matter up to and including July 13, 1998.

On March 10, 1998, ALLTEL filed a status report and proposed public notices. In that filing ALLTEL reported that it had reached an agreement with Carolina Telephone regarding one way EAS from the five exchanges described in ALLTEL's application. By Order issued March 12, 1998 the Commission approved ALLTEL's proposed notices for bill insert and newspaper publication. In that same order the Commission set public hearings for April 27, 1998, in Sanford and April 30, 1998, in Aberdeen for the purpose of receiving the testimony of public witnesses. The Commission also set a third public hearing for May 20, 1998, in Raleigh.

At the April 27, 1998, public hearing at the Dennis Wicker Civic Center in Sanford, the following public witnesses appeared: Judi Marsh, Tim Preston, and Richard Golan. Ms. Marsh testified regarding her concern, as a business owner, that she had no complaints about ALLTEL's service but that she hoped any rate increase would be done gradually, and not 100% at one time. Tim Preston, a newspaper reporter, testified in his capacity as a reporter regarding an anonymous letter he received posing certain questions regarding when ALLTEL plans to install SS7 technology in Sanford. Mr. Golan expressed a question as to which part of his total telephone bill would increase as a result of ALLTEL's proposal.

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[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); The Carolina Telephone Company, Docket P-16, Sub 181 (May 30, 1997).

At the April 30, 1998 public hearing at the Aberdeen Middle School in Aberdeen, no public witnesses appeared.

On May 12, 1998, ALLTEL entered into a Stipulation and Agreement with the Public Staff in which those parties agreed to a revised price regulation plan for ALLTEL (the "Stipulated Plan"). (The Public Staff and ALLTEL are hereafter referred to as the "Stipulating Parties"). The Stipulated Plan was filed with the Commission on May 12, 1998. The Stipulated Plan modified ALLTEL's Original Plan in several significant respects, including the following:

- The Original Plan provided for a productivity offset of 25% of the change in GDPPI from the previous year. The Stipulated Plan provides for a productivity offset of 2%;

- Under the Original Plan ALLTEL proposed to reduce its annual revenues by $2,100,000. Over $3,000,000 of this annual revenue reduction will result from a reduction in intrastate switched access rates. The Stipulated Plan provides for an annual reduction to ALLTEL of $7,615,036, as follows:

Net increases and decreases in basic local rates	($2,881,349)
Decrease in intrastate access charges	($3,153,780)
Elimination of touch tone charges	($1,077,750)
Additional EAS routes for 5 exchanges	($328,000)
Decrease in special access rates	($138,341)
Other miscellaneous reductions in recurring and non-recurring charges	($35,816)
Total annual revenue reduction	($7,615,036)

- The definition of long run incremental costs ("LRIC") was amended in the Stipulated Plan to further clarify that while LRIC would be presumed appropriate for use in the Plan, such use is without prejudice to the right of any party to challenge the propriety of the use of LRIC in any complaint proceeding;

- Section 6.B.(3) of the Original Plan was modified to make it clear that the rebalanced rates for Toll Switched Access Services, in the aggregate for originating plus terminating, shall be the maximum that ALLTEL will charge;

- Attachment A to the Original Plan, the List of Services, was amended to conform with the services included in ALLTEL's existing intrastate tariffs;

- Attachment B to the Original Plan, Local Rate Structure, was amended to correct the existing and proposed rates in all rate groups for PTAS-Smart and PTAS-Dumb service and to reflect the three year phase-in of local rate increases in the five exchanges; and

- Attachment E, Intrastate Access Rate Analysis, was added to reflect ALLTEL's proposed reduction in special access rates and the three year phase-in of the reduction of switched access rates.

At the May 20, 1998, evidentiary hearing in Raleigh, ALLTEL offered the testimony of Deborah L. Nobles, Staff Manager - State Regulatory Affairs, and Larry R. Whipkey, Staff Manager - Local Rates and Tariffs. Ms. Nobles testified regarding modifications to the Original Plan which ALLTEL had agreed to in reaching an agreement with the Public Staff. Mr. Whipkey testified regarding rate design as provided for in the Stipulated Plan.

Intervenor AT&T Communications of the Southern States, Inc. offered the testimony of Richard Guepe, District Manager for Law and Governmental Affairs. Mr. Guepe recommended that the Commission make adjustments to the Stipulated Plan to require that ALLTEL's proposed reductions in local exchange rates in 26 of its 31 exchanges not be allowed unless ALLTEL can establish that the proposed reduced rates are not set below cost. Second, Mr. Guepe testified that while AT&T generally favored ALLTEL's proposal to reduce its switched access rates, he believed ALLTEL should be required to further reduce its switched access charges, beyond the reductions provided in the Stipulated Plan, to incremental cost-based rates. Specifically, Guepe recommended that the Commission not only prohibit ALLTEL from increasing any access rate element, but that it require ALLTEL to reduce its switched access charges to incremental cost-based rates in conjunction with relief from rate of return regulation.

At the conclusion of the evidentiary hearing, the Commission scheduled the filings of briefs and proposed orders for June 18, 1998. A joint proposed order was filed by ALLTEL 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, ALLTEL Carolina, Inc., is a "local exchange company" as that term is defined in G.S. §62-3(16a). ALLTEL has agreed to become subject to the provisions of G.S. §62-110(f)(1) on the effective date of a price regulation 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 the Commission for consideration, and ALLTEL 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 Stipulated Plan should be modified to provide for waiver by ALLTEL of the exemption for certain rural telephone companies provided for in Section 251(f)(1) of the Telecommunications Act of 1996 (TA96), upon the date a price regulation plan becomes effective for ALLTEL. The Commission finds that, under the circumstances of this case, if ALLTEL should accept the Commission's modifications to the Stipulated Plan, as reflected in the Commission-approved price regulation plan adopted herein, then 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 47 U.S.C. § 254 other than Subsections (b) (7) and (c) (1) (D) thereof. This finding in no way waives, impairs or modifies, ALLTEL's rights under 47 U.S.C. § 251(f)(2) to petition this Commission for suspensions or modifications as provided for therein.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 1

This finding is supported by the record as a whole and is uncontested.

EVIDENCE FOR FINDING OF FACT AND CONCLUSION OF LAW NO. 2

- AFFORDABILITY -

The Commission concludes that basic local exchange service at the rates provided for under the Commission-approved price regulation plan is affordable for the following reasons. First, the proposed basic local service rates provided for in the Stipulated Plan are lower than the rates currently in effect in 26 of ALLTEL's 31 exchanges. Those rates were found to be just and reasonable at the time they were set by this Commission over ten years ago. The rates in ALLTEL's remaining five exchanges, which will be increased over the next three years to parity with the rates in the 26 other ALLTEL exchanges will, at the end of three years, be at a level which is lower than the current rates the Commission found to be just and reasonable for ALLTEL's other 26 exchanges.

Second, the local service rates provided for in the Stipulated Plan are comparable to the rates recently found to be affordable by the Commission for the three largest incumbent LECs within the State, including BellSouth Telecommunications, the LEC with which ALLTEL frequently shares a community of interest. These rates compare favorably with prices for other goods and services in ALLTEL's service area.

Although some basic local exchange rates will increase under the Stipulated Plan, the value of the services available under those rates will also increase due to an expansion of the calling scopes for the five ALLTEL exchanges where rates will be increased.

The Commission-approved price regulation plan addresses the affordability of telephone service for low-income customers by maintaining the existing Linkup and Lifeline programs for qualifying residential subscribers who are recipients of Work First, or Temporary Assistance for Needy Families, Supplemental Security Income, or Food Stamps. Except for those five exchanges where ALLTEL is increasing rates, the initial rebalanced rates for residential or basic local service are capped for a period of three years. Even in those five exchanges where rates are increasing, the rates will be increased through a three-year phase in. Furthermore, the rebalanced rates produce a net reduction in ALLTEL's annual revenues of approximately $7,483,036.

Witness Nobles testified that although rates will go up for customers in those five ALLTEL exchanges which have rates well below the current rates in ALLTEL's 26 other exchanges, ALLTEL is establishing one-way EAS for its customers in those five exchanges to other areas. By reducing rates in 26 of its exchanges, where approximately 80% of its access lines are located, ALLTEL will reduce its rates for approximately 156,000 access lines. The three-year phased in rate increases in the other five ALLTEL exchanges, which represent approximately 20% of ALLTEL's access lines, will affect approximately 41,000 access lines.

No party offered any testimony which attempted to show that the rebalanced rates provided for under the Stipulated Plan are not affordable.

For the reasons set forth above, the Commission concludes that the rebalance rates provided for 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 undisputed. First, we note that the Stipulated Plan provides that ALLTEL will 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 will change by implementation of a price regulation plan for ALLTEL. The Commission retains the same powers and authority which it has always had with respect to the provision of quality service. The Commission can investigate service problems either on its own initiative or upon a complaint by any other party.

Thus, we conclude 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

\- NO PREJUDICE AMONG CUSTOMER CLASSES -

In its prior orders authorizing price regulation for other North Carolina LECs, the Commission has consistently concluded that the North Carolina 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 thereunder.

For example, in its May 2, 1996 order authorizing price regulation for GTE South, Incorporated, in Docket No. P-19, Sub 277, the Commission noted that "[t]he test has always been unreasonable preference, unreasonable advantage, unreasonable prejudice, unreasonable disadvantage, and unreasonable discrimination . . . "

The Commission reached a similar conclusion in authorizing price regulation for BellSouth in Docket No. P-55, Sub 1013:

> "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. re. 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."

AT&T witness Guepe testified that the Stipulated Plan should "not be thrown out," but that the Commission should make three adjustments to the Stipulated Plan. First, AT&T advocated that ALLTEL should not be allowed to reduce local service prices unless it can prove its proposed rebalanced rates were not priced below forward-looking economic cost. The Commission notes that ALLTEL's current local basic service rates were residually derived by this Commission in past rate-making proceedings. ALLTEL has had no reason, at this point, to attempt to determine its cost of providing basic local service. Neither this Commission nor the FCC have yet undertaken to establish rules or costing models for developing forward-looking economic costs for rural LECs such as ALLTEL.

In addition, this Commission has not required any of the other LECs now operating under price regulation plans, to establish that the basic local service rates provided for under their proposed price regulation plans were price above forward looking economic costs.

Second, AT&T witness Guepe also testified that while AT&T supported ALLTEL's decision to lower access rates in connection with its implementation of price regulation, AT&T believes that ALLTEL should be ordered to reduce its switched access rates even further. Third, AT&T particularly opposed ALLTEL's proposal to increase its carrier common line rate element. This is AT&T's position, even though ALLTEL currently has, on a composite intrastate basis, the third lowest access rates of any LEC in the State. After implementation of its proposed reduction in access charges, ALLTEL will have the second lowest composite intrastate access rate of any LEC in North Carolina. AT&T further recommended that the Commission not only prohibit ALLTEL from increasing any access rate element, but that it require ALLTEL to reduce its switched access charges to incremental cost-based rates. As an alternative proposal AT&T recommended that the Commission reduce ALLTEL's intrastate switched access rates to the same levels as its interstate switched access rates, which are 55% lower than its intrastate access rates.

As the Commission noted in approving a price regulation plan for BellSouth, "AT&T has alleged from the inception of this case--indeed long before the beginning of this case--the Commission should conduct a full cost-of-service and earnings review of BellSouth (in other words, a general rate case, in conjunction with BellSouth's price regulation case." The Commission has consistently refused AT&T's request for review of the applicant's rates. The Commission will generically review intrastate access charge pricing in the course of its deliberations in Docket No. P-100, Sub 133g. There is nothing in the price regulation statute which requires the access charges be lowered to incremental costs, and the Commission has not directed any LEC operating in North Carolina to lower their rates for switched access services to incremental costs.

With regard to AT&T's alternative proposal that the Commission reduce ALLTEL's intrastate switched access rates to the same level as its interstate switched access rates, which are less than half of ALLTEL's current intrastate access rates, the Commission has not reduced any North Carolina LEC's intrastate access rates to interstate levels. In that regard, the Commission also notes that the interstate access costs recovery structure includes the $3.50 subscriber line charge mandated by the FCC. Finally, the Commission notes from Whipkey's Cross-Examination Exhibit No. 1 that ALLTEL's current composite intrastate access rate is appreciably lower than Concord Telephone Company's current composite intrastate access rates, which AT&T did not challenge during Concord's price regulation docket last year. As ALLTEL will reduce its composite intrastate access rate even further, with a three year phase down which will reduce ALLTEL's access revenues by $3,292,122 in year three of the plan, we conclude that there is substantial benefit for ALLTEL's switched access customers under the Stipulated Plan.

In addition, the Commission notes that AT&T stated in its Proposed Order (Page 5) that it has agreed to flow through any access charge reductions to its long distance rates. The Commission concludes that any interexchange carrier (IXC) receiving a material reduction in access charges as a result of ALLTEL's Price Regulation Plan is expected to flow through such reductions to its 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, those customers whose rates will increase over the next three years will be provided with EAS calling to additional exchanges and access lines.

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 ALLTEL 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 public interest standard is one that the Commission has employed in its deliberations for many years. See, e.g. G.S. § 62-2; 62-110(b), (c) and (d); 62-133.3 (repealed by 62-133.5, House Bill 161, 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 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 necessary for ALLTEL to begin the transition to competition. Second, as we have previously found, the Commission-approved price regulation plan provides affordable rates and assures that ALLTEL will continue to provide adequate service to its customers. Third, the productivity offsets require ALLTEL 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 ALLTEL'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 ALLTEL's ratepayers to its shareholders, 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

The Commission notes that the Stipulated Plan does not provide for waiver by ALLTEL of its exemption under Section 251(f)(1)(A) of TA 96. The price regulation plan approved by the Commission for the Concord Telephone Company provided for termination of that exemption. We believe it appropriate to include a similar provision in a price regulation plan for ALLTEL. Therefore, the Commission concludes that it is appropriate to modify the Stipulated Plan to provide for termination of the exemption provided under 47 U.S.C. § 251(f)(1), as provided for below.

The Commission concludes that it is not required to conduct an inquiry for the purpose of determining whether to terminate the exemption under § 251(f)(1) of TA96, since that determination is only required when a party making a bona fide request of a rural telephone company such as ALLTEL for interconnection, services or networks elements shall submit a notice of its request to the State commission. No such request has been made of ALLTEL and no such request is before the Commission at this time. Nevertheless, because ALLTEL will become subject to competition because of its access line growth as provided for under G.S. § 62-110(f2), we think it appropriate to address this now in order 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 §251(f)(1). We find that, under the circumstances of this case, the termination of the §251(f)(1) exemption upon the effective date of a price regulation plan for ALLTEL is not unduly economically burdensome, is technically feasible, and is consistent with §254 of TA96, other than subsections (b)(7) and (c)(1)(D) thereof. This conclusion in no way impairs, limits or waives ALLTEL's ability to seek a suspension or modification of the application of a requirement or requirements of Subsections 251(b) or (c) of TA96, as provided for in §251(f)(2) of TA96.

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 ALLTEL effective not later than 90 days after the acceptance of the Commission-approved price regulation plan, provided that ALLTEL shall, not later than seven days following the date of this Order:

    A. File a statement in this docket notifying the Commission that ALLTEL 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 Telecommunications Act of 1996 shall terminate as to ALLTEL upon the effective date of the Plan. Termination of that exemption will not limit, impair or otherwise restrict ALLTEL's right to seek a suspension or modification of the application of a requirement or requirements of Subsections 251(b) or (c) of TA96, as provided for in §251(f)(2) of TA96.

3. That all North Carolina IXCs are expected to flow through any material reductions in access charges they experience as a result of ALLTEL's Price Regulation Plan.

ISSUED BY ORDER OF THE COMMISSION.
This the 8th day of July, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

SMALL LOCAL EXCHANGE CARRIER

PRICE REGULATION PLAN

FOR

ALLTEL CAROLINA, INC.

EFFECTIVE ____________________, 1998

TELEPHONE - RATES

DEFINITIONS

The following definitions will apply to the terms as used in this Price Regulation Plan (the "Plan") for ALLTEL Carolina, Inc. (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 anitcompetitive 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 ALLTEL Carolina, Inc. 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 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 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 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. 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 I 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 ~~I~~ 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 and all the phased in local rates shown in Attachments B and D for the exchanges of Aberdeen, Broadway, Olivia, Sanford, and Wagram shall be the maximum prices charged for a period of three years from the effective date of the Plan (the "cap period").

The specific Residence Basic Local Exchange Service 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 prices for Toll Switched Access Services after each of the reductions shown in Attachment E shall, in the aggregate for originating plus terminating, be the maximum that the Company will charge under the Plan.

(4) During the cap period, the capped Residence Basic Local Exchange Services and all the phased in local rates shown in Attachments B and D for the exchanges of Aberdeen, Broadway, Olivia, Sanford, and Wagram will be excluded from the calculation of the SPI for the Basic Services Category.

(5) During the cap period, prices for individual non-capped rate elements within the Basic Services Category and prices for any rate elements within the Interconnection and Non-Basic 1 Services Categories may be increased or decreased by varying amounts. Price increases for individual rate elements cannot exceed the percent change in the GDPPI over the preceding year, plus the percentages shown in the table below.

Service Category	Change in GDPPI plus
Basic	3%
Interconnection	7%
Non-Basic 1	15%

For example, the price increases for individual rate elements in the Basic Services Category cannot exceed five percent (5%), assuming a plus two percent (+2%) change in the GDPPI for the previous year. Price increases can be made at any time, subject to Commission review and approval; however, only one increase per individual rate element is allowed within the twelve-month period between anniversary dates of the Plan. Price decreases may be made at any time and are not limited as to the number of decreases in the twelve-month period between anniversary dates of the Plan. This provision shall apply to both capped and non-capped Basic rate elements after the expiration of the cap period and to all rate elements in the Interconnection and Non-Basic 1 Services Categories.

(6) In the annual filing to be effective at the beginning of the fourth year of the Plan, the PRI and the SPI associated with the Basic Services Category will be re-initialized as a result of removing the cap on capped Residence Local Exchange Services and the phased in local rates for the exchanges of Aberdeen, Broadway, Olivia, Sanford, and Wagram. 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 and the phased in local rates for the exchanges of Aberdeen, Broadway, Olivia, Sanford, and Wagram, 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 plus the revenues for the phased in local rates for the exchanges of Aberdeen, Broadway, Olivia, Sanford, and Wagram 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 ~~shall~~ <u>may</u> 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.

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 ~~percent~~ 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. 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	IXStatistical 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; Restructuring of Rates; Rebalancing of Rates and Reduction in Revenues

A. Expansion of Services

(1) Under the Plan, the majority of the customers in the five exchanges experiencing a rate increase in local residential rates, will have an expanded local calling scope to include specific EAS routes.

(2) A comparison between the existing local calling area and the proposed calling area for affected exchanges is shown in Attachment C.

B. Restructuring of Rates

(1) Basic Local Exchange Rates. Under the Plan, the Company's local service rates will be modified to be similar to the rates of BellSouth in most exchanges.

(2) Touch-Calling. Currently there is a separate charge for Touch-Calling service. This charge is eliminated under the Plan for all classes of service.

(3) Miscellaneous Recurring and Nonrecurring rates. Currently, the rates for some miscellaneous recurring and nonrecurring services vary between the Company's thirty-one exchanges as the result of the merger of Heins Telephone Company and Sandhill Telephone Company into ALLTEL Carolina, Inc. effective January 1, 1995. After the phase in of certain rates for the exchanges of Aberdeen and Wagram as shown in Attachment D, the rates under the Plan will be the same for each of these recurring and nonrecurring services in all of the Company's exchanges.

C. Rebalancing of Rates - Under the Plan, ALLTEL Carolina's rates will be rebalanced as shown on Attachment B, Attachment D, and Attachment E.

D. Reduction in Revenues - The rate design described in A, B, and C of this Section will result in an annual reduction in intrastate revenues of $7,483,036. The implementation of the one-way EAS routes described in A of this Section will also result in $132,000 additional annual intrastate terminating access expense, for a total annual reduction to the Company of $7,615,036 beginning the first year of the Plan.

(1) At each of the anniversary dates of the Plan for years two and three, revenues resulting from the phased in rate increases as shown in Attachments B and D for the Aberdeen, Broadway, Olivia, Sanford, and Wagram exchanges will be totally offset by the phased in rate reductions of the intrastate switched access charges as shown in Attachment E.

(2) The Company shall file tariffs for the initial rate changes as soon as reasonably possible after the Commission approves the Plan, to become effective within ninety (90) days of that approval. If the Commission approves a modified Plan, the Company will file tariffs for the initial rate changes at the time it accepts the modified Plan, to become effect within ninety (90) days from the date the Company accepts the modified Plan. The Company will file tariffs fourteen (14) days prior to the anniversary date of its Plan for years two and three to implement he phased in rates shown in Attachments B, D and E.

(3) The rate changes made pursuant to this Section of the Plan will not change the relationship between the SPI and PRI for the category of the affected services, and the Company will include in the tariff filing required by Subparagraph D(2). above, documentation demonstrating that the rate changes have not affected the relationship between SPI and the PRI for the category(ies) of the affected service(s).

Section 12. IntraLATA Presubscription

As part of this Plan ALLTEL Carolina commits to implement intraLATA presubscription in all of its exchanges concurrent with BellSouth's implementation of intraLATA presubscription in its North Carolina exchanges. In the event that BellSouth does not implement intraLATA Presubscription within three years following ALLTEL Carolina's implementation of this Plan, ALLTEL Carolina commits to implement intraLATA presubscription in all of its exchanges within three years following implementation of this Plan. ALLTEL Carolina will not seek rate adjustments under Section 7 of this Plan to offset the impacts of implementing intraLATA presubscription.

Section 13. 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-118, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of ALLTEL Carolina, Inc.	)	ORDER ON
for Approval of a Price Regulation	)	RECONSIDERATION
Plan Pursuant to N.C.G.S. §62-133.5(a)	)	

BY THE COMMISSION: On July 8, 1998, the Commission issued an Order in this Docket which approved the Stipulated Price Regulation Plan between ALLTEL Carolina, Inc. (ALLTEL) and the Public Staff with slight modification.

The Commission-approved Stipulated Price Regulation Plan allowed for ALLTEL to increase its originating carrier common line (CCL) charge from $0.00 per minute to $.007588 per minute and its terminating CCL charge from $0.0323 per minute to $0.0433 per minute over a three year period.

On July 22, 1998, AT&T Communications of the Southern States, Inc. (AT&T) filed its Motion for Reconsideration of the Commission's Order dated July 8, 1998. AT&T is requesting reconsideration of that portion of the Commission's Order which allows ALLTEL to raise its CCL charges. AT&T maintains that there is no basis in the record for increasing ALLTEL's CCL charges and requests that the Commission order that all increases to the CCL charges be eliminated.

AT&T stated that AT&T witness Guepe's testimony is uncontested and demonstrates that the CCL charge is a pure contribution element, or tax, for which there is no associated cost to ALLTEL. Additionally, AT&T noted that BellSouth's originating CCL charge has been reduced to zero effective June 24, 1998 under BellSouth's Price Regulation Plan. Finally, AT&T noted that no price regulation plan approved by this Commission has authorized an increase in the CCL charge and that ALLTEL has made no showing of fact to justify an increase in the CCL charges in this docket.

AT&T observed in its Motion that ALLTEL stated in its Post-Hearing Brief that it would not object to leaving its CCL charges at their existing levels, however, contended that some other rate element would have to be increased to keep the overall reduction in intrastate access revenue at the same level. AT&T, however, recommends that the Commission leave ALLTEL's CCL charges at their existing levels but not endorse an increase in any switched access rate elements.

On July 30, 1998, ALLTEL filed its Response to AT&T's Motion for Reconsideration. ALLTEL stated that AT&T's Motion should be denied because the Motion is nothing more than a rehash of exactly the same argument already advanced by AT&T in this Docket. ALLTEL maintained that AT&T presented no new or compelling reason for the Commission to reverse its decision. ALLTEL pointed out that while the Commission approved Price Regulation Plan allows ALLTEL to increase its CCL rates, the ***net*** result of the changes in ALLTEL's access rates is a substantial reduction in ALLTEL's intrastate access rates. ALLTEL noted that the change AT&T focuses on is simply a part of an overall switched access reduction. ALLTEL concluded that AT&T has offered no new or compelling reason for the Commission to reverse its decision and that the Commission should deny AT&T's Motion for Reconsideration.

The Commission believes that the issue raised in AT&T's Motion was thoroughly discussed in the record in this Docket. The Commission notes that *CCL charges are simply a component of access charges*. After the filing of AT&T's Motion for Reconsideration, however, the Commission finds that it is appropriate to grant AT&T's Motion for Reconsideration with regard to AT&T's request that the Commission not allow ALLTEL to increase its <u>originating</u> CCL charge in order for ALLTEL's originating CCL charge to be consistent with BellSouth's current originating CCL charge which is $0.00 effective June 24, 1998. AT&T Nobles Cross-Examination Exhibit 2 in the record of evidence is a schedule that compares the access charges among various incumbent local exchange companies (ILECs) in the State. The comparison shows that many ILECs currently do not have an originating CCL charge, and BellSouth's originating CCL has since been decreased to $0.00. However, all of the ILECs except ALLTEL currently have a terminating CCL charge of $0.0433. Under the Stipulated Price Regulation Plan, ALLTEL's terminating CCL would be increased to $0.0433 over a three year period.

Based on the record of evidence, the Commission finds that it is appropriate to grant AT&T's Motion, in part, by not allowing ALLTEL to increase its originating CCL charge. However, the Commission also denies AT&T's Motion for Reconsideration in part, and will allow ALLTEL to increase its terminating CCL charge as stipulated and will also allow ALLTEL to increase other access charges in order to generate the same previously approved reduction of $7,615,036. The Commission does not believe that AT&T presented a compelling argument to support its request for a greater reduction.

IT IS, THEREFORE, ORDERED as follows:

1. That AT&T's Motion for Reconsideration with regard to AT&T's request to deny ALLTEL an increase in its originating CCL charge is hereby granted.

2. That AT&T's Motion for Reconsideration with regard to AT&T's request to deny ALLTEL an increase in its terminating CCL charge or an increase in any switched access charge element to generate the revenue lost by not allowing ALLTEL to increase its originating CCL charge is hereby denied.

3. That the Commission finds it appropriate to request that ALLTEL and the Public Staff (and other interested parties of record) work together to propose a revised Stipulated Price Regulation Plan which would achieve the same annual reduction of $7,615,036 by increasing other access charge elements (except by increasing the terminating CCL charge to more than $0.0433) while holding ALLTEL's originating CCL charge at the level currently in effect which is $0.00.

4. That due to time constraints in this Docket, the Commission finds it appropriate to require ALLTEL to file the proposed revised Stipulated Price Regulation Plan within 20 days after the date of this Order on Reconsideration and further orders that interested parties should submit comments within 7 days after such a revised Plan is filed.

ISSUED BY ORDER OF THE COMMISSION.
This the 11th day of August, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-118, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application of ALLTEL Carolina, Inc.	)	ORDER
For Approval of a Price Regulation	)	CONCERNING NCPA
Plan Pursuant to G.S. 62-133.5(a)	)	MOTION

BY THE PRESIDING COMMISSIONER: On August 5, 1998, the North Carolina Payphone Association (NCPA) filed a Motion for Reconsideration or, in the alternative, Clarification in this docket. The NCPA noted that the Order issued on July 8, 1998, authorizing price regulation had approved rates for the provision of payphone line access service to payphone service providers. The NCPA stated that in approving these payphone rates, the Commission had made no reference to the controlling federal requirements in Section 276 of the Communications Act and the Federal Communications Commission's (FCC's) Orders but had applied the pre-existing payphone access rate formula (60% of the B1 tariff) to the revised rates. The NCPA contended that this formula had been superseded by federal law and that the so-called "new services" test must apply. The NCPA therefore requested that either the Commission reconsider its Order Authorizing Price Regulation to the extent necessary to bring it into compliance with federal law or the Commission clarify that its approval of the proposed payphone rates is not a determination under the new services test and does not prejudice such evaluation undertaken by the Commission in Docket No. P-100, Sub 84b.

On August 6, 1998, an Order Requesting Comments was issued directed at ALLTEL and the Public Staff.

On August 11, 1998, ALLTEL filed a Response. While noting that the NCPA is not even a party to Docket No. P-118, Sub 86, ALLTEL opposed the NCPA's request that the Commission now reconsider its decision as to the payphone rate component of the approved price regulation plan. However, ALLTEL conceded that the payphone rates established in the price regulation plan are subject to whatever review and analysis the Commission undertakes in Docket No. P-100, Sub 84b. Given this acknowledgment, there is not need for an Order of Clarification.

The Public Staff filed Comments on August 12, 1998, stating that it believed that neither reconsideration nor modification is necessary and that the NCPA motions should be denied. The Public Staff noted that the planned review process in Docket No. P-100, Sub 84b is independent of the adjustment of monthly payphone rates in the ALLTEL price plan. Since there will be many occasions in which the payphone rates in one exchange or another will be adjusted, the Commission should not put itself in a position of having to clarify its intention on each of these occasions

After careful consideration, the Presiding Commissioner concludes that, for the reasons stated by ALLTEL and the Public Staff, there is no need to reconsider or otherwise "clarify" the status of payphone rates for ALLTEL. This matter has further been rendered moot by ALLTEL's acknowledgment that those payphone rates are subject to the Docket No. P-100, Sub 84b review process.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE PRESIDING COMMISSIONER.
This the _14th_ day of August, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-118, SUB 86

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of	)	
Application of ALLTEL Carolina, Inc.	)	ORDER APPROVING
for Approval of a Price Regulation	)	ALLTEL'S REVISED PRICE
Plan Pursuant to N.C.G.S. §62-133.5(a)	)	REGULATION PLAN

BY THE COMMISSION: On July 8, 1998, the Commission issued an Order in this Docket which approved the Stipulated Price Regulation Plan between ALLTEL Carolina, Inc. (ALLTEL) and the Public Staff with slight modification.

On July 22, 1998, AT&T Communications of the Southern States, Inc. (AT&T) filed its Motion for Reconsideration of the Commission's Order dated July 8, 1998. AT&T requested reconsideration of that portion of the Commission's Order which allows ALLTEL to raise its carrier common line (CCL) charges.

On July 30, 1998, ALLTEL filed its Response to AT&T's Motion for Reconsideration. ALLTEL stated that AT&T's Motion should be denied because the Motion is nothing more than a rehash of exactly the same argument already advanced by AT&T in this Docket.

On August 11, 1998, the Commission issued its Order on Reconsideration in this docket. The Commission requested that ALLTEL and the Public Staff (and other interested parties of record) work together to propose a revised Stipulated Price Regulation Plan which would achieve the same annual reduction of $7,615,036 by increasing other access charge elements (except by increasing the terminating CCL charge to more than $0.0433) while holding ALLTEL's originating CCL charge at the level currently in effect which is $0.00. The Commission also ordered ALLTEL to file the revised Stipulated Price Regulation Plan within 20 days after the date of the Order on Reconsideration and allowed interested parties to submit comments within 7 days after such a revised Plan was filed.

On August 31, 1998, ALLTEL filed its revised Price Regulation Plan in compliance with the Commission's Order on Reconsideration. The Commission notes that ALLTEL's August 31, 1998 Price Regulation Plan also reflects the changes in ALLTEL's Price Regulation Plan ordered by the Commission in its July 8, 1998 Order Authorizing Price Regulation. ALLTEL noted that the Public

Staff had reviewed and approved the proposed revisions. No party filed comments on the revised Price Regulation Plan.

After reviewing the revised Price Regulation Plan filed by ALLTEL on August 31, 1998, the Commission finds it appropriate to accept and approve ALLTEL's revised Price Regulation Plan as the final Commission-approved Price Regulation Plan for ALLTEL.

IT IS, THEREFORE, ORDERED as follows:

1. That the revised Price Regulation Plan filed by ALLTEL on August 31, 1998 is approved for implementation by ALLTEL effective not later than 90 days after the date of this Order.

2. That ALLTEL shall file appropriate tariffs in conformity with the provisions of the August 31, 1998 revised Price Regulation Plan and a copy of the August 31, 1998 revised Price Regulation Plan reflecting an effective date that corresponds with the effective date of said Plan.

ISSUED BY ORDER OF THE COMMISSION.
This the 15th day of September, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-141, SUB 34
DOCKET NO. P-283, SUB 20
DOCKET NO. P-156, SUB 29
DOCKET NO. P-474, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.	)))	ORDER APPROVING TRANSFER OF CONTROL

HEARD: Tuesday, January 13, 1998, at 9:30 a.m. in the Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Commissioner Allyson K. Duncan, Presiding; Commissioners J. Richard Conder and Robert V. Owens, Jr.

APPEARANCES:

For WorldCom, Inc.:

James P. West, Evans West & Woods, P.A., Post Office Box 2777, Raleigh, NC 27602

For MCI Telecommunications Corporation:

Ralph McDonald, Bailey & Dixon, L.L.P., Post Office Box 1351 Raleigh, NC 27602-1351

For GTE Corporation and GTE Communications Corporation:

Robert W. Kaylor, PA, 225 Hillsborough Street, Suite 480 Raleigh, NC 27603

Joe W. Foster, GTE Corporation, 4100 N. Roxboro Road, Durham, NC 27704

For the Using and Consuming Public:

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

BY THE COMMISSION: This matter comes before the Commission upon the Application filed on October 23, 1997, by WorldCom, Inc. (WorldCom), as amended by a Joint Amendment to Application filed on November 25, 1997, by WorldCom and MCI Communications Corporation (MCI) (together the Applicants). In the Application, the Applicants seek the authority of the Commission to transfer control of the MCI subsidiaries which have previously been granted a Certificate of Public Convenience and Necessity (Certificate) to provide certain types of telecommunications services in North Carolina to WorldCom. A copy of the Agreement and Plan of Merger was attached to the Joint Amendment to Application.

On November 21, 1997, GTE Corporation and GTE Communications Corporation (collectively, GTE) filed a Petition to Intervene, and on November 26, 1997, the Commission granted GTE's Petition. GTE's first set of data request was served on WorldCom and MCI on December 17, 1997. On January 6, 1998, WorldCom and MCI filed its objections and responses to GTE's first set of data request. On January 12, 1998, GTE filed a Motion requesting that the Commission issue an Order compelling WorldCom and MCI to respond to GTE's first set of data requests. This Motion is currently pending before the Commission. A Notice of Intervention was also filed on January 7, 1998 by the Attorney General.

An Order was issued on December 23, 1997, setting the Application for Oral Argument on January 13, 1998. Oral Argument was heard as scheduled, and arguments were presented by counsel for WorldCom, MCI, GTE, and the Attorney General.

After careful consideration and review of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. WorldCom is a Georgia corporation publicly traded on the NASDAQ stock market under the stock symbol WCOM. Its principal offices are located at 515 East Amite Street, Jackson, Mississippi 39201-2702. WorldCom is a global telecommunications company whose existing operating subsidiaries offer service throughout the United States and in more than 50 countries worldwide, and provide a wide variety of facilities-based and resold local, long distance, and international voice and data communications services. Through certain of its operating subsidiaries, WorldCom is authorized to offer intrastate telecommunications services nationwide, including in the State of North Carolina, and is also authorized by the FCC to offer domestic interstate and international services as a non-dominant carrier nationwide.

2. WorldCom is the nation's fourth largest interexchange carrier. In 1996, WorldCom had revenues of approximately $4.5 billion. In addition, WorldCom is operated by a management team with extensive backgrounds in telecommunications. Following the merger, the combined company will be able to call upon existing WorldCom and MCI management personnel.

3. MCI is a Delaware corporation publicly traded on the NASDAQ Stock Market under the stock symbol MCIC. Its principal offices are located at 1801 Pennsylvania Avenue, N.W., Washington, D.C. 20006-3606. MCI's operating subsidiaries offer a variety of local, long distance, and international voice and data communications services nationwide. Through certain of its operating subsidiaries, MCI is authorized to offer intrastate telecommunications services nationwide, including in the State of North Carolina, and is also authorized by the FCC to offer domestic interstate and international services as a non-dominant carrier nationwide. In North Carolina, MCI Telecommunications Corporation, Inc. (MCIT) is authorized to provide intrastate interexchange telecommunications services pursuant to a Certificate granted by the Commission in Docket No. P-141. SouthernNet, Inc. (SouthernNet) is an authorized reseller of intrastate long distance

service pursuant to a Certificate granted by the Commission in Docket No. P-156. MCImetro Access Transmission Services, Inc. (MCImetro) is an authorized competing local exchange and exchange access provider pursuant to a Certificate granted by the Commission in Docket No. P-474.

4. Applicants request approval of a proposed transaction, whereby MCI will merge with and into TC Investments Corp., a wholly owned subsidiary of WorldCom, at which time TC Investments Corp. will be renamed MCI Communications Corporation. That surviving company will be a wholly owned subsidiary of WorldCom, which will be renamed MCI WorldCom. MCIT, SouthernNet, and MCImetro will remain subsidiaries of MCI following the merger.

5. The Merger Agreement provides that MCI's Chairman, Bert C. Roberts, Jr., will become chairman of MCI WorldCom and WorldCom's President and Chief Executive Officer, Bernard J. Ebbers, will become Chief Executive Officer of MCI WorldCom. Under the terms of the Merger Agreement, holders of MCI Common Stock will receive shares of WorldCom Common Stock pursuant to an agreed upon Exchange Ratio. Upon completion of the merger, current holders of MCI's Common Stock will own approximately 45% of the combined company as determined by the Exchange Ratio as of the closing date.

6. The Applicants submit that the proposed merger is in the public interest for several reasons. First, the Applicants have publicly stated that cost savings of over $2 billion annually are expected as a result of combining WorldCom and MCI. Second, the combined companies will form a viable competing local provider which will be well-positioned to compete against incumbent local exchange companies and to offer competitive choices to consumers. Third, the Applicants believe that the merger will allow them to serve more customers and increase their physical facilities at a faster rate since the costs of such facilities will be spread over the combined customer base. Finally, the Applicants state that the services provided by MCI's operating subsidiaries and WorldCom's existing operating subsidiaries will continue to be provided under the same terms and conditions.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

In considering the proposed merger of WorldCom and MCI, and the resulting transfer of control of MCIT, SouthernNet, and MCImetro, the Commission must determine whether the transfer of control is in the public interest pursuant to G.S. 62-111(a). Based upon the foregoing Findings of Fact and the entire record in this proceeding, the Commission finds and concludes that the proposed transfer of control is in the public interest. Further, the Commission concludes there is no evidence to suggest that the proposed merger and transfer of control will have any adverse impact on the criteria considered by the Commission in granting MCIT and SouthernNet a Certificate to offer intrastate interexchange services in North Carolina and granting MCImetro a Certificate to offer local exchange and exchange access services as a competing local provider.

GTE made a competing offer to acquire control of MCI, but MCI's Board of Directors did not accept GTE's offer and unanimously approved the WorldCom proposal. GTE Corporation's affiliate, GTE Communications Corporation, has previously been granted a Certificate to operate as a competing local provider and to offer intrastate interexchange services as a switchless reseller in North Carolina. In provisioning its long distance services, GTE Communications Corporation purchases most of its transmission capacity from WorldCom and resells this underlying basic long distance service to end-users under the GTE brand name. At the Oral Argument granted upon GTE's request, GTE stated its belief that the Applicants had not sufficiently demonstrated that the proposed merger was in the public interest and would diminish competitive choices for consumers. Further, GTE requested an evidentiary hearing. GTE explained that WorldCom has aggressively pursued providing wholesale interexchange services to resellers such as GTE's affiliate. According to GTE, WorldCom has been far more price competitive than the other interexchange carriers in providing services such as advanced features and capabilities to its wholesale customers that other large interexchange carriers have refused to provide to resellers. If the merger is consummated, GTE is particularly concerned that WorldCom will not continue to provide services to resellers because the reseller would be competing with MCI for intrastate long distance customers.

The Commission concludes that the concerns expressed by GTE do not warrant further Commission investigation in this matter at this time. GTE opines that the proposed merger will reduce WorldCom's incentives to enter wholesale supply arrangements with resellers, such as GTE Communications Corporation. However, by GTE's own admission, WorldCom has thus far been a maverick in the industry in its willingness to provide resellers with better wholesale supply arrangements than the other major facilities-based interexchange carriers. Further, the Applicants have repeatedly stated on the record that the WorldCom and MCI subsidiaries will continue to offer the same services under the same terms and conditions. Therefore, the Commission finds no reason to proceed to an evidentiary hearing on the basis of concerns which GTE anticipates may occur as a result of the merger. In the future, if the merger is consummated and GTE feels that the Applicants are engaging in anticompetitive behavior and exercising unjust market power, GTE may seek relief in the appropriate venue at that time. Moreover, the Commission notes that the concerns expressed by GTE are not necessarily specific to North Carolina and are being raised before the Federal Communications Commission and the United States Department of Justice, which must approve the proposed merger prior to its closing.

Pursuant to G.S. 62-111(a), the Commission finds and concludes that the merger is in the public interest in North Carolina for the reasons stated by the Applicants and should be approved without undue delay. Further, the Commission's findings and conclusions that the merger should be approved render GTE's data request to WorldCom and MCI moot, therefore GTE's pending Motion to compel WorldCom and MCI to respond should be denied.

IT IS, THEREFORE, ORDERED as follows:

1. That the request of WorldCom filed on October 23, 1997, as amended by the Joint Amendment to Application of WorldCom and MCI filed on November 25, 1997, for approval to transfer control of MCI to WorldCom is hereby approved.

2. That Applicants shall notify the Commission within thirty (30) days after the consummation of the proposed merger.

3. That the Motion of GTE to compel WorldCom and MCI to respond GTE's first set of data requests is denied.

ISSUED BY ORDER OF THE COMMISSION.
This 10th day of March, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. P-141, SUB 34
DOCKET NO. P-283, SUB 20
DOCKET NO. P-156, SUB 29
DOCKET NO. P-474, SUB 5

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Joint Application for Approval to Transfer Control of MCI Communications Corporation to WorldCom, Inc.	)))	ORDER DENYING MOTION FOR RECONSIDERATION

BY THE COMMISSION: On March 10, 1998, the Commission issued an Order Approving Transfer of Control in this Docket. Said Order was entered after careful consideration and review of the entire record in this proceeding, including concerns expressed by GTE Corporation and GTE Communications Corporation (collectively, GTE), as intervenors, during oral argument heard by the Commission on January 13, 1998.

On April 9, 1998, GTE filed a Motion for Reconsideration of the Order Approving Transfer of Control (Motion). In its Motion, GTE continues to urge the Commission to hold an evidentiary hearing, or in the alternative, defer ruling on the petition until all national inquiries are finished and any changes in the structure of the merger are known.

WorldCom, Inc. and MCI Communications Corporation filed their joint opposition to GTE's Motion on April 17, 1998.

Having carefully considered GTE's Motion, the Commission concludes that GTE's Motion presents no new or compelling reason which warrants reconsideration of this matter by the Commission. Therefore, GTE's Motion is denied.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.
This 27th day of April, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

DOCKET NO. P-141, SUB 36

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Tariff Filing by MCI Telecommunications Corporation to Revise the Rate for its Execunet and Credit Card Services, Increase the Rates for Operator Calls, to Impose a Payphone Surcharge, and to Make Miscellaneous Text Changes	)))))	ORDER CONCERNING MOTION FOR RECONSIDERATION

BY THE COMMISSION: On March 17, 1998, MCI Telecommunications Corporation (MCI) filed tariffs to revise the rates for its Execunet and credit card services, together with other changes. MCI provided customer notice with its tariff filing, but the Public Staff concluded that the notice was inadequate. Pursuant to the Commission's Ceiling Rate Plan, the notices were sent to MCI subscribers at least 14 days prior to April 1, 1998, the effective date for the tariff.

This matter came before the Regular Commission Conference on April 6, 1998. The Public Staff argued that MCI's Notice did not adequately describe all the changes reflected in its tariff filing. For example, MCI revised the time-of-day structure for Execunet service but does not indicate when peak rates apply and when off-peak rates apply. Proposed usage rates contained in the Notice do not reflect the rates contained in MCI's proposed tariff. The notice also does not accurately reflect when the per-call surcharge applies to payphone calls. The Public Staff recommended that the rate changes proposed by MCI for its Execunet service as well as the payphone surcharge proposed by MCI be denied pending adequate notice. The Public Staff also recommended that MCI be required to make refunds to any customers paying increased rates prior to obtaining adequate notice as a result of these changes. The Commission issued an Order on April 7, 1998, concluding that the rate changes proposed by MCI for its Execunet service as well as the proposed payphone surcharge should be suspended pending adequate customer notice.

MCI Motions

On April 23, 1998, MCI filed Motions for Reconsideration and Stay. MCI's main argument was that the Commission lacks the authority to suspend a tariff once it has gone into effect if the ground for such suspension is insufficiency of notice. In support of its argument, MCI noted that G.S. 62-134(a) provides that changes in rates may become effective after 30 days notice or a shorter period prescribed by the Commission--which the Commission did by prescribing the 14-day notice period in the Ceiling Rate Plan. G.S. 62-134(b) authorizes the suspension of proposed rate changes "at any time before they become effective" (emphasis added). There is a procedure for challenging effective rates in G.S. 62-136 whereby the Commission, after notice and hearing, changes rates that are found to be unjust, unreasonable, insufficient, or discriminatory or in violation of any provision of law; but, in the instant case, there has been neither allegation nor proof that the rates would meet any of these criteria. The only impropriety is the alleged inadequacy of notice.

MCI believes that the Notices are adequate since they state the nature, amount, and effective date of the rate changes and direct customers to MCI customer service without charge if they have questions. The provision of notice is a complicated affair, requiring at least 120 days lead time for bill inserts. Suspension of the tariffs will mean delay for more than four months. Although the Notices are adequate, MCI stated that it would be willing to undertake corrective steps in order to avoid an appeal. It is willing to furnish further explanation through newspaper publication or by a "marketing message" to be included in future subscriber bills. MCI will also refund charges to any subscriber who believes that he has been misled.

MCI noted that it has the right under G.S. 62-90 to appeal from the Commission's Order on or before May 7, 1998. MCI therefore requested that the Order be stayed until the earlier of May 7, 1998, or such time as a subsequent MCI petition under G.S. 62-95 for a stay pending appeal is granted or denied.

On May 6, 1998, MCI filed a Motion for Extension of Time to File Exceptions and Notice of Appeal with respect to this matter. MCI was granted a 30-day extension of time by Order of the Chair entered May 7, 1998.

Public Staff Response

On May 8, 1998, the Public Staff filed a Response to MCI's Motions. The Public Staff argued that the "provision of both adequate and timely notice is required before a tariff can become effective under the Ceiling Rate Plan" and that, accordingly, the 14-day suspension period does not begin until a tariff is filed and adequate notice is given. The Public Staff contended that MCI was informed well within 14 days of providing a copy of the notice to the Public Staff that the notice was inadequate. Having nevertheless proceeded to implement the tariff, MCI did so at its own risk.

The Public Staff also maintained that the Commission has the authority to revisit rates allowed to go into effect. Utilities Commission v. Edmisten, Attorney General, 291 N.C. 327, 230 S.E.2d 651 (1976) (Edmisten). This decision notes the Commission's power to revise rates "from time to time as often as circumstances may require." G.S. 62-130(d). The decision also cites G.S. 62-132 which authorizes the Commission, after petition and hearing, to find rates to be other than those established by the Commission and to be unjust and unreasonable and to require refunds for same.

The Public Staff concluded by arguing that the rates in question were not "established" within the meaning of Chapter 62. Therefore, even if the tariff technically became effective--which the Public Staff denies--then the Commission has the authority to require the tariff to be revised and to require refunds.

MCI Reply

On May 13, 1998, MCI filed a Reply to the Public Staff's Response. MCI disagreed with the Public Staff's position asserting that the 14-day suspension period does not begin until adequate notice is given. If that were true, then this would mean that rate changes could be challenged at any time, even after the rates go into effect. No utility could ever change rates with certainly except in a general rate case--which would not be consistent with the regulatory scheme established by the General Assembly. As for the Public Staff's citation to Edmisten, MCI argued that its holding supports MCI's position. MCI contended that the notice period is not only a minimum notice period for utility customers and the Commission, it is also a maximum waiting period for the filing utility.

WHEREUPON, the Commission reaches the following

CONCLUSIONS

The Commission reluctantly concludes that is should grant MCI's Motion for Reconsideration in this instance. After much consideration, the Commission believes that MCI's argument that the Commission lacks the authority to suspend a tariff once it has gone into effect, if the ground for such suspension is inadequacy of notice, is the more persuasive one.

The Public Staff has argued that the 14-day suspension period does not begin until after the tariff is filed and adequate notice is given. However, the Ceiling Rate Plan does not precisely say this. Instead the relevant portion of the Ceiling Rate Plan reads as follows:

> To increase rates the facilities-based carriers and resellers other than AT&T . . . must file tariffs and a proposed subscriber notice or notices with the Public Staff at least 14 days prior to the effective date of the change. In addition, the proposed notice to customers must be sent to the affected subscribers at least 14 days prior to the effective date of the change. If the proposed notice is found to be inadequate, the implementation date of the rate change will be suspended until such time as the customers are adequately notified. . . .

Contextually, it seems evident that the company is to submit the notice or notices for review at least 14 days prior to the effective date and that the Public Staff has that 14-day period in which to assess the adequacy of the notice. See also G.S. 62-134(b) (suspension of rates authorized before they become effective).

Moreover, to hold otherwise would bring further uncertainty into the tariff process. The Commission believes that, given today's competitive conditions, there needs to be a bright line drawn as to when a tariff may be suspended and when it becomes effective. The 14-day period from filing was intended to provide that "window of opportunity" for the Public Staff to file its objections and request suspension.

The Public Staff's citations to G.S. 62-130 and 62-132 are similarly inapposite. The question here is not whether the rates being charged are just and reasonable but whether adequate notice has been given. Inadequacy of notice does not of itself render the rates unjust and unreasonable and thus susceptible to later suspension once they have become effective. This does not mean, however, as MCI appears to contend, that the Commission is without authority to investigate the justness and reasonableness of allowed rates, based on considerations other than adequacy of notice by itself, after the permissible time period for suspension has expired. To the contrary, the Edmisten case and G.S. 62-130, et seq., clearly authorize the Commission to investigate and revisit rates which have been allowed to become effective. Furthermore, the Commission retains the authority, where it finds deficiencies in the notice given by the utility, to require additional notice or other appropriate remedial measures even after the permissible time period for suspension of allowed rates has expired and even if there is otherwise no question as to the justness and reasonableness of the allowed rates.

Having made these points, the Commission shares the Public Staff's discomfort and displeasure with this filing. The Public Staff communicated its views to MCI on the inadequacy of notice before the item was presented and the tariffs became effective, but MCI proceeded anyway. Furthermore, the Commission has itself found that the notice was inadequate. Nevertheless, under the circumstances, the Commission believes that the better course of action at this time is to reluctantly reconsider and accept the reparations measures proposed by MCI, but to also express strong disappointment that MCI, after being notified of the Public Staff's opposition, chose to implement the tariff changes rather than at least waiting for the Commission to consider the matter at the Staff Conference held on April 6, 1998.

Accordingly, in order to prevent such problems from occurring in the future, the Commission further determines that it will, by this Order, institute and announce a policy as a result of this case which will allow the Public Staff, if it finds that its review of a tariff is coming up against the 14-day deadline before the next Regular Commission Conference, to file a motion seeking suspension, which motion would be granted for good cause by the Chair on an ex parte basis subject to later comment.

IT IS, THEREFORE, ORDERED as follows:

1. That MCI's Motion for Reconsideration be granted, provided that MCI furnishes further explanation of these tariff changes through newspaper publication and by a marketing message to be included in future subscriber bills. These notices shall indicate that any subscriber who believes he or she has been misled may receive a refund of applicable charges.

2. That the Chief Clerk shall mail a copy of this Order all interexchange carriers certificated to provide intrastate telecommunications services in North Carolina and all parties to Docket No. P-100, Sub 72.

ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of May, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner William R. Pittman dissents.
Commissioner J. Richard Conder did not participate.

DOCKET NO. P-141, SUB 36
COMMISSIONER WILLIAM R. PITTMAN, DISSENTING

I respectfully dissent. While I do not completely agree with the Public Staff's reasoning in the matter, I do agree with the conclusion that the Commission has sufficient authority to suspend the proposed rates until the Commission determines that adequate public notice has been given. The Ceiling Rate Plan clearly states that "[i]f the proposed notice is found to be inadequate", as we have previously ruled, "the implementation date of the rate change will be suspended until such time as the customers are adequately notified...". (Emphasis added.) There is nothing in the Plan which limits suspension only to the time prior to the end of the 14-day period. There is adequate statutory and case authority for the Commission's authority to follow the plain words of the Plan. MCI's contemptuous treatment of the Public Staff's objections to the proposed public notice is not helpful to its argument. I would deny the motion to reconsider.

\s\ William R. Pittman
William R. Pittman

DOCKET NO. P-55, SUB 1022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of BellSouth Telecommunications, Inc., to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996	)))	ORDER REGARDING SECTION 271 REQUIREMENTS

HEARD: September 22, 1997 - October 1, 1997, Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina

BEFORE: Chairman Jo Anne Sanford, Presiding; and Commissioners Allyson K. Duncan, Ralph A. Hunt, Judy Hunt, William R. Pittman, J. Richard Conder, and Robert V. Owens, Jr.

APPEARANCES:

For BellSouth Telecommunications, Inc.:

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For The Alliance of Independent Telephone Companies and Concord Telephone Company:

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For Time Warner Communications of North Carolina, L.P., and the North Carolina Cable Telecommunications Association:

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For WorldCom, Inc., and Competitive Telecommunications Association:

James P. West, Evans, West and Woods, PA, Attorneys at Law, Post Office Box 2777, Raleigh, North Carolina 27602

For the Using and Consuming Public:

Antoinette R. Wike, Chief Counsel, Paul L. Lassiter, Staff Attorney, and Amy Barnes Babb, Staff Attorney, Public Staff, Post Office Box 29520, Raleigh, North Carolina 27626-0520

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

BY THE COMMISSION: On August 5, 1997, BellSouth Telecommunications, Inc. (BellSouth), filed with the North Carolina Utilities Commission (Commission), pursuant to the Commission's Orders in this docket of August 21, 1996 and April 24, 1997, its Notice of Intent to File, on or after December 3, 1997, a 42 U.S.C. 271 Application for InterLATA Authority with the Federal Communications Commission (FCC). In its notice, BellSouth requested that the Commission set this matter for hearing to respond to the FCC's request for consultation pursuant to Section 271(d)(2)(B) of the Telecommunications Act of 1996 (TA96 or the Act); to consider, evaluate, and approve BellSouth's Statement of Generally Available Terms (SGAT) pursuant to Section 252(f) of the Act; to find that BellSouth's SGAT meets the requirements of the 14-point checklist set forth in Section 271(c)(2)(B) of the Act; to establish an information-gathering process to determine the presence in North Carolina of one or more "unaffiliated competing providers of telephone exchange service to residential and business subscribers;" and to find that the request of BellSouth Long Distance, Inc. (BSLD) to enter the long distance market in North Carolina is consistent with the public interest, convenience and necessity in accordance with Section 271(d)(3)(C) of the Act.

By Order dated August 11, 1997, the Commission scheduled the matter for hearing beginning at 1:00 p.m. on Monday, September 22, 1997, required all competing local providers (CLPs) certificated by the Commission to file monthly reports to a series of questions attached to the Order beginning on the first day of December 1997, and scheduled testimony and proposed order filing dates. The parties were required to file their list of witnesses, the preferred order for those witnesses, and approximate cross-examination times by Wednesday, September 17, 1997.

On August 29, 1997, MCI Telecommunications Corporation (MCI) and AT&T Communications of the Southern States, Inc. (AT&T) jointly filed a Motion to Dismiss BellSouth's Notice of Intent. On September 3, 1997, Time Warner Communications of North Carolina, L.P., (Time Warner) filed a Motion to Dismiss or Suspend the Docket. Sprint Communications Company L.P. (Sprint) filed a Concurrence to these motions on September 5, 1997. On September 5, 1997, BellSouth filed its response in opposition to the Motions to Dismiss. On September 10, 1997, the Commission denied the Motions to Dismiss.

Numerous other motions and pleadings have been filed in this docket, including numerous motions to intervene, and various orders have been issued by the Commission addressing those motions and pleadings. All of those motions, pleadings, and Commission Orders are matters of public record and are contained in the official files maintained by the Chief Clerk of the Commission.

At the evidentiary hearing, which began as scheduled on September 22, 1997, the parties offered the testimony of the following witnesses: BSLD - the testimony of William E. Taylor, Senior Vice President of National Economic Research Associates, Inc.; Michael Raimondi, Executive Vice President of the WEFA Group; John E. Connaughton, Professor of Economics at the University of North Carolina at Charlotte and Director of the North Carolina Economic Forecast; and James G. Harralson, Vice President, General Counsel and Secretary; BellSouth - the testimony of Alphonso J. Varner, Senior Director for Regulatory; Gloria Calhoun, Director of Regulatory Planning; Jerry W. Moore, Director in the Interconnection Operations Department; and W. Keith Milner, Director, Interconnection Operations; Intermedia Communications, Inc. (Intermedia) - the testimony of Julia Strow, Director, Strategic Planning and Industry Policy; AT&T - the testimony of John M. Hamman, Technical Support Manager; Jay Bradbury, Manager in the Local Infrastructure and Access Management Organization; and Katherine N. Dailey, Staff Manager, Local Services Division Negotiations Support; MCI - the testimony of Ronald Martinez, Executive Staff Member II; AT&T and MCI jointly offered the testimony of David Kaserman, Torchmark Professor of Economics at Auburn University, and Richard Cabe, economist; AT&T, MCI, Competitive Telecommunications Association (CompTel), and WorldCom, Inc. (WorldCom) jointly offered the testimony of Joseph Gillan, economist; Sprint offered the testimony of Tom Nelson, Group Manager-Systems Planning and Integration, and Melissa Closz, Director-Local Market Development; TCG of the Carolinas, Inc. (TCG) offered the testimony of Paul Kouroupas, Vice President, Regulatory and External Affairs, and Frank Hoffman, Regional Director of Carrier Relations; KMC Telecom, Inc. (KMC) offered the testimony of Donald Menendez, Manager of Cost Engineering; DeltaCom, Inc. (DeltaCom) offered the testimony of Steven Moses, Vice President of Network Services, which was adopted by Sandra Stisher, Vice President of Information and Services and Account Services; and CaroNet, LLC (CaroNet) offered the testimony of Christopher Darby, President and CEO.

Local Competition in North Carolina
House Bill 161

During the 1995 Legislative Session, the North Carolina General Assembly enacted House Bill 161, entitled "An Act to Provide the Public with Access to Low-Cost Telecommunications Service in a Changing Competitive Environment." This amended Chapter 62 of the North Carolina General Statutes to permit telecommunications public utilities subject to rate of return regulation pursuant to G.S. 62-133 to elect a form of price regulation in lieu of rate of return regulation and to allow competing local providers to enter the local telecommunications market where such entry is determined by this Commission to be in the public interest. House Bill 161 became effective on July 1, 1995, and on October 4, 1995, BellSouth filed an application for an election of price regulation with the Commission under G.S. 62-133.5. BellSouth's application for price regulation was followed on October 23, 1995, by applications for price regulation by Carolina Telephone and Telegraph Company (Carolina) and Central Telephone Company (Central). On November 1, 1995, GTE South Incorporated (GTE) also filed an application for price regulation.

Under G.S. 62-133.5, the Commission is required, *inter alia*, to allow an electing local exchange company such as BellSouth to (1) set and determine its own depreciation rates; (2) rebalance its rates; and (3) adjust its prices in the aggregate, or adjust its prices for various aggregated categories of service, based upon changes in generally accepted indices of prices. This statute requires notice and hearing of applications for a price plan, allows different forms of price regulation between local exchange companies, and requires the Commission to approve price regulation upon finding that the proposed plan:

(1) Protects the affordability of basic local exchange service, as such service is defined by the Commission;
(2) Reasonably assures the continuation of basic local exchange service that meets the 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.

On May 2, 1996, the Commission entered Orders in these dockets authorizing Commission-approved Price Regulation Plans for BellSouth, Carolina, Central, and GTE. By those Orders, the above-referenced local exchange companies (LECs) were required, not later than Monday, May 20, 1996, to file statements with the Commission stating whether they would accept and agree to all the terms, conditions, and provisions of the Commission-approved price regulation plans and indicate their willingness to implement those plans effective June 3, 1996. On May 20, 1996, BellSouth, Carolina, Central, and GTE each filed statements of acceptance regarding their respective price regulation plans. By Order entered in Docket No. P-16, Sub 181 on May 30, 1997, the Commission approved a price regulation plan for Concord Telephone Company (Concord). On June 6, 1997, Concord filed a statement of acceptance of that plan.

On July 3, 1995, the Commission received its first applications requesting certification as CLPs when both MCImetro Access Transmission Services, Inc. (MCImetro), and Time Warner filed for certificates. On March 12, 1996, the Commission issued its first order granting a CLP certificate. That certificate went to MCImetro. Shortly thereafter, the Commission issued CLP certificates to AT&T, Sprint, and GTE. As of October 1, 1997, the Commission had issued CLP certification to more than 30 applicants, including many of the intervenors in this Section 271 proceeding.

The Telecommunications Act of 1996

On February 8, 1996, President Clinton signed into law the Telecommunications Act of 1996. Section 252 of the Act provides that an incumbent local exchange carrier (ILEC) receiving a request for interconnection may negotiate and enter into a binding agreement with the requesting telecommunications carrier. The Act further provides in Section 252(b) that during the period from the 135th to the 160th day after the date on which an incumbent carrier received a request for negotiation under this section, the carrier or any party to the negotiations may petition a State Commission to arbitrate any open issues.

On July 17, 1996, AT&T filed a petition with the Commission pursuant to Section 252(b) of TA96 and G.S. 62-110(f), requesting that this Commission arbitrate certain terms and conditions with respect to interconnection between AT&T, as the petitioning party, and BellSouth. On August 23, 1996, MCI filed a petition also requesting that this Commission arbitrate certain terms and conditions with respect to interconnection between MCI, as a petitioning party, and BellSouth.

By Order entered in Docket Nos. P-140, Sub 50, and P-100, Sub 133, on August 19, 1996, the Commission adopted certain procedures governing the arbitration proceedings, excluding intervenors other than the Attorney General from participating in the proceedings, and scheduled the AT&T/BellSouth proceeding for hearing beginning Monday, September 30, 1996. By Order of August 28, 1996, the Commission consolidated the AT&T/BellSouth arbitration in Docket No. P-140, Sub 50, with the MCI/BellSouth arbitration proceeding in Docket No. P-141, Sub 29.

The purpose of these proceedings was for the Commission to resolve the issues set forth in the petitions by AT&T and MCI pursuant to Section 252(b)(4)(C) of the Act. The Commission was directed by the Act to ensure that its arbitration decision meets the requirements of Section 251 and any valid FCC regulations pursuant to Section 252, to establish rates according to the provisions of Section 252(d) for interconnection, services, or network elements, and to provide a schedule for implementation of the terms and conditions by the parties to the agreement.

Pursuant to Section 252 of the Act, the FCC issued a First Report and Order in CC Docket Nos. 96-98 and 95-185 on August 8, 1996 (Interconnection Order). This Order adopted a forward-looking incremental costing methodology for pricing unbundled telephone network elements which an incumbent local 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 have appropriate costing studies for unbundled elements of wholesale services. Several parties, including this Commission, appealed from the Interconnection Order; and on October 15, 1996, the United States Court of Appeals for the Eighth Circuit (Eighth Circuit Court) issued a stay of the FCC's pricing provisions and its "pick and choose" rule pending the outcome of the appeal. On July 18, 1997, the Eighth Circuit Court reversed the FCC with respect to certain portions of the FCC's Interconnection Order. Upon rehearing, the Eighth Circuit Court issued a further Order on October 14, 1997.

On December 23, 1996, the Commission issued Recommended Arbitration Orders (RAOs) on AT&T's and MCI's petitions for arbitration. These RAOs required AT&T, MCI, and BellSouth to jointly prepare and file Composite Agreements in conformity with the conclusions of the RAOs within 45 days. BellSouth, AT&T, and MCI filed Comments and Objections to these RAOs. Comments and Objections were also filed by various parties including the Attorney General. BellSouth, AT&T, and MCI also filed with the Commission lists of unresolved items. The Commission, by Orders issued on April 11, 1997, ruled on the Comments and Objections. Pursuant to those Orders, BellSouth filed signed interconnection agreements with AT&T and MCI. As of the present date, BellSouth has signed more than 30 interconnection agreements with CLPs in its North Carolina service area.

In addition to negotiating and arbitrating private interconnection agreements with CLPs, the Act provides under Section 252(f)(1) that a Bell Operating Company (BOC) may prepare and file with a State Commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirements of Section 251 and the regulations thereunder. Under Section 252(f)(2), a State Commission may not approve such statement unless it complies with Section 251 and the pricing standards for interconnection, unbundled network elements (UNEs), and resale contained in Section 252(d). BellSouth filed an SGAT with this Commission on August 5, 1997, as noted above.

The Statutory Framework of This Proceeding

The Act conditions BOC entry into in-region interLATA services on compliance with certain provisions of Section 271. BOCs must apply to the FCC for authorization to provide interLATA services originating in any in-region state. The FCC must issue a written determination on each application no later than 90 days after receiving such application. In acting on a BOC's application for authority to provide in-region interLATA services, the FCC must consult with the United States Attorney General and give substantial weight to the Attorney General's evaluation of the BOC's application. Finally, the FCC must consult with the applicable State Commissions to verify that the BOC has complied with the requirements of Section 271(c) of the Act. The Act places on BellSouth, as applicant, the burden of proving that all of the requirements for authorization to provide in-region interLATA services are met.

According to Section 271(c)(1), a BOC may enter the in-region long distance business in a state in one of two ways. These paths are known as "Track A" and "Track B" and are as follows:

> Track A: Under Section 271(c)(1)(A) -- Presence of a Facilities-Based Competitor -- a Bell Operating Company must show that it has entered into one or more binding agreements that have been approved under Section 252 specifying the terms and conditions under which the Bell Operating Company is providing access and interconnection to its network facilities for the network facilities of one or more unaffiliated competing providers of telephone exchange service to residential and business subscribers. Such telephone exchange service may be offered by such competing providers either exclusively over their own telephone exchange service facilities or predominantly over their own telephone exchange service facilities in combination with the resale of the telecommunications services of another carrier.
>
> Track B: Under Section 271(c)(1)(B) – Failure of CLP to Request Access -- a Bell Operating Company can file a request for interLATA authority even if no facilities-based competition exists that would allow the Bell Operating Company to meet the requirements of Section 271(c)(1)(A). In this case, the Bell Operating Company must have filed a general statement of terms and conditions that the company generally offers to provide such access and interconnection and this statement must have been approved or permitted to take effect by the State Commission under Section 252(f).

TELEPHONE - MISCELLANEOUS

The access and interconnection provided or offered either pursuant to agreements or pursuant to the SGAT must meet the requirements of the 14-point competitive checklist contained in Section 271(c)(2)(B). The requirements of the 14-point competitive checklist are as follows:

> Competitive Checklist. - Access or interconnection provided or generally offered by a Bell operating company to other telecommunication carriers meets the requirements of this subparagraph if such access and interconnection includes each of the following:

(i) Interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1).

(ii) Nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 251(d)(1).

(iii) Nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the Bell operating company at just and reasonable rates in accordance with the requirements of Section 224.

(iv) Local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

(v) Local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services.

(vi) Local switching unbundled from transport, local loop transmission, or other services.

(vii) Nondiscriminatory access to-- (a) 911 and E911 services, (b) directory assistance services to allow the other carrier's customers to obtain telephone numbers, and (c) operator call completion services.

(viii) White pages directory listings for customers of the other carrier's telephone exchange service.

(ix) Until the date by which telecommunications numbering administration guidelines, plan, or rules are established, nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers. After that date, compliance with such guidelines, plan, or rules.

(x) Nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

(xi) Until the date by which the Commission issues regulations pursuant to Section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations.

(xii) Nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3).

(xiii) Reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2).

(xiv) Telecommunications services are available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3).

In addition, Section 271(d)(3)(B) of the Act requires the FCC to determine that the requested authorization will be carried out in accordance with the structural safeguards contained in Section 272, and Section 271(d)(3)(C) requires the FCC to determine that the requested authorization is consistent with the public interest, convenience and necessity.

Although the FCC must consult with the State Commissions, it is clear that the FCC makes the decision on whether to grant in-region interLATA entry, subject to appellate review. The FCC has requested the states to conduct proceedings to develop a comprehensive factual record concerning BellSouth's compliance with the requirements of Section 271. This Commission takes its role seriously and has endeavored to fulfill its responsibilities under the Act. In this regard, we make no determination regarding BellSouth's Track A or Track B eligibility at this time, but will, at the appropriate time, provide the FCC with the results of the information gathering process undertaken in connection with this proceeding. Additionally, we make no determination or conclusion on whether BellSouth's requested authorization will be carried out in accordance with the requirements of Section 272 (Separate Affiliate Safeguards) of the Act. Accordingly, the questions addressed in this Order are limited to (1) whether the access or interconnection provided or generally offered by BellSouth complies with the requirements of the competitive checklist set out in Section 271(c)(2)(B); (2) whether BellSouth's SGAT should be approved, disapproved, or permitted to continue in effect; and (3) whether BellSouth's entry into the interLATA market is consistent with the public interest, convenience and necessity in accordance with Section 271(d)(3)(C). A glossary of the acronyms referenced in this Order is attached hereto as Appendix A.

Based upon a careful consideration of the entire record in this proceeding, the Commission now makes the following

FINDINGS OF FACT

1. BellSouth is not currently providing or generally offering interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1). Therefore, BellSouth is not in compliance with checklist item (i).

2. BellSouth does not have performance measurements adequate to demonstrate that the electronic interfaces through which the CLPs will access the Operations Support Systems (OSS) are necessarily permitting the CLPs to access those systems in a nondiscriminatory manner. Therefore, the Commission is unable to determine from the record that BellSouth is in compliance with checklist item (ii). BellSouth is not required to recombine network elements that are purchased on an unbundled basis. BellSouth's proposed SGAT rates are cost-based and are in compliance with Section 252(d)(1).

3. BellSouth is providing or generally offering nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in

accordance with the requirements of Section 224. Therefore, BellSouth is in compliance with checklist item (iii).

4. BellSouth is providing or generally offering the local loop transmission from the central office to the customer's premises unbundled from local switching or other services and is in compliance with checklist item (iv).

5. BellSouth is providing or generally offering local transport from the trunk side of the wireline local exchange carrier's switch unbundled from switching or other services and is in compliance with checklist item (v).

6. BellSouth is providing or generally offering local switching unbundled from transport, local loop transmission, or other services in compliance with checklist item (vi).

7(a). BellSouth is providing or generally offering nondiscriminatory access to 911 and E911 services and is in compliance with checklist item (vii)(I).

7(b). BellSouth is providing or generally offering nondiscriminatory access to directory assistance services and is in compliance with checklist item (vii)(II).

7(c). BellSouth is providing or generally offering nondiscriminatory access to operator call completion services and is in compliance with checklist item (vii)(III).

8. BellSouth is providing or generally offering white pages directory listings for customers of the other carrier's telephone exchange service and is in compliance with checklist item (viii).

9. BellSouth is providing or generally offering nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers and is in compliance with checklist item (ix).

10. BellSouth is providing or generally offering nondiscriminatory access to databases and associated signaling necessary for call routing and completion and is in compliance with checklist item (x).

11. BellSouth is providing or generally offering interim telecommunications number portability through remote call forwarding (RCF), direct inward dialing (DID) trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. Therefore, BellSouth is in compliance with checklist item (xi).

12. BellSouth is providing or generally offering nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251(b)(3) and is in compliance with checklist item (xii).

12(a). BellSouth must provide intraLATA toll dialing service to CLPs at parity with BellSouth in North Carolina by the date on which BellSouth begins to provide interLATA service in North Carolina.

13. BellSouth is providing or generally offering reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) and is in compliance with checklist item (xiii).

14. BellSouth is providing or generally offering telecommunications services such that they are available for resale in accordance with the requirements of Section 251(c)(4) and 252(d)(3) and is in compliance with checklist item (xiv).

15. BellSouth's Revised SGAT is allowed to continue in effect.

16. BellSouth's entry into the interLATA long distance market in North Carolina, through its affiliate BSLD, is consistent with the public interest, convenience and necessity in accordance with Section 271(d)(3)(C) of TA96 and should be authorized by the FCC as soon as BellSouth meets all Section 271 requirements.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 1

Issue: Is BellSouth providing or generally offering interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1)? Is BellSouth providing access and interconnection to its network facilities for the network facilities of such competing providers? [Checklist item (i)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth provides CLPs interconnection with BellSouth's network for the transmission and routing of telephone exchange service and exchange access and therefore satisfies this checklist item. Interconnection permits the exchange of local traffic between the networks of BellSouth and a CLP over trunks terminated at specified interconnection points. Section I of BellSouth's SGAT provides for complete and efficient interconnection of requesting telecommunications carriers' facilities and equipment with BellSouth's network. BellSouth's SGAT offers a reasonable means of interconnection for any company electing to operate under the terms, conditions, and prices of the SGAT. For interconnection arrangements that are not described in the SGAT, a CLP may take advantage of the bona fide request process to request such arrangements. BellSouth provided unrefuted testimony that, as of September 1, 1997, it had installed approximately 28,280 interconnection trunks from CLPs' switches to BellSouth's switches in BellSouth's nine-state region, including 5,762 in North Carolina. The intervenors presented no credible evidence to rebut BellSouth's proven ability to offer this checklist item.

BSLD: Supported the position taken by BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: Yes. BellSouth satisfies the requirements of checklist item (i), as it offers through its SGAT and individual interconnection agreements with CLPs interconnection facilities to meet the same technical criteria and service standards that are used with its own network. Any startup problems referenced by intervenors are not problems with BellSouth's ordering or provisioning systems but are normal startup problems that occur when any new system is put in place. While BellSouth has the duty to provide interconnection at parity, the CLPs have the responsibility to learn how to use such interfaces. BellSouth's SGAT provides for the following: (1) trunk termination points generally at BellSouth tandems or end offices for the reciprocal exchange of local traffic; (2) trunk directionality allowing the routing of traffic over a single one-way trunk group or a two-way trunk group depending upon the type of traffic; (3) trunk termination through virtual collocation, physical collocation, and interconnection via purchase of facilities from either company by the other company; (4) intermediary local tandem switching and transport services for interconnection of CLPs to each other; and (5) interconnection billing.

ATTORNEY GENERAL: Issue was not addressed in Brief.

AT&T: No. BellSouth has not provided such interconnection to AT&T. BellSouth has not developed procedures for providing trunking arrangements and has not tested or implemented the procedures to ensure the ability to transport and bill calls properly. In addition, BellSouth and CLPs requesting interconnection have not yet developed or tested certain maintenance procedures. To comply with this checklist item, BellSouth additionally must provide collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. BellSouth witness Varner stated at the hearing that BellSouth currently does not provide physical collocation.. Therefore, BellSouth has not yet demonstrated that it can provide collocation on a just, reasonable, and nondiscriminatory basis.

CWA: Did not address this issue.

DELTACOM: No. After the North Carolina hearing, DeltaCom obtained a physical collocation agreement with BellSouth, although DeltaCom's first request for physical collocation was made in April, 1997.

ICG, ET AL.: No. BellSouth has not met its burden of proof to demonstrate that it is providing interconnection to CLPs "at least equal in quality with" and otherwise "indistinguishable" from that which it provides itself. BellSouth has offered no performance measures or data on interconnection quality, and the network configuration offered to CLPs is decidedly inferior to that within BellSouth's own network.

INTERMEDIA: No. BellSouth does not comply with checklist item (i) because by refusing to pay reciprocal compensation for the transport and termination of Internet-bound local traffic, BellSouth is not providing interconnection pursuant to Section 271(c)(2)(B)(i).

MCI: No. BellSouth has not provided such interconnection to MCI in accordance with the requirements of Sections 251(c)(2) and 252(d)(1). BellSouth has not yet fully implemented interconnection in part because it has not yet fully implemented collocation. Collocation (both physical and virtual) is a primary method of interconnection. BellSouth has received 11 requests for physical collocation, yet none of those requests have been completed. BellSouth has refused to allow new entrants to interconnect at their local tandem switches, even though it admits that interconnection is technically feasible. BellSouth is not, thus, providing access and interconnection at any technically feasible point consistent with Section 251(c)(2) of the Act.

SPRINT: Adopted AT&T's position.

TRA: Did not address this issue.

WORLDCOM/COMPTEL: Supports AT&T's position.

DISCUSSION

Section 251(c)(2) of TA96 states:

> "Interconnection: The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--
> (A) for the transmission and routing of telephone exchange service and exchange access;
> (B) at any technically feasible point within the carrier's network;
> (C) that is 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; and
> (D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

Section 252(d)(1) of TA96 states:

> "Interconnection and network element charges: Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) or section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--
> (A) shall be--
> (I) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
> (ii) nondiscriminatory, and
> (B) may include a reasonable profit."

Thus, BellSouth must provide interconnection with its network that is equal in quality to that which it enjoys and on rates, terms, and conditions that are just, reasonable, and nondiscriminatory under Sections 251 and 252. Rates specifically must be cost-based.

AT&T, in its Post-Hearing Brief, argued that BellSouth has not satisfied this checklist item because BellSouth is currently not providing such access nor is it prepared to do so. AT&T argued that BellSouth has not developed procedures for providing trunking arrangements and has not tested or implemented the procedures to ensure the ability to transport and bill calls properly. AT&T argued that actual experience does not show that BellSouth can provide interconnection at the same level of quality as it provides itself, as represented in its SGAT. AT&T notes MCI witness Martinez's testimony that MCI customers had experienced blockage from calls originating on the BellSouth network and that the problem originated from a separate CLP trunk group designed by BellSouth that differed from the trunk groups BellSouth used on its own network. Finally, AT&T argued in its Brief that to comply with this checklist item, BellSouth must provide collocation on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. AT&T stated that BellSouth witness Varner stated at the hearing that BellSouth currently does not provide physical collocation in North Carolina, and AT&T inferred that means that BellSouth has not yet demonstrated that it can provide collocation on a just, reasonable, and nondiscriminatory basis.

ICG, et al., in its Proposed Order, state that BellSouth has provided inferior interconnection to CLPs which has detrimentally affected the level of service they have been able to provide to their customers. ICG, et al. recommend that the Commission conclude that BellSouth has not provided CLPs interconnection with BellSouth's network that is at least equal in quality to that provided by BellSouth to itself, or to any subsidiary, affiliate, or any other party to which BellSouth provides interconnection.

MCI witness Martinez argued that BellSouth has not yet fully implemented interconnection in part because BellSouth has not yet fully implemented collocation, and collocation is a primary method of interconnection. However, witness Martinez stated that MCI sent applications to BellSouth on June 27, 1997, for physical collocation at five BellSouth switches in North Carolina and that the requests have been approved by BellSouth with planned due dates in the first quarter of 1998. Witness Martinez testified that collocation represents the only way from an engineering perspective that any carrier can truly provide competition to BellSouth using the new entrant's own facilities. He stated that the FCC in the Michigan Ameritech decision made clear the requirement that a BOC must support all three competitive entry strategies established by the Act, i.e., facilities-based, resale, and UNEs (Paragraph 133). Witness Martinez concluded that it is premature to conclude that BellSouth has met any of its obligations with regard to collocation. Additionally, witness Martinez stated that BellSouth has refused to permit new entrants to interconnect at their local tandem switches, although on paper BellSouth has now agreed to allow MCI interconnection to its local tandems. MCI has interconnection at the access tandems, but asserts that BellSouth has a paper commitment to allow interconnection at the BellSouth local tandem, although once this change occurs, there is absolutely no assurance that trunk blockage will not occur. On redirect, witness Martinez specified that MCI did not believe that BellSouth is providing nondiscriminatory access and interconnection to BellSouth's network.

TCG witness Hoffman stated in his summary during the hearing that TCG's principal business is providing facilities-based local exchange service. Witness Hoffman stated that BellSouth is not providing interconnection at least equal in quality to that provided by BellSouth to itself. Witness Hoffman stated that the most fundamental indicator of equal interconnection is whether a call can be completed between a CLP's network and BellSouth's network and that TCG's experience in Florida indicates that BellSouth is not measuring up. Additionally, witness Hoffman stated that TCG has received and continues to receive complaints from its customers about blocked incoming traffic, and several customers have threatened to discontinue service directly as a result of blocking. However, it appears that witness Hoffman was referencing TCG's experience in Florida only, as TCG was just recently granted a certificate to provide local service in North Carolina (Docket No. P-646, granted October 2, 1997). TCG has trunks from its switch terminating at each BellSouth access tandem, and at several BellSouth end offices. TCG also has traffic terminating into TCG from BellSouth's network which is carried on trunks from the BellSouth access tandem, and trunking on the other side of the BellSouth access tandem. Witness Hoffman indicated that BellSouth has been largely unresponsive to these problems. TCG has a single point of interconnection to BellSouth's network and that is through the access tandem. Witness Hoffman stated that with only one point of interconnection, CLPs are placed at unnecessary risk of catastrophic network failure and that if BellSouth's tandem switch fails at any time, BellSouth will still be able to route its own traffic through its end office network or to other tandems and TCG's customers would be severely impacted. TCG witness Hoffman stated that BellSouth has chosen not to provide direct end-office routed facilities to TCG which would alleviate this problem. In prefiled testimony, witness Hoffman asserted that BellSouth has not presented data regarding the percentage of call blockage it experiences for its own internal traffic as compared to the percentage of TCG's traffic which is being blocked. He testified that the industry standard blocking criteria for tandem routed traffic is P-.01 and for direct and office routed traffic is P-.005. BellSouth asserted in cross-examination of witness Hoffman that if blocking is occurring, it is a result of a lack of forecasting information from TCG.

BellSouth witness Milner, in prefiled direct testimony, stated that BellSouth provided 85 volumes of information to support its compliance with each of the 14 points, including checklist item (i) - interconnection (specifically Volumes 1-1 and 1-2). Witness Milner states, "Section I of BellSouth's Statement (of Generally Available Terms and Conditions) provides for complete and efficient interconnection of requesting telecommunications carriers' facilities and equipment with BellSouth's network and that interconnection services are functionally available from BellSouth". Witness Milner stated that as of July 1, 1997, BellSouth had provisioned approximately 3,816 trunks interconnecting its network with the networks of CLPs in North Carolina. In its Proposed Order, BellSouth represented that as of September 1, 1997, BellSouth had installed approximately 28,280 interconnection trunks from CLPs' switches to BellSouth's switches in BellSouth's nine-state region, including 5,762 trunks in North Carolina. In rebuttal testimony, witness Milner attempted to refute TCG witness Hoffman's claims and stated that the number of one-way trunks which deliver traffic from TCG's switch to BellSouth's switch is determined by TCG and not BellSouth. Therefore, witness Milner determined, if there is a trunk blockage situation in that part of the network, TCG is in the best position to identify such blockage. Additionally, witness Milner explained that the trunk group between a BellSouth end-office switch and a BellSouth tandem switch carries the aggregate traffic for delivery to TCG's switch as well as to other switches including BellSouth's, and, therefore, it would be obviously counterproductive for BellSouth to intentionally block traffic in the manner TCG witness Hoffman suggested. Witness Milner stated that he has reviewed the latest Automated

Reporting Management Information System (ARMIS) report and identified those individual trunk groups which carry traffic from BellSouth's switches to TCG and has not identified any consistent pattern of observed blockage. Witness Milner concluded that BellSouth interoffice and tandem facilities are properly sized to meet and exceed regulatory and company standards.

During cross-examination by MCI, BellSouth witness Milner stated that currently BellSouth has 11 physical collocation requests "in progress" in North Carolina. Witness Milner testified that "in progress" means:

> "...that a firm request has been received by a CLP and that physical work is in progress towards completing that. As you might imagine with physical collocation, quite a number of steps are involved including architectural drawings being rendered, building permits being applied for and received, electrical designs being processed. In some cases in some older buildings asbestos abatement, things of that nature. So it means that that work is in progress and that accounts for the sometimes considerable amount of work that's required to create a separate walled-off space."

Additionally, witness Milner stated on cross-examination by MCI that BellSouth has no policy against interconnecting at either the access tandem or the local tandem. Witness Milner also admitted that interconnection at the local tandem is technically feasible.

Finally, during cross-examination, BellSouth witness Milner stated that there are blockage standards both on the access side and on the local side. On the access side, the FCC requires that companies such as BellSouth produce information and gather it all year long, and the design objective in the access world is that 98% or better of all BellSouth's traffic is completed. However, witness Milner stated that you cannot compare the call completion rates for BellSouth customers' originated calls terminating over BellSouth's network with those terminating on the network of a CLP.

BellSouth in its Proposed Order refuted AT&T's assertion that BellSouth had purportedly not fully satisfied AT&T's interconnection needs as set forth in the parties' interconnection agreement. BellSouth stated that AT&T's witness had conceded that AT&T has no local switches in North Carolina and has no immediate plans to install such switches. BellSouth concluded that since AT&T is not actually interconnecting with BellSouth in North Carolina, AT&T's criticisms have no basis in fact. BellSouth argued that the test that BellSouth must meet in this proceeding is not whether BellSouth has satisfied every condition of a private arbitration agreement with AT&T, but rather whether it has made interconnection generally available to CLPs, as required by Section 252(f) and 271. Additionally in its Proposed Order, BellSouth stated that TCG witness Hoffman had presented no evidence of blocking problems in North Carolina and that no evidence of blocking problems experienced by BellSouth customers was introduced by any party.

Section I of BellSouth's SGAT states that local interconnection is available at any technically feasible point within BellSouth's network which currently includes: (a) line-side of local switch; (b) trunk-side of local switch; (c) trunk interconnection point for tandem switch; (d) central office cross-connect points; and (e) out-of-band signal transfer points (SGAT Section I.A.1.). BellSouth's SGAT also states that interconnection is available through (1) virtual collocation; (2) physical collocation; and (3) interconnection via purchase of facilities from either company by the other company (SGAT Section I.C.).

The FCC's Ameritech Order extensively discusses Ameritech's compliance with checklist item (i). The FCC found that the data Ameritech submitted provided the FCC with an inadequate basis to compare the quality of the interconnection that Ameritech provides to other carriers to that which Ameritech provides itself (Paragraph 224). The FCC stated that Ameritech provided neither the actual level of trunk blockage nor any information about the rate of call completion.

The facts as of the date of the hearing in this proceeding concerning interconnection are as follows:

(1) BellSouth is not currently providing physical collocation in North Carolina but has 11 physical collocation requests in "progress";
(2) As of June 15, 1997, BellSouth was providing 134 virtual collocation arrangements in its nine-state region with 19 virtual collocation arrangements in North Carolina;
(3) As of September 1, 1997, BellSouth had installed approximately 28,280 interconnection trunks from CLPs' switches to BellSouth's switches in BellSouth's nine-state region, including 5,762 trunks in North Carolina;
(4) BellSouth is providing interconnection to MCI in North Carolina (70% of 5,800 interconnections) and has provisions for interconnection in its SGAT; and
(5) MCI has interconnection at BellSouth's access tandems and asserts that BellSouth has a paper commitment to allow interconnection at BellSouth's local tandem. BellSouth witness Milner admitted that interconnection at the local tandem is technically feasible.

With regard to the CLPs' positions regarding interconnection, the Commission notes the following:

(1) AT&T does not currently have switches in North Carolina with which it could interconnect with BellSouth;
(2) TCG's noted concerns were for interconnection in Florida; TCG received certification to provide local service in North Carolina after the hearing in this proceeding (October 2, 1997). BellSouth and TCG have an approved interconnection agreement (July 9, 1997);
(3) MCI and AT&T's statement that BellSouth is not providing physical collocation is true, however, BellSouth has 11 physical collocation requests "in progress" which amount to a "paper promise" by BellSouth to process these physical collocation requests; and
(4) MCI has a "paper commitment" from BellSouth to allow interconnection at BellSouth's local tandem.

Based on the evidence of record in this proceeding, which the Commission notes only extends through the date of the hearing in this docket, the Commission concludes that BellSouth is not currently providing physical collocation and interconnection to local tandems in North Carolina and has currently only "paper promises" to fulfill these requests. Therefore, based on the record of evidence presented, the Commission concludes that BellSouth is not currently meeting the requirements of checklist item (i) to provide interconnection in accordance with the requirements of Sections 251(c)(2) and 252(d)(1).

CONCLUSIONS

The Commission concludes that BellSouth is not currently providing or generally offering interconnection in accordance with the Act, and, therefore, not meeting the requirements of checklist item (i). The Commission acknowledges that BellSouth is generally offering physical collocation and interconnection to its local tandems; however, the pending requests cause concern about BellSouth's ability to actually provide physical collocation and interconnection to its local tandems.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 2

Issue: Is BellSouth providing or generally offering nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the Act? [Checklist item (ii)] Since the issues raised by the parties with regard to collocation and the UNEs BellSouth will provide, other than the OSS, are addressed under the evidence and conclusions for other findings of fact herein, the discussion here will address the other areas of concern that were raised by the parties in their Proposed Orders and Briefs specifically relating to this issue with regard to (a) the OSS network element, (b) performance measurements, (c) recombination of UNEs, and (d) the rates in the SGAT.

Part (a): Is BellSouth providing or generally offering nondiscriminatory access to OSS in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the Act?

POSITIONS OF PARTIES

BELLSOUTH: Yes. OSS are computer-based systems and databases used by telecommunications carriers to perform customer and business support functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing. BellSouth's electronic interfaces, through which CLPs must access necessary OSS, permit the CLPs to access those systems in a nondiscriminatory manner. BellSouth's OSS provides CLPs with the functionalities they need to provide local telecommunications services in competition with BellSouth, and the CLPs who desire access to these OSS have adequate access to them. BellSouth offers:

1. Pre-ordering through the Local Exchange Navigation System (LENS) interface;

2. Ordering and provisioning through the Electronic Data Interchange (EDI), Exchange Access Control and Tracking System (EXACT), and LENS interfaces;

3. Maintenance and trouble reporting through the CLP Trouble Analysis Facilitation Interface (TAFI) as well as the same Electronic Bonding Interface (EBI) currently used by interexchange carriers (IXCs) for access service; and

4. Billing through access to the Billing Daily Usage File.

BellSouth's electronic interfaces provide CLPs access to BellSouth's OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing that is substantially the same as, and in many cases better than, that which it provides to its own personnel supporting BellSouth's retail customers. BellSouth will continue to upgrade and enhance its OSS; however it believes that it has reached the standards required by Section 251 and fulfilled the requirements of the competitive checklist.

BSLD: Yes. BSLD agrees with the position of BellSouth.

PUBLIC STAFF: Yes. BellSouth is providing or generally offering nondiscriminatory access to its network elements in accordance with the requirements of Sections 252(c)(3) and 252(d)(1) and is in compliance with checklist item (ii). While it is true that the interfaces offered by BellSouth (e.g., LENS, EDI, TAFI) are different from the systems that BellSouth's own customer service personnel use to process orders, this fact does not make the interfaces offered to the CLPs substandard. The checklist does not require that systems offered to the CLPs be the same as BellSouth's systems, but that they offer the same functionality, quality, and timeliness as BellSouth offers to itself. All of the functionalities needed by the CLPs to order BellSouth services are provided for by BellSouth through its interfaces, and they allow the CLPs access to BellSouth's OSS in substantially the same time and manner as is available for BellSouth's own personnel.

ATTORNEY GENERAL: Issue was not addressed in Brief.

AT&T: No. In order to meet this checklist item, BellSouth must prove that it actually has provided or can provide access to all network elements at parity and on a nondiscriminatory basis. BellSouth has not done so. The electronic interfaces offered by BellSouth do not allow CLPs nondiscriminatory access to BellSouth's OSS. BellSouth cannot render a bill for usage sensitive elements of the local switch as required by the Act. Absent adequate OSS interfaces, BellSouth's provisioning of interconnection, network elements, and resale is necessarily discriminatory.

Internally, BellSouth uses integrated systems, which communicate and share information with each other, to perform pre-ordering, ordering, and provisioning functions to support its retail operations. Evidence presented at the hearing demonstrated that in contrast, BellSouth provides CLPs with separate systems which do not communicate with each other for pre-ordering, ordering, and provisioning. BellSouth's interfaces require human intervention to transfer information from the CLP's OSS to BellSouth's OSS. BellSouth's ordering and pre-ordering interfaces also are discriminatory as they do not provide for integrated ordering and pre-ordering functions. LENS does not allow CLPs to access the full range of information or functions that are available to BellSouth through its OSS. LENS also lacks the capacity to handle the amount of CLP orders that will be generated. BellSouth's maintenance and repair interfaces are discriminatory because they require human intervention and lack sufficient capacity to handle CLP requests. Therefore, AT&T recommends that the Commission find that BellSouth is not providing nondiscriminatory access to its electronic interfaces to allow CLPs to obtain unbundled network elements.

TELEPHONE - MISCELLANEOUS

CWA: No. BellSouth does not yet have in operation a fully automated system that provides nondiscriminatory access for ordering, pre-ordering, and billing. Problems experienced by CLPs with respect to backlogs in orders, low service levels, and billing errors indicate that CLPs do not receive OSS service at parity with BellSouth's own customers. More time is necessary to improve the computer systems and to hire and train sufficient numbers of employees to handle the growing volume of business. BellSouth is not supplying automated access to OSS, leading to inefficiencies and impeding competitive entry. BellSouth's OSS must operate efficiently in a real commercial situation. The experiences of the intervenors reveals that BellSouth cannot meet this requirement.

DELTACOM: No. Based on DeltaCom's actual, commercial experience BellSouth has not provided nondiscriminatory access to its OSS. DeltaCom has continued to experience problems using the LENS system as a pre-ordering and ordering system. EDI relies on batch processing which does not provide parity to BellSouth's OSS. DeltaCom must contact the Local Carrier Service Center (LCSC) to ensure that the order has been completed, since a firm order confirmation (FOC) is not provided except upon request. In summary, LENS does not provide parity such that meaningful competition can be achieved, and LENS has not been integrated with the ordering interface, EDI, that BellSouth is relying upon to prove that it has satisfied the standard of nondiscriminatory access.

ICG, ET AL.: No. OSS is a network element unto itself and is critical to a CLP's ability to use other UNEs. CLPs have experienced serious performance problems with LENS and EDI. BellSouth is not presently providing CLPs with nondiscriminatory access to OSS functions or to UNEs. To prove that it is providing nondiscriminatory access to OSS functions, BellSouth must provide clear and precise performance measurements to evaluate the access afforded CLPs. BellSouth must also provide empirical data under such performance measurements to demonstrate that CLPs are receiving nondiscriminatory access. BellSouth has not offered sufficient performance measures or data to the Commission to demonstrate that it is providing CLPs with nondiscriminatory access to OSS functions.

INTERMEDIA: No. Nondiscriminatory access to BellSouth's OSS is not completely available to Intermedia and other competing providers of telephone exchange services at parity with BellSouth, BellSouth is not providing nondiscriminatory access to network elements consistent with the Act. BellSouth is not providing equivalent access to its OSS in terms of quality, accuracy, and timeliness. Similarly, it is not clear whether BellSouth's OSS will be able to handle both current and future demands. BellSouth's OSS does not provide parity because its wholesale support processes are insufficient to make resale services and unbundled network services practicably and meaningfully available when requested by a competitor. Many of the interfaces are deficient, requiring manual intervention. There are no OSS in place for complex resold services and complex unbundled elements. CLPs and BellSouth do not have access to the information and functionality in BellSouth's OSS in substantially the same time and manner.

MCI: No. In order to meet this checklist item, BellSouth must prove that it actually has provided or can provide access to all network elements at parity and on a nondiscriminatory basis. BellSouth has not done so. The electronic interfaces offered by BellSouth do not allow CLPs to access BellSouth's OSS in the same manner as BellSouth does. The OSS that BellSouth makes available to CLPs are in their developmental stages and have still not been tested on a commercial scale. Neither LENS nor EDI has been fully and satisfactorily tested with CLPs. TAFI does not meet the requirements of the Act in part because it is not based upon industry standards. In the absence of fully functioning OSS, new entrants cannot obtain interconnection and access on a timely and efficient basis or provide acceptable customer service. BellSouth's witness Calhoun admitted that BellSouth has no practical testing results to prove that its systems are performing as intended. BellSouth has provided no evidence to verify that LENS provides access to information for CLPs in the same time that BellSouth can obtain such information over its own systems. Nothing in the testimony of any of BellSouth's witnesses directly compares the capabilities of BellSouth's internal systems with the functionality today available from BellSouth through LENS and EDI.

SPRINT: No. BellSouth must prove that it actually has provided or can provide access to all network elements at parity and on a nondiscriminatory basis. BellSouth has not done so. The electronic interfaces offered by BellSouth do not allow CLPs nondiscriminatory access to BellSouth's OSS. BellSouth cannot render a bill for usage sensitive elements of the local switch as required by the Act. Absent adequate OSS interfaces, BellSouth's provisioning of interconnection, network elements, and resale is necessarily discriminatory.

Sprint has not commenced local service in North Carolina. However, it does have a facilities-based operation in Florida under the name of Sprint Metropolitan Networks, Inc. (SMNI). SMNI orders numerous UNEs from BellSouth including local loops, local number portability, directory listings, interoffice trunks, and local interconnection trunks. Sprint believes that the experiences of SMNI in Florida can be assumed to offer relevant evidence as to BellSouth's readiness to meet the requirements of Section 271 in this State since they involve use of the same systems that BellSouth proposes to use in North Carolina. Based on SMNI's experience in Florida, Sprint stated that BellSouth has not demonstrated that its interfaces provide nondiscriminatory access to the OSS functions.

TRA: No. BellSouth has failed to carry the evidentiary burden required to demonstrate that it is providing nondiscriminatory access to all OSS functions. BellSouth witness Calhoun testified that while changes had been made to its LENS interface over the past several months, CLPs had not been provided with the documentation on those changes that would permit them to integrate their own systems with LENS. Witness Calhoun also testified that BellSouth had not made the business rules for its Regional Navigation System (RNS) and its Direct Order Entry (DOE) OSS systems available to CLPs. Thus, TRA finds that by the testimony of its own witnesses, BellSouth has admitted that it has failed to meet two important prerequisites to nondiscriminatory OSS access.

BellSouth witness Moore testified that BellSouth had offered no data in this record on average installation intervals for resale, average installation intervals for loops, comparative performance information for unbundled network elements, and repeat trouble reports for unbundled network elements and that data on only portions of service order accuracy and percent flow through, and held orders and provisioning accuracy was included in the record in this proceeding. By omitting from the record data specifically prescribed by the FCC for 271 Application consideration, BellSouth has failed to carry the evidentiary burden required to demonstrate that it is providing nondiscriminatory access to all OSS functions.

WORLDCOM/COMPTEL: No. We agree with the position of AT&T.

DISCUSSION

Checklist item (ii) is referenced in TA96 as Section 271(c)(2)(B)(ii). This section states that a BOC meets this subsection if such access and interconnection includes: " [n]ondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1)."

Section 251(c)(3) of TA96 states:

"UNBUNDLED ACCESS.— The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

Section 252(d)(1) of TA96 states:

"INTERCONNECTION AND NETWORK ELEMENT CHARGES.— Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section —

(A) shall be —

(i) based on the cost (determined without reference to a rate-of-return of other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(B) may include a reasonable profit."

The FCC interpreted the requirements of the Act in its Interconnection Order. In addition, the FCC developed a set of rules under its authority provided in the Act.

In Rule 51.313(c), the FCC requires the incumbent local exchange company (incumbent LEC or ILEC) to provide access to the five functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing) of the ILEC's OSS to a carrier purchasing UNEs from the ILEC. In Rule 51.5, the FCC defines each OSS function as follows:

Pre-ordering and ordering. "Pre-ordering and ordering" includes the exchange of information between telecommunications carriers about current or proposed customer products and services or unbundled network elements or some combination thereof.

Provisioning. "Provisioning" involves the exchange of information between telecommunications carriers where one executes a request for a set of products and services or unbundled network elements or combination thereof from the other with attendant acknowledgments and status reports.

Maintenance and repair. "Maintenance and repair" involves the exchange of information between telecommunications carriers where one initiates a request for maintenance or repair of existing products and services or unbundled network elements or combination thereof from the other with attendant acknowledgments and status reports.

Billing. "Billing" involves the provision of appropriate usage data by one telecommunications carrier to another to facilitate customer billing with attendant acknowledgments and status reports. It also involves the exchange of information between telecommunications carriers to process claims and adjustments.

In addressing the importance of competing carriers to access the OSS functions of an ILEC, the FCC stated that:

> ". . .if competing carriers are unable to perform the functions of pre-ordering, ordering, provisioning, maintenance and repair, and billing for network elements and resale services in substantially the same time and manner that an incumbent can for itself, competing carriers will be severely disadvantaged, if not precluded altogether, from fairly competing. Thus providing nondiscriminatory access to these support systems functions, which would include access to the information such systems contain, is vital to creating opportunities for meaningful competition."

It is AT&T and Intermedia's position that the interfaces offered by BellSouth are discriminatory because they require human intervention in order to transmit information from BellSouth's OSS to the CLP's OSS. AT&T stated that this is not how BellSouth's own systems operate. AT&T argued that BellSouth's pre-ordering interface, LENS which operates in two modes: Inquiry and Firm Order, is unable to provide equivalent pre-ordering functionality to that of BellSouth's internal OSS. AT&T argued that neither the Inquiry mode or the Firm Order mode provide all the information that a CLP will need in order to place an order, thus a CLP must use both modes when obtaining pre-ordering information.

Additionally, AT&T stated that BellSouth has not demonstrated that LENS and TAFI have the capacity to support the combined operational requirements of all new entrants. AT&T noted that BellSouth has not provided the Commission with any test plans or test data for its internal capacity testing and has not conducted any joint testing to verify the capacity of LENS. AT&T, DeltaCom, Intermedia, MCI, and TRA argued that BellSouth's interfaces are discriminatory because they do not provide integrated pre-ordering and ordering, and noted that BellSouth's systems are integrated such that the systems electronically populate service orders with pre-ordering information. However, it was acknowledged that BellSouth had suggested that the CLPs could simply cut and paste the information from one computer program to another.

Further, AT&T and DeltaCom argued that BellSouth's EDI does not provide new entrants with FOCs that have the same level of detail as BellSouth's internal functional equivalents. AT&T,

DeltaCom, and ICG, et al. also complained that EDI lacks near real-time functionality because it involves batch processing which may prevent BellSouth from processing the order for up to 30 minutes after it is transmitted.

DeltaCom noted that it has continued to experience "lock-up" problems using the LENS system as a pre-ordering and ordering system such that it is unable to obtain customer records and cannot submit conversion "as is" orders. However, BellSouth stated that this is a software problem which has been corrected.

ICG, et al. complained that LENS does not contain a complete list of tariffed services available for resale by CLPs. ICG, et al. noted that this deficiency requires the CLP to inquire directly of the customer about the services provided by BellSouth and hampers the CLPs ability to compete effectively with BellSouth on a resale basis.

Intermedia remarked that it is of critical importance to competing carriers to receive up-to-date information on OSS functionalities as changes occur. Intermedia and MCI stated that BellSouth has no reliable, formal process in place for informing CLPs of changes in interfaces and related processes. As an example, Intermedia noted that the date of the latest printed documentation available for LENS is June 17, 1997, even though several changes have since been made to LENS.

MCI and Sprint argued that complete customer service records, considered by BellSouth to be part of pre-ordering, are not available through LENS, and noted that BellSouth customer service representatives have access to customer service records through RNS. Sprint stated that with LENS, a CLP can view and print only the first 50 pages of the customer's record. Additionally, MCI noted that BellSouth has not made online access to customer credit histories available to CLPs, despite the fact that this information is clearly available to BellSouth service representatives. MCI and Sprint also complained about using LENS for ordering, noting that a CLP cannot make electronic changes to the original order once the order has been placed. However, it was noted that the order can be canceled and replaced.

In regard to processes associated with repair and maintenance of resold services, MCI witness Martinez complained about having to call varying BellSouth locations to obtain answers to day-to-day questions instead of having a single point of contact or telephone number. He also complained that BellSouth customers will have access to 611 abbreviated dialing to access BellSouth trouble handling centers where available, while MCI customers cannot use the same kind of dialing to contact MCI repair centers.

Sprint noted that in this proceeding, BellSouth said it relied on the EDI system to provide access to ordering functions. Sprint remarked that it has no real-life experience to show whether EDI will function as represented by BellSouth.

TRA stated that BellSouth witness Calhoun testified that while changes had been made to its LENS interface over the past several months, CLPs had not been provided with the documentation on those changes that would permit them to integrate their own systems with LENS. TRA also noted that witness Calhoun had testified that BellSouth had not made the business rules for its RNS or DOE OSS systems available to CLPs.

In support of its position, BellSouth argued that the pre-ordering of services using the LENS interface permits CLPs to obtain, in substantially the same time and manner as BellSouth, the following information: (1) address validation; (2) telephone number selection, including special number assignment; (3) product and service selection; (4) due date information; and (5) customer record information. It is BellSouth's position that LENS provides CLPs with access to BellSouth's pre-ordering databases in substantially the same manner as BellSouth's retail personnel obtain access to such databases. BellSouth witness Calhoun demonstrated the systems used by BellSouth for most residential orders, RNS, and the system used for most business orders, DOE. Witness Calhoun also demonstrated the LENS interface to show the substantially similar manner in which CLPs can access BellSouth's pre-ordering databases. According to BellSouth, it is undisputed that LENS, RNS, and DOE access the same BellSouth databases and that the requested pre-ordering information is returned without regard to whether the request originated through a CLP or from BellSouth.

In many respects, BellSouth believes that the LENS system is superior to BellSouth's systems. LENS is a graphic "point and click" interface that also contains a drop down box and menu format that CLPs may use regionwide for both residence and business service support. In contrast, for processing its own retail orders in North Carolina, BellSouth personnel must use at least two systems, RNS and DOE. The BellSouth system which supports orders from business customers, DOE, is an older system that is less user-friendly, more "DOS-like" than RNS because it relies more on the use of special codes and function keys. RNS is a newer system that provides more "Windows-like", point-and-click capabilities. In addition to developing LENS for the CLP industry, BellSouth has also agreed to provide AT&T with a customized pre-ordering interface designed to AT&T's specifications, which goes beyond the requirements of the Act. However, it is BellSouth's position that its willingness to do this for AT&T is not an indication that LENS is deficient. BellSouth stated that there is currently no industry standard for pre-ordering and noted that AT&T's customized interface will not be an industry standard.

The Commission understands that the ordering and provisioning systems provided by BellSouth accumulate and format the information needed to enter an order into BellSouth's Service Order Control System (SOCS). BellSouth provides the EDI interface for resale orders and simple UNEs, such as unbundled loops and ports. Witness Calhoun demonstrated the EDI interface to show the substantially similar manner in which CLPs can access BellSouth's ordering databases. EDI is the electronic interface sanctioned by the Ordering and Billing Forum (OBF) for local service request communications. Using this interface, the CLP can transmit service requests in OBF standard format to BellSouth. EDI permits CLPs to order for resale 34 retail services that account for the majority of BellSouth's retail revenue. EDI is available to any CLP. To accommodate smaller CLPs, BellSouth worked with a third-party software vendor, Harbinger, to develop an "off-the-shelf" personal computer-based EDI package that according to BellSouth can be used with very little development effort. EDI allows CLPs to place orders for some complex services such as Private Branch Exchange (PBX) trunks, SynchroNet® service, ISDN-Basic Rate service, and hunting. Other complex services, not currently supported by EDI, such as SmartRing® service, are handled in the same manner by BellSouth for both BellSouth's CLP customers and BellSouth's retail customers. BellSouth stated that many complex services ordered by BellSouth's retail customers involve a significant amount of manual paper work and telephone calling. According to BellSouth, if a CLP customer has to experience this same manual ordering process for these same services this does not place the CLP at a competitive disadvantage with BellSouth.

BellSouth also provides its existing EXACT interface to CLPs for interconnection trunking and other complex unbundled network elements. The EXACT system is the same industry-standard interface used by BellSouth for processing access service requests from interexchange carriers.

Whether a CLP submits an order through EDI or LENS, the Commission understands that the request is screened for formatting errors, and the complete and correct service request is then passed to BellSouth's Local Exchange Ordering (LEO) system. LEO performs certain edit checks and data-formatting checks to determine if the required information has been provided. LEO will pass a complete and correct service request to BellSouth's Local Exchange Service Order Generator (LESOG) for mechanized order generation, or to a worklist for further handling by a BellSouth service representative. LESOG will mechanically format many service requests into BellSouth service order record formats which can be handled by SOCS and the other downstream systems through which BellSouth's service orders are also processed. According to BellSouth, LESOG requires no manual intervention by a BellSouth service representative. BellSouth stated that those services for which mechanized order generation is available through LESOG without manual intervention represent most of BellSouth's total retail operating revenue in North Carolina.

BellSouth stated that its ordering systems for CLPs are fully operational. The EXACT interface has been available since 1985, and CLPs are currently using EXACT to process orders for local interconnection trunking and unbundled loops. BellSouth's EDI interface has been available since December 1996. EDI itself has been in commercial use for almost 30 years. LENS has been available since April 28, 1997.

BellSouth believes that the CLP ordering and provisioning systems are capable of processing a sufficient number of orders to permit meaningful competition in North Carolina. According to BellSouth, the combined capacity of the EDI and LENS ordering systems, including the mechanized order generation capability in LESOG, has been verified as being at least 5,000 local service requests per day, which is the capacity for which this system was initially designed based on forecasted ordering volumes supplied by CLPs themselves to BellSouth. Additional capacity is available for rapid turn-up that would double the capacity to 10,000 orders per day. To date, the CLPs' peak daily ordering volume over EDI and LENS has been only around 1,100 orders per day.

Witness Calhoun testified that CLP ordering activity to date has not come close to approaching the forecasted volume. It is BellSouth's opinion that compliance with the Act does not require BellSouth to build out capacity for which there is no reasonable expectation at this time. BellSouth states that it will continue to size its systems based upon ordering volumes from the CLP's input.

BellSouth stated that CLPs may access maintenance and repair information in substantially the same time and manner as BellSouth. For designed circuits, BellSouth provides CLPs with the same industry-standard, real-time electronic trouble reporting interface that has been available to interexchange carriers since 1995. In addition, at AT&T's request, BellSouth has agreed to develop a local exchange trouble reporting system similar to the existing interexchange carrier gateway, known as the Electronic Communications Gateway (ECG), which will be available in December 1997.

BellSouth noted that CLPs also have access to the same local exchange service trouble reporting system that BellSouth uses for its retail customers — the TAFI system. Witness Calhoun demonstrated the TAFI interface to show the substantially similar manner in which CLPs can access BellSouth's repair databases. The TAFI system, which analyzes troubles, initiates testing, and provides CLPs with recommendations for clearing the trouble, is the same as the TAFI system used by BellSouth. The Commission understands that the only difference is an electronic — and nearly instant — security check that verifies that a CLP is accessing only its customers' information.

BellSouth stated that its maintenance and repair interfaces are fully operational. According to BellSouth, the CLP TAFI system has been available since March 28, 1997, and was thoroughly tested before being offered to CLPs. From March 17 through April 16, 1997, a group of BellSouth repair attendants used the CLP version of TAFI to process about 10,000 trouble reports from real customers utilizing a single CLP TAFI processor. The CLP version of TAFI worked in the same time and manner as BellSouth's TAFI. Six CLPs have entered trouble reports via TAFI, and BellSouth has also conducted TAFI training for personnel with twenty other CLPs. It has also scheduled training for other CLPs.

Additionally, BellSouth stated that the CLP maintenance and repair systems are capable of handling a sufficient volume to permit meaningful competition in North Carolina. TAFI currently will support 130 simultaneous users with a volume of 2,600 troubles handled per hour. According to BellSouth, it also has a "hot spare" processor for TAFI that can be activated almost immediately if needed that will increase the capacity by another 65 simultaneous users and 1,300 troubles handled per hour. The Commission understands that the current capacity far exceeds usage to date and forecasted usage in the immediate future.

BellSouth provides CLPs with an electronic interface for customer billable usage data transfer known as the Billable Daily Usage File. The specific types of data include intraLATA toll, billable local calls, billable feature activations, operator services, and WATS/800 Service. The file provides billable call detail records in a BellCore-supported, industry-standard format known as Exchange Message Record (EMR) format and is offered with several methods of data delivery.

BellSouth stated that CLPs have electronic access to daily billable usage data in substantially the same time and manner as BellSouth. BellSouth runs its billing system five work days a week. Usage processing begins each morning, and the billing system cycle completes the following morning with the creation of actual bills. For CLPs that establish electronic data transmission capability with BellSouth, the usage is then transmitted immediately.

BellSouth noted that its billing interface is fully operational and is capable of handling a sufficient volume to permit meaningful competition in North Carolina. Fourteen CLP customers now receive the daily usage files. Eight CLP customers are currently working with BellSouth in preparation for receiving daily usage files. According to BellSouth, the interface was thoroughly tested before being offered to CLPs, and BellSouth conducts individual tests with each CLP prior to their establishing a daily production feed and is prepared to conduct additional testing in a "live" mode, if the CLP so desires.

According to BellSouth, because these daily billable usage files are generated through the same mainframe-based systems that have been used to bill for IXCs for some time, there are no constraints to its capacity to process daily usage files for CLPs. BellSouth notes that the average daily message volumes delivered to the combined 14 CLPs during June 1997 was 33,753 messages per day for the BellSouth region.

In response to the testimony of AT&T, MCI, WorldCom, and CompTel witness Gillan who alleged that BellSouth lacked the ability to mechanically bill usage information for unbundled switching, BellSouth witness Milner's testimony revealed that on August 14, 1997, BellSouth updated its customer record information system to allow it to provide mechanized usage sensitive billing for UNEs. BellSouth witness Milner testified on September 29, 1997, that he had a copy of a test bill, which was first produced by BellSouth's billing system on September 15, 1997 and that the first production run of actual customer bills was made on September 25, 1997. Thus, the record reveals that BellSouth can produce mechanized usage sensitive billing.

BellSouth remarked that it has provided CLPs with extensive documentation about each of its electronic interfaces. BellSouth has conducted regular CLP training sessions that include training on BellSouth's interfaces. Moreover, BellSouth offers CLPs access to its training lab and provides "help desk" support for CLPs using the electronic interfaces.

According to BellSouth, CLPs are advised of changes in BellSouth's proprietary interfaces (such as LENS and TAFI) through ongoing CLP conferences, the CLP account teams, and updated reference materials, including on-line release notes. Changes in interfaces supported by industry standards, such as EDI, are communicated through industry fora. BellSouth stated that this is the same manner in which BellSouth service representatives are advised of changes to BellSouth's operating systems.

The Public Staff agreed with BellSouth's position. The Public Staff stated that witness Calhoun's testimony establishes that BellSouth's interfaces for pre-ordering comply fully with the requirements of the Act and the FCC Interconnection Order. With regard to whether BellSouth has presented LENS as both a pre-ordering and ordering interface, the Public Staff noted that witness Calhoun stated that while LENS does have both real-time, pre-ordering and ordering capabilities, BellSouth has never presented LENS as its interface for nondiscriminatory access to ordering OSS.

The Public Staff stated that witness Calhoun testified that BellSouth employs two industry-standard ordering systems, depending on the type of service ordered. The first is the EDI interface for resale orders and simple UNEs, such as unbundled ports. EDI also can be used to support orders for unbundled local loops, unbundled ports, interim number portability, and local loop/interim number portability combinations. The second is the EXACT interface which allows CLPs to order interconnection trunking and other more infrastructure-type orders such as ordering UNEs. The Public Staff believes that the testimony of witnesses Calhoun and Milner demonstrates that these systems are operational and are capable of processing a sufficient number of orders to permit meaningful competition in North Carolina.

The Public Staff noted that witness Calhoun gave an example of the retail ordering of a complex service, SmartRing®, for which retail ordering is not fully mechanized. SmartRing® service is a private line service available to both retail customers and to resellers. In both cases, the pre-ordering and ordering processes for SmartRing® service are largely manual. Nonetheless, the pre-ordering and ordering processes are virtually identical for both retail and CLP orders, except that retail services are handled primarily by the appropriate business unit for each situation — BellSouth Business Systems (BBS) personnel for retail services, and Interconnection Services (ICS) personnel for resale services. The processing of both BellSouth and CLP orders for SmartRing® require substantial manual activity and paper forms for both retail and resale situations. These processes are common to both retail and CLP orders and do not place the CLP at a competitive disadvantage relative to BellSouth.

The Public Staff agreed with BellSouth that CLPs may access maintenance and repair information in substantially the same time and manner as BellSouth. For design circuits, BellSouth provides CLPs with the same real-time electronic trouble reporting interface that is available to interexchange carriers. CLPs also have access to the TAFI system — this is the same local exchange service trouble reporting system that BellSouth uses for its retail customers.

BellSouth uses two billing systems to bill its end-user customers. Depending on the services being provided, the same customer will receive two types of bills. For services ordered from the General Subscriber Services Tariff (GSST) and the Private Line Service Tariff (PLT), BellSouth renders bills from its Customer Records Information System (CRIS). For services ordered from the Access Service Tariff (AST), BellSouth renders bills from the Carrier Access Billing System (CABS) system, even if the access is ordered by and billed to the end-user customer. This means that one end-user customer with services from both billing systems will receive both CABS and CRIS bills. Further, in order to give CLPs access to information and functions that are substantially the same in time and manner as BellSouth's access, BellSouth offers the CLPs an electronic interface for customer billing usage transfer, known as the Billing Daily Usage File.

The overall adequacy of BellSouth's OSS offerings is a complex and dynamic issue. The opposing parties have argued that some deficiencies exist in BellSouth's OSS functionality to the extent that the access being provided is discriminatory. On the other side, the Public Staff and BellSouth have argued that BellSouth's OSS provide CLPs with the functionalities they need to provide local telecommunications services in competition with BellSouth, that the CLPs who desire access to these OSS have adequate access to them, and that the electronic interfaces through which the CLPs will access the OSS permit the CLPs to access those systems in a nondiscriminatory manner.

While it is true that the interfaces offered by BellSouth (e.g., LENS and EDI) are different from the systems that BellSouth's own customer service personnel use to process orders, this fact does not make the interfaces offered to the CLPs inferior. Checklist item (ii) does not require that the systems offered to the CLPs be the same as BellSouth's systems, instead it requires BellSouth to offer the same functionality, quality, and timeliness as BellSouth offers to itself. The issue is not whether LENS and EDI are different from what BellSouth uses internally, but whether these interfaces permit the CLPs to access BellSouth's OSS in equivalently the same manner as BellSouth. The Commission believes that some of the problems some of the opposing intervenors have had is a result of their having tried to use LENS for ordering functions when, in fact, LENS is a pre-ordering system. Since LENS is a pre-ordering interface, it is not surprising that it fails to provide full ordering capabilities. As to the opposing intervenors complaint that the pre-ordering and ordering systems are not integrated, the Commission understands that all the CLPs have to do is to electronically copy LENS pre-ordering information and electronically paste it into their EDI and EXACT ordering interfaces which is accomplished by just cutting data from one computer program screen and pasting it to another program screen.

The Commission recognizes that LENS is not an industry-standard interface. However, the Commission understands that there is currently no industry standard for pre-ordering. The Commission understands that EDI is the industry-standard electronic ordering interface sanctioned by the national Ordering and Billing Forum for local service request communications. The TAFI system, which analyzes troubles, initiates testing, and provides CLPs with recommendations for clearing trouble, is the same as the TAFI system used by BellSouth; the only difference is an electronic and nearly instant security check that verifies that a CLP is accessing only its customers' information. For billing, the Commission understands that the CLPs are provided with an electronic interface for customer billable usage data transfer known as the Billable Daily Usage File which provides billable call detail records in a BellCore-supported, industry-standard EMR format.

BellSouth's witnesses testified that they have recently made improvements and changes to their electronic interfaces and that they will continue to make changes and updates to these systems. The Commission does not view such updates as evidence that BellSouth's systems do not meet the checklist item, but that such changes have enhanced such interfaces and are evidence of BellSouth's continuing objective to make its interfaces work as seamlessly as possible and meet the needs of the CLPs.

The Commission understands that BellSouth has provided appropriate system-user guides and other information including updates on all of its new interface systems. However, the Commission cautions BellSouth that when making changes it should inform all the CLPs of such changes as expeditiously as possible.

Concerns have been raised by some opposing intervenors regarding the need for appropriate performance standards and measurements to be in place in order to determine the adequacy of BellSouth's OSS. This matter will be addressed in Part (b). The Commission believes that BellSouth must develop adequate performance measurements in order to determine whether OSS access is being provided in a nondiscriminatory manner.

CONCLUSIONS

Although there is evidence in the record to suggest that BellSouth is generally offering all of the OSS functionalities needed by the CLPs through its OSS interfaces, the Commission feels that this question is inextricably linked to the issue of performance standards. The Commission finds that BellSouth does not have adequate performance standards in place. Without objective criteria against which to measure BellSouth's performance, the Commission is unable to find that it has carried its burden of proving that the electronic interfaces through which the CLPs will access the OSS are permitting such access in a nondiscriminatory manner. Thus, the Commission concludes that BellSouth is not currently meeting the requirements of Section 217(c)(2)(B)(ii), which is checklist item (ii).

Part (b): Has BellSouth developed performance standards and measurements to ascertain nondiscriminatory access and support?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth has developed and continues to develop performance standards and measurements that demonstrate that BellSouth is providing service to CLP customers in substantially the same time and manner as BellSouth provides to its own retail customers. Performance measures do not comprise an item on the competitive checklist; however, BellSouth has agreed to provide and further develop performance measures to ensure that the service it provides to its CLP customers will be the same as the analogous service provided to its retail customers.

BSLD: Adopted the position of BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: The Public Staff did not present a specific recommendation or position on performance measurements in its Proposed Order, and only mentioned the parties' specific positions on performance measurements in their testimony concerning compliance with checklist item (ii).

ATTORNEY GENERAL: Issue was not addressed in Brief.

AT&T: No. The performance standards and measurements proposed by BellSouth are insufficient to demonstrate parity or nondiscriminatory access. BellSouth's SGAT is deficient because it does not contain performance standards against which to measure the quality of service provided to new entrants or any performance measurements relating to electronic interfaces.

CWA: Did not address this issue.

DELTACOM: No. DeltaCom suggests that the benchmark for determining whether BellSouth has implemented OSS systems that meet the competitive checklist and provide nondiscriminatory access depends upon the answers to two questions: (1) are the interfaces that BellSouth uses to communicate with a Competing Local Exchange Carrier (CLEC) adequate to fulfill competitive need; and (2) has there been sufficient experience with the interface and associated systems to be sure that these systems will work as promised?

ICG, ET AL.: No. BellSouth has not adopted or proposed empirical measures to demonstrate that the exchange of traffic provided through its interconnection with facilities-based CLPs is at parity with the interconnection it provides to itself, its affiliates, or others as required by 47 U.S.C. Section 271(c)(2)(B)(i).

INTERMEDIA: No. The Commission should adopt a mechanism through which it can determine BellSouth's compliance with its nondiscrimination and parity obligations.

MCI: No. The performance standards and measurements proposed by BellSouth are insufficient to demonstrate parity or nondiscriminatory access. BellSouth has failed to provide the information that Ameritech provided to the FCC and has failed to provide the minimal performance data the FCC required of Ameritech. Without this information, the Commission cannot conclude that BellSouth is providing nondiscriminatory access to OSS functions.

SPRINT: No. In order to show that it has met the checklist requirement for nondiscriminatory access to network elements, BellSouth must show documented results in accordance with specifically defined performance measurements. BellSouth has not yet produced such results. Sprint contends that the act of publishing an agreed-upon list of performance measurements, which it contends is what BellSouth has done, is fundamentally different from demonstrating that the stated performance targets can be met. BellSouth must actually meet the agreed-upon performance targets on a consistent basis to meet its obligation.

TRA: No. The record in this docket contains no performance measures to evaluate the quality of interconnection provided by BellSouth to facilities-based CLPs. TRA argues that the FCC clearly stressed the importance of performance standards and data for evaluating BOC compliance with Section 271 requirements as stated throughout its Ameritech Order. BellSouth has failed to provide performance benchmarks for measuring compliance with Section 271, and this is fatal to its 271 Application and to its proposed SGAT.

WORLDCOM/COMPTEL: Supports the position of AT&T.

DISCUSSION

ICG, et al. stated in its Proposed Order that BellSouth witness Moore testified that the performance measures contained in BellSouth's SGAT do not include standards for call blockage or call completion rates and that BellSouth had not adopted any such measures for use with CLPs.

TCG witness Kouroupas stated in prefiled testimony that BellSouth's performance measurements are wholly inadequate and make it impossible for BellSouth to demonstrate that it has met the first checklist item, i.e. that BellSouth implements interconnection that is at least equal in quality to that which it provides to itself.

On cross-examination by MCI attorney Melson, BellSouth witness Moore stated that trunk blockage rates for interconnection to CLPs is not currently one of the performance measurements that the CLPs and BellSouth have discussed and negotiated. Additionally, BellSouth witness Moore testified that call completion rates are another metric that neither a CLP or BellSouth during negotiations have discussed and is not currently a performance measurement. BellSouth witness Moore also confirmed on cross-examination by Mr. Campen that BellSouth did not provide any performance measurements on call blockage or call completion in its SGAT or in the record in this proceeding.

The Commission notes that there is, indeed, no data on call blockage or call completion rates in this record or in BellSouth's SGAT.

AT&T testified that BellSouth to date has failed to provide data measuring OSS performance to AT&T or the Commission. AT&T also maintains that there are five key characteristics of an adequate performance measurement plan, as follows: (1) the measurements must allow for direct comparison of the performance of CLPs versus BellSouth's performance; (2) each measure and applicable terms must be clearly defined; (3) comparisons must be accomplished through generally accepted and documented statistical tests of difference; (4) the data collection and reporting methods must permit disaggregation of results based on types of services or types of activities; and (5) results must be reported on a regular basis and made subject to independent validation through an auditing procedure. AT&T stated that BellSouth has not established target performance levels for provisioning UNEs.

AT&T maintains that BellSouth's SGAT does not contain any performance standards relating to electronic interfaces, and that fact alone requires the SGAT be rejected. AT&T states that there is no evidence in the record upon which the Commission can base a decision that BellSouth is providing or will provide nondiscriminatory access to its OSS. BellSouth and AT&T have not negotiated performance measurements relating to OSS. AT&T also states that at present, there is no completed statistically valid study comparing the performance of LENS to RNS or DOE. AT&T states that BellSouth witness Moore's correction to his direct testimony which states that BellSouth has implemented procedures that will enable it to monitor response times for BellSouth interfaces versus interfaces made available for CLPs only reflect the response time of the machines, and do not attempt to capture the impact of any differences in the way CLPs must enter orders in the systems and the way BellSouth is able to enter orders. AT&T recommends that the Commission direct BellSouth to identify, document, and incorporate clearly defined statistical tests to establish nondiscrimination into any measurement plan it institutes, and that control charts will not satisfy this requirement. AT&T acknowledges that a starting point has been established for performance measurements, however, it believes that a considerable amount of work remains to be done before an adequate set of measures is in place to allow monitoring of whether BellSouth is providing CLPs with nondiscriminatory access to its network.

ICG, et al. do not believe that BellSouth can rely on performance measures adopted with respect to resale to demonstrate that it is providing interconnection at parity to facilities-based CLPs. In order to meet its burden of proof, ICG, et al. maintain that BellSouth must adopt specific performance measures which evaluate the quality of its interconnection with facilities-based CLPs. Further, ICG, et al. believe that BellSouth must produce data under those performance measures to prove that it is providing interconnection at parity to facilities-based CLPs.

Intermedia testified that the Commission should adopt, as a starting point, the standards proposed by the Local Competition User Group (LCUG), however, expanded to include BellSouth's provision of data services. Intermedia argues that the Commission needs proof, rather than promises, in order to determine whether BellSouth can provide nondiscriminatory services to CLPs. Intermedia believes that performance standards and measurements can be construed as a checklist item, since performance standards and measurements are derivative issues under the nondiscriminatory requirement of checklist items (ii) and (xiv). Intermedia states that the record shows that, to date, BellSouth has not provided verifiable and ascertainable performance data to permit an informed performance analysis. Specifically, Intermedia believes that BellSouth has not provided CLPs with the kind of data and measurement criteria they need to determine whether Intermedia is being provided parity of OSS access.

Intermedia believes that to ensure that parity of access exists, BellSouth must comply with performance standards and provide reporting for various measurements, including query failure rates, speed of answer by support center, speed of inquiry closure, response interval of successful queries, acknowledgment of orders, provision of firm order confirmation, and provisioning of UNEs, among other things. Intermedia also believes that BellSouth would need to provide reports giving performance results on a regular basis with sufficient historical data to allow comparison. Intermedia maintains that BellSouth must also provide performance standards relating to other advanced data services (both simple and complex) which are critical for CLPs providing primarily data-oriented services.

MCI testified that BellSouth has provided no evidence to verify that LENS provides access to information for CLPs in the same time that BellSouth can obtain such information over its own systems. MCI maintains that nothing in the testimony of any of BellSouth's witnesses directly compares the capabilities of BellSouth's internal systems with the functionality today available from BellSouth through LENS and EDI. MCI concludes that without necessary performance standards in place, BellSouth cannot meet the standards of the Act, and the Commission cannot conclude that BellSouth is providing nondiscriminatory access to OSS functions. Finally, MCI noted that this Commission opted not to establish performance measures and notes that the FCC is now addressing the issue of performance measures.

TCG witness Kouroupas stated in prefiled direct testimony that AT&T and BellSouth have just recently agreed on a set of performance standards to include in the AT&T/BellSouth interconnection agreement. However, witness Kouroupas stated that those measurements are deficient because (1) they are tailored to AT&T's specific business plans which means that they are not directly suitable for facilities-based carriers such as TCG; and (2) BellSouth has not indicated that it will perform the same or similar measurements for other CLPs operating in North Carolina. Further, witness Kouroupas testified that the approved interconnection agreement between TCG and BellSouth does not contain service quality and parity measurements. As for the AT&T/BellSouth interconnection agreement performance measurements, witness Kouroupas stated that those measurements are deficient for facilities-based carriers such as TCG because they fail to address call blocking percentages on interconnection trunks. Witness Kouroupas stated that the performance data presented by BellSouth witness Moore is flawed because (1) it is not North Carolina specific and is aggregated data for the entire BellSouth region; (2) it is not sufficiently comprehensive so as to assist the Commission in verifying BellSouth's 271 compliance; and (3) BellSouth does not desegregate its measurements in a manner that can be useful for comparative purposes. Witness Kouroupas recommended that BellSouth should be directed to provide service quality reports that desegregate the results, for example, by geographic area, customer class, product, service and CLP. Lastly, witness Kouroupas stated that BellSouth is currently providing performance reports to TCG, however, they are very limited. Witness Kouroupas believes that a minimum of six months of reporting data from BellSouth would be necessary for the Commission to determine that parity is being provided.

BellSouth witness Moore, in prefiled direct testimony, stated that this Commission has dealt with performance standards before in the arbitration proceedings (Docket No. P-140, Sub 50 - AT&T/BellSouth). Witness Moore stated that the RAO issued in that docket found in Issue No. 3

that "The Commission declines to enact specific performance standards and instructs the parties to negotiate mutually agreeable terms."

Witness Moore went on to state in prefiled direct testimony that on May 9, 1997, AT&T and BellSouth reached agreement on certain service performance measures to include in their interconnection agreement (Attachment 12 of the AT&T/BellSouth interconnection agreement). Witness Moore also stated that BellSouth has not reached agreement on performance measurements with other CLPs, however, it is negotiating measures similar to those provided to AT&T. Additionally, during cross-examination by MCI attorney Melson, BellSouth witness Moore stated that the performance measurements in Attachment 12 of the AT&T/BellSouth interconnection agreement are open-ended and that the parties have the responsibility to come back together after three months of performance to determine if they are measuring the right items. In fact, Attachment 12, Section 1.4 of the BellSouth/AT&T contract states, "BellSouth and AT&T recognize that percentage target performance levels have not been provided for all measurements and that such targets for certain categories of performance will be required to improve performance, to maintain parity with that which BellSouth has obligated itself to provide under this Agreement, or to improve service as AT&T and BellSouth may mutually agree. BellSouth and AT&T agree to meet and discuss establishment of such targets quarterly, starting no later than ninety (90) days after actual performance occurs."

The performance measurements agreed to between BellSouth and AT&T as represented in Attachment 12 of their agreement and Attachment I of BellSouth's SGAT provides for the measurement of five categories of performance as follows:

I. Provisioning
   (1) Percent reject or error status notification;
   (2) Percent FOC per interval;
   (3) Percent appointments met; and
   (4) Percent trouble reports within 30 days of installation.

II. Maintenance
   (1) Average duration (in hours);
   (2) Percent appointments met;
   (3) Percent repeat reports in 30 days;
   (4) Report rate; and
   (5) Percent calls answered in 30 seconds in BellSouth Repair Center.

III. Billing
   (1) Timeliness of daily usage messages delivered via the ConnectDirect system;
   (2) Completeness of recorded usage data delivered within 30 days of the message create date;
   (3) Recorded usage data accuracy transmitted correctly in the current BellCore EMR format;
   (4) Recorded usage data transmission; and
   (5) Data packs sent error free.

IV. Databases
(1) Line information database (LIDB);
(2) LIDB message round trip time;
(3) Measure to be developed (LIDB query reply rate - 99.9%); and
(4) Measure to be developed (LIDB query time out - less than 0.1%).

V. Account Maintenance
(1) Notification of switch of an AT&T customer to another CLP;
(2) Interexchange carrier Preferred Interexchange Carrier (PIC) changes; and
(3) Rejection of "01" PIC change requests for AT&T customers.

Witness Moore also explained the proposed reporting format that BellSouth would use which would include the historical and current performance of BellSouth as the standard to establish statistical process control parameters. Witness Moore testified that BellSouth's performance measurements would be used as the basic parameters which would be compared to the results produced by the CLPs for the services BellSouth would provide to the CLPs. These performance results of BellSouth and the CLPs would be represented on a control chart and if a CLP showed significant variations consistently (for three consecutive months), an investigation or study known as a "root cause analysis" would be performed.

BellSouth witness Moore, also in prefiled direct testimony, stated that he would discuss "the steps BellSouth is taking in its organizational structure and process to insure that the response time of the CLP's OSS is similar to BellSouth's retail system". BellSouth witness Moore stated that BellSouth has "[b]egun a series of tests to obtain statistically valid data to compare time intervals required for a service representative using LENS to perform certain OSS functions with the time intervals required for a service representative using RNS or DOE to perform the comparable function. [T]hese tests will be conducted as described below:

(1) BellSouth will remotely observe the order entry process in each of the systems on random days;

(2) BellSouth will collect a sample set of actual orders from the random observations (approximately 100) for each system: DOE, RNS, LENS;

(3) BellSouth will analyze the types of orders received in the typical sample set;

(4) BellSouth will track the orders with these four data elements: Serial number (sample number), BellSouth system order number (or telephone number), type of order, and system response time for each pre-ordering section of the order; and

(5) The data collected in #4 will be analyzed to determine the high and low time-frames for pre-ordering system responses while ordering through these systems."

Based on the record in this proceeding, including BellSouth witness Moore's testimony, these performance measurements for BellSouth's OSS are in the process of being implemented. The Commission notes that there was no evidence presented on the record in this proceeding from the "tests" BellSouth witness Moore described or any other performance measurements showing that CLPs receive nondiscriminatory access to BellSouth's OSS.

Also, witness Moore stated in prefiled direct testimony that BellSouth has published a set of target intervals for provisioning of UNEs and is preparing a similar set of target intervals for maintenance of UNEs. Also, in rebuttal testimony, witness Moore stated that the process for developing measurements for UNEs is now underway.

BellSouth witness Moore stated in his correction to direct testimony presented at the hearing that BellSouth has implemented procedures for programmatically measuring the amount of time that both LENS (the on-line system which BellSouth provides for the CLP's to use for ordering and pre-ordering) and RNS (BellSouth's state-of-the-art system for its own service reps) require for accessing the legacy system in connection with a pre-order or an order. The response time summary reports will be generated monthly for each system on a going-forward basis per witness Moore. Witness Moore maintains that BellSouth has taken these measures to insure that the response times for its CLP OSS are substantially the same as BellSouth's retail systems. Again, the Commission notes that no evidence was presented in the record in this proceeding outlining the specific OSS performance measurements witness Moore addressed or any actual comparisons using the performance measurements showing the results of both BellSouth and other CLPs.

At the hearing, through cross-examination by AT&T, witness Moore stated that BellSouth does not have data in the record in this proceeding regarding average time for order confirmation and rejection, however, for those CLPs that BellSouth has an agreement with, that information is being provided. Witness Moore stated that data regarding the mean time to restore plain-old-telephone-service (POTS) retail service and unbundled loops mean time to restore service has been provided in this proceeding.

Also, during the hearing, AT&T attorney Rhodes asked witness Moore a series of questions concerning performance standards and the FCC's Ameritech decision. Ms. Rhodes mentioned Paragraph 212 of the Order in which the FCC gives a list of seven different kinds of data that the FCC would like to see in a follow-up Ameritech application. Ms. Rhodes went on to ask witness Moore whether BellSouth had provided those seven kinds of data to the North Carolina Utilities Commission, and these were the responses:

(1) Q. Average installation intervals for resale

A. BellSouth has some of that kind of data but did not present it in this instant case. BellSouth will provide it to the FCC when it files with them. Witness Moore did agree to provide the interval information to the Commission in this docket as a late-filed exhibit.

(2) Q. Average installation intervals for loops

A. BellSouth does not record that data and has not provided it in this proceeding. BellSouth believes that the "percentage of due dates" measurement is a good measure of whether BellSouth is making available on a nondiscriminatory basis. There is a possibility, however, that BellSouth may be providing that data in the future.

(3) Q. Comparative performance information for unbundled network elements
A. BellSouth does not record that data and has not provided it in this proceeding. BellSouth does plan to look at it and see if BellSouth can provide it.

(4) Q. Service order accuracy and percent flow through
A. BellSouth has provided service order accuracy data into the record in this proceeding in the second exhibit to witness Moore's rebuttal testimony. BellSouth believes that they have provided service order accuracy and the measurement entitled customer reports within 30 days of a service order. However, BellSouth has not provided percent flow through and does not currently record it.

(5) Q. Held orders and provisioning accuracy
A. Held orders - BellSouth does record that data but has not provided it in this proceeding. BellSouth will probably provide it in the future.
Provisioning accuracy - BellSouth believes that that would be covered in "trouble reports within 30 days of a service order being complete" and "trouble report rate period".

(6) Q. Bill quality and accuracy
A. BellSouth does record that data, but it has not been provided in this proceeding. It has been provided to AT&T.

(7) Q. Repeat trouble reports for UNEs
A. BellSouth does record that data but has not provided it in this proceeding. It is part of the AT&T/BellSouth performance measurements that were provided on September 15, 1997.

Additionally, as discussed above, on May 9, 1997, BellSouth and AT&T signed an addendum to their interconnection agreement on service quality and parity measurements (Attachment 12) which are the same identical measurements that are in BellSouth's SGAT (Attachment I). However, BellSouth witness Moore testified in response to a cross-examination question from AT&T attorney Rhodes during the hearing asking whether Attachment 12 contains any performance measures for OSS. Witness Moore responded, "No, it does not".

Finally, on cross-examination by the Attorney General during the hearing, BellSouth witness Moore stated that when BellSouth goes to the FCC, it will attempt to have the measurements outlined in Paragraph 212 of the FCC's Ameritech Order. However, when BellSouth witness Moore was asked whether BellSouth intended to give those measurements to the North Carolina Utilities Commission, BellSouth witness Moore responded that some of those measurements are still being developed.

BellSouth stated in its Proposed Order that through Moore Exhibit JWM-2, BellSouth provided data that compared BellSouth's performance to CLPs with its performance to its own retail customers for the period February-March through July 1997. BellSouth stated that many of those measurements have been used by this Commission and other State Commissions to evaluate service to BellSouth's retail customers. BellSouth asserts that in almost every category, CLPs have received service that is comparable to and, in most cases, better than service received by BellSouth's retail customers.

TELEPHONE - MISCELLANEOUS

Several parties mentioned the FCC's Ameritech Order, specifically Paragraph 22, in discussing performance standards. Paragraph 22 states that the FCC will look to see if there are appropriate mechanisms, such as reporting requirements or performance standards, to measure a BOC's compliance, or to detect noncompliance, with their obligations.

Also, the FCC's Ameritech Order, Paragraphs 166 and 171, states that in order to demonstrate nondiscriminatory access to OSS functions, Ameritech must demonstrate that it is provisioning resale orders within the same average installation interval as that achieved by its retail operations.

The Florida Commission, in its Order in BellSouth's 271 Application proceeding in Florida, rejected BellSouth's proposed use of its negotiated measures with AT&T (Attachment 12) as its performance standards and measurements and BellSouth's proposed use of the statistical control process as a reporting format for Alternative Local Exchange Company's (ALEC's) performance. The Florida Commission also concluded that BellSouth should provide performance measures that are clearly defined, permit comparison with BellSouth retail operations, and are sufficiently desegregated to permit meaningful comparison. Additionally, the Commission ordered that BellSouth should provide statistically valid commercial usage data showing (1) average installation intervals for resale; (2) average installation intervals for loops; (3) comparative performance information for unbundled network elements; (4) service order accuracy and percent flow through; (5) held orders and provisioning accuracy; (6) bill quality and accuracy; and (7) repeat trouble reports for UNEs as ordered by the FCC in the Ameritech decision (Paragraph 212). The Florida Commission stated that "regardless of the method used, BellSouth must demonstrate from commercial usage data that it performs analogous functions for itself and ALECs in a statistically comparable manner."

The Alabama Commission found that BellSouth's current performance measurement data is inadequate (Order dated October 16, 1997).

The United States Department of Justice (DOJ) concluded in its evaluation of BellSouth's application for interLATA authority in South Carolina (CC Docket No. 97-208) that "BellSouth has failed to measure and report all of the indicators of wholesale performance that are needed to demonstrate that it is currently providing adequate access and interconnection and to ensure that acceptable levels of performance will continue after Section 271 authority is granted." The DOJ also stated that BellSouth is not providing actual installation intervals, instead relying on the "percentage of due dates missed" (Page 46 of Evaluation). The DOJ concluded that given BellSouth lacks performance measures in a number of crucial areas, the DOJ was unable to determine whether BellSouth has established performance standards that are enforceable, as well as a track record, or benchmark, of wholesale performance. The DOJ provided "Appendix A" which examines BellSouth's performance measures under the principles set forth in the FCC's Ameritech decision; the DOJ's evaluation of Southwestern Bell's (SBC's) Section 271 Oklahoma application; and the DOJ's evaluation regarding Ameritech's Section 271 Michigan application.

The DOJ concluded in its evaluation of BellSouth's application for interLATA authority in Louisiana (CC Docket No. 97-231) that "Given BellSouth's lack of performance measures in a number of crucial areas, we still are unable to determine whether BellSouth has established enforceable performance standards for these areas or a track record, or benchmark, of wholesale performance" (Pages 32-33 of Evaluation). The DOJ noted that in BellSouth's current application it has added some permanent performance measures, but remarked that major deficiencies remain.

As BellSouth and MCI pointed out, the issue of performance measurements was presented to the Commission in the arbitration proceedings. In that context, the Commission consistently ordered that the subject of performance measures was outside the scope of the arbitration proceedings. However, the Commission believes that in the review of a Section 271 proceeding, performance measurements must be in place in order to effectively determine if BellSouth is providing interconnection and access at parity and in a nondiscriminatory manner as required by the Act.

The Commission notes that on May 9, 1997, BellSouth and AT&T signed an addendum to their interconnection agreement on service quality and parity measurements which are the same identical measurements that are in BellSouth's SGAT. BellSouth witness Moore testified under cross-examination by AT&T attorney Rhodes that AT&T and BellSouth reached an agreement on certain performance measures which are embodied in Attachment 12 to the AT&T/BellSouth interconnection agreement and that Attachment 12 is now part of the SGAT in North Carolina. Those performance measurements are not included in all interconnection agreements and are currently only in the BellSouth/AT&T interconnection agreement (Attachment 12) and BellSouth's SGAT (Attachment I). Other parties point out, and correctly so, that those performance standards are specific to BellSouth and AT&T. But they nevertheless contain due rudiments of standards that may be used *vis a vis* other parties.

The Commission notes the following points as derived from the record of evidence in this matter:

(1) BellSouth has provided evidence of performance measurements as detailed in Attachment 12 to the AT&T/BellSouth interconnection agreement and Attachment I to BellSouth's SGAT (which are identical);

(2) The performance measurements in Attachment 12 to the AT&T/BellSouth interconnection agreement and Attachment I to BellSouth's SGAT do not contain any performance measures for OSS;

(3) BellSouth has implemented procedures for programmatically measuring the amount of time that both LENS and RNS require for accessing the legacy system in connection with a pre-order or an order. The Commission notes that no evidence was presented to the record in this proceeding outlining the specific OSS performance measurements witness Moore addressed or any actual comparisons using the performance measurements showing the results of both BellSouth and other CLPs;

(4) BellSouth has agreed to provide and further develop performance measures to ensure that the service it provides to its CLP customers will be the same as the analogous service provided to its retail customers. The performance measurement are subject to further changes and revisions; and

(5) BellSouth witness Moore testified that BellSouth has not provided several of the seven types of data the FCC noted in its Ameritech Order to the record in this proceeding. Additionally, BellSouth is still developing some of that data.

Foremost, the Commission believes that adequate performance measurements must be in place. These measurements must have the capability of producing reasonable, empirical evidence that BellSouth is providing nondiscriminatory access to its OSS functions.

The Commission has concerns and reservations about the performance measurements and standards that BellSouth has presented on the record of evidence in this proceeding. The Commission cannot ignore the fact that BellSouth's performance measurements in Attachment 12 of the BellSouth/AT&T interconnection agreement and BellSouth's SGAT do not contain performance measurements for OSS. Additionally, the Commission is concerned that BellSouth has not developed the performance measurements the FCC required Ameritech to provide before the FCC could determine if Ameritech was providing nondiscriminatory access to its OSS functions. Therefore, the Commission cannot conclude that BellSouth has demonstrated that it is providing nondiscriminatory access and support to its OSS functions due to the lack of evidence in the record showing such performance measurements. The Commission notes that BellSouth has expended time and resources to begin developing a complete set of performance measurements and standards and commends BellSouth on its efforts. The record reflects that BellSouth has begun work on performance measurements for OSS and is developing other performance measurements. However, the Commission did not find that the record of evidence in this proceeding contained sufficient evidence that BellSouth has developed a complete and adequate set of performance standards and measurements to show that BellSouth is providing nondiscriminatory access and support to its OSS functions. BellSouth, in conjunction with its Section 271 filing with the FCC, should provide a set of performance standards and measurements which clearly demonstrate that BellSouth is providing nondiscriminatory access to its OSS functions.

CONCLUSIONS

The Commission concludes that, based on the record of evidence presented in this proceeding, BellSouth has not currently fully developed adequate performance standards and measurements to ascertain nondiscriminatory access and support to its OSS functions.

Based on the Commission's conclusion that BellSouth has not fully developed adequate performance standards and measurements related to its OSS functions, the Commission finds that it cannot make a determination that BellSouth is providing nondiscriminatory access to its OSS functions and, therefore, the Commission must conclude that BellSouth is not currently meeting the requirements of checklist item (ii). BellSouth, in conjunction with its Section 271 filing with the FCC, should provide a set of performance standards and measurements which clearly demonstrate that BellSouth is providing nondiscriminatory access to its OSS functions.

Part (c): Should BellSouth be required to recombine network elements that are purchased on an unbundled basis?

TELEPHONE - MISCELLANEOUS

POSITIONS OF PARTIES

BELLSOUTH: No. On October 14, 1997, the Eighth Circuit Court issued an Order on Petitions for Rehearing in Iowa Utilities Board, et al., v. Federal Communications Commission in which the Eighth Circuit Court vacated FCC Rule 51.315(b) that prohibits ILECs from separating network elements that the ILEC currently combines and FCC Rules 51.315(c)-(f) as well. The Eighth Circuit Court expressly held that new entrants that order UNEs must combine those elements themselves and cannot place that responsibility on the ILEC.

AT&T, MCI, WorldCom, and CompTel witness Gillan criticized BellSouth's offering of the unbundled local switching element as insufficient, because the element was offered only on an unbundled basis and not in combination with the unbundled loop. Witness Gillan testified that, pursuant to FCC Rule 51.315(b), BellSouth had to allow new entrants the "preexisting combination of the loop and switch." The combination of network elements referred to by witness Gillan has been referred to as the "UNE platform." It is BellSouth's position that to the extent any doubt existed at the time of this hearing about the merits of witness Gillan's "UNE platform" theory, the Eighth Circuit Court's October 14, 1997, ruling to vacate Rule 51.315(b) has squarely laid this issue to rest. Therefore, the intervenors' position that BellSouth must offer a preexisting combination of a loop and a switch should be rejected.

BSLD: No. BSLD agrees with the position of BellSouth.

PUBLIC STAFF: No. The Order of the Eighth Circuit Court issued on October 14, 1997, amending on rehearing its opinion issued July 18, 1997, plainly states that the ILECs are not required to recombine network elements that are purchased on an unbundled basis and vacates FCC Rule 51.315(b).

The Public Staff agrees with BellSouth that UNEs are just that: unbundled. Unlike the AT&T/BellSouth and the MCI/BellSouth arbitration agreements, the SGAT states without qualification that "CLPs may combine network elements in any manner to provide telecommunications services." Thus, consistent with the Eighth Circuit Court's ruling, when the CLP purchases the elements and combines them, it pays the sum of the unbundled element prices. Furthermore, however plausible AT&T's arguments may have been at the time of the hearing, the subsequent order of the Eighth Circuit Court on October 14, 1997, amending on rehearing its opinion issued July 18, 1997, plainly states that the ILECs are not required to recombine network elements that are purchased on an unbundled basis and vacates FCC Rule 51.315(b) on which witness Gillan relied. Thus, the statement in the SGAT that "[a]dditional services desired by CLPs to assist in their combining or operating BellSouth unbundled network elements are available as negotiated" is also entirely permissible.

ATTORNEY GENERAL: Issue was not addressed in Brief.

AT&T: Yes. Incumbent carriers must provide requesting carriers with access to multiple network elements on the same terms that the incumbent provides combinations to itself. In particular, incumbent carriers must provide access to "network elements" on terms "no less favorable" to the CLP than those "under which the incumbent LEC" provides access to itself. (Rule 51.313(b)). The duty to provide access to network elements cannot be conditioned on a CLP's request to interconnect its facilities and equipment with those of the ILEC. Most importantly, the competing carrier's ability to access the incumbent carrier's network elements does not require the CLP to use its own equipment in the provision of telecommunications services. Section 251(c)(3) requires incumbent carriers to provide unbundled access to network elements "to any requesting telecommunications carrier for the provision of a telecommunications service."

AT&T has requested access to the combined local loop and local switching, collectively referred to as the "network platform." The combination of these unbundled network elements allows AT&T to provide basic local exchange service and to combine the network platform with its own network elements. The Act, the FCC Interconnection Order, and the Eighth Circuit Court's decision validate the obligation of BellSouth to make available and the right of AT&T to purchase the network elements and combine them to create the platform. BellSouth should not impose a fee on CLPs to leave previously combined elements together, as CLPs should not pay BellSouth to not perform work. Where BellSouth does charge CLPs for combining network elements that are not already combined, such charges must be at cost-based rates in compliance with the Act.

CWA: Issue was not addressed in Proposed Order.

DELTACOM: Issue was not addressed in Brief.

ICG, ET AL.: Issue was not addressed in Proposed Order or Brief.

INTERMEDIA: Issue was not addressed in Proposed Order.

MCI: Issue was not addressed in Proposed Order.

SPRINT: Yes. Sprint recognizes that the Eighth Circuit Court has recently struck down the FCC's regulation requiring incumbent LECs to recombine UNEs for requesting carriers without reasonable compensation. However, Sprint asserted that the Commission is clearly authorized to determine this issue on the basis of state regulatory policy, statutory law, and the public interest.

Sprint argued that Section 251(d)(3) of the Act expressly preserves the states' authority to decide such issues for their jurisdictions. Sprint believes that the UNE platform could be provided at forward-looking costs and without any additional costs flowing from the unnecessary act of disaggregating and recombining UNEs. Sprint argued that such a ruling is within the Commission's general authority, preserved under Section 2(b) of the Communications Act, and unimpeded by any express provision of the Act.

TRA: Issue was not addressed in Brief.

WORLDCOM/COMPTEL: We agree with the position of AT&T.

DISCUSSION

On October 14, 1997, the Eighth Circuit Court issued an Order vacating FCC Rule 51.315(b) that prohibits ILECs from separating network elements that the ILEC currently combines. The Eighth Circuit Court held that:

> Section 251(c)(3) requires an incumbent LEC to provide access to the elements of its network only on an unbundled (as opposed to a combined) basis. Stated another way, 251(c)(3) does not permit a new entrant to purchase the incumbent LEC's assembled platform(s) of combined network elements (or any lesser combination of two or more elements) in order to offer competitive telecommunications services. To permit such an acquisition of already combined elements at cost based rates for unbundled access would obliterate the careful distinctions Congress has drawn in subsections 251(c)(3) and (4) between access to unbundled network elements on the one hand and the purchase at wholesale rates of an incumbent's telecommunications retail services for resale on the other. Accordingly, the Commission's rule, 47 C.F.R. 51.315(b), which prohibits an incumbent LEC from separating network elements that it may currently combine, is contrary to 251(c)(3) because the rule would permit the new entrant access to the incumbent LEC's network elements on a bundled rather than an unbundled basis.

Based on the Eighth Circuit Court's decision, the Commission agrees with the position of BellSouth, BSLD, and the Public Staff. The CLPs should be given access to BellSouth's network elements on an unbundled basis.

CONCLUSIONS

The Commission concludes that BellSouth should not be required to recombine network elements that are purchased on an unbundled basis. Additionally, the Commission also concludes that it is appropriate to permit BellSouth to include a statement in the SGAT that "[a]dditional services desired by CLPs to assist in their combining or operating BellSouth unbundled network elements are available as negotiated."

Part (d): Do the rates contained in the SGAT for interconnection and UNEs comply with Section 252(d)(1) of the Act?

POSITIONS OF PARTIES

BELLSOUTH: Yes. The rates contained in the SGAT for interconnection and UNEs comply with Section 252(d)(1). The pricing standards in Section 252(d)(1) of the Act require that the rates for interconnection and network elements be based upon cost. In meeting this requirement, BellSouth's SGAT incorporates rates from several sources: Commission-ordered rates in the arbitration cases, BellSouth's North Carolina intrastate tariffs, BellSouth's North Carolina interstate tariffs, North Carolina-specific cost studies, cost results in other BellSouth states, and for one item a negotiated price.

The SGAT incorporates a true-up process that is consistent with the process used by the Commission in resolving the AT&T and MCI arbitration petitions with BellSouth. The SGAT specifies the rates that will apply when a CLP elects to compete with BellSouth under the terms of the SGAT. If and when those rates are modified by the Commission through a subsequent cost proceeding, the interim rates will be changed to the new rates. The difference between the interim rates, positive or negative, will be trued-up retroactively to the date the elements were installed. The fact that the rates are subject to a true-up, based upon a subsequent Commission proceeding, provides further assurances that the rates in the SGAT are cost-based.

BSLD: Yes. BSLD agrees with the position of BellSouth.

PUBLIC STAFF: Yes. The Public Staff believes that the rates proposed by BellSouth in the SGAT are cost based as prescribed by Section 252(d)(1) of the Act. The Public Staff stated that it can find nothing in the Act that requires permanent rates as a condition of checklist compliance. The fact that the FCC itself recognized the appropriateness of interim arbitrated rates and specifically adopted a schedule of interim proxy rates for use by State Commissions in their arbitration proceedings further persuades the Public Staff that permanent rates are not required.

Although the proposed rates were taken from several sources using a variety of costing methodologies, the Public Staff believes that it is sufficiently familiar with the way the rates were derived to be satisfied that they were based on cost at the time they were established. The fact that the Commission may ultimately review those rates using a different costing methodology does not make them any less cost based for purposes of this proceeding.

The Public Staff is concerned, however, about the competitive impact of the two-way, true-up mechanism because of the possibility of upward adjustments in the interim rates. To alleviate this concern and to ensure that potential competitors are not deterred from entry on this account, the Public Staff recommends that BellSouth amend its SGAT to provide that the price of any interconnection or unbundled network element provided under an interim rate will not be adjusted upward retroactively.

ATTORNEY GENERAL: The Attorney General made no specific recommendation in this regard. However, the Attorney General noted that the rates which BellSouth includes in its SGAT come from a variety of sources not all of which have been reviewed or set by this Commission.

AT&T: No. BellSouth has not complied with its obligation to provide nondiscriminatory, cost-based rates for interconnection and UNEs as required by Section 252(d)(1) of the Act. BellSouth has not demonstrated that the individual rates imported from its tariffs into the SGAT comply with Section 252(d)(1). The fact that a particular rate is in a tariff does not prove that the individual rate meets the cost-based pricing requirements of Section 252(d)(1). BellSouth's reliance on interim rates that have not been found to be cost-based by this Commission requires rejection of the SGAT for failure to comply with Section 252(d)(1). AT&T believes that BellSouth's reliance on interim rates tied to a true-up mechanism constitutes "retroactive ratemaking", and runs contrary to the requirement of Section 252(d)(1) that rates be cost-based.

CWA: Issue was not addressed in Proposed Order.

DELTACOM: Issue was not addressed in Brief.

ICG, ET AL.: Issue was not addressed in Proposed Order or Brief.

INTERMEDIA: No. BellSouth's proposed rates are inconsistent with the pricing provisions of the Act. The Commission has not yet determined the appropriate pricing methodology and has not yet arrived at the costs of the UNEs by applying that methodology. Rates derived from tariffs or from negotiated agreements do not comply with the pricing standards of the Act.

MCI: No. In order for cost-based prices to be established and implemented pursuant to Section 252(d)(1), it is necessary for the Commission to determine the cost of providing UNEs and interconnection. In order to determine the cost of providing UNEs and interconnection, the Commission must first adopt a methodology for the calculation of such costs. The interim rates established by this Commission cannot be determined to be cost based until the Commission has had the opportunity to determine an appropriate cost methodology, to review and adopt a cost model or models, and to fully evaluate the cost studies and supporting documentation which has been or will be filed in Docket No. P-100, Sub 133(d). Consequently, for this reason, BellSouth is unable to meet the requirements of checklist item (ii).

SPRINT: No. BellSouth is not in compliance with checklist item (ii). Witness Varner stated that BellSouth currently offers rebundled elements and that BellSouth expected to continue to offer such rebundled elements, assuming BellSouth can establish the appropriate prices for these elements. Witness Varner did not explain how BellSouth would calculate the "appropriate" price and whether or not such "appropriate" price would be just, reasonable, and nondiscriminatory as required by Section 252(d)(1), which requires that the rates shall be based on the cost of providing the interconnection or network element, shall be nondiscriminatory, and may include a reasonable profit.

TRA: Issue was not addressed in Brief.

WORLDCOM/COMPTEL: We agree with the position of AT&T.

DISCUSSION

In this proceeding, the opposing intervenors argued that BellSouth's SGAT rates are inconsistent with the pricing provisions of the Act. They remarked that where arbitrated rates do not exist for an item, BellSouth used a combination of sources: existing North Carolina intrastate and FCC interstate tariffs; interim rates based on cost studies; rates from other cost studies; and a negotiated price for intermediate transport function. The opposing intervenors argued that the fact that a particular rate is in a tariff does not prove that the individual rate meets the cost-based pricing requirements of Section 252(d)(1). In its arbitration decisions, the Commission adopted interim rates subject to true-up provisions. The Commission established that the parties should submit further cost studies in a separate cost proceeding, and that "the Commission [will] establish final rates based on appropriate cost studies." It is the opposing intervenors' opinion that BellSouth's reliance on interim rates that have not been found to be cost based by this Commission requires rejection of the SGAT for failure to comply with Section 252(d)(1).

BellSouth and the Public Staff have agreed that the SGAT rates are cost-based as prescribed by Section 252(d)(1) of the Act. Witness Varner testified that BellSouth used several sources as the basis for the interconnection and network elements included in its SGAT: Commission-ordered rates in the arbitration cases, BellSouth's North Carolina intrastate tariffs, BellSouth's North Carolina interstate tariffs, North Carolina-specific cost studies, cost results in other BellSouth states, and for one item a negotiated price. Although the proposed rates were taken from several sources using a variety of costing methodologies, the Public Staff found that it was sufficiently familiar with the way the rates were derived to be satisfied that they were based on cost at the time they were established. The Public Staff and BellSouth stated that the fact that the Commission may ultimately review those rates using a different costing methodology does not make them any less cost-based for purposes of this proceeding.

All of the proposed SGAT rates are designated as interim and subject to true-up. The Public Staff and BellSouth note that they find nothing in the Act that requires permanent rates as a condition of checklist compliance. The fact that the FCC itself recognized the appropriateness of interim arbitrated rates and specifically adopted a schedule of interim proxy rates for use by State Commissions in their arbitration proceedings further persuaded them that permanent rates are not required. The question is whether the rates proposed by BellSouth in the SGAT are cost-based as prescribed by Section 252(d)(1) of the Act. The Commission agrees with the Public Staff and BellSouth's position that the proposed rates are cost-based. The Public Staff indicated that they were sufficiently familiar with the way the SGAT rates were derived to be satisfied that they were based on cost at the time they were established. The Commission concurs.

In regard to the operation of the true-up, BellSouth has proposed that if, and when, the interim rates are modified by the Commission through a subsequent cost proceeding, the difference between the interim rates, positive or negative, will be "trued-up" retroactively. The Public Staff is recommending that the interim rates not be adjusted upward retroactively. The Public Staff stated that it was concerned about the competitive impact of the two-way, true-up mechanism because of the possibility of upward adjustments deterring potential competitors from market entry.

The Commission agrees with BellSouth's position that the true-up mechanism should allow for the interim rates to be trued-up, upward or downward, retroactively. Such treatment is consistent with prior Commission decisions in the telephone arbitration proceedings, where interim rates were approved for inclusion in interconnection agreements subject to true-up. In its arbitration decision, in Docket No. P-140, Sub 50, (AT&T/BellSouth) the Commission found that by having a true-up, ". . .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 Commission concludes that it is appropriate for the SGAT to reflect that the interim rates are subject to a two-way, true-up, retroactively. Thus, the Commission concludes that the SGAT rates comply with Section 252(d)(1) of the Act.

CONCLUSIONS

The Commission concludes that the proposed SGAT rates are cost-based and are in compliance with Section 252(d)(1) of the Act. Further, the Commission concludes that the SGAT should reflect that the interim rates included therein are subject to true-up, upward or downward, retroactively.

Additionally, the Commission acknowledges that it will be deciding the permanent cost-based prices for interconnection and UNEs in Docket No. P-100, Sub 133d, which is scheduled for hearing. Thus, the Commission notes that when the cost study proceeding is completed, the resulting rates should be incorporated into the SGAT, and the interim rates should be trued-up accordingly.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

Issue: Is BellSouth providing or generally offering nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224? [Checklist item (iii)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way. In Section III of the SGAT, BellSouth offers access to any CLP via a standard license agreement. BellSouth has developed procedures for processing requests by CLPs for access to BellSouth's poles, ducts, conduits, and rights-of-way.

BSLD: Supports the position of BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: Yes. BellSouth is providing or generally offering nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224.

ATTORNEY GENERAL: No position on this issue.

AT&T: No. BellSouth has not provided such access to AT&T and cannot demonstrate compliance with this checklist item until methods and procedures have been tested and implemented, and it demonstrates that it can actually provide such access to competitors on a nondiscriminatory basis.

CWA: No position on this issue.

DELTACOM: No position on this issue.

ICG, ET AL.: No position on this issue.

INTERMEDIA: No. Although the BellSouth Intermedia interconnection agreement provides for nondiscriminatory access to poles, ducts, and conduits, Intermedia has very limited experience, if any, with this matter.

MCI: No. BellSouth cannot demonstrate compliance with this checklist item until methods and procedures have been tested and implemented, and it demonstrates that it can actually provide such access to competitors on a nondiscriminatory basis.

SPRINT: Adopts the position of AT&T.

TRA: No position on this issue.

WORLDCOM/COMPTEL: Adopts the position of AT&T.

DISCUSSION

To comply with the checklist item, BellSouth must provide CLPs the same access to BellSouth's poles, ducts, conduits, and rights-of-way as BellSouth provides itself. Under Section III of the SGAT, a CLP can acquire access by submitting a standard license agreement to BellSouth. A CLP can also reserve, under Section III, capacity for bona fide local telecommunications needs and can receive access to engineering records by filing a bona fide request for access and agreeing to reasonable terms to protect proprietary information.

As of the date of the hearing, BellSouth witness Milner testified that BellSouth has executed standard license agreements with nine CLPs allowing these CLPs to attach their facilities to BellSouth's poles and place their facilities in BellSouth's ducts and conduits. Witness Milner further testified that BellSouth had allowed access to its poles, ducts, conduits, and rights-of-way to cable television and power companies for many years.

BellSouth witness Varner outlined the procedures by which a CLP gains access to poles, ducts, conduits, and rights-of-way. According to witness Varner the CLP sends a license application to BellSouth Right of Way and Joint Use Group, who forwards the request to the geographic area affected by the request. The requests are processed on a first-come, first-serve basis, and the response interval is negotiated with the CLP. Witness Varner also testified that in the standard license agreement, attached to the SGAT as Attachment D, the pole attachment rate of $4.20 per pole, per year and the conduit occupancy rate or $.56 per foot, per year were developed in accordance with the FCC's Accounting Rules which are designed to produce cost-based rates.

AT&T witness Hamman testified that BellSouth has not provided access to AT&T, that BellSouth cannot demonstrate compliance with this checklist item until the methods and procedures have been tested and implemented, and BellSouth demonstrates that it can actually provide such access to competitors on a nondiscriminatory basis. Further, AT&T states that although BellSouth maintains it provides access now under licensing agreements for interexchange carriers, the access required in the local market will differ from that currently offered to interexchange carriers. Local competition will require access in many more locations, and AT&T now will be a competitor to BellSouth rather than a provider of long distance service which complemented BellSouth's local offerings. On cross-examination, witness Hamman admitted, however, that AT&T is not presently providing local service to any customers in North Carolina and that AT&T has not ordered any of the checklist items for North Carolina. He also stated that he has no personal knowledge regarding what CLPs, who have ordered checklist items in North Carolina, are doing with those items or whether those items have, in fact, been implemented.

The Public Staff agreed with BellSouth's position and cited the provisions in Section III of the SGAT as the basis for its support. The Public Staff also noted that no other party to this proceeding introduced any evidence to dispute BellSouth's testimony that access to poles, ducts, conduits, and rights-of-way is functionally available from BellSouth.

The direct and rebuttal testimony of BellSouth are persuasive. Therefore, the Commission finds that BellSouth is providing or generally offering to CLPs nondiscriminatory access to poles, ducts, conduits, and rights-of-way at just and reasonable rates.

CONCLUSIONS

The Commission concludes that BellSouth is providing or generally offering nondiscriminatory access to poles, ducts, conduits, and rights-of-way owned or controlled by BellSouth at just and reasonable rates in accordance with the requirements of Section 224 and is in compliance with checklist item (iii). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 4

Issue: Is BellSouth providing or generally offering the local loop transmission from the central office to the customer's premises unbundled from local switching or other services? [Checklist item (iv)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. The local loop is a dedicated facility (e.g., a cable pair) from the customer's premises to the main distribution frame of the serving central office. This checklist item, as well as items 5-7 and 9-12, are functions and capabilities associated with a switch, and thus are only necessary for a facilities-based CLP that has its own switch. A CLP's failure to request these items does not translate into a failure by BellSouth to meet the checklist because, as BellSouth's testimony demonstrates, each of these functions and features is available in the SGAT. Should a CLP request loops that are not contained in the SGAT, the CLP may use the bona fide request process to obtain such additional loop types. In addition to the unbundled loops, CLPs may also request loop distribution, loop cross connects, loop concentration, and access to Network Interface Devices (NIDs).

BellSouth has technical service descriptions outlining the availability of unbundled loops and subloops, and BellSouth has implemented procedures for the ordering, provisioning, and maintenance of unbundled loops and subloops. As of August 1, 1997, BellSouth had provided 4,316[1] unbundled loops to CLPs in its region, but none have been requested in North Carolina.

BellSouth, however, does not have to depend on a CLP to actually order each checklist item that BellSouth generally offers to prove that each item is available. BellSouth has conclusively shown not only that it offers unbundled loops in its North Carolina SGAT but that it has actually provisioned those loops elsewhere in its region. Accordingly, the Commission should find that BellSouth has met this checklist item.

BSLD: Yes. BSLD's position is consistent with that of BellSouth.

PUBLIC STAFF: Yes. The Public Staff offered no evidence in this proceeding. In its Proposed Order, the Public Staff presented a summary of the testimony of witnesses. However, such Proposed Order contained no specific discussion as to the reasoning underlying the Public Staff's conclusion that BellSouth had met the requirements of checklist item (iv). Presumably, the Public Staff reached the aforesaid conclusion for the same reasons offered by BellSouth in support of its position.

ATTORNEY GENERAL: The Attorney General did not address this issue with specificity.

AT&T: No. The testimony of other carriers in Georgia and Louisiana reveals that the methods and procedures for a CLP desiring to provide customers with local loop clearly are not in place, nor have they been tested to ensure that service changes will happen in a nondiscriminatory time frame. BellSouth's systems are the same throughout the region, and there is no reason to expect that BellSouth has capabilities in North Carolina that it does not have in other states.

BellSouth is unable at this time to implement fully the unbundling of loops either under the SGAT or its arbitrated agreements because it does not have fully developed and functioning OSS to support nondiscriminatory provisioning and maintenance. Full implementation requires, at a minimum, a fully tested and functioning process for pre-ordering, ordering, provisioning, maintenance, and billing. In order to provide nondiscriminatory access to unbundled loops, BellSouth's pre-ordering, ordering, provisioning, maintenance, and billing systems must ensure that CLPs can obtain loops at the same intervals that BellSouth obtains them for itself.

When existing customers desire to change from BellSouth to a CLP and the CLP intends to provide service with its own local switch and BellSouth's unbundled local loop, BellSouth and the CLP must coordinate to ensure that the customer is not out of service during the transition. First, BellSouth's loop must be physically disconnected from BellSouth's switch and extended to the CLP's switch. This provides the "new" dialtone from the CLP switch. Second, BellSouth simultaneously must update the translations in its switch so that calls to this customer's number will be routed to the CLP's switch and then to the customer. If this is not done at the same time the loop is attached to the CLP's switch, the customer will not be able to receive incoming calls. The translation involves

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[1]BellSouth witness Milner indicated that, while no CLP in North Carolina has requested BellSouth to provide it with unbundled loops, BellSouth has provided 3,575 unbundled loops to CLPs in its nine-state region as of July 1, 1997.

several interim steps and communication between the old and the new service provider. BellSouth simply cannot provide access to unbundled loops in compliance with Section 251 until these methods and procedures to make the change are in place and are tested.

BellSouth has not provided intervals for provisioning unbundled loops. BellSouth has stated its intent to establish intervals for such loops on a Customer Desired Due Date (CDDD) basis, but BellSouth has not, however, committed to meeting these intervals. Instead, BellSouth has stated all intervals are subject to negotiation, and BellSouth promises only to provide the loops subject to projected workload, features and services requested, and equipment availability. BellSouth believes that these items can be determined only when the order is processed. The aforesaid provisioning intervals are discriminatory and give BellSouth the ability to determine unilaterally the rate at which its competitors can obtain new customers. Such power imposes intolerable burdens on CLPs and is antithetical to the development of competition.

Although BellSouth has agreed to unbundle loops delivered by Integrated Digital Loop Carrier (IDLC), no method for providing these loops has been established or tested. Until such a method is defined and tested, there is no way to know whether BellSouth will be able to provide access to these loops.

Other CLPs, specifically Intermedia and MCI, have experienced problems with BellSouth's attempts to provision loops. Intermedia experienced provisioning and billing problems in obtaining the loops and other network elements on an unbundled basis. MCI witness Martinez testified that MCI placed an order for 86 unbundled loops with BellSouth on August 1, 1997, but had not received them as of the date of the hearing.

In concluding its comments, AT&T stated that the experiences of CLPs demonstrate that BellSouth currently is unable to provide CLPs with loops and sub-loop elements. AT&T maintained that BellSouth must establish methods and procedures for nondiscriminatory access to unbundled loops and these methods and procedures must be validated through testing and actual operational experience before BellSouth can be found to be compliant with Section 251(c)(3) of the Act and checklist items (ii) and (iv).

CWA: No. CWA did not address this issue with specificity. Generally, however, it takes the position that BellSouth has not demonstrated compliance with the requirements of the 14-point checklist.

DELTACOM: DeltaCom did not address this issue with specificity.

ICG, ET AL.: ICG, et al. did not address this issue with specificity.

INTERMEDIA: No. BellSouth has not complied with Section 271(c)(2)(B)(ii) of the Act by virtue of its not having provided nondiscriminatory access to network elements in accordance with certain provisions of the Act. CLPs have experienced problems (and continue to experience problems) with obtaining UNEs from BellSouth, and they have experienced problems with BellSouth's billings for certain services. Further, BellSouth's pricing provisions are inconsistent with the Act.

TELEPHONE - MISCELLANEOUS

Intermedia requested four-wire 56/74 kbps unbundled digital loops and other unbundled network elements to support the provision of local frame relay service. Although some progress has been made (i.e., the unbundled loops and other UNEs have been identified and pricing has been developed), the network elements are still not being provisioned on an unbundled basis. If Intermedia wanted to place an order tomorrow for the unbundled loop and UNEs requested previously, it could not do so. There are no ordering or maintenance procedures nor documentation in place to support such arrangements. In addition, more recently, Intermedia has had problems with ordering an unbundled T1 circuit. Intermedia stated in its Proposed Order that it

> ". . . placed an order for an unbundled T1 **circuit** in May of 1997, following the ordering process suggested by BellSouth. Despite fully adhering to BellSouth's suggested ordering process, Intermedia's order was referred to, and transferred from, one BellSouth organization to another, with the ultimate effect of severely delaying the provisioning. What normally should have taken 7-10 days to provision took at least six weeks to complete. Intermedia complained of this delay to BellSouth, and received assurances that the problems had been fixed, and that BellSouth was prepared to deliver DS1 loops in a timely manner. When Intermedia submitted a second order for an unbundled DS1 loop, however, it encountered <u>exactly the same problems</u> that resulted in the unreasonable delay for its first DS1 loop. This calls into question BellSouth's ability to provision more complex unbundled network elements and services."

Intermedia has encountered billing problems with BellSouth. Despite prior agreement between BellSouth and Intermedia that calls from BellSouth customers to Intermedia's new NXX in the Raleigh-Durham area would not be billed as toll calls, BellSouth nevertheless billed calls to Intermedia's NXX as toll calls. This problem was compounded by inaccurate information and misrepresentations made by BellSouth service representatives when end-users called BellSouth to dispute the billing. Other CLPs have also experienced billing problems with BellSouth.

Intermedia commented that Section 271(c)(2)(B)(ii) requires a BOC to provide nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1).

Intermedia stated that BellSouth has not carried the burden of proof in clearly demonstrating that it has complied with Section 271(c)(2)(B)(ii). Intermedia again asserted that several CLPs have experienced (and continue to experience) problems with obtaining UNEs from BellSouth. Intermedia reiterated that BellSouth has not provided the unbundled digital loops and related UNEs that Intermedia has been requesting for over 15 months. Intermedia stated that it has demonstrated, and BellSouth has not rebutted, that both Intermedia and BellSouth contemplated the provision of digital UNEs and services when they entered into their interconnection agreement. Intermedia again noted that certain CLPs, including itself, are experiencing significant billing problems in one or more areas, including billings for local interconnection, resale, and unbundled network elements. With respect to pricing, Intermedia continued to assert that BellSouth's rates for UNEs are not consistent with the pricing standards of the Act.

MCI: No. MCI takes the position that BellSouth has not committed to permitting CLPs to order NIDs separate and apart from an unbundled loop. MCI argued that, although BellSouth has tested the availability of isolated NIDs, such testing is not synonymous with actually providing local loop transmission as required by checklist item (iv).

SPRINT: No. Sprint commented that, while it has not commenced local service in North Carolina, it does have a facilities-based operation in Florida under the name of SMNI. According to Sprint, SMNI orders numerous UNEs from BellSouth, including local loops, local number portability, directory listings, interoffice trunks, and local interconnection trunks. Thus, the experiences of SMNI in Florida can be assumed to offer relevant evidence as to BellSouth's readiness to meet the requirements of Section 271 in North Carolina, since they involve use of the same systems BellSouth proposes to use in North Carolina. SMNI's experiences show that North Carolina CLPs will not have nondiscriminatory access to these network elements.

SMNI has experienced a number of problems with BellSouth in Florida. Sprint's testimony about those problems came from Melissa L. Closz, the Sprint Director of Local Market Development. For example, witness Closz described one instance in which troubles caused by BellSouth finally prompted a SMNI customer to return his service to BellSouth. She said,

> "This customer's initial service cutover was postponed by BellSouth due to a facilities shortage. At cutover, BellSouth engineering problems caused an additional installation postponement. Two months later, this customer experienced a service interruption due to a BellSouth 'open jumper.' On three separate additional occasions, the customer could not receive calls due to BellSouth network routing errors related to call routing and Local Number Portability functionality. After his service failed again July 3 due to a 'bad card' on the BellSouth side of a demarcation hand-off between SMNI and BellSouth, the customer requested that his service be returned to BellSouth."

Sprint observed that, after all of those problems, BellSouth was able to reestablish its service to the customer on the same day that the customer's service order was placed. Sprint further observed that it does not believe that BellSouth experiences the same problems, in servicing its own customers, that SMNI has experienced and that BellSouth has not made such a contention. In conclusion, Sprint stated that, since BellSouth clearly is not yet prepared to provide nondiscriminatory access to unbundled network elements, it has not met this requirement of Section 271(c)(2)(B).

TRA: TRA does not appear to have addressed this issue with specificity.

WORLDCOM/COMPTEL: No. WorldCom/CompTel's position is consistent with that of AT&T.

DISCUSSION

Witness Varner testified that BellSouth offers a number of unbundled loop transmission services to CLPs as well as loop cross connects, loop concentration systems, and NIDs, as subloop elements. He further testified that CLPs may request additional loop types through the bona fide request process, and he indicated that BellSouth's SGAT includes the specifications of this Commission's Arbitration Orders of December 23, 1996, regarding connection of an AT&T- or MCI-provided loop through an adjoining AT&T or MCI NID.

Witness Milner testified that, as of July 1, 1997, BellSouth had provisioned 3,575 unbundled loops to CLPs in its nine-state region, but none in North Carolina. Additionally, witness Milner testified that BellSouth had tested certain of its unbundled loop services and that its systems and procedures had allowed for the accurate and timely processing of an order.

Witness Strow testified that UNEs are still not being provided in a manner which completely satisfies certain of Intermedia's requirements. However, she acknowledged that BellSouth offered SynchroNet service as an interim solution to such requirements while technical evaluation of Intermedia's specific request progressed. It now appears that BellSouth has concluded its technical analysis and conveyed the results and proposed pricing to Intermedia for incorporation into the interconnection agreement between them.

Witness Martinez testified that BellSouth refuses to permit MCI to order NIDs separate and apart from the unbundled loop. Witness Milner, in response to witness Martinez, testified that BellSouth provides NID-to-NID connection pursuant to the Commission's Arbitration Order. As previously noted, witness Varner also testified to that effect.

Witness Hamman testified that BellSouth has not as yet fully implemented the provisioning of unbundled local loops anywhere in its territory. He asserted that full implementation requires, at a minimum, a fully tested and functioning process for pre-ordering, ordering, provisioning, maintenance, and billing. Witness Hamman further testified that this process must be tested and demonstrated to work in a market environment for both new and existing customers. He stated that, although BellSouth has agreed to unbundle IDLC delivered loops, it has not established or tested the method by which these loops will be provided. Witness Hamman also described problems AT&T had experienced in Florida in this regard. He testified that AT&T's experience with BellSouth providing local loops is limited to four orders placed in Florida for a combination of all 12 UNEs, adding that BellSouth has now stopped the testing begun on these orders and changed its policy on whether AT&T can have access to the elements in the form requested. He further noted that carriers in other states have had problems. Witness Milner, in response to witness Hamman, noted that BellSouth's provisioning of 3,575 unbundled loops to CLPs in BellSouth's nine-state region is evidence that BellSouth has a workable process for providing unbundled loops to CLPs who request them. Witness Milner also stated that, while AT&T has not requested unbundled loops served by IDLC, other CLPs have, and BellSouth has successfully provided them.

Concerns raised by certain CLPs regarding the ability of BellSouth's OSS to provide nondiscriminatory access to unbundled network elements and the pricing of those elements are issues that have been addressed elsewhere herein and therefore need not be addressed here.

It is clear from the record that, in this regard, BellSouth has not satisfied the wishes of certain CLPs in an absolute sense in all respects. What is far less clear, however, is the degree of reasonableness of the CLPs' demands that have gone unfulfilled, and the extent to which BellSouth must go in attempting to meet those demands before it can reasonably be determined that the Company has in fact met, or failed to meet, the requirements of checklist item (iv).

As stated above, BellSouth, BSLD, and the Public Staff take the position that BellSouth is in compliance with checklist item (iv). The testimony of BellSouth's witnesses Varner and Milner clearly support the appropriateness of that view, i.e., that BellSouth is providing or generally offering local loop transmission from the central office to the customer's premises, unbundled from local switching or other services. The record is also clear that BellSouth is provisioning unbundled loops to CLPs in its nine-state region, but none in North Carolina. In provisioning those unbundled loops, it appears that BellSouth has encountered some difficulties, including problems which may have been experienced by SMNI in Florida, which have resulted in service delays to CLPs. However, based on the weight of the evidence presented, it appears that those difficulties have been reasonably overcome and that BellSouth now has in place both the facilities and procedures necessary to ensure that any requesting CLP will be granted nondiscriminatory access to local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.

CONCLUSIONS

After having carefully considered the foregoing as well as all other evidence of record, the Commission is persuaded, by the weight of the evidence, that it is entirely appropriate for it to adopt the position advocated by BellSouth, BSLD, and the Public Staff. The Commission, therefore, concludes that BellSouth is providing or generally offering the local loop transmission from the central office to the customer's premises unbundled from local switching or other services and has met the requirements of checklist item (iv). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 5

Issue: Is BellSouth providing or generally offering local transport from the trunk side of the wireline local exchange carrier's switch unbundled from switching or other services? [Checklist item (v)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. Local transport comprises those elements necessary to connect a CLP location to BellSouth or to connect two BellSouth locations. There are two types of local transport: dedicated and common. Dedicated transport is used exclusively by a single carrier for the transmission of its traffic. For example, a CLP switch can connect directly to a BellSouth switch through the use of dedicated transport. Common transport is used to carry the traffic of more than a single company for the transmission of their aggregate traffic. Common transport can connect a BellSouth end-office to another BellSouth end-office or to a BellSouth tandem. When a tandem switch is involved, a separate charge for tandem switching would apply in addition to the transport rates. This is similar to the application of a tandem switching charge for interconnection at a tandem switch.

BellSouth offers unbundled local transport in Section V of its SGAT, with optional channelization for such local transport from the trunk side of its switch. BellSouth offers both dedicated and common transport for use by CLPs, including Digital Signal Level 0 (DSO) channels, Digital Signal Level 1 (DS1) channels in conjunction with central office multiplexing or concentration, and DS1 or Digital Level 3 (DS3) transport.

BellSouth witness Milner testified that the Company has technical service descriptions outlining both dedicated and shared interoffice transport and has procedures in place for the ordering, provisioning, and maintenance of these services. Further, the Company has tested its methods and procedures for these services and has demonstrated its ability to place these facilities in service and generate a timely and accurate bill for them. As of September 1, 1997, BellSouth had installed 185 trunks for dedicated transport for CLPs in North Carolina and 939 trunks region wide.

BellSouth argued that the record clearly demonstrates that unbundled local transport is functionally available from BellSouth. Therefore, BellSouth contended that the Commission should conclude that it has met this checklist item.

BSLD: Yes. BSLD's position is consistent with that of BellSouth.

PUBLIC STAFF: Yes. As previously indicated, the Public Staff offered no evidence in this proceeding. In its Proposed Order, the Public Staff presented a summary of the testimony of witnesses. However, such Proposed Order contained no specific discussion as to the reasoning underlying the Public Staff's conclusion that BellSouth had met the requirements of checklist item (v). Presumably, the Public Staff, here again, reached the aforesaid conclusion for the same reasons offered by BellSouth in support of its position.

ATTORNEY GENERAL: The Attorney General did not address this particular issue with specificity.

AT&T: No. BellSouth has provided common transport to IXCs but CLPs cannot utilize it without additional work by BellSouth. Further, BellSouth has not put in place the methods and procedures that provide certainty that common transport can be provided between end-offices and billed on a nondiscriminatory basis. For example, in Florida, AT&T ordered four test loop combinations but cannot confirm receipt of shared transport or how BellSouth will render a usage sensitive bill for this shared transport. Therefore, BellSouth cannot claim that it has met the Act's requirement to provide unbundled local transport.

AT&T witnesses argued that BellSouth has not satisfied the requirements of checklist item (v). Section 271(c)(2)(B)(v) of the Act requires BellSouth to provide local transport unbundled from local switching or other services. BellSouth must provide access to transport that is "nondiscriminatory" in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) of the Act. BellSouth has yet to demonstrate that it can provide local transport in accordance with the requirements of the Act.

AT&T has requested that it be permitted to service its Digital Link customers using dedicated transport now in use for the transport of long distance calls. BellSouth required AT&T to go through the bona fide request process before it would agree to this arrangement. BellSouth's SGAT provides that a CLP may request additional transport options through the bona fide request process. That provision indicates that BellSouth intends to force other CLPs through the same lengthy process, if they request something different from the limited options proposed by BellSouth.

In concluding its comments, AT&T argued that BellSouth has not met its burden of proof in clearly demonstrating that it can provide local transport and, therefore, has not met the requirements of Sections 251(c)(3) and 252(d)(1) of the Act and checklist items (ii) and (v).

CWA: No. CWA did not address this issue with specificity. Generally, however, it takes the position that BellSouth has not demonstrated compliance with the requirements of the 14-point checklist.

DELTACOM: DeltaCom did not address this issue with specificity.

ICG, ET AL.: ICG, et al. did not address this issue with specificity.

INTERMEDIA: Intermedia does not appear to have addressed this particular issue with specificity.

MCI: No. MCI witness Martinez testified regarding the Company's position on this issue. Witness Martinez testified that there are a number of areas in which BellSouth fails to meet checklist compliance. In the case of local tandems, the SGAT does not allow CLPs to interconnect at the local tandem even though such interconnection admittedly is technically feasible. Witness Martinez acknowledged, however, that BellSouth has recently told MCI that it can begin to interconnect at the local tandems but that the information as to the location of these tandems is just now being finalized. Part of the problem stemmed from MCI's not being aware that BellSouth has local tandems, as most companies have basically done away with local tandems since the 1970's.

Witness Martinez stated that he does not believe that BellSouth is providing unbundled common transport. He agreed that his position on this issue was contrary to the opinion of BellSouth witness Milner. It was also his testimony that BellSouth does not offer a trunk port that a new entrant could use to connect to the local office switch. Without such a port, he asserted that there would be nothing to which a new entrant could connect the facility piece of the common transport. Witness Martinez also testified that it was his belief that BellSouth is not providing common transport, since the only way to measure traffic over a trunk group is to use the measurement capability of the switch.

SPRINT: No. Generally, Sprint's position is consistent with the position taken by AT&T.

TRA: TRA does not appear to have addressed this issue with specificity.

WORLDCOM/COMPTEL: No. WorldCom/CompTel's position is consistent with that of AT&T.

DISCUSSION

Witness Varner testified that in Section V of its SGAT, BellSouth offers local transport with optional channelization for local transport from the trunk side of its switches, and that the Company makes available dedicated transport and common transport, including central office multiplexing, as well as DS1 and DS3 transport.

BellSouth witness Milner testified that local transport is functionally available from BellSouth. He stated that BellSouth has technical service descriptions outlining both dedicated and shared interoffice transport and has procedures in place for the ordering, provisioning, and maintenance of these services. As of July 1, 1997, BellSouth had 171 dedicated trunks providing interoffice transport to CLPs in North Carolina and 771 dedicated trunks providing interoffice transport in its nine-state region.

AT&T witness Hamman, AT&T and MCI witness Cabe, and AT&T, MCI, CompTel, and WorldCom witness Gillan testified that BellSouth has not satisfied the requirements of checklist item (v). Generally, they asserted that BellSouth has provided common transport to IXCs but that CLPs cannot utilize it without additional work by BellSouth. Further, they stated that BellSouth has not put in place the methods and procedures necessary to assure with certainty that common transport can be provided between end-offices and billed on a nondiscriminatory basis. They pointed to Florida where AT&T ordered four test loop combinations but has not been able to confirm receipt of shared transport. In contravention of the foregoing, witness Milner testified that, because unbundled interoffice transport is very similar to the interoffice transport component of special access services that BellSouth has been providing for years, BellSouth had concluded that end-to-end testing of its systems and circuits was not necessary. Witness Milner further testified that BellSouth did conduct testing which verified that service orders for dedicated transport and unbundled channelization flowed through as planned and that accurate bills were generated.

MCI witness Martinez testified that there are a number of areas in which BellSouth fails to meet checklist compliance. However, witness Milner responded in rebuttal that witness Martinez had gone into a lengthy discussion about problems MCI has had in interconnecting with Southwestern Bell and Vista United—companies over which BellSouth has no control. The simple "bottom line" to this issue, according to witness Milner, is that CLPs may interconnect at BellSouth's local tandems or at BellSouth's access tandems, at the election of the CLP. Witness Milner also offered rebuttal to witness Martinez's opinion that BellSouth is not providing common transport, as it must impose a per minute charge on the CLPs' traffic usage over the trunk. Witness Milner stated that "minute-by-minute" measurements are needed to allocate the costs of shared facilities, since, at a given moment, all of the facilities might be used for BellSouth's traffic or the traffic of CLPs. Witness Milner testified that such "minute-by-minute" usage, for years, has been taken at the switch.

BellSouth, BSLD, and the Public Staff have asserted that BellSouth has procedures in place for the ordering, provisioning, and maintenance of the subject services and that BellSouth has demonstrated its ability to generate a timely and accurate usage sensitive bill for them, including usage sensitive bills for shared transport. On cross-examination, BellSouth's witness Milner testified that a usage sensitive test bill was first produced by BellSouth's billing system on September 15, 1997, and that the first production run of actual customer bills was made on September 25, 1997. The aforesaid parties also have asserted that BellSouth, as of September 1, 1997, had installed 185 trunks for dedicated transport for CLPs in North Carolina and 939 trunks region wide. Those assertions do not appear to have been refuted. It does appear that the CLPs might have experienced some difficulty in obtaining certain requested services in the past. However, to the extent problems were encountered, it also appears that BellSouth has acted reasonably and responsibly in dealing therewith. Thus, based on the weight of the evidence presented, it appears that BellSouth now has in place both the facilities and procedures necessary to ensure that any requesting CLP will be granted nondiscriminatory access to local transport from the trunk side of the wireline local exchange carrier's switch unbundled from switching or other services.

CONCLUSIONS

Based on the foregoing and all other evidence of record, the Commission concludes that BellSouth is providing or generally offering local transport from the trunk side of the wireline local exchange carriers switch unbundled from switching or other services and is in compliance with checklist item (v). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 6

Issue: Is BellSouth providing or generally offering local switching unbundled from transport, local loop transmission, or other services? [Checklist item (vi)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth provides local switching unbundled from transport, local loop transmission, or other services and therefore satisfies this checklist item. Local switching provides the functionality required to connect the appropriate originating lines or trunks wired to the main distribution frame, or to the digital cross-connect panel, to a desired terminating line or trunk. The functionality includes all features, functions, and capabilities inherent in the switch or provided by the switch software and includes vertical features, such as Call Waiting. It also provides access to additional capabilities such as common and dedicated transport, out-of-band signaling, 911, operator services, directory services, and repair service. In purchasing unbundled services, the CLP will determine which vertical features it wishes to activate and which other unbundled elements it wishes to use in conjunction with unbundled switching. Unbundled switching is functionally available from BellSouth.

In Section VI of its SGAT, BellSouth offers a variety of switching ports and associated usage unbundled from transport, local loop transmission, and other services. These include 2-wire and 4-wire analog ports, 2-wire and 4-wire ISDN ports, and hunting. Additional port types will be made available under the Bona Fide Request process. BellSouth has technical service descriptions and procedures in place for the ordering, provisioning, and maintenance of its switching services. Ordering and provisioning processes are set forth in the Local Interconnection and Facilities Based Ordering Guide. CLP orders for the port-switching functionality can be placed either electronically, through EDI, or via facsimile. Current installation intervals range from one to seven days depending on the load volume in the switching entity. Billing for the port/switching functionality is handled in the CRIS system and format; however, at a future date, CRIS billing in a CABS format is expected to be available.

BellSouth has also agreed to provide unbundled switching in many of its negotiated interconnection agreements. These agreements include a more comprehensive version of switching that includes the elements of common transport, tandem switching, and end-office switching. These agreements, as well as the SGAT, further disaggregate switching and allow the CLPs to purchase these elements separately. Vertical features and access to operator services, etc. are treated identically in the arbitrated agreements and the SGAT.

As of August 31, 1997, BellSouth submits that it has one unbundled switch port in service in North Carolina and 21 unbundled ports in service in its region. BellSouth believes this is clear evidence that unbundled local switching is functionally available from BellSouth.

BSLD: BSLD agrees with BellSouth.

PUBLIC STAFF: The Public Staff recommended that BellSouth is providing or generally offering local switching unbundled from local transport, local loop transmission, and other services and is in compliance with this checklist item.

ATTORNEY GENERAL: This party did not specifically address this issue.

AT&T: No. BellSouth is unable to comply with the Act's requirements concerning unbundled local switching because of its inability to provide new entrants with the full capabilities of the switch including control over vertical features and provision of usage sensitive billing in sufficient detail to permit CLPs to bill other carriers for exchange access. Moreover, BellSouth is unable to provide access to unbundled local switching because it has not yet demonstrated that it is capable of meeting the Act's requirements related to direct routing.

CWA: This party did not specifically address this issue.

DELTACOM: This party did not specifically address this issue.

ICG, ET AL.: This party did not specifically address this issue.

INTERMEDIA: Intermedia has not ordered unbundled local switching from BellSouth and, hence, Intermedia cannot state with certainty whether BellSouth can provide unbundled local switching pursuant to the requirements of the 1996 Act.

MCI: No. BellSouth does not provide unbundled switching in accordance with Section 271(c)(2)(B)(vi). BellSouth has no unbundled switch ports in service in North Carolina. BellSouth has not shown that it is capable of providing unbundled local switching. In addition, BellSouth has not unbundled local switching so that both line side and trunk side are offered separately. BellSouth has not shown that it can provide the access usage data necessary for a CLP to bill access charges. Consequently, BellSouth has not satisfied checklist item (vi).

SPRINT: This party did not specifically address this issue.

TRA: This party did not specifically address this issue.

WORLDCOM/COMPTEL: This party agreed with the position of AT&T.

DISCUSSION

As stated above, several intervenors contend for various reasons that BellSouth is not providing or generally offering local switching unbundled from transport, local loop transmission, or other services as required by the Act. The evidence related to these contentions is discussed below.

In his prefiled direct testimony, BellSouth witness Milner explained that unbundled local switching includes a monthly port charge and usage charges (per minute charges). He testified that a bill for the monthly charges can be system-generated. The usage charges, however, contain several components and can vary by distance and the number of switches involved in completing the call. In his prefiled testimony, witness Milner stated that if a CLP purchases unbundled switching from BellSouth, BellSouth will either render a manually calculated bill or retain the usage until a system-generated bill is available.

AT&T, CompTel, MCI, and WorldCom witness Gillan testified there are a number of reasons why a manual billing process for unbundled local switching is unsatisfactory. Witness Gillan asserted that a manual billing process violates the requirement that network elements, including OSS functions such as billing, be provided in a nondiscriminatory manner. Further, he asserted that automated billing for switching is essential if its potential to support widespread competition is to be realized. Witness Gillan believed it was impractical for a CLP to enter the market now and wait for BellSouth to develop the ability to issue bills in the future. He also stated that there is no reason to believe that every IXC that terminates traffic to CLP's customers will agree to wait for an access bill and pay it when it arrives. Finally, witness Gillan testified that BellSouth had alternately denied and admitted that the CLP which purchases unbundled local switching becomes the provider of exchange access services.

Under cross-examination from AT&T counsel during the hearing on September 29, 1997, BellSouth witness Milner testified that BellSouth can now provide mechanized usage billing for UNEs. He elaborated that on August 14, 1997, BellSouth updated its customer record information system which allows BellSouth to process the usage measurements off-line and create a bill for them. He further testified that test bills were created on September 15, 1997, and the first production run of "live" customer bills occurred on September 25, 1997.

In rebuttal to witness Gillan's statement that "in other state proceedings BellSouth has alternately denied and admitted that the entrant becomes the access provider to its own customers," BellSouth witness Varner testified that his review of testimony in these proceedings revealed that two different situations were being addressed by BellSouth witnesses. In one situation, witness Varner was addressing the application of access charges when the CLP orders all the UNEs which replicate an existing service and indicates that BellSouth should do the recombining. In this situation, BellSouth's position is that BellSouth remains the end-user's access provider. In the other situation, the BellSouth witness was addressing the issue of access charges in the situation where the CLP orders UNEs and the CLP combines the UNEs in order to provide the services. In this latter situation, it is BellSouth's position that the CLP becomes the end-user's provider, and BellSouth would not receive access revenue.

Witness Gillan also testified that offering unbundled switching alone was insufficient. It was his testimony that new entrants should be able to purchase the unbundled loop and unbundled switching in combination, which is commonly referred to as the "UNE Platform." However, witness Gillan's own testimony recognized that this Commission did not require BellSouth to provide network element combinations in arbitration decisions, requiring instead that any network element combination that produces an existing service should be priced as a wholesale service. In rebuttal, BellSouth witness Varner testified that the provision of this unbundled platform is simply resale. In its Proposed Order, BellSouth also cites the Order on Petitions for Rehearing in Iowa Utilities Board, et al., v. Federal Communications Commission issued by the Eighth Circuit Court on October 14, 1997. BellSouth submits that this decision squarely laid witness Gillan's "UNE Platform" theory to rest.

AT&T witness Hamman stated that there are several unresolved issues related to the provision of local switching and provided testimony concerning two such issues. First, witness Hamman testified that BellSouth has delayed the provision of direct routing to AT&T. He explained that direct routing is the ability of AT&T's customers to reach AT&T's operator services and directory services when dialing "0" or "411" just as BellSouth customers are able to dial those numbers to reach BellSouth operators and directory assistance. Generally, there are two means to provide direct routing: through switch translations using Line Class Codes (LCCs), or through an Advanced Intelligent Network (AIN) database solution. He described AT&T's experience with BellSouth in Georgia as an example of BellSouth's delay in providing direct routing. In rebuttal, BellSouth witness Milner testified that this Commission determined that selective routing using the LCC method is not technically feasible. He added that although BellSouth is working diligently towards an AIN solution, that work is not yet complete. On cross-examination, witness Milner stated that testing of the AIN method will begin in late 1997 or early 1998.

Witness Hamman testified that the second major issue related to unbundled local switching is BellSouth's failure to provide access to all of the features of the switch, including the ability for a CLP to activate and change features; define the translations for a CLP's customers; and provide usage billing which includes identification of the Carrier Identification Code (CIC) of the IXC for a toll call and the billing of access charges. Witness Hamman testified that to date, these details have not been made available from BellSouth when AT&T orders this element as part of the unbundled platform. However, BellSouth witness Varner testified that the functionality of local switching includes access to vertical features, which BellSouth provides access to in the SGAT. (See SGAT, Section VI.A.) According to his testimony, in purchasing unbundled switching, the CLP will determine which features it wishes to activate.

MCI witness Martinez testified that there are two basic elements associated with local switching, the ports or access and egress elements and the switching function, and that to effectively unbundle local switching, each of these two elements must be offered from both the port or line side and the trunk side. He stated that only the trunk side of local switching combined with the common transport group is offered in the SGAT. Therefore, he believed that BellSouth has not unbundled local switching so that both the line side and the trunk side are offered separately.

In response to witness Martinez, BellSouth witness Milner stated that these elements by themselves would provide no useful functionality and that Mr. Martinez had attempted to create new UNEs which were not the subject of the arbitration process or the Bona Fide Request process. Witness Milner asserted that such "new" UNEs did not have to be provided for BellSouth to be in compliance with the checklist.

The Commission has ruled in the BellSouth arbitration proceedings that selective routing using LCCs is not required. However, BellSouth's Binder Volume 6-1, which contains a Technical Service Description for Unbundled Local Switching, states that "selective routing may also be ordered to allow access CLECs to route 0+, 0-, 555-1212, and 411 calls to an operator other than BellSouth's or to route 611 repair calls to a repair center other than BellSouth. LCCs will be utilized until they are exhausted. An AIN solution will be explored as a potential long term solution for the industry". Further, Section 27.1 of the Interconnection Agreement between BellSouth and AT&T provides for the use of LCCs to be used for selective routing until a permanent industry solution exists. To the extent BellSouth has agreed to the use of LCCs to provide such routing, the Commission concludes that there is no evidence that BellSouth has failed or would fail to live up to its commitments in North Carolina.

With respect to the issue that BellSouth has not unbundled local switching so that both the line side and trunk side are offered separately, the Commission concludes that this issue was successfully rebutted by the testimony of BellSouth witness Milner. Further, the language contained in Sections II and VI of the SGAT does not appear to support the position taken by certain intervenors with respect to this issue.

Finally, several parties argued that BellSouth lacked the ability to mechanically bill usage sensitive information for unbundled switching. Despite BellSouth witness Milner's prefiled testimony that BellSouth would either manually calculate a bill for usage sensitive information or retain usage until a system-generated bill is available, on cross-examination witness Milner's testimony revealed that on August 14, 1997, BellSouth had updated its CRIS to allow it to provide mechanized usage sensitive billing for UNEs. Witness Milner added that test bills were created on September 15, 1997 and the first "live" customer bills were produced during the hearings on September 25, 1997.

CONCLUSIONS

Based on the record, the Commission concludes that BellSouth is providing or generally offering local switching unbundled from transport, local loop transmission, or other services and is in compliance with checklist item (vi). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7(a)

Issue: Is BellSouth providing or generally offering nondiscriminatory access to 911 and E911 services? [Checklist item (vii(I))]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth offers nondiscriminatory access to the 911 and E911 network, directory assistance and operator call completion services, and associated databases and therefore satisfies this checklist.

BSLD: Yes. BSLD agrees with the position of BellSouth.

PUBLIC STAFF: Yes. Based on the evidence presented, the Public Staff believes that BellSouth is providing or generally offering nondiscriminatory access to 911 and E911 services and is in compliance with checklist item (vii).

ATTORNEY GENERAL: Did not take a position on this issue.

AT&T: No. BellSouth has not provided such access to AT&T. Section 271(c)(2)(B)(vii) requires BellSouth to provide nondiscriminatory access to 911 and E911 services. BellSouth currently is not providing CLPs in North Carolina access to 911 and E911 services in a manner consistent with the requirements of the Act and checklist item (vii).

CWA: Did not address this issue.

DELTACOM: Did not address this issue.

ICG, ET AL.: Did not address this issue.

INTERMEDIA: BellSouth has provided Intermedia with access to 911 and E911, directory assistance services, and operator call completion services, but only to the extent limited local exchange service is being provided by Intermedia over Intermedia's local exchange facilities. To the extent that Intermedia has requested such access in association with requested UNEs, BellSouth has not provided nondiscriminatory access to such services. Intermedia does not know whether BellSouth will be able to provide access to such services in connection with the requested UNEs.

MCI: No. BellSouth has not fully implemented or offered checklist item (vii) of the competitive checklist contained in Section 271(c)(2)(B) of the Act, which requires nondiscriminatory access to 911 and E911 services. BellSouth is required to provide 911 and operator call completion services in accordance with the Act in order to satisfy checklist Item (vii).

SPRINT: Sprint indicated that it concurred with the post-hearing matrix submitted by AT&T.

TRA: Did not address this issue.

WORLDCOM/COMPTEL: No. WorldCom/CompTel's position is consistent with that of AT&T.

DISCUSSION

Section 271(c)(2)(B)(vii)(I) of the Telecommunications Act states that a BOC shall provide nondiscriminatory access to 911 and E911 services.

BellSouth witness Varner testified that BellSouth offers CLPs nondiscriminatory access to 911 and E911 service within North Carolina. In all situations, a CLP's customer is able to dial 911 in the same manner as BellSouth's end-user customers. BellSouth enables a CLP's customer to obtain 911 call routing to the appropriate Public Safety Answering Point (PSAP). BellSouth provides and validates customer information to the PSAP. BellSouth uses its service order process to update and maintain the automatic Location Identification/Database Management system used to support E911 and 911 services on the same schedule that it uses for its end-users. Under resale, BellSouth provides E911 and 911 in the same manner that it is provided in BellSouth's retail tariffs. BellSouth provides facilities-based CLPs equal access to provide their customer numbers and address information to 911 providers. The SGAT contains the terms and conditions that are required to provide this service.

BellSouth witness Varner testified that as of September 1, 1997, BellSouth had 18 trunks in service in North Carolina connecting CLPs with BellSouth's 911 arrangements and 211 trunks regionwide. BellSouth has also had experience loading data for several CLPs in BellSouth's 911 databases. Five CLPs in North Carolina and 15 throughout BellSouth's region have loaded mechanized data in BellSouth's 911 databases. BellSouth contended that no party to this proceeding presented any evidence that BellSouth's access to 911 and E911 service is discriminatory.

The Public Staff stated that it believes that BellSouth is providing or generally offering nondiscriminatory access to 911 and E911 services and is in compliance with checklist item (vii).

AT&T witness Hamman testified that nondiscriminatory access for 911 and E911, directory assistance, and operator call completion is technically feasible and can be provided by direct routing from the switch or other means.

Intermedia indicated that BellSouth has provided Intermedia with access to 911 and E911 but only to the extent limited local exchange service is being provided by Intermedia over Intermedia's local exchange facilities. Intermedia stated that it does not know whether BellSouth will be able to provide access to such services in connection with the requested UNEs.

The Commission has carefully reviewed the evidence presented by the witnesses and is persuaded by the weight of that evidence that BellSouth is providing nondiscriminatory access to 911 and E911 services.

CONCLUSIONS

Based on the evidence presented, the Commission concludes that BellSouth is providing or generally offering nondiscriminatory access to 911 and E911 services and is in compliance with checklist item (vii)(I). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7(b)

Issue: Is BellSouth providing or generally offering nondiscriminatory access to directory assistance services? [Checklist item (vii(II))]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth's directory assistance is available on a nondiscriminatory basis to CLPs providing local exchange service to end-user customers in exchanges served by BellSouth.

BSLD: Yes. BSLD agrees with the position of BellSouth.

PUBLIC STAFF: Yes. The Public Staff believes that BellSouth is providing or generally offering nondiscriminatory access to directory assistance services to allow the other carrier's customers to obtain telephone numbers and is in compliance with checklist item (vii).

ATTORNEY GENERAL: Did not address this issue.

AT&T: No. Although nondiscriminatory access is technically feasible and can be provided by direct routing from the switch or other means, BellSouth has yet to provide such access while continuing to brand these services as its own even for AT&T customers.

DELTACOM: Did not address this issue.

ICG, ET AL.: Did not address this issue.

INTERMEDIA: BellSouth has provided Intermedia with access to 911 and E911, directory assistance services, and operator call completion services, but only to the extent limited local exchange service is being provided by Intermedia over Intermedia's local exchange facilities. To the extent that Intermedia has requested such access in association with requested UNEs, BellSouth has not provided nondiscriminatory access to such services. Intermedia does not know whether BellSouth will be able to provide access to such services in connection with the requested UNEs.

MCI: No. BellSouth has not fully implemented or offered item (vii) of the competitive checklist contained in Section 271(c)(2)(B) of the Act, which requires nondiscriminatory access to directory assistance services.

SPRINT: Did not address this issue however indicated that it concurred with AT&T's post-hearing matrix.

WORLDCOM/COMPTEL: No. WorldCom/CompTel's position is consistent with that of AT&T.

DISCUSSION

Section 271(c)(2)(B)(vii)(II) of the Telecommunications Act states that a BOC shall provide nondiscriminatory access to directory assistance services to allow the other carrier's customers to obtain telephone numbers.

BellSouth witness Varner testified that Subsection B of Section VII concerns directory assistance services. It requires BellSouth to include CLP subscriber listings, for both resale and facilities-based CLP customers, in BellSouth's directory assistance database at no charge, and requires BellSouth to provide CLPs and their subscribers access to its unbranded directory assistance service by dialing the same numbers (i.e., 411 or the appropriate area code and 555-1212) and receiving the same treatment as BellSouth subscribers. The rates for the directory assistance services are set out in Attachment A of the SGAT.

BellSouth witness Milner stated that as of July 1, 1997, there were 110 directory assistance trunks in place serving CLPs in North Carolina and 412 directory assistance trunks in place serving CLPs in its nine-state region. In addition, four CLPs in North Carolina are purchasing directory assistance access service from BellSouth and 15 in the nine-state region. One CLP in North Carolina is purchasing Directory Assistance Call Completion (DACC), and nine in the nine-state region. BellSouth witness Milner also stated that there were no intercept trunks allowing for intercept service which refers calls from a disconnected or nonworking number to the proper number in North Carolina, but there were 14 in the nine-state region.

BellSouth witness Varner testified that as of September 1, 1997, there were 118 directory assistance trunks in place serving CLPs in North Carolina and 492 on a regionwide basis. End-users can access BellSouth's directory assistance service by dialing 411 or the appropriate area code and 555-1212. Additionally, BellSouth will provide routing of calls from a CLP's customer to the CLP's directory assistance platform through 411 and 555-1212 dialing arrangements. BellSouth offers CLPs access to BellSouth's directory assistance database under the same terms and conditions currently offered to other telecommunications providers.

BellSouth witness Varner stated that BellSouth includes both facilities-based and reseller CLP's subscribers listings in its directory assistance databases, and BellSouth does not charge the CLP to maintain the directory assistance database. BellSouth also offers three services to CLPs that will provide them with access to BellSouth's directory assistance database under the same terms and conditions currently offered to other telecommunications providers. Directory assistance access service is the service by which BellSouth currently provides directory assistance to IXCs. Direct Access Directory Assistance Service (DADAS) is the service which provides direct on-line access to BellSouth's directory assistance database, and Directory Assistance Database Service (DADS) is the service which provides a copy of the BellSouth directory assistance database. BellSouth witness

Varner stated that no party presented any evidence that BellSouth's access to its directory assistance services is discriminatory.

BellSouth's SGAT specifically states that directory assistance services will be provided unbranded. The rates for directory assistance services are set out in Attachment A of the SGAT.

The Public Staff believes that BellSouth is providing or generally offering nondiscriminatory access to directory assistance services and is in compliance with checklist item (vii).

AT&T witness Hamman testified that nondiscriminatory access for 911 and E911, directory assistance, and operator call completion is technically feasible and can be provided by direct routing from the switch or other means. He testified, however, that BellSouth continues to brand these services under the BellSouth brand for AT&T customers.

Intermedia stated that BellSouth has provided Intermedia with access to 911 and E911, directory assistance services, and operator call completion services, but only to the extent limited local exchange service is being provided by Intermedia over Intermedia's local exchange facilities. To the extent that Intermedia has requested such access in association with requested UNEs, BellSouth has not provided nondiscriminatory access to such services. Intermedia does not know whether BellSouth will be able to provide access to such services in connection with the requested UNEs.

MCI witness Martinez testified that an MCI customer calling MCI directory assistance and wishing access to directory service listings for independent telephone companies and other new entrants would need to be transferred by MCI's directory assistance to BellSouth's directory assistance or such customer would have to dial a special code to by-pass MCI's directory assistance and go directly to BellSouth's directory assistance. MCI witness Martinez stated that this was not dialing parity.

BellSouth witness Milner stated that the issue is whether a local service provider can request that its directory listings not be provided to MCI by BellSouth. BellSouth believes that local service providers have that right and will honor requests not to provide such listings. He stated that BellSouth makes the listings of its customers available to all other local providers and also makes available the customer listings of all other service providers which have not specifically instructed BellSouth not to furnish their listings to others. Mr. Milner stated this is an issue between MCI and certain local service providers rather than an issue between MCI and BellSouth. MCI witness Martinez indicated that MCI could contract directly with these independents to obtain this information. The Commission agrees with BellSouth that this is an issue between MCI and the other ILECs and should be resolved by those parties.

The Commission has carefully reviewed the evidence presented by the witnesses and is persuaded by the weight of that evidence that BellSouth is providing nondiscriminatory access to directory assistance services.

CONCLUSIONS

Based on the evidence presented, the Commission concludes that BellSouth is providing or generally offering nondiscriminatory access to its directory assistance services and is in compliance with checklist item (vii)(II). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7(c)

Issue: Is BellSouth providing or generally offering nondiscriminatory access to operator call completion services? [Checklist item (vii(III))]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth makes available its operator call completion services to CLPs in the same manner that it provides operator services to its own customers.

BSLD: Yes. BSLD agrees with the position of BellSouth.

PUBLIC STAFF: Yes. The Public Staff believes that BellSouth is providing or generally offering nondiscriminatory access to operator call completion services and is in compliance with checklist item (vii).

AT&T: No. Without direct routing of calls from AT&T customers to AT&T operators and directory assistance services, BellSouth has not met the requirements to provide nondiscriminatory access to AT&T operator services and directory assistance.

DELTACOM: Did not address this issue.

ICG, ET AL.: Did not address this issue.

INTERMEDIA: BellSouth has provided Intermedia with access to 911 and E911, directory assistance services, and operator call completion services, but only to the extent limited local exchange service is being provided by Intermedia over Intermedia's local exchange facilities. To the extent that Intermedia has requested such access in association with requested UNEs, BellSouth has not provided nondiscriminatory access to such services. Intermedia does not know whether BellSouth will be able to provide access to such services in connection with the requested UNEs.

MCI: No. BellSouth has not fully implemented or offered checklist item (vii) of the competitive checklist contained in Section 271(c)(2)(B) of the Act, which requires nondiscriminatory access to 911 and E911 services, directory assistance services, and operator call completion services. BellSouth is required to provide 911, directory assistance, and operator call completion services in accordance with the Act in order to satisfy checklist item (vii).

MCI witness Martinez testified that, in his opinion, BellSouth is not making operator call amplification service available on a nondiscriminatory basis until BellSouth conducts tests to insure that with ported numbers, the BellSouth operator will transfer to the new entrant operator emergency interrupt and busy verification requests made on ported numbers.

SPRINT: Did not address this issue. However, Sprint indicated that it concurred with AT&T's post-hearing matrix.

WORLDCOM/COMPTEL: No. WorldCom/CompTel's position is consistent with that of AT&T.

DISCUSSION

Section 271(c)(2)(B)(vii)(III) states that a BOC must provide nondiscriminatory access to directory assistance services to allow the other carrier's customers to obtain telephone numbers.

BellSouth witness Varner testified that BellSouth offers Centralized Message Distribution System - Hosting (CMDS-Hosting) and Non-Sent Paid Report System (NSPRS) processing. Other operator services offerings include: Busy Line Verification (BLV) and Busy Line Verification and Emergency Interrupt (BLVI); Operator Call Processing Access Service; and Operator Services Transport. As of September 1, 1997, BellSouth had provided CLPs with 49 trunks in North Carolina to access BellSouth's operator services system and 222 trunks regionwide. The rates for operator call completion services are set out in Attachment A of the SGAT.

AT&T witness Hamman stated that Section 271(c)(2)(B)(iv) of the Act requires BellSouth to provide access to local switching unbundled from transport, local loop transmission, and other services. In order to provide such unbundled access, BellSouth must implement direct routing. Direct routing involves directing certain classes of traffic to specified trunks. For example, direct routing over specially designed AT&T trunks permits access to AT&T's operator services and directory assistance platforms from unbundled local switching.

MCI witness Martinez testified that there is no evidence that BellSouth has conducted testing to insure that with respect to ported numbers, the BellSouth operator will transfer to the new entrant operator emergency interrupt and busy verification requests. BellSouth cannot be deemed to be making available or providing operator call completion services until it has shown that testing has been conducted and that the requested transfer is technically feasible.

In his rebuttal testimony, BellSouth witness Milner stated that BellSouth is willing to establish, in cooperation with MCI, inward-only trunks for the purpose of transferring such requests between operator service platforms, that BellSouth has already prepared a database for its operators' use for that purpose, and is prepared to establish the trunks when MCI is ready. The Commission expects BellSouth to offer to provide a similar arrangement to any new entrant which establishes its own operator services platform.

The Commission has concluded in arbitration proceedings that BellSouth should not be required to unbrand its operator call completion services and believes that unbranding of operator call completion services is not necessary to satisfy the requirements of the checklist.

The Commission has carefully reviewed the evidence presented by the witnesses and is persuaded by the weight of that evidence that BellSouth is providing nondiscriminatory access to operator call completion services.

CONCLUSIONS

Based on the evidence presented, the Commission concludes that BellSouth is providing or generally offering nondiscriminatory access to operator call completion services and is in compliance with checklist item (vii)(III). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 8

Issue: Is BellSouth providing or generally offering white pages directory listings for customers of the other carrier's telephone exchange service? [Checklist item (viii)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth provides CLPs and their customers access to white pages listings and thus satisfies this checklist item.

BSLD: Supports the position of BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: Yes. BellSouth is providing or generally offering white pages directory listings for customers of the other carrier's telephone exchange service.

ATTORNEY GENERAL: No position on this issue.

AT&T: No. BellSouth has not provided such listings to AT&T. BellSouth cannot meet this requirement until it provides competitors the same capability to submit orders as BellSouth enjoys, and this capability is not yet available.

CWA: No position on this issue.

DELTACOM: No position on this issue.

ICG, ET AL.: No position on this issue.

INTERMEDIA: BellSouth has provided very limited white pages directory listings for Intermedia's customers. Intermedia does not know, however, if BellSouth will be able to provide such listings in connection with the requested UNE, which BellSouth has not yet been able to provide to Intermedia.

MCI: No. BellSouth has not shown that it offers or provides directory listings for independent telephone companies and other new entrants.

SPRINT: Adopts the position of AT&T.

TRA: No position on this issue.

WORLDCOM/COMPTEL: Adopts the position of AT&T.

DISCUSSION

Section 271(c)(2)(B)(viii) of the Act requires BellSouth to provide or generally offer white pages directory listings for customers of other carriers' telephone exchange service.

BellSouth obtains directory publication services from one of its affiliates, BellSouth Advertising and Publishing Corporation (BAPCO). BellSouth arranges with its directory publisher to make available to any CLP, for their subscribers, white pages directory listings which include the subscriber's name, address, and telephone number. CLP subscribers receive no less favorable rates, terms, and conditions for directory listings than are provided to BellSouth's subscribers. Listings for a CLP's residential and business customers are included in the appropriate white pages or local alphabetical directories. These listings are included with all other LEC's listings without any distinction as to the LEC providing the local service. Copies of such directories are delivered to a CLP's subscriber. Witness Varner stated that all interconnection agreements which BellSouth has negotiated with resellers and facilities-based carriers have included arrangements for the provision of directory listings in the white pages.

As of July 22, 1997, BellSouth had processed orders for 9,416 resold local exchange services in North Carolina and 178,330 services regionwide. Because these orders included directory listings, BellSouth contends that they provide evidence of its ability to process CLPs' orders for white pages directory listings and to include these listings in the directory assistance database.

AT&T contends that BellSouth has not provided such white pages listings to AT&T. It argues that BellSouth cannot meet this requirement until it provides competitors the same capability to submit orders as BellSouth enjoys and that this capability is not yet available. AT&T further asserts that BellSouth does not have adequate electronic interfaces to allow competitors to relay information for white pages listings to BellSouth at parity with the method BellSouth employs to provide information to itself. AT&T states that BellSouth has required AT&T to submit the information through service orders using manual interfaces.

MCI states that BellSouth has not shown that it offers or provides directory listings for independent telephone companies and other new entrants and therefore does not meet the checklist requirement.

The Public Staff takes the position that BellSouth is in compliance with this checklist item. It refers to Section VIII of BellSouth's SGAT as addressing white pages directory listings for CLPs. Under Section VIII, BellSouth or its agents provide CLP residential and business customers' names, addresses, and telephone number listings in the residential or business white pages, as appropriate, or in alphabetical directories, at no charge, and with no distinction between CLP and BellSouth subscribers. BellSouth also agrees in Section VIII to deliver white pages directories to CLP subscribers at no charge and to provide additional listings and optional listings to the CLP subscribers at BellSouth's tariffed rates as set forth in the General Subscriber Services Tariff.

The direct and rebuttal testimony of BellSouth are persuasive in that it is providing or generally offering white pages directory listings for customers of the other carrier's telephone exchange service.

CONCLUSIONS

The Commission concludes that BellSouth is providing or generally offering white pages directory listings for customers of the other carrier's telephone exchange service and meets checklist item (viii). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 9

Issue: Is BellSouth providing or generally offering nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers? (Nondiscriminatory access is required until the date by which telecommunications numbering administration guidelines, plan, or rules are established. After that date, compliance with such guidelines, plan, or rule is required.) [Checklist item (ix)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth, as the North American Numbering Plan (NANP) Administrator for its territory, ensures that CLPs have nondiscriminatory access to telephone numbers for assignment to their customers.

BSLD: Supports the position of BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: Yes. BellSouth is providing or generally offering nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone service customers.

ATTORNEY GENERAL: No position on this issue.

AT&T: No. AT&T cannot order telephone numbers on a nondiscriminatory basis. BellSouth must establish methods and procedures for assignment of telephone numbers that apply to all competitors, including BellSouth, and further must implement nondiscriminatory electronic ordering procedures and capabilities.

CWA: No position on this issue.

DELTACOM: No position on this issue.

ICG, ET AL.: No position on this issue.

INTERMEDIA: Yes. BellSouth has provided nondiscriminatory access to telephone numbers to Intermedia.

MCI: No. Before BellSouth can be found to meet this checklist item, there must be standards in place for the assignment of NXXs with performance measures to insure that such standards are being met.

SPRINT: Adopts the position of AT&T.

TRA: No position on this issue.

WORLDCOM/COMPTEL: Adopts the position of AT&T.

DISCUSSION

BellSouth addresses this checklist item in Section IX of its SGAT. This section states that BellSouth is the NANP Administrator for its territory and that, while it continues to serve as the Administrator, it insures that both facilities-based or reseller CLPs have nondiscriminatory access to telephone numbers for assignment to their customers under the same terms that BellSouth has access to telephone numbers. BellSouth also agrees that when it is no longer the NANP Administrator, it will comply with the final and nonappealable guidelines, plan, or rules adopted pursuant to 47 U.S.C. Section 251 (e).

BellSouth witness Milner testified that it has established the procedures to provide nondiscriminatory NXX code assignments to CLPs. BellSouth witness Varner testified that BellSouth will provide numbering resources, pursuant to the BellCore Guidelines, regarding number assignments. As of September 8, 1997, BellSouth had activated a total of 128 NXX codes to CLPs in North Carolina and 761 regionwide.

AT&T witness Hamman testified that BellSouth has not demonstrated that it is providing telephone numbers in accordance with the requirements of this checklist item. He argues that methods and procedures for assignment of telephone numbers that apply equally to everyone, including BellSouth, must be established, and that these methods and procedures do not exist. Witness Hamman's testimony is in direct contradiction to witness Milner's testimony that BellSouth has established procedures. On cross-examination by the Attorney General, witness Hamman admitted that, other than in its interconnection agreement, AT&T has not asked for and thus has no first hand knowledge of whether they would be provided access to telephone numbers by BellSouth in North Carolina.

AT&T witness Bradbury's testimony focused on the lack of OSS functions which BellSouth has to enable it to assign telephone numbers in a nondiscriminatory manner. He stated that BellSouth's OSS mechanism called LENS does not provide new entrants with the same capability to reserve telephone numbers for CLPs as it does for BellSouth. He further stated that BellSouth can use its OSS to reserve more types of telephone numbers than a new entrant using LENS. BellSouth can also reserve multi-line hunt group numbers while new entrants cannot, and that a new entrant will incur charges for conducting searches whereas BellSouth will not incur charges for conducting the same searches. Witness Bradbury asserts that LENS is unable to perform certain telephone number searches as advertised, and that it does not provide new entrants with the same options as BellSouth for selecting telephone numbers.

On cross-examination by BellSouth, witness Bradbury admitted that AT&T does not intend to use interfaces offered through the SGAT except to the extent that those are the same interfaces available through AT&T's interconnection agreement with BellSouth. He also stated that AT&T only intends to use the LENS system on an interim basis for pre-ordering functions, of which assigning telephone numbers is included, until AT&T's own long-term interfaces are delivered to AT&T in December.

MCI witness Martinez testified that BellSouth is not making available or providing access to telephone numbers on a nondiscriminatory basis in accordance with the checklist requirements, because there are no standards in place for the assignment of NXXs with performance measures to insure that these standards are being met. He further stated that MCI believes that, to reduce the possibility of discrimination, there is a need to take steps to conserve the use of numbers; that it is BellSouth's responsibility to take steps to reduce the likelihood of exhaust; and that until BellSouth does so, it should not be deemed to satisfy its obligations under this checklist item.

Furthermore, MCI believes that BellSouth, as the current code administrator, should be notifying the industry regarding new NXX codes being assigned and opening up, just as it does for itself and its affiliates. Without proper loading of CLPs' NXX codes into the switches of all third parties, voids are created which prevent CLP customers from receiving calls from customers of third parties whose providers do not have the codes loaded.

In response to questions by the Commission, witness Martinez admitted that MCI was not having problems getting assigned numbers by BellSouth but only in the activation of those numbers. He stated that it was his hope that this activation problem would go away when BellSouth ceased to be the administrator.

BellSouth witness Milner testified that BellSouth does have standards in place regarding the assignment of NXX codes. He stated that BellSouth uses the Central Office Code (NXX) Assignment Guidelines for administering codes. He further stated that BellSouth maintains and updates the list of NXX code assignments in its Local Exchange Routing Guide (LERG) and therefore notifies the industry regarding new NXX codes being assigned to CLPs.

The direct and rebuttal testimony of BellSouth are persuasive in that it is providing or generally offering nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers.

CONCLUSIONS

The Commission concludes that BellSouth is providing or generally offering to CLPs nondiscriminatory access to telephone numbers for assignment to the other carrier's telephone exchange service customers and meets checklist item (ix). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 10

Issue: Is BellSouth providing or generally offering nondiscriminatory access to databases and associated signaling necessary for call routing and completion? [Checklist item (x)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth stated that its SGAT provides access to the signaling elements necessary for call routing and completion, including Signaling Links, Signal Transfer Points (STPs), and Service Control Points (SCPs). The SCPs/Databases to which CLP's have access include Line Information Database (LIDB), Toll Free Number Database, Automatic Location Identification and Data Management System, and AIN. BellSouth has technical service descriptions that outline access to these databases and has procedures in place for the ordering, provisioning, and maintenance of these services.

From January through August 1997 CLPs across BellSouth's nine-state region made approximately 22 million queries to BellSouth's 800 database, thus demonstrating its functional availability. BellSouth's LIDB received more than 244 million queries from CLPs and other service providers from January through July 1997.

Testing of BellSouth's AIN Toolkit 1.0, which provides a CLP with the ability to create and offer AIN-service applications to their end-users, confirmed that service orders flowed through BellSouth's systems properly and that accurate bills were rendered.

BellSouth's signaling service is also functionally available, as demonstrated by the fact that as of July 1, 1997, one CLP was interconnected directly to BellSouth's signaling network in Georgia, and seven other CLPs have interconnected using a third party signaling hub provider which, in turn, accesses BellSouth's signaling network.

BSLD: Supported the position taken by BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: Yes. The Public Staff recommends that the Commission find and conclude that BellSouth is providing or generally offering nondiscriminatory access to its databases and associated signaling systems necessary for call routing and is in compliance with checklist item (x).

ATTORNEY GENERAL: Issue was not addressed in Brief.

AT&T: No. AT&T states that BellSouth has not satisfied this checklist item. AT&T argues that there are no methods and procedures in place for nondiscriminatory access to databases and associated signaling, nor has testing been conducted to determine how BellSouth will provide access to its AIN.

CWA: Did not address this issue.

DELTACOM: Did not address this issue.

ICG, ET AL.: No. TCG maintains that BellSouth has refused to confirm Signaling System 7 (SS7) signaling to TCG despite repeated requests.

INTERMEDIA: No. Because BellSouth has not provided Intermedia with the requested UNEs, BellSouth has not provided Intermedia with nondiscriminatory access to databases and associated signaling necessary for call routing and completion.

MCI: No. BellSouth has not shown that it is making available or providing access to databases and signaling in accordance with Section 271(c)(2)(B)(x). There are no methods and procedures in place for nondiscriminatory access to databases and associated signaling.

SPRINT: Sprint did not specifically address this item but did adopt the post-hearing matrix of AT&T.

TRA: Did not address this issue.

WORLDCOM/COMPTEL: No. Supports the position of AT&T.

DISCUSSION

BellSouth witness Milner testified that Section 10 of the SGAT provides access to the signaling elements necessary for call routing and completion, including Signaling Links, STPs, and SCPs. The SCPs/Databases to which CLPs have access include Toll Free Number Database, LIDB, AIN, and Signaling Transport Service. Mr. Milner stated that the signaling elements necessary for call routing and completion are functionally available from BellSouth and that BellSouth has technical service descriptions outlining access to its 800 database, LIDB, and AIN services as well as access to BellSouth's signaling services. BellSouth also has procedures in place for the ordering, provisioning, and maintenance of these services.

AT&T witness Hamman testified that BellSouth had not demonstrated that it is providing signaling and databases in accordance with the checklist item and that there had not been cooperative testing. MCI witness Martinez questioned availability of several specific database items.

In rebuttal, Mr. Milner stated that BellSouth could make the items discussed by Mr. Martinez available. In response to Mr. Hamman, Mr. Milner testified regarding CLPs that are accessing BellSouth's signaling network and call related databases either directly or through a third party hub provider.

The Commission finds BellSouth's testimony reasonable and persuasive that CLPs have received access to the appropriate databases and associated signaling systems as evidenced by their ability to send and receive calls through BellSouth's network.

CONCLUSIONS

Based on the evidence presented, the Commission concludes that BellSouth is providing or generally offering nondiscriminatory access to its databases and associated signaling systems necessary for call routing and completion and is in compliance with checklist item (x). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

Issue: Is BellSouth providing interim telecommunications number portability through remote call forwarding (RCF), direct inward dialing (DID) trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible? [Checklist item (xi)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. Until an industry-wide permanent solution can be achieved, BellSouth provides interim Service Provider Number Portability that allows customers switching from BellSouth to a CLP to retain the same telephone number(s) and therefore satisfies this checklist item. BellSouth's SGAT includes offerings of RCF and DID since BellSouth anticipates that most CLPs will want to use one of these methods. These two arrangements are expressly contemplated in checklist item (xi) and comply with the FCC's July 2, 1996, First Report and Order in CC Docket No. 95-116 (Number Portability Order).

BSLD: Supported the position of BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: Yes. BellSouth is providing or generally offering interim telecommunications number portability through RCF, DID trunks, or other comparable arrangements in compliance with checklist item (xi).

ATTORNEY GENERAL: Issue was not addressed in Brief.

AT&T: No. BellSouth has not provided number portability to AT&T; and until it has methods and procedures in place to provide any requesting CLP with number portability through a permanent or interim solution, it cannot meet this checklist requirement. At present, BellSouth provides only limited number portability options with no electronic ordering capability. BellSouth has not yet finalized methods and procedures for interim and long-term number portability. Additionally, BellSouth has not finished developing or implementing a long-term number portability solution. Finally, although BellSouth has agreed to offer number portability through Route Indexing-Portability Hub (RI-PH) to AT&T, it does not make this method of number portability generally available to CLPs in its SGAT. An AT&T witness testified that despite repeated requests from AT&T, BellSouth has not specified how interim portability will work and in what timeframe it will be available. BellSouth has agreed to provide AT&T RI-PH, however BellSouth only offers RCF and DID in its SGAT. AT&T argues that is discriminatory.

CWA: Did not address this issue.

DELTACOM: Did not address this issue.

ICG, ET AL.: Did not address this issue.

INTERMEDIA: Yes. BellSouth has provided interim number portability to Intermedia principally through RCF and DID.

MCI: No. BellSouth has not provided number portability to MCI, and until it has methods and procedures in place to provide any requesting CLP with number portability through a permanent or interim solution, it cannot meet this checklist requirement. MCI stated that BellSouth does offer RCF as an interim solution, however, there is evidence that CLPs are experiencing problems with conversions and the assignment of adequate paths for ported numbers. Unless and until BellSouth can show refinement in its coordination of conversions, it cannot meet the requirements of checklist item (xi).

SPRINT: Adopted AT&T's position.

TRA: Did not address this issue.

WORLDCOM/COMPTEL: Supports AT&T's position.

DISCUSSION

In prefiled direct testimony, AT&T asserted that BellSouth's obligation under Section 271 is to be in full compliance with the FCC's Number Portability Order. AT&T further stated that it believes that BellSouth has not demonstrated that it is providing number portability in accordance with the checklist. AT&T stated that BellSouth has offered to provide RCF and DID in North Carolina as interim number portability solutions. Further, AT&T stated that it requested in negotiations, and BellSouth agreed to provide, RI-PH as the interim number portability solution for customers with large quantities of telephone numbers in North Carolina, however, BellSouth's SGAT only provides for DID and RCF. AT&T argues that BellSouth also should include RI-PH as another form of interim number portability in its SGAT. AT&T witness Hamman also testified that implementation of permanent number portability is now scheduled for the second quarter of 1998 for the Charlotte and Raleigh Metropolitan Statistical Areas. AT&T argues that until BellSouth has the methods and procedures in place to provide any requesting CLP with number portability either through a permanent or interim solution, it cannot meet this checklist item.

Intermedia stated on the record that BellSouth has provided it with interim number portability through RCF and DID.

MCI stated that BellSouth does provide RCF as an interim solution, however, noted that it is experiencing significant problems with cutovers. Under the BellSouth/MCI interconnection agreement cutovers should be coordinated, however, MCI contends that BellSouth at times is not proceeding on a coordinated basis. MCI contends that BellSouth has at times offered cutovers within a four hour window of the desired cutover time, however, that the interconnection agreement states that BellSouth shall not begin the cutover more than 20 minutes after the agreed upon time. MCI claims that it must have the ability to schedule and postpone interim local number portability conversions, otherwise, BellSouth forwards the customer's working BellSouth number to an MCI number that is not operational which results in service outages. MCI added that recently in such a situation, the customer was without service for five hours before BellSouth restored service. MCI stated that interim number portability is a very complicated process that can only be ordered through systems requiring manual intervention even though they do flow through LENS or EDI.

During cross-examination by the Attorney General, MCI witness Martinez stated that MCI does have number portability, but there are disputes in the way it works.

Sprint stated that it has also faced problems with interim local number portability. Sprint asserted that on three separate occasions, a customer could not receive calls due to BellSouth network routing errors related to call routing and local number portability functionality. Sprint maintained that a troublesome series of service interruption have occurred since May 19 related to SMNI customers receiving calls through the BellSouth network. On three separate occasions, translation errors made by BellSouth interrupted local number portability functionality, such that SMNI customers could receive calls directly to their Sprint numbers, but calls being call-forwarded through the BellSouth network could not be completed. Additionally, Sprint maintained that the translation errors have been corrected, but that the underlying permanent process correction is still being addressed.

BellSouth witness Milner, in prefiled testimony, stated that BellSouth provided 85 volumes of information to support its compliance with each of the 14 points, including checklist item (xi) - local number portability (specifically Volume 11-1). Witness Milner stated that BellSouth's SGAT describes the interim number portability arrangements that are available including RCF and DID. Witness Milner maintained that interim number portability is functionally available from BellSouth. Witness Milner also testified that as of July 8, 1997, BellSouth had ported 124 business directory numbers and no residence directory numbers in North Carolina using interim number portability.

In rebuttal testimony, BellSouth witness Milner stated that BellSouth had already indicated its willingness and its capability to provide interim number portability using RI-PH upon request of AT&T or another CLP.

In its Proposed Order, BellSouth stated that it has demonstrated the functional availability of interim number portability. As of August 31, 1997, BellSouth had ported 1,043 business directory numbers in North Carolina using interim number portability and over 13,000 residence and business customers in its region. BellSouth argued that AT&T witness Hamman acknowledged that BellSouth is providing interim number portability through RCF and DID. BellSouth argued that AT&T is confused on this issue and that the fact that BellSouth may negotiate multiple forms of interim number portability with CLPs does not translate into an obligation to include all of those methods in its SGAT.

BellSouth's SGAT provides for number portability through either RCF or DID trunks, at the election of the CLP (SGAT Section XI.C.) and states that BellSouth will implement a permanent number portability approach as developed and approved by the Commission, the FCC, and industry forums (SGAT Section XI.F.).

The Commission notes that the FCC's Number Portability Order only mentions DID and RCF as possible technically feasible interim number portability solutions. In the arbitration proceeding between BellSouth and AT&T in North Carolina, BellSouth did agree to provide additional interim number portability solutions such as RI-PH and LERG assignment, although neither the FCC's Number Portability Order nor checklist item (xi) of Section 271 of the Act require such additional interim number portability solutions. Therefore, the Commission does not believe that it is mandatory for BellSouth to offer RI-PH or LERG assignment in its SGAT as an interim number portability measure.

The Commission believes that the allegations by MCI and Sprint of problems with interim number portability should be taken into consideration in evaluating whether BellSouth meets the requirements of checklist item (xi). The level of functioning for interim number portability under checklist item (xi) is that the interim number portability is provided with as little impairment of functioning, quality, reliability, and convenience as possible. The Commission notes that Sprint's interim number portability problems have been corrected and that MCI did state during cross-examination that it does have interim number portability. Additionally, the Commission believes that under the "as little impairment of functioning, quality, reliability, and convenience as possible" standard of the checklist item, it is reasonable and acceptable for BellSouth to experience a "learning-curve" in deploying interim number portability solutions, and that the problems noted by Sprint and MCI were encountered during the "start-up" period of this process.

BellSouth represented that it ported 124 business numbers as of July 8, 1997, and increased that number to 1,043 ported business numbers by August 31, 1997. BellSouth can provide interim number portability, and the Commission believes that the problems noted are temporary in nature and related to the "start-up" period of providing interim number portability which meets the "as little impairment of functioning, quality, reliability, and convenience as possible" standard of the checklist item.

Finally, as AT&T witness Hamman testified, implementation of permanent number portability is now scheduled for the second quarter of 1998 for the Charlotte and Raleigh Metropolitan Statistical Areas; and BellSouth's SGAT states that BellSouth will implement a permanent number portability approach as developed and approved by the Commission, the FCC, and industry forums.

The evidence of record shows that BellSouth is providing interim number portability through DID and RCF as required under checklist item (xi) with as little impairment of functioning, quality, reliability, and convenience as possible.

CONCLUSIONS

The Commission concludes that BellSouth is providing or generally offering interim telecommunications number portability through RCF, DID trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible and is in compliance with checklist item (xi). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

TELEPHONE - MISCELLANEOUS

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

Issue: Is BellSouth providing or generally offering nondiscriminatory access to such services or information as are necessary to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251 (b)(3)? [Checklist item (xii)]

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth maintains that it provides local dialing parity and therefore satisfies this checklist item. Dialing parity permits local service subscribers to dial the same number of digits to place a local call, without the use of an access code, regardless of their choice of local service provider. BellSouth provided undisputed testimony that it will interconnect with CLPs so that the same number of digits that are dialed by a BellSouth retail customer may be used by the CLP customer to complete a call.

BSLD: Supported the position taken by BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: Yes. BellSouth is providing or generally offering nondiscriminatory access to such services and information as necessary to allow requesting carriers to implement local dialing parity in accordance with the requirements of Section 251(b)(3) and is in compliance with checklist item xii.

ATTORNEY GENERAL: Did not address issue in Brief.

AT&T: No. BellSouth has not provided such access to AT&T. BellSouth is not providing direct routing to CLP operator call completion and directory assistance services. Therefore, in order to reach AT&T operator services, directory assistance, and repair services, CLP customers would have to dial additional digits rather than "0", "411" and "611". BellSouth's customers, on the other hand, can reach BellSouth services by dialing the old familiar numbers. This is clearly discriminatory.

CWA: Did not address this issue.

DELTACOM: No. BellSouth has not provided dialing parity. BellSouth has refused to add a CLP's NXX codes to their Area Calling Service (ACS) even though BellSouth readily does so with other ILECs. If a BellSouth customer is a subscriber to ACS and places a call to a CLP customer, he will have to dial eleven digits and pay a toll call, but if he calls another BellSouth customer, it will be a seven-digit call without toll charges.

ICG, ET AL.: Did not address this issue.

INTERMEDIA: BellSouth is providing Intermedia with dialing parity on a very limited scale (i.e. within the limited scope of local exchange services that Intermedia can provide today principally through its own facilities).

MCI: No. BellSouth does not provide dialing parity in accordance with Section 271(c)(2)(B)(xii). MCI testimony was that with regard to directory service listings for independent telephone companies and other new entrants, BellSouth refuses to provide the necessary data. Consequently, a CLP local customer would need to be transferred from the CLP to BellSouth's directory assistance or dial a special code to bypass the CLP to BellSouth's directory assistance group to obtain the telephone numbers of end-users served by other CLPs or independent telephone companies.

SPRINT: Sprint did not specifically address this item in its Brief but did adopt the post-hearing matrix of AT&T.

TRA: TRA did not address this issue.

WORLDCOM/COMPTEL: No. WorldCom/CompTel supported the position of AT&T.

DISCUSSION

Section 251(b)(3) imposes on all LECs the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service with "nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."

Dialing parity is defined in Section 3 (15) of the Act:

> "The term 'dialing parity' means that a person that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier)."

In this issue the Commission is considering dialing parity as it relates to the definition above, i.e. the ability of local service subscribers to dial the same number of digits to place a local call, without the use of an access code, regardless of their choice of local service provider. Dialing parity as it relates to access to operator services, directory assistance and directory listings, access to telephone numbers, and unbundled local switching are discussed in other issues.

BellSouth witnesses Varner and Milner testified on this issue. Witness Varner testified that BellSouth will interconnect with CLPs so that the same number of digits that are dialed by a BellSouth retail customer may be used by the CLP customer to complete a call.

The Commission finds persuasive the evidence offered by BellSouth that local dialing parity is available.

CONCLUSIONS

The Commission concludes that BellSouth is providing or generally offering such services or information as are needed to allow the requesting carrier to implement local dialing parity in accordance with the requirements of Section 251 (b)(3) and is in compliance with checklist item (xii). The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12(a)

Issue: By what date does BellSouth propose to provide intraLATA toll dialing parity throughout North Carolina pursuant to Section 271 (e)(2)(A) of the Act?

POSITIONS OF PARTIES

BELLSOUTH: BellSouth will provide intraLATA toll dialing parity when it offers interLATA service in North Carolina.

BSLD: Supported the position taken by BellSouth and filed a joint Proposed Order with BellSouth.

PUBLIC STAFF: The Public Staff took no position on this issue.

ATTORNEY GENERAL: Took no position on this issue.

AT&T: Section 271(e)(2)(A) requires a BOC to provide intraLATA toll dialing parity "coincident with" its authorized provision of the interLATA service. Such parity does not exist currently in North Carolina. BellSouth must provide intraLATA toll dialing service to CLPs at parity with BellSouth in North Carolina by the date on which BellSouth begins to provide interLATA service in North Carolina.

CWA: Took no position on this issue.

DELTACOM: Took no position on this issue.

ICG, ET AL.: Took no position on this issue.

INTERMEDIA: Intermedia took no position on this issue.

MCI: MCI took no position on this issue.

SPRINT: Sprint did not specifically address this item but did adopt the post-hearing matrix of AT&T.

TRA: TRA took no position on this issue.

WORLDCOM/COMPTEL: WorldCom/CompTel supported the position of AT&T.

DISCUSSION

On May 27, 1997, the Commission, on the recommendation of the Public Staff, approved BellSouth's intraLATA presubscription plan and its proposal to begin implementation of its plan concurrent with its authorization to enter the interLATA market in North Carolina. Its proposed tariffs would become effective at that time.

CONCLUSIONS

The Commission concludes that, in accordance with the Act, BellSouth must provide intraLATA toll dialing service to CLPs at parity with BellSouth in North Carolina by the date on which BellSouth begins to provide interLATA service in North Carolina.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

Issue: Is BellSouth providing or generally offering reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2)? [Checklist item (xiii)]

POSITIONS OF PARTIES

BELLSOUTH: BellSouth provides reciprocal compensation and therefore satisfies this checklist item.

BSLD: BSLD agrees with BellSouth.

PUBLIC STAFF: The Public Staff recommends that BellSouth is providing or generally offering reciprocal compensation in accordance with the requirements of Section 252(d)(2) and is in compliance with checklist item (xiii).

ATTORNEY GENERAL: This party did not specifically address this issue.

AT&T: No. Interconnection arrangements are satisfactory but have yet to be implemented. BellSouth must implement methods and procedures for billing in order to comply with this requirement. Further, without an agreement on a Percentage Local Usage factor for local traffic between BellSouth and AT&T, the parties will be unable to bill each other properly, and BellSouth cannot meet this requirement. Numerous billing issues remain to be resolved. BellSouth is not providing usage detail sufficient to allow CLPs to bill for exchange access charges. BellSouth cannot meet the requirements of Section 252(d)(2) and checklist item (xiii) until methods and procedures for billing are in place and have been tested.

CWA: This party did not specifically address this issue.

DELTACOM: This party did not specifically address this issue.

ICG, ET AL.: No. BellSouth is not compensating CLPs for traffic to Internet Service Providers (ISP). This decision by BellSouth is in violation of its interconnection agreements with CLPs and in violation of checklist item (xiii).

INTERMEDIA: No. BellSouth does not comply with item (xiii) of the competitive checklist. BellSouth has refused to pay reciprocal compensation for the transport and termination of Internet bound local traffic in contravention of the BellSouth-Intermedia interconnection agreement and items (i) and (xiii) of the competitive checklist.

MCI: No. BellSouth does not provide reciprocal compensation arrangements in accordance with Section 271(c)(2)(B)(xiii).

SPRINT: This party did not specifically address this issue.

TRA: This party did not specifically address this issue.

WORLDCOM/COMPTEL: This party agreed with the position of AT&T.

DISCUSSION

BellSouth witness Varner testified that the standard for just and reasonable prices for reciprocal compensation is that each carrier receives mutual and reciprocal recovery of costs associated with the transport and termination on each carrier's facilities of calls that originate on the network facilities of the other carrier. The costs are to be based on a reasonable approximation of the additional costs of terminating such calls. As described in witness Varner's pre-filed testimony addressing checklist items (i) and (xiii), BellSouth offers cost-based rates for interconnection and reciprocal transport and termination at a tandem and at an end office.

BellSouth witness Milner testified that this item is not specifically addressed in the 85 binders because it is not an offering per se but an arrangement worked out between the parties.

Intermedia witness Strow testified that Intermedia was recently notified by BellSouth of its intent not to compensate Intermedia for transporting and terminating local traffic to ISPs. According to witness Strow, the reciprocal compensation provision of the BellSouth/Intermedia interconnection agreement does not place any limitation on the type of local traffic for which reciprocal compensation would apply. She stated her belief that this action is tantamount to a breach of the reciprocal compensation and dispute resolution portions of the agreement and constitutes bad faith on the part of BellSouth. The immediate effect on Intermedia, she said, is that it would not be able to recover its costs associated with the transport and termination of local traffic to ISPs; the overall effect is that BellSouth stands to reap anticompetitive benefits. BellSouth Strow Cross-Examination Exhibit 2 was a copy of a letter dated August 12, 1997, advising CLPs of BellSouth's position. It states in part:

> The purpose of this letter is to call to your attention that our interconnection agreement applies only to local traffic. Although enhanced service providers (ESPs) have been exempted from paying interstate access charges, the traffic to and from ESPs remains jurisdictionally interstate. As a result, BellSouth will neither pay, nor

> bill, local interconnection charges for traffic terminated to an ESP. . . . The ESP category includes a variety of service providers such as information service providers (ISPs) and internet service providers, among others.

Witness Strow stated on cross-examination that this is an industry issue.

AT&T and MCI witness Cabe testified that at a minimum terms and conditions for the mutual and reciprocal recovery of call transport and termination must be established that do not provide a competitive advantage to either party. He stated that such an outcome can be assured if the compensation arrangement focuses on the function being performed rather than the simple labeling of the point of interconnection or other extraneous variables. In addition, witness Cabe stated, terms and conditions for the mutual and reciprocal recovery of costs of call transport and termination must be established that do not reward incumbent carriers for network inefficiencies they may experience relative to new entrants or punish new entrants for efficiencies they may experience relative to incumbents. An improper focus on configurations instead of functions can lead to undesirable consequences that can result in higher prices to consumers. Finally, he stated that cost-based rates for call termination and transport have not been developed for North Carolina.

KMC witness Menendez also addressed the issue raised by witness Strow. He stated that BellSouth's position is wholly inconsistent with the Act and FCC orders as well as a number of state regulatory decisions which have rejected ILEC attempts to withhold reciprocal compensation payments for the termination of ISP traffic or to treat traffic to enhanced service providers, including ISPs, differently than other local service. He stated that BellSouth is seeking to create a competitive disadvantage for new entrants by eliminating their ability to recover their fundamental cost of terminating local traffic to ISP customers pursuant to their interconnection agreements with ILECs while ILECs continue to charge their end-user customers for the ability to place a call to an ISP.

In rebuttal, witness Varner contended that enhanced service provider traffic is jurisdictionally interstate because it does not terminate on the CLP's local facilities but rather traverses them as well as those of the ISP and the Internet transport providers to establish a communications path to distant Internet locations. He stated that the FCC has already exercised its jurisdiction over Internet traffic as evidenced by the fact that it granted an exemption from the payment of access charges to ESPs. He further stated that this exemption applies only to ILECs. A CLP is free to charge appropriate rates to compensate it fully for any services it provides to ISPs. Finally, witness Varner stated, the FCC made it clear in its Interconnection Order that reciprocal compensation rules apply only to traffic that originates and terminates within a local area. On cross-examination by counsel for Intermedia, witness Varner stated that the fact that this traffic is interstate was established at least 30 years ago. He did not agree that the nature of the traffic is currently being litigated before the FCC. The issue that is being litigated, he said, concerns the rates the FCC should require information service providers to pay. As to whether BellSouth would be in violation of the checklist because of its refusal to pay reciprocal compensation if a court or the FCC or a state commission should find against BellSouth on this issue, witness Varner stated that this would be the rule from that point forward but that the rule today is that it is interstate traffic. When asked if BellSouth is illegally providing interstate service through its ISP subsidiary, BellSouth.Net, witness Varner stated that what is being provided through the subsidiary is Internet access, which is permitted under the Act.

The Commission agrees with Section XIII of the SGAT which states that "BellSouth provides for the mutual and reciprocal recovery of the costs of transporting and terminating local calls on its and CLP networks." The Commission has already concluded that the charges for transport and termination are cost-based as required by the Act.

However, as the evidence shows, an issue has arisen between BellSouth and CLPs with whom it has interconnection agreements as to whether ISP traffic is local traffic. Further, this issue is the subject of the Petition of US LEC of North Carolina, L.L.C., to Enforce Interconnection Agreement (Petition) filed on October 24, 1997 in Docket No. P-55, Sub 1027. The Commission believes this issue, which could also arise under the SGAT, should be considered in a separate proceeding.

CONCLUSIONS

Based upon the evidence, the Commission concludes that BellSouth is providing or generally offering reciprocal compensation arrangements in accordance with the requirements of Section 252(d)(2) and is in compliance with checklist item (xiii). The dispute between BellSouth and certain CLPs concerning treatment of ISP traffic should be considered in a separate proceeding. The Commission further concludes that BellSouth's SGAT meets the requirements of this competitive checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

Issue: Is BellSouth providing or generally offering telecommunications services such that they are available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3)?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth stated that it offers its tariffed retail telecommunications services for resale in accordance with the terms and conditions and the discounts authorized by the Commission Orders in its arbitrations. BellSouth has developed technical service descriptions in the ordering, provisioning, and maintenance procedures for 50 of its major retail telecommunication services, representing the vast majority of BellSouth's retail service revenue. As of July 22, 1997, 9,416 of these service were being resold by CLPs in North Carolina (178,330 regionwide). Other retail services which have not yet been ordered by CLPs are functionally available. These include primary rate ISDN, E911, FlexServ, Frame Relay, LightGate Service, off premises extensions, optional calling plans, SmartTask Service, SmartRing Service, and Visual Directory. Testing has been conducted to verify that these services can be resold appropriately and efficiently.

No intervenor is contending that BellSouth is not reselling service or is doing so in conflict with Commission decisions. Rather, they contend that BellSouth has not provided appropriate OSS support for the ordering and pre-ordering.

BSLD: BSLD agrees with BellSouth.

PUBLIC STAFF: Yes. The Public Staff concluded that BellSouth was in compliance with this checklist item. First, the Public Staff noted that BellSouth was offering or providing resold services in compliance with the arbitration orders of the Commission. Second, the Public Staff noted that BellSouth has provided electronic interfaces to support pre-ordering, ordering, provisioning, trouble reporting, and billing functions. The CRIS format will be used initially to render bills, but BellSouth will modify its billing regionwide so that CRIS billing for resold services will be available in the CABS format in July for some parties. The majority of BellSouth's provisioning activity has occurred in Florida and Georgia, and BellSouth has so far been able to process resale orders for a significant number of end-user accounts.

The Public Staff discussed some of the allegations made by MCI witness Martinez concerning problems with resold services--e.g., billing the wrong discount and the wrong rate for call waiting, late payment disputes, and organization confusion relating to the resolution of these complaints. The Public Staff also noted that MCI had complained of BellSouth sending retention letters to customers and the disconnection of trial participants. MCI also stated that BellSouth had left behind BellSouth cards rather than generic cards and criticized the requirement that CLPs, upon request, provide proof of authorization to effect a transfer of BellSouth customers. He also disagreed with the proposed $19.41 unauthorized transfer charge. MCI also identified certain aspect of the SGAT as it relates to resale.

The Public Staff then noted that BellSouth had investigated and addressed many of the concerns of MCI. For example, BellSouth had traced the question of the appropriate discounts being applied and was modifying its CRIS system in North Carolina. The correct discount has now been applied. BellSouth did not agree that it had billed more than the tariffed rate for call waiting. All outstanding issues regarding late payment charges have been resolved as of September 10, 1997.

The Public Staff finally noted that the question of the adequacy of BellSouth's OSS had been addressed elsewhere. The Public Staff concluded that these systems are able to make BellSouth's services available for resale on a nondiscriminatory basis if the CLPs are willing to take advantage of them. The Public Staff characterized the problems raised by the CLPs as more in the nature of start-up problems and stated that most appear to have been addressed. Other complaints, while perhaps understandable, do not rise to the level of evidence that BellSouth is not offering its retail service for resale in compliance with the Act.

ATTORNEY GENERAL: The Attorney General did not address this issue.

AT&T: No. AT&T argued that BellSouth has imposed unreasonable restrictions on resale and that BellSouth's interfaces do not permit pre-ordering services for resale. These unreasonable restrictions include restrictions on contract service arrangements (CSAs). As for the interfaces, AT&T maintained that they do not provide nondiscriminatory access to pre-ordering, ordering, provisioning, maintenance, and billing for resold service. AT&T discussed these issues elsewhere.

CWA: CWA asserted that BellSouth does not yet have in operation a fully automated system that provides nondiscriminatory access for ordering, pre-ordering, and billing. Many competitors have experienced backlogs in orders, low service levels, and billing errors. Competitors cannot perform ordering, maintenance, billing, and other functions at parity with BellSouth.

DELTACOM: DeltaCom did not address this issue specifically but argued that BellSouth had failed to provide nondiscriminatory access to OSS.

ICG, ET AL.: ICG, et al. did not address this issue specifically in its Proposed Order but argued that BellSouth's OSS were deficient. KMC witness Martinez also complained at the hearing that BellSouth had improperly handled resale orders.

INTERMEDIA: No. Intermedia stated that it has requested business services offered by BellSouth (e.g., call waiting and call forwarding) for resale, as well as more complex services. BellSouth's OSS interfaces do not fully support the implementation of resale of more complex services, and Intermedia says that it has experienced difficulty in placing resale orders. The current systems are manual for the most part and do not facilitate the support of moves, adds, and changes for complex services. Intermedia cited an instance in which it advised BellSouth it would be submitting 200 resale orders for BellSouth's fast-packet service (i.e., frame relay), but BellSouth was not able to support the first 20 orders, and Intermedia was forced to resort to another alternative.

MCI: No. MCI maintained that BellSouth has not met its burden of demonstrating that it is making available or providing resold services in accordance with its Section 271 obligations. In addition to BellSouth's failure to satisfy its OSS obligations, MCI contended that BellSouth is sending retention letters to customers using information obtained from a CLP's ordering of products and services and has disconnected CLP customers changed "as is," leaving those customers without phone service for extended periods of time. BellSouth has not set up resale processes to protect against discrimination for new entrants pursuing a resale strategy.

SPRINT: Sprint did not specifically address this issue but cited the alleged inadequacies of BellSouth's OSS.

TRA: No. TRA maintained that the evidence in this docket does not sustain BellSouth's burden of proof concerning this checklist item. A variety of CLP witnesses testified to problems and delays in ordering resold service. Intermedia witness Strow stated that BellSouth had been unable to support a large order for a resold service. KMC witness Menendez stated that BellSouth had lost KMC orders, filled orders improperly, and had failed to advise it when BellSouth had filled an order. BellSouth has allegedly charged installation fees to CLP customers.

WORLDCOM/COMPTEL: WorldCom and CompTel stated that they supported and agreed with AT&T's position.

DISCUSSION

Checklist item (xiv) states in relevant part in Section 271(c)(2)(B) as follows:

> (B) COMPETITIVE CHECKLIST.--Access or interconnection provided or generally offered by a Bell operating company to other telecommunications carriers meet the requirements of this subparagraph if such access and interconnection includes each of the following...(xiv) Telecommunications services are available for resale in accordance with the requirements of sections 251(c)(4) and 252(d)(3).

Section 251(c)(4) is included among the additional obligations of incumbent LECs and sets out the duty:

> (A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
>
> (B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a state commission may, consistent with the regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers.

Section 252(d)(3) concerns the wholesale prices for telecommunications services and states that for the purposes of Section 251(c)(4):

> a state commission 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 marketing, billing, collection, and other costs that will by avoided by the local exchange carrier.

It is the Commission's view that there are two primary questions involved in determining whether BellSouth has satisfied this checklist requirement. First, is BellSouth offering its retail services for resale at the appropriate rates? Second, is BellSouth making those services available on a reasonable and nondiscriminatory basis? The second question involves whether BellSouth's OSS is adequate.

The answer to the first question is "yes." BellSouth is making its retail services available to competitors on such conditions and at such rates as the Commission has arbitrated. The Commission believes that adherence to current Commission Arbitration Orders is the appropriate standard--not, as AT&T believes, whether the Commission decision is consistent with AT&T's interpretation of the Act. The Commission points out that AT&T's position, for example, on the resale of CSAs is on appeal. Should the federal courts rule against the Commission and require a different result, then the Commission will modify its position, and BellSouth will conform to that. BellSouth cannot be blamed for conforming to current Commission Orders.

The answer to the second question is more complicated. In deciding the resale issues on the context of the various arbitration dockets, the Commission followed the provisions of Section 251(b)(1), prohibiting "unreasonable or discriminatory conditions or limitations," and Section 251(c)(4)(A) and (B), cited herein. As such, BellSouth may be said to be providing resale in accordance with Commission decision, which has decided what is discriminatory and what is not. Additionally, with respect to the various problems raised by competitors and noted herein, the Commission agrees with the Public Staff that these difficulties are more in the nature of "start up" or "teething problems" than systemic inadequacies. Therefore, the Commission agrees with the Public Staff that BellSouth should be found to be in compliance with this checklist item.

CONCLUSIONS

The Commission concludes that BellSouth is providing or generally offering telecommunications services such that they are available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3) and is in compliance with checklist item (xiv). The Commission further concludes that BellSouth's SGAT is in compliance with the requirements of this checklist item.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 15

Issue: Should BellSouth's SGAT that BellSouth generally offers to provide access and interconnection be approved or permitted to take effect under Section 252(f)?

DISCUSSION

On December 23, 1997, the Commission issued Order Regarding SGAT which ordered that BellSouth's SGAT, as revised by BellSouth on August 28, 1997, and September 4, 1997, be permitted to take effect; provided, however, that the Commission may approve, disapprove, or require BellSouth to revise or modify the SGAT in future Orders issued pursuant to the Commission's authority under Section 252(f)(4) of the Act.

The Commission notes that Section 252(d) pricing standards were addressed in conjunction with the Evidence and Conclusions for Finding of Fact No. 2, Part (d). Therein, the Commission concluded that the SGAT rates are in compliance with Section 252(d)(1) of the Act and also found that when the permanent cost study proceeding is completed, the resulting rates should be incorporated into the SGAT, and the interim rates should be trued-up accordingly.

CONCLUSIONS

The Commission concludes that BellSouth's SGAT should be allowed to continue in effect pursuant to our December 23, 1997 Order. Modifications may be required as a result of future decisions by either the FCC or this Commission. Furthermore, when the permanent cost study proceeding is completed, the resulting rates should be incorporated into the SGAT and the interim rates should be trued-up accordingly. Further, the Commission may, in future Orders, approve, disapprove, or require BellSouth to further revise or modify the SGAT, pursuant to the Commission's authority under Section 252(f)(4) of the Act.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 16

Issue: Has BellSouth satisfied the public interest requirement of Section 271(d)(3)(C)?

POSITIONS OF PARTIES

BELLSOUTH: Yes. BellSouth's entry into the interLATA long distance market in North Carolina, through its affiliate, BSLD, is in the public interest. The "public interest test" should be focused on the effect on the long distance market of BellSouth's entry into that market, not on the effect of such entry on the local exchange market. BellSouth's entry into the interLATA market in North Carolina does not change its obligations in the local market or its competitive local carrier opportunities. Entry by BellSouth into the long distance market will increase competition in that market by increasing (1) the number of effective facilities-based competitors, (2) the diversity of cost characteristics, (3) the diversity of the product mix of the long distance competitors, and (4) the rate of technological change. There is substantial evidence in other jurisdictions that incumbent LECs will bring significant competition at lower rates than prices charged by the IXCs as they begin to enter long distance markets. BellSouth's entry into the interLATA long distance market will provide greater incentives for the IXCs to enter the local market and encourage them to construct facilities in North Carolina over which they can provide bundled long distance and local service. BellSouth's entry into the interLATA market should serve as a catalyst for greater competition in the local market and greater availability of one-stop shopping for consumers. BSLD is committed to providing convenient, high-quality long distance services to customers in North Carolina when permitted to do so, and BSLD will comply with the separate subsidiary and safeguard requirements of Section 272 of TA96 and the FCC's regulations promulgated thereunder. There is no policy rationale to exclude BSLD from providing interLATA long distance service in North Carolina when other incumbent LECs (or their affiliates) are allowed to do so.

BSLD: Yes. BellSouth's entry into the interLATA markets is both good and not bad. BellSouth's entry is good because it represents the only meaningful chance for additional competition in the interLATA long distance market and, as a by-product, will promote competition in the local exchange market as well. The long distance market is not fully competitive and is characterized by excessive profit margins. BellSouth's entry into the interLATA market will result in more competitive prices for consumers and increased competition will provide additional benefits to the North Carolina economy as a whole. BellSouth's ability to offer combined local and long distance service will force the IXCs to accelerate their entry into the local markets. BellSouth's entry is not bad, despite the intervenors' predictions to the contrary, because it will not result in any negative consequences and will increase competition in the interLATA markets. The proper focus of the public interest inquiry is the interLATA long distance market and the effect BellSouth's entry will have on that market, not on the effect such entry might have on the local exchange market. There is no "effective competition" requirement or other competitive threshold requirement in TA96 for BellSouth's entry into the interLATA market. The IXCs oppose BellSouth's entry into the interLATA markets out of fear for their profits and their market shares.

PUBLIC STAFF: Yes. No convincing structural analysis was presented in this proceeding that the interLATA market is effectively competitive. Substantial public benefits are to be realized from the entry of a strong competitor like BellSouth into the interLATA market. The Commission should reject as being both legally and practically flawed the intervenors' contention that the local exchange market must be effectively competitive before BellSouth's interLATA entry is allowed. BellSouth's interLATA entry will not only bring the benefits of increased long distance competition, but will also accelerate the development of local exchange competition. Having met the requirements of the 14-point checklist through its SGAT, BellSouth has opened its local markets to competition in compliance with TA96. Unless and until BellSouth is allowed to enter the interLATA market, effective competition may never develop in either the local or the interLATA market. The Commission should express increasing disappointment by the pace of entry into the local market on the part of the many CLPs that have been certificated. If the presence of BellSouth in the long distance market will encourage the IXCs to enter the local market, which it will, the public interest will clearly be served. The present lack of effective competition in both the local and long distance markets far outweighs any potential concerns about BellSouth's behavior once interLATA authority is granted. The preponderance of the evidence, both theoretical and empirical, supports BellSouth's entry into the interLATA long distance market in North Carolina, and such entry is the fairest and most expedient way of bringing the benefits of competition to the State as a whole.

ATTORNEY GENERAL: No stated position on this issue.

AT&T: No. The public interest is not served by BellSouth's entry into the interLATA market at this time. Premature entry by BellSouth may harm existing competition in the long distance market and will remove any incentive for BellSouth to comply with its obligations necessary for local exchange competition to develop. Evidence presented during the hearing in this docket clearly demonstrates that BellSouth remains in control of the local exchange market. BellSouth's entry into the long distance market in North Carolina would create a risk of monopoly leveraging and unfair competition. The local telephone market in North Carolina lacks any significant competition that would afford choice to consumers. BellSouth's failure to complete critical development and testing of interfaces necessary for resale and the purchase of unbundled network elements prohibits AT&T and other CLPs from entering the market. In its Ameritech Order, the FCC concluded that the public interest inquiry turns on the availability of "all procompetitive strategies" to new entrants. (Paragraph 387). The North Carolina local exchange market lacks the availability of these entry strategies for new entrants, reflecting the continued monopoly held by BellSouth over the local market. The limited choice afforded CLPs in North Carolina in turn restricts competition and reduces potential benefits to consumers. The absence of competitive entry strategies and resulting competitive benefits confirms that BellSouth's entry into the long distance market would be detrimental to the public interest.

CWA: No. BellSouth has not made the necessary showing. Although BellSouth claims that granting its application for interLATA service would result in substantial employment opportunities, BellSouth has made no specific showing of an intent to increase its workforce with well-trained individuals. An assumption that it would do so is unwarranted given the fact that BellSouth's current staffing is inadequate to handle all of the intervenors' needs. The public interest will best be served by increasing facilities-based competition in North Carolina as required by TA96 before allowing BellSouth's entry into the interLATA market.

DELTACOM: No stated position on this issue.

ICG, ET AL.: No. Neither BellSouth nor BSLD offered any evidence on the broad public interest standard established by the FCC in the Ameritech Order.

INTERMEDIA: No. A grant of in-region interLATA relief at this time is not in the public interest because the local exchange market is not yet irreversibly opened.

MCI: No. The public interest is not served by BellSouth's entry into the interLATA market at this time. Premature entry by BellSouth may harm existing competition in the long distance market and will remove any incentive for BellSouth to comply with its obligations necessary for local exchange competition to develop. Effective competition in the long distance market is well established as demonstrated by the fact that consumers have benefitted tremendously from declining prices, expanded service offerings, and increased choices resulting from the intense rivalry that permeates the market. The high profit margins alleged by BellSouth are nonexistent and the alleged benefits to long distance customers from BellSouth's entry are illusory at worst and speculative at best. No meaningful local competition exists in North Carolina. The vast majority of local exchange markets in North Carolina exhibit monopoly or near-monopoly conditions. Unfortunately, the speed at which effective competition can be expected to emerge depends in large part on cooperation from BellSouth, and BellSouth has strong incentives to impede competition and preserve its monopoly status. Allowing BellSouth premature entry into the interLATA market would have severe consequences because BellSouth would retain monopoly control of essential bottleneck local facilities which are essential inputs to the services offered by long distance carriers and other potential providers of competitive local services. Until effective competition exists for these facilities, BellSouth retains the ability to leverage this monopoly control into competitive long distance markets. BellSouth cannot be permitted to offer interLATA long distance services until others can just as easily offer competitive local services. It is BellSouth's failure to provide adequate facilities, services, and capabilities for local competition which has largely resulted in the absence of substantial competitive entry. TA96 mandates effective local competition before BOC entry into long distance.

SPRINT: No. The grant of in-region, interLATA authority to BellSouth at this time will have an adverse impact on local exchange competition in North Carolina. If Section 271 authorization is granted before this Commission is assured that BellSouth's cooperation has indeed been forthcoming and will continue, the strong incentives for BOC cooperation created by the Section 271 process will be lost, and the emergence of local competition will be undermined. In view of the absence of local competition in North Carolina, in-region, InterLATA long distance entry by BellSouth is not in the public interest absent a showing that entry barriers into local exchange markets relating to interconnection with BellSouth truly have been eliminated. Instead, a large number of crucial interconnection issues remain unresolved in North Carolina. BellSouth has not yet "fully implemented" the competitive checklist in any economically meaningful manner that reliably eliminates interconnection-related entry barriers to the provision of local exchange service in North Carolina. Since the conditions of local competition remain uncertain, uncertainty favors deferring in-region long distance authorization for BellSouth until the Commission can assert with confidence that local entry through a variety of business strategies has truly been enabled through BellSouth's interconnection provisions. In assessing current and prospective local exchange competition, the Commission must distinguish actual competition from potential competition and must distinguish CLPs based on their entry strategies and their assets. The best evidence of the feasibility of local exchange competition is the actual presence of significant facilities-based local competitors. By conventional market-share measures, BellSouth maintains a dominant monopoly position in the provision of local exchange service in North Carolina. BellSouth continues to serve well over 99% of all access lines in its territory. There currently is no facilities-based CLP service to residential and business customers in North Carolina. The record in this docket is also filled with references to unresolved interconnection issues, the interim nature of various current arrangements, and limitations on the ability of CLPs to compete effectively.

TRA: No. The appropriate public policy focus is the local exchange market which is completely dominated by BellSouth. North Carolina's long distance market is already fiercely competitive as contrasted with the present absence of meaningful competition in the local exchange market. Neither BellSouth nor BSLD offered any evidence on the broad public interest standard established by the FCC in the Ameritech Order. By contrast, the intervenors offered extensive evidence that BellSouth's premature entry into the in-region, interLATA market is not in the public interest. BellSouth has not met its burden of proof with respect to this central issue.

WORLDCOM/COMPTEL: These parties adopt the position taken by AT&T on this issue.

DISCUSSION

Section 271(d)(3)(C) of TA96 provides that the FCC shall not approve a BOC's application to provide in-region, interLATA long distance service unless the FCC finds, in pertinent part, that "the requested authorization is consistent with the public interest, convenience and necessity."

In its Ameritech Order, the FCC stated that its public interest inquiry "should focus on the status of market-opening measures in the relevant local exchange market." (Paragraph 385). In so ruling, the FCC stated that:

> "We reject the view that our responsibility to evaluate public interest concerns is limited narrowly to assessing whether BOC entry would enhance competition in the long distance market. We believe that our inquiry must be a broader one. . . .In adopting section 271, Congress mandated, in effect, that the Commission [FCC] not lift the restrictions imposed by the MFJ [Modification of Final Judgment] on BOC provision of in-region, interLATA services, until the Commission [FCC] is satisfied on the basis of an adequate factual record that the BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."

Ameritech Order, Paragraph 386. The FCC further concluded that its public interest analysis should include assessments of whether all procompetitive entry strategies are available to new entrants (Paragraph 387) and the effect of BOC entry on competition in the long distance market (Paragraph 388) and that compliance with the competitive checklist alone is not a sufficient indicator that the BOC has met the public interest criterion of Section 271 (Paragraph 389). The FCC noted that Congress specifically rejected an amendment to TA96 which would have stipulated that full implementation of the checklist would satisfy the public interest criterion. The FCC further stated that it would make a case-by-case determination of whether the public interest would be served by granting a Section 271 application and would examine a variety of factors, including the nature and extent of competition in the applicant's local market, in order to determine whether the market is and will remain open to competition. (Paragraphs 391, 402).

On its face, it would seem that an analysis of the public interest criterion would be fairly straightforward. That is not the case, however. BellSouth and its competitors are at opposite ends of the spectrum on this issue and urge the Commission to adopt different standards for judging the public interest. The Public Staff, in its role as an advocate on behalf of consumers of local and long distance telephone services, offers very appealing arguments which urge the Commission to conclude that BellSouth's immediate entry into the interLATA market would promote the public interest in that it would be the fairest and most expedient way of bringing the benefits of both local and long distance competition to the State as a whole. Although BellSouth has not yet met each of the 14-point checklist requirements, the Commission strongly favors early BellSouth entry into the interLATA market because (1) substantial public benefits are to be realized from the entry of BellSouth into the interLATA market through increased (i.e., more effective) long distance competition, (2) such entry will serve to encourage the CLPs to compete in the local market and thereby accelerate the development of local exchange competition to a truly effective level, and (3) there is no longer a compelling need from the standpoint of public policy to exclude BellSouth from providing interLATA long distance service in North Carolina through a separate affiliate and subject to the Section 272 safeguards when other ILECs (or their affiliates) are allowed to provide such service. The Commission further concludes that, logically, BellSouth's entry into the interLATA market will, as a result of its ability to offer combined local and long distance service, encourage, if not force, the CLPs to accelerate their construction activities and their entry into the local market and that the ability of BellSouth and its competitors to provide bundled local and long distance service will serve as a catalyst for greater competition in both markets and will ensure a greater availability of one-stop shopping for consumers. Thus, BellSouth, with the support of the Public Staff, has established a strong position in support of a finding that its early entry into the interLATA market in North Carolina, through its affiliate BSLD, is in the public interest and should be allowed as soon as all checklist requirements are met.

CONCLUSIONS

Based on the evidence presented, the Commission concludes that the authorization of BellSouth to provide interLATA service in North Carolina, through its affiliate BSLD, is consistent with the public interest, convenience, and necessity in accordance with Section 271(d)(3)(C) of the Act and should be authorized by the FCC as soon as BellSouth meets all Section 271 requirements.

IT IS, THEREFORE, ORDERED as follows:

1. That, except as set out below, BellSouth is providing or generally offering each and every one of the 14-point checklist items:

a. With respect to checklist item (i), BellSouth is not currently providing or generally offering interconnection and access to local tandems and physical collocation in accordance with the requirements of Sections 251(c)(2) and 252(d)(1); and

b. With respect to checklist item (ii), BellSouth has not fully developed adequate performance measurements to demonstrate that the electronic interfaces through which the CLPs will access the OSS are being provided in a nondiscriminatory manner. BellSouth, in conjunction with its Section 271 filing with the FCC, shall provide a set of performance standards and measurements which clearly demonstrate that BellSouth is providing nondiscriminatory access to its OSS functions.

2. That BellSouth's entry into the interLATA long distance market in North Carolina, through its affiliate BSLD, is consistent with the public interest, convenience, and necessity in

accordance with Section 271(d)(3)(C) of TA96 and should be authorized by the FCC as soon as BellSouth meets all Section 271 requirements.

3. That BellSouth's Revised SGAT shall be allowed to continue in effect. Furthermore, when the permanent cost study proceeding is completed, the resulting rates shall be incorporated into the SGAT and the interim rates shall be trued-up accordingly.

ISSUED BY ORDER OF THE COMMISSION.
This the 14th day of January, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Chairman Jo Anne Sanford concurring.
Commissioner Allyson Duncan concurring.
Commissioner Ralph A. Hunt dissenting in part.
Commissioner Judy Hunt dissenting in part.
Commissioner William R. Pittman concurring.
Commissioner J. Richard Conder dissenting in part.
Commissioner Robert V. Owens, Jr. dissenting in part and concurring in part.

DOCKET NO. P-55, SUB 1022

CONCURRING STATEMENT OF JO ANNE SANFORD, CHAIR: The Commission has determined in a 5:2 decision that BellSouth has not fully demonstrated its compliance with all of Section 271 of the federal Telecommunications Act of 1996 (the Act). I concur with this decision, but like my colleagues, wish to speak individually to my reasons.

Our charge in this matter is to develop a comprehensive factual record which the Federal Communications Commission (FCC) can use to assess BellSouth's progress towards opening its North Carolina local telecommunications markets to competitors. Under Section 271 of the Act, the Bell Operating Companies (BOCs) are given guidelines for receipt of authorization by the FCC to enter the interLATA long distance market within their region. As a condition precedent, the BOCs are required to allow nondiscriminatory access to their networks by other carriers who have been authorized to provide local service in what was previously the BOCs' exclusive local markets. The incentive for compliance by the BOCs is the referenced opportunity to compete in the interLATA long distance markets from which they have been excluded since 1984. This proceeding is part of the process whereby BellSouth is seeking to demonstrate its compliance with the open market requirements of the Act, and our responsibility is to act as consultants to the FCC with regard to the status of BellSouth's Section 271 compliance in North Carolina.

I believe that BellSouth has made tremendous progress toward meeting the Act's requirements and has invested enormous amounts of money and effort in that undertaking. I commend BellSouth for doing so and applaud its progress. It is vital to the citizens of this state and to our economy that local markets be opened to and entered by competitors as soon as possible. The transition period between monopoly and competitive market structures must be bridged quickly, else we face the grim prospect of telecommunications markets that are disciplined by neither competition nor regulation. By this, I mean that we need at an early point to have competitors fully engaged throughout local exchange markets in this state — markets characterized both by geographic ubiquity and by service to all customer classes. We also need the enhanced customer choice that BellSouth can bring to the in-region, interLATA long distance markets. I am dismayed by published reports of a waning of interest by several major carriers in competing for residential customers. Apparently some of the reluctance arises from the greatly underestimated complexity and cost associated with full-scale local entry, and some of the hesitation is a function of the competitors' assessment that access to the local network is not yet adequate to meet their business needs. BellSouth points out that its competitors have tremendous incentive to delay its entry under Section 271, that many of the alleged problems with access to the network are of the competitors' own doing, and that any delay in regulatory approval under Section 271 inures unfairly to the competitors' benefit, allowing them to "cherry-pick" BellSouth's most profitable customers. I recognize substance in the claims of both sides. Nevertheless, evaluations of cross-allegations concerning motives and incentives for conduct cannot substitute for a focus on fairly assessing the actual, demonstrated compliance with the Act as written.

Because of the importance of the operations support systems (OSS) and the range of views among those of us in the Majority, I wish to state my assessment of that item separately. Particularly with respect to the "front-end" functions of the OSS (pre-ordering, ordering, and provisioning), I do not believe that BellSouth met its burden of demonstrating that it provides or generally offers those functions in compliance with the Act, because I do not think that it demonstrated that the competitors' access is equivalent to BellSouth's. The competitors are entitled to the same functionality, quality, and timeliness with respect to the OSS that BellSouth itself enjoys in its retail operation. I appreciate BellSouth's position that some of the problems of delay and error are the competitors' responsibility, and I agree wholeheartedly that development and implementation of adequate performance standards will allow regulators to sort the wheat from the chaff of conflicting claims concerning the source of such problems. However, I emphasize my position that BellSouth should not only develop adequate performance standards, but should also demonstrate by their use that it is generally offering all of the required OSS functionalities through the electronic interfaces in a nondiscriminatory manner.

\s\ Jo Anne Sanford
Jo Anne Sanford, Chair

DOCKET NO. P-55, SUB 1022

CONCURRING STATEMENT OF COMMISSIONER ALLYSON K. DUNCAN AND COMMISSIONER WILLIAM R. PITTMAN

The issue of whether BellSouth is providing nondiscriminatory access to its operational support systems, is, in our opinion, the most difficult and troubling of the matters addressed by this Order. Although we concur with the Majority's decision with respect to checklist item (ii), we write separately to commend BellSouth on the considerable efforts it has made in opening its network to competition, to specify our view of the remediable nature of its deficiencies, and to stress that some responsibility for the success of these efforts lies with the CLPs as well.

We also wish to support the Majority's conclusion that BellSouth's entry into the long distance market, as soon as Section 271 requirements are met, is in the public interest. In fact, it is only that entry which will compel CLPs to compete for the less lucrative local residential market which they have so far demonstrated little inclination to serve. We share the Public Staff's conviction that BellSouth's entry into the interLATA long distance market is the most expedient way to force the numerous CLPs who have been certificated--many of whom are already serving the more financially appealing business customers--to woo residential customers as well, and thus bring the benefits of competition to the state as a whole.

The CLPs raised numerous challenges to the adequacy of BellSouth's OSS interfaces. We are not convinced that all of the problems cited--such as the need to electronically import information from one computer program to another--necessarily mandate a finding of discrimination. Furthermore, we believe that many of the problems cited by the CLPs are ones which could be solved by the CLPs' own information systems operations. At the very least, CLPs have a responsibility to work with BellSouth to integrate their systems with the packages provided. We also think that BellSouth is to be commended for many of the efforts it has made to provide CLPs with documentation regarding its electronic interfaces, as it has conducted training sessions, and made its training laboratory and "help desk" support available.

We believe that BellSouth is generally offering all of the OSS functionality needed by the CLPs through the OSS interfaces. Our primary concern is that, as the party with the burden of proof, BellSouth has failed to provide a comprehensive set of performance measurements that would allow us to determine whether a CLP can receive all the functions that it needs at parity. This could have been demonstrated if BellSouth had provided standards showing such data as comparable time intervals and accuracy rates for both BellSouth and CLPs for all OSS functions.

We realize that the Commission declined to enact specific performance standards in the context of BellSouth's arbitration proceedings, and that performance standards are not a checklist item. But for purposes of a proceeding involving the comparative analysis of the availability of services and functions, some objective criteria, even if unilaterally developed, appear necessary as a point of reference against which to judge BellSouth's performance. We believe that performance measurements addressing matters such as average installation intervals for resale and loops, percent flow through, held orders, and bill quality and accuracy which were not in the record in this proceeding, must be developed in order to reasonably determine if the OSS functions BellSouth offers operate in a nondiscriminatory manner.

Finally, we wish to emphasize our agreement with the Public Staff that the entry of BellSouth into the in-region interLATA long distance market is very much in the public interest. Public records filed with this Commission indicate with troubling clarity the lack of interest CLPs have in serving the residential sector of the local market. In fact, under the Telecommunications Act, they have a financial disincentive to do so, since it potentially prolongs the barring of Baby Bells from entry into the long distance market. It is our belief that allowing such entry would do more to promote competition than all of the current litigation. The inferences which can be drawn from this record support our concern that keeping BellSouth out of the long distance market is of greater interest to competitors who are currently in it than increasing their share of the local market--and particularly the comparatively financially unattractive residential sector. We do not believe that to be the intent of Congress or the General Assembly in opening the local market to competition.

\s\ Allyson K. Duncan
Commissioner Allyson K. Duncan

\s\ William R. Pittman
Commissioner William R. Pittman

DOCKET NO. P-55, SUB 1022

COMMISSIONERS RALPH A. HUNT AND J. RICHARD CONDER, DISSENTING IN PART:

Although we believe that the majority decision in this docket is in an overall sense positive toward BellSouth's application for in-region, interLATA long distance authority,we must dissent from those aspects of the Order which cast doubt on BellSouth's compliance with certain items in the competitive checklist.

In so doing, we are in concurrence with the views of the Public Staff, who have the statutory duty of representing the using and consuming public. After careful and exhaustive consideration, the Public Staff gave its unqualified endorsement to BellSouth's application in all respects--and so do we.

We believe that BellSouth has done what it needs to do to open up its local network to local competition as required by law. BellSouth has signed approximately 48 interconnection agreements with competing local providers in addition to the agreements that have been arbitrated. A number of these competing local providers are already providing local service at least to businesses. BellSouth should not be required to go through the "eye of the needle" to get the authority it needs to provide greater choice in the long distance marketplace.

\s\ Ralph A. Hunt
Commissioner Ralph A. Hunt

\s\ J. Richard Conder
Commissioner J. Richard Conder

DOCKET NO. P-55, SUB 1022

COMMISSIONER JUDY HUNT, DISSENTING IN PART:

Although I generally concur with the majority's conclusion that BellSouth has failed to carry its burden of proving that it should be allowed entry into the in-region interLATA long distance market, I write separately to express my concern with the majority's analysis of the public interest standard. Where the majority concludes that BellSouth's early entry into long distance is in the public interest because it would stimulate local competition, I am not persuaded. The majority cites two conditions that must be met before the public interest is satisfied. I believe the evidence supports a finding that this analysis is incomplete. Additional factors exist as barriers to competitive entry into local markets, including uncertainty of pricing. This Commission has a hearing scheduled several months hence on this subject.

In large measure, the rationale for the majority's conclusion on the public interest issue rests on the premise that competing local providers are holding back from large-scale local competition because they are not currently faced with long-distance competition from BellSouth. I believe that there are additional reasons that may discourage local competition. These include, but are not limited to, the sheer expense of building or even leasing a comprehensive local network, uncertainty as to the final pricing of unbundled network elements which I alluded to earlier, and the technical problems associated with interconnection. While BellSouth may not bear responsibility for all these barriers, certainly caution must be exercised to insure compliance for those within its control.

If consumers are to benefit from competition, which is supposed to keep prices in check and stimulate creativity and innovation, meaningful competition must be achievable. Therefore, it is premature to conclude that BellSouth's entry into the interLATA market is in the public interest.

\s\ Judy Hunt
Commissioner Judy Hunt

DOCKET NO. P-55, SUB 1022
BELLSOUTH TELECOMMUNICATIONS, INC.

COMMISSIONER ROBERT V. OWENS, JR., DISSENTING IN PART AND CONCURRING IN PART: I respectfully dissent in part from the Commission Order and decision in this case because I do not think that BellSouth, in fundamental and necessary ways, has adequately opened its network to competition. To allow BellSouth into the interLATA long-distance market at this point would perpetuate its continuing control of the provisioning of local telecommunications services within its franchised territory. If the Commission's decision is followed by the FCC, it will foreclose educational and economic opportunities to business and residential consumers within North Carolina, which would otherwise be available in an open, fair, and competitively robust market for telecommunications services.

Essentially, under the Commission's Order, once BellSouth has met certain minimal requirements, the acceptability of which is left largely to the sole discretion of the FCC, BellSouth will be permitted to compete freely in the interLATA long distance market for telecommunications services, while continuing to control the market for local telecommunications services within its existing franchised territory. Under such an overall market structure, BellSouth will have a far-reaching, competitive advantage in marketing and provisioning its services to the detriment of other telecommunications service providers and to business and residential consumers of telecommunications services within this State.

More specifically, the Commission has ruled that it cannot determine if BellSouth is providing or generally offering competing local providers (CLPs) nondiscriminatory access to certain of its facilities, because "BellSouth does not have performance measurements adequate to demonstrate that the electronic interfaces through which the CLPs will access the Operations Support Systems (OSS) are necessarily permitting the CLPs to access those systems in a nondiscriminatory manner." While I am in complete agreement with the Commission's finding that BellSouth does not have adequate performance standards in place, I also believe that BellSouth is not providing nondiscriminatory access to its OSS functions as argued by the CLPs and as demonstrated by the weight of the evidence of record. The Commission's Order simply directs BellSouth, when it makes its 271 filing with the FCC, to provide a set of performance standards and measurements which clearly demonstrate that BellSouth is providing nondiscriminatory access to its OSS functions. By deferring to the FCC, the Commission relinquishes its authority to rule on the issue and avoids directly addressing the question which is really the heart of the issue: do BellSouth's electronic interfaces, through which the CLPs access necessary OSS, permit the CLPs to access those systems in a nondiscriminatory manner?

Considering all of the evidence presented to the Commission, I further conclude that BellSouth's entry into the interLATA long distance market, through its affiliate BellSouth Long Distance, Inc. (BSLD), is not in the public interest at this time. As the CLPs argue, the immediate entry by BellSouth will likely harm existing competition in the long distance market and will adversely impact the development of competition in local markets by removing any incentive for BellSouth to comply with its obligations, which is necessary for meaningful local exchange competition to develop. Furthermore, BellSouth remains in control of the local exchange market, as evidenced by the fact that it continues to serve well over 99% of all access lines in its territory. Based upon the evidence of record, I am unable to conclude that meaningful local competition now exists in North Carolina or that there are currently adequate provisions in place which would ultimately allow for the development of such competition. BellSouth retains control of essential bottleneck local facilities which are necessary inputs to the services offered by long distance carriers and other potential providers of competitive local services, as well as the ability to leverage its monopoly position into competitive long distance markets. For these reasons, it is my view that BellSouth should not be permitted to offer interLATA long distance services until its potential competitors can just as easily offer competitive local services, a condition that does not now exist. Thus, the immediate entry by BellSouth into the interLATA long distance market is not in the public interest at this time.

Because of the interrelationship between OSS functions and certain other facilities or services of BellSouth, I also find that BellSouth has not demonstrated its compliance with respect to checklist items (iv), (v), (vi), and (xiv). Finally, because decisions in the Commission Order on issues to which

I dissent, as well as one decision on an issue in which I concur[1], impact BellSouth's SGAT, I also disagree with and dissent from the Order in that regard. In my view, it is incorrect to allow BellSouth's SGAT to remain in effect. Consistent with my position on related deficiencies, I believe that the Commission should have ruled that the SGAT was deficient and therefore unacceptable.

For the foregoing reasons, I dissent in part and concur in part with the Commission's decision.

In closing, due to my deep concern for the well being of consumers in this State and in consideration of my strong sense of responsibility to both public utilities and consumers of public utility services, I wish to reiterate that I do not believe it to be in the best interest of business and residential consumers in North Carolina to allow BellSouth entry into the interLATA long distance market at this time.

\s\ Robert V. Owens, Jr.
COMMISSIONER ROBERT V. OWENS, JR.

[1] The Commission found BellSouth's filing to be deficient in two areas: interconnection and OSS-functionality performance standards. The latter deficiency led the Commission to conclude that it was unable to determine whether BellSouth was providing nondiscriminatory access to its OSS functions — checklist item (ii). For that reason, the Commission concluded that BellSouth was not meeting the requirements of that checklist item. As explained above, I concur in the Commission's decisions in those regards.

If BellSouth's filing is deficient due to inadequate OSS-functionality performance standards, its SGAT is also deficient for the same reason. Thus, for that additional reason, I am of the opinion that the SGAT is deficient and therefore unacceptable.

APPENDIX A

GLOSSARY OF ACRONYMNS
Docket No. P-55, Sub 1022

ACS	Area Calling Service
Act	Telecommunications Act of 1996
AIN	Advanced Intelligent Network
ALEC	Alternative Local Exchange Company
Ameritech	Ameritech Michigan (BOC in Michigan)
ARMIS	Automated Reporting Management Information System
AST	Access Service Tariff
AT&T	AT&T Communications of the Southern States, Inc.
BAPCO	BellSouth Advertising and Publishing Corporation
BBS	BellSouth Business Systems
BellSouth	BellSouth Telecommunications, Inc
BLV	Busy Line Verification
BLVI	Busy Line Verification and Emergency Interrupt
BOC	Bell Operating Company
BSLD	BellSouth Long Distance, Inc.
C.F.R.	Code of Federal Regulations
CABS	Carrier Access Billing System
Carolina	Carolina Telephone and Telegraph Company
CaroNet	CaroNet, LLC
CDDD	Customer Desired Due Date
Central	Central Telephone Company
CIC	Carrier Identification Code
CLEC	Competing Local Exchange Company (Carrier)
CLP	Competing Local Provider
CMDS-Hosting	Centralized Message Distribution System-Hosting
Commission	North Carolina Utilities Commission

GLOSSARY OF ACRONYMNS
Docket No. P-55, Sub 1022

CompTel	Competitive Telecommunications Association
CRIS	Customer Record Information System
CSA	Contract Service Arrangement
CWA	Communications Workers of America, AFL-CIO
DACC	Directory Assistance Call Completion
DADAS	Direct Access Directory Assistance Service
DADS	Directory Assistance Database Service
DeltaCom	DeltaCom, Inc.
DID	Direct Inward Dialing
DOE	Direct Order Entry
DOJ	Department of Justice
DS0	Digital Signal Level 0 (64 Kbps signal)
DS1	Digital Signal Level 1 (1.544 Mbps signal)
DS3	Digital Signal Level 3 (45 Mbps signal)
EBI	Electronic Bonding Interface
ECG	Electronic Communications Gateway
EDI	Electronic Data Interchange
Eighth Circuit Court	United States Court of Appeals for the Eighth Circuit
EMR	Exchange Message Record
ESP	Enhanced Service Provider
EXACT	Exchange Access Control and Tracking System
FCC	Federal Communications Commission
FOC	Firm Order Confirmation
GSST	General Subscriber Services Tariff
GTE	GTE South Incorporated
ICG, et al.	ICG Telecom Group, Inc., KMC Telecom, Inc., and TCG of the Carolinas, Inc.
ICS	Interconnection Services

TELEPHONE - MISCELLANEOUS

GLOSSARY OF ACRONYMNS
Docket No. P-55, Sub 1022

IDLC	Integrated Digital Loop Carrier
ILEC	Incumbent Local Exchange Company (Carrier)
Incumbent LEC	Incumbent Local Exchange Company
Interconnection Order	FCC's First Report and Order in CC Docket Nos. 96-98 and 95-185, issued on August 8, 1996
Intermedia	Intermedia Communications, Inc.
ISDN	Integrated Services Digital Network
ISP	Information (Internet) Service Provider
IXC	Interexchange Carrier
KMC	KMC Telecom, Inc.
LCC	Line Class Code
LCSC	Local Carrier Service Center
LCUG	Local Competition User Group
LEC	Local Exchange Company
LENS	Local Exchange Navigation System
LEO	Local Exchange Ordering
LERG	Local Exchange Routing Guide
LESOG	Local Exchange Service Order Generator
LIDB	Line Information Database
MCI	MCI Telecommunications Corporation
MCImetro	MCImetro Access Transmission Services, Inc.
MFJ	Modification of Final Judgment
NANP	North American Numbering Plan
NID	Network Interface Device
NSPRS	Non-Sent Paid Report System
NXX	Used to symbolize telephone numbers not yet determined
OBF	Ordering and Billing Forum
OSS	Operations Support Systems

GLOSSARY OF ACRONYMNS
Docket No. P-55, Sub 1022

PBX	Private Branch Exchange
PIC	Preferred Interexchange Carrier
PLT	Private Line Service Tariff
POTS	Plain-Old-Telephone-Service
PSAP	Public Safety Answering Point
Public Staff	Public Staff - North Carolina Utilities Commission
RAO	Recommended Arbitration Order
RCF	Remote Call Forwarding
RI-PH	Route Indexing-Portability Hub
RNS	Regional Navigation System
SBC	Southwestern Bell
SCP	Service Control Point
SGAT	Statement of Generally Available Terms
SMNI	Sprint Metropolitan Networks, Inc.
SOCS	Service Order Control System
Sprint	Sprint Communications Company L.P.
SS7	Signaling System 7
STP	Signal Transfer Point
TA96	Telecommunications Act of 1996
TAFI	Trouble Analysis Facilitation Interface
TCG	TCG of the Carolinas, Inc.
Time Warner	Time Warner Communications of North Carolina, L.P.
TRA	Telecommunications Resellers Association
U.S.C.	United States Code
UNE	Unbundled Network Element
WorldCom	WorldCom, Inc.

DOCKET NO. P-55, SUB 1022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of BellSouth Telecommunications, Inc. To Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996	))))	ORDER DENYING AT&T MOTION

BY THE COMMISSION: On January 9, 1998, AT&T Communications of the Southern States, Inc. (AT&T) filed a Motion to Reject, Modify, or Revise BellSouth's SGAT and for Additional Proceedings "in light of the recent decision of the Federal Communications Commission (FCC) denying the application of BellSouth...to provide in-region, interLATA service in the state of South Carolina." On January 13, 1998, BellSouth Telecommunications, Inc. (BellSouth) filed a Response to AT&T's Motion. On January 14, 1998, the Commission issued its own Order Regarding Section 271 Requirements. Ordering Paragraph No. 3 of that Order provided that BellSouth's Revised Statement of Generally Available Terms (SGAT) would be allowed to continue in effect, provided that, when the permanent cost study proceeding is completed, the resulting SGAT rates would be incorporated into the SGAT and the interim rates trued-up accordingly.

In view of the Commission's January 14, 1998, Order in this docket, AT&T's January 9, 1998, Motion is denied.

IT IS, THEREFORE, SO ORDERED

ISSUED BY ORDER OF THE COMMISSION.

This the 21st day of January, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

Commissioner Robert V. Owens, Jr. dissents.

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 Provice In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996	)	ORDER DENYING MOTION FOR RECONSIDERATION
	)	
Docket No. P-100, Sub 133	)	
	)	
In the Matter of Local Exchange and Exchange Access Competition	)	

BY THE COMMISSION: On October 21, 1997, the Chair issued an Order Concerning Confidentiality of Report Filings regarding reports required to be filed under Commission Rule R17-2(k) and those to be filed under Docket No. P-55, Sub 1022 ("Questions for Competing Carriers" or QCC). Certain competing local providers (CLPs)--namely, MCIMetro Access Transmission Services, Inc. (MCI), Time Warner Communications of North Carolina, L.P. (Time Warner), Business Telecom, Inc. (BTI), and US LEC of North Carolina, LLC (US LEC) had claimed confidentiality with respect to R17-2(k) filings made on or about October 15, 1997. Concerning the R17-2(k) filings, the Order stated:

> The Chair does not consider that a mere statement of the number of business and residential customers a CLP has is a "trade secret" within the meaning of G.S. 66-152(3) and is thus protected from public disclosure. Thus, MCI's, Time Warner's, BTI's, and US LEC's claims to confidentiality are denied.

Concerning the QCC, the Chair stated that she had closely examined the list of questions and concluded that the answers to questions 1 through 11 would not constitute trade secrets, but that answers to questions 12 and 13 may constitute trade secrets. The Chair acknowledged that CLPs may nevertheless assert their privilege to designate answers to any questions as confidential but the Chair instructed them, should they do so, to be prepared at the time of filing to submit a detailed and cogent statement of the reasons therefor.

The first set of responses to the thirteen questions were due on November 17, 1997, and monthly on the 15th day of each month thereafter. By Order dated October 9, 1997, CLPs were authorized to combine their monthly subsequent Rule R17-2(k) reports with the thirteen questions reports due on November 17, 1997, and monthly on the 15th day of each month thereafter.

Motion for Reconsideration

On November 5, 1997, AT&T Communications of the Southern States, Inc. (AT&T), BTI, CaroNet, LLC (CaroNet), DeltaCom, Inc. (DeltaCom), ICG Telecom Group, Inc. (ICG), Intermedia Communications, Inc. (Intermedia), KMC Telecom, Inc. (KMC), MCI, Sprint Communications Company, LP (Sprint), TCG of the Carolinas, Inc. (TCG), Time Warner, US LEC, and WorldCom, Inc. (WorldCom) (collectively, the Joint Petitioners) filed a Joint Petition for Reconsideration of Order Concerning Confidentiality of Competitive Information and Motion for Stay.

By Order dated November 7, 1997, the Chair granted the request for stay and requested comments from interested parties.

There are two information requests at issue in these dockets. The first is Rule R17-2(k) which provides as follows:

> (k) By the 15th of each month each CLP shall file a report with the Chief Clerk reflecting the number of access lines subscribed to at the end of the preceding month by business and residence customers in each respective geographic area served by the CLP. Other operating statistics are not required to be filed except upon specific request of the Commission or Public Staff.

As noted by the Joint Petitioners, the rule does not specify the definition of "geographic area." The Joint Petitioners stated that the Public Staff had informally advised parties that "geographic area" refers to the specific exchanges served by the CLP.

The second information request was the thirteen questions required in the QCC, attached hereto as Appendix A.

The provisions on which the Joint Petitioners rely in resisting disclosure of the requested information are G.S. 132-1.2 and G.S. 66-152(3). The Joint Petitioners stated that the Public Records Act neither requires nor authorizes release of "confidential information" if that information:

(1) Constitutes a "trade secret" as defined by G.S. 66-152(3);
(2) Is the property of a private person as defined in G.S. 66-152(2);
(3) Is disclosed or furnished to the public agency in connection with the owner's performance of a public contract or in connection with a bid, application, proposal. . .or in compliance with laws, regulations, rules, or ordinances of the United States, or political subdivisions of the State; and
(4) Is designated or indicated as "confidential" or as a "trade secret" at the time of its initial disclosure to the public agency.

The Joint Petitioners also noted that a "trade secret" is defined in G.S. 66-152(3) as:

> business or technical information, including but not limited to a formula, pattern, program, device, compilation of information, method, technique, or process that:
>
> > (1) Derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use; and
> > (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The Joint Petitioners argued that the statute protects not only information that gives an advantage over competitors but also information that, if known by the competitors, would give the competitors an unfair advantage over the owner of the information.

The Joint Petitioners maintained that the North Carolina Court of Appeals in Wilmington Star-News v. New Hanover Regional Medical Center, 125 N.C. App. 174, 480 S.E. 2d 53, review allowed, 346 N.C. 185, 486 S.E. 2d 221, appeal dismissed, 346 N.C. 557, 488 S.E. 2d 826 (1997) (Wilmington Star-News) had adopted an expansive definition of trade secrets. Although the Court did not decide whether the particular information was or was not a trade secret, the Joint Petitioners stated that the Court held that a trier of fact could conclude that the information was protected "trade secret" information if disclosure of the financial terms of the contract would be of substantial economic benefit to the competitors of the contracting HMO; disclosure of the financial terms of specific contracts between HMOs and health care providers would be detrimental to competition in the health care industry; HMOs typically regard price information as confidential; and measures were taken to protect the confidentiality of the price information. The Joint Petitioners argued that these same factors are dispositive of whether access line data and other competitive information should be held as a trade secret--i.e, competitors will benefit, competition will be hindered, access line information is regarded as confidential by the Joint Petitioners, and the Joint Petitioners have taken appropriate measures to protect its confidentiality.

Regarding the R17-2(k) reports, the Joint Petitioners argued that information concerning the number and geographical location of CLP access lines is competitively sensitive, and could be used by competitors to disparage the ability of a given CLP to provide service. Competitors could identify and target each other's customers through these reports and receive some insight into the business plans and strategies of the reporting CLPs. Moreover, if access line information must be released, the Commission should also require the incumbent local exchange companies (ILECs) to release other information in similar contexts, such as certain information on the TS-1 reports.

Regarding the QCC reports, the Joint Petitioners agreed that questions 1 through 4 were not competitively sensitive, but they disagreed as to the rest of the questions. Disclosure of the information in numbered questions 7 through 13, for example, would permit competitors of any reporting CLP to determine the exact number of customers that the CLP serves, how it provides that service, the exact quantity of each particular service the CLP provides, and the CLP's expansion plans. As with the R17-2(k) reports, public disclosure of information will unfairly permit other carriers to assess the relative effectiveness of a CLP's marketing schemes and react thereto.

Disclosure of such information may have an untoward impact on a publicly-held CLP's stock price and lead to shareholder derivative suits and adverse securities law consequences. Finally, the Joint Petitioners noted that the Florida Public Service Commission has determined that similar information required there deserves confidential treatment.

Comments

On November 7, 1997, the Commission solicited comments with respect to the Motion for Reconsideration. The following parties filed comments:

BellSouth. BellSouth argued that this matter can be resolved without reaching the merits of the Joint Petitioners' position. BellSouth stated that it had no objection to classifying the information that the Commission seeks from the CLPs as "trade secrets," and that it is willing to enter into an appropriate nondisclosure agreement before reviewing the information in question. BellSouth added that its only purpose in asking the Commission to seek this information was to ensure that the Commission had the information it needed to respond to the request of the Federal Communications Commission (FCC) for consultation under Section 271 of the Telecommunications Act of 1996. Thus, if the Commission's ability to consult with the FCC is not impaired and if BellSouth can review the information in question pursuant to a protective order, BellSouth does not oppose its classification as "trade secrets." BellSouth provided a draft protective order for the Commission's consideration.

Public Staff. The Public Staff stated that it was aware that BellSouth had distributed to the parties a draft protective order. Although the Public Staff indicated that it did not agree that the information constituted a "trade secret," the Public Staff did not object to treating information as such insofar as the responses to questions 1 through 13 of the QCC are concerned. The Public Staff did object to such treatment of information provided pursuant to Rule R17-2(k). The filing of access line information for ongoing regulatory and public review which has not been contested up until now. The Public Staff recommended that the Commission affirm its earlier finding that access line reports are not "trade secrets" and require that they be filed independently pursuant to Rule R17-2(k). The Public Staff stated that it would make a recommendation concerning the treatment of the QCC in its reply comments.

Reply Comments

Joint Petitioners. The Joint Petitioners noted that both BellSouth and the Public Staff had recognized the sensitive and proprietary nature of the QCC but recommended that the Commission not issue an order based on a determination under the Public Records Act but rather enter a Stipulated Protective Order. Concerning the R17-2(k) reports, BellSouth took a similar position, but the Public Staff contended that the access lines report are not confidential and should therefore be subject to public disclosure.

The Joint Petitioners insisted that the Commission must reach the issue of confidentiality under the Public Records Act and pointed out that the news media, newly certified CLPs, and other persons not party to a Stipulated Order would not be bound by it. The Joint Petitioners reiterated that the information which they seek to keep confidential meets the criteria set out in the Wilmington

Star-News case. The Joint Petitioners further asserted that, with respect to the R17-2(k) reports, they could not have appropriately raised the issue of confidentiality at an earlier point in time, as the Public Staff implies, nor is there any basis for distinguishing the information required by the R17-2(k) reports from the QCC, since both independently satisfy the criteria of Wilmington Star-News. The Joint Petitioners criticized the Public Staff's "conclusory" analysis regarding the R17-2(k) reports and asserted that their arguments concerning confidentiality had not been rebutted. Information that may have been made routinely available in a monopoly context is not necessarily information that should be available in a competitive context.

The Joint Petitioners did concede that, to the extent the information contained in the QCC is being utilized in Docket No. P-55, Sub 1022, BellSouth should be provided limited access to this information. The Joint Petitioners proposed that BellSouth should be provided a composite of the QCC made by all the CLPs with company-identity information deleted. However, BellSouth should not be entitled to review the R17-2(k) reports because those reports are not required in connection with Docket No. P-55, Sub 1022 and the Commission has not indicated that it plans to utilize this information in connection with that docket. In the event that the Commission elects to adopt BellSouth's protective order approach, the Joint Petitioners gave notice that they do not stipulate to BellSouth's proposed order and would like the opportunity to file further comments.

BellSouth. On December 18, 1997, BellSouth filed a Response to the Reply Comments of the Joint Petitioners focusing on the proposed protective order that BellSouth had submitted. BellSouth noted that the Joint Petitioners were not willing to stipulate to BellSouth's proposed order and desired further opportunity to submit additional comments on this issue. The Commission should proceed forthwith to approve BellSouth's proposed protective order.

Whereupon, the Commission reaches the following:

Conclusions

After careful consideration, the Commission concludes that the original decision in this matter should be upheld--i.e., that the responses to R17-2(k) and the responses to the QCC 1-11 should be made public.

The Joint Petitioners have argued that all this material, with the exception of QCC 1-4, should be construed as "trade secrets" and thus should be entitled to confidentiality. The Joint Petitioners have cited the alleged competitive nature of the telecommunications marketplace, as well as case law which they suggest supports their analysis. The Joint Petitioners have also urged that composite data, with identifying features removed, may be an appropriate way to release information; and, although cool to BellSouth's original proposal for a confidentiality agreement, they did not rule out the use of confidentiality agreements entirely to allow the information to be disseminated to concurring parties.

The Commission believes that the Joint Petitioners have presented an able analysis for their point of view as far as it goes. Unfortunately, their analysis does not go far enough. The primary consideration that the Joint Petitioners have left out is the regulated nature of the telecommunications industry at this point in time[1] and the numerous public interests that have a legitimate--and, in some cases, a compelling--need for this information.

It is the Commission's view that the "trade secret" exception to the Public Records Act must in the instant case be analyzed within the context of a regulated industry. This means that what may perhaps be deemed to be a "trade secret" within a totally and freely competitive marketplace should not necessarily be construed to be a "trade secret" within a regulated marketplace. Otherwise, the "trade secret" exception may very well swallow up the over-arching principle of public disclosure enunciated in the Public Records Act. Such a construction would also be in derogation of the Commission's responsibilities which the General Assembly has articulated in G.S. 62-2 "to provide fair regulation of public utilities in the interest of the public." The principal purpose of the Public Records Act is to make government information and information filed with the government public, subject to specified exceptions, not the reverse.

As G.S. 132-1(b) states:

> (b) The public records and public information compiled by the agencies of North Carolina government. . . are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal costs. . .

It is one of the great misconceptions that the Telecommunications Act of 1996 (TA96) and House Bill 161 "deregulated" telecommunications. It is more accurate to say that those laws have "restructured" telecommunications regulation, with a view toward greater and greater degrees of deregulation as conditions warrant. No one can say how long this process will take. As Winston Churchill said when the United States entered World War II, we are not at the "beginning of the end"; we are at best at the "end of the beginning."

House Bill 161 provided this Commission with a road map for restructuring even before the TA96 was passed. There are two main parts. The first authorizes local competition. In response to this, the Commission promulgated Rule R17-1 et seq. which sets out the rules under which CLPs are to operate. Those rules largely set out certification requirements, and the continuing requirements are far from onerous. For example, CLPs do not have to file tariffs, only price lists (from which they may seek a waiver after March 1, 1998), and they are subject neither to rate base/rate of return nor price regulation. They were required from the very first, however, in Rule R17-2(k) to provide monthly information concerning the number of business and residence customers in each respective geographic area served by the CLPs. When this provision was promulgated, there was no objection from the CLPs. No one filed a motion for reconsideration. The Commission simply never received the reports. It was not until the Commission made a specific note of this omission and demanded the reports that the CLPs began responding.

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[1] See, for example, G.S. 62-23 (Commission an administrative agency of the General Assembly), G.S. 62-30 (Commission has general power and authority to supervise and control the public utilities "as may be necessary"), G.S. 62-31, (Commission has power to make and enforce reasonable rules), G.S. 62-32 (Commission to have general supervision over rates and service), G.S. 62-33 (Commission to keep informed regarding utilities) and G.S. 62-36 (Commission may require annual reports).

The second part of House Bill 161 allowed major LECs to opt for price regulation instead of traditional rate base/rate of return regulation. Although the regulatory process for major LECs is more streamlined as compared to the old system, these LECs must still file tariffs and cannot exceed certain price levels. Extensive reporting requirements are still in place. The nature and extent of these reporting requirements stand in stark contrast to those imposed on CLPs, which are modest by comparison and are targeted to obtaining information concerning the level of competition. For example, all LECs must still regularly file monthly access line reports known as station development reports. LECs must also file service quality reports, a statement of annual construction plans and objectives, and a financial and operating report. With one minor exception, there has been no assertion of confidentiality in regard to these filings.[1] These reports are valuable not only to the Commission but to the public-at-large. If the CLPs view of confidentiality is sustained, there will surely be calls to close off public access to many of these reports.

The overall philosophy regarding the substantive regulation of the CLPs and the LECs as expressed in Rule R17 and the price regulation plans is that CLPs, being the new entrants, should be regulated less extensively than incumbent LECs. However, for that very reason, it is still extremely important to have information concerning the extent of competition because the process of restructuring--with eventual deregulation--is a "work in progress." For example, G.S. 62-2 vests authority in the Commission to "deregulate or to exempt from regulation" virtually any telecommunications service upon finding that the service is competitive and deregulation is in the public interest. It is thus necessary to have information concerning the state of competition before taking further steps.

The Joint Petitioners have argued that the Commission can get the information it needs and that it does not need to disclose this information to the public. The Commission can redact the information or make its disclosure subject to confidentiality agreements. But this ignores the larger interests involved. The restructuring and eventual deregulation of the telecommunications industry is not simply a matter of private interest nor even exclusively of Commission interest; it is a matter of public interest. This public interest includes the political and legislative process by which telecommunications policy is ultimately governed. There are several distinct classes of persons, other than the Commission, who have a legitimate public interest in access to specific, as well as general, information concerning the state of competition in telecommunications. They include:

1. General Assembly. As the maker of the laws, the General Assembly has a legitimate interest in access to accurate, unbiased, and specific information concerning the state of competition in telecommunications. It would be extremely difficult, if not impossible, for the Commission or individual parties to provide such information to the General Assembly on a confidential basis. The General Assembly may, for example, be legitimately interested in whether telecommunications opportunities are comparable as between rural and urban areas, as well as the nature of the service being provided. Based on information concerning the state of competition, the General Assembly may wish to alter or amend House Bill 161 to achieve the results it desires.

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[1]BellSouth in 1997 has claimed confidentiality with respect to the reporting of certain business revenues relative to specific lines of business.

2. General Public. The general public, as voters, have a legitimate interest in access to accurate, unbiased, and more specific information concerning the state of competition in telecommunications so that they may convey their views to both state and federal elected representatives. A subset of the general public--the using and consuming public--has a similar interest in order to be able to make intelligent choices concerning whom they wish their carriers to be. For example, a member of the using and consuming public may wish to call the Commission or the Public Staff to find out just how substantial a particular CLP or interexchange carrier is--or is not. The number of access lines or customers they serve and where their operations are concentrated could assist a consumer to make an informed choice.

3. Media. The media acts as the "information intermediaries" for society, informing public and elected representatives alike. Accurate, unbiased, and specific information concerning the state of competition in telecommunications is necessary for the media to report the true state of telecommunications competition.

4. BellSouth. BellSouth's need for information on the state of competition in telecommunications is both general and particular. The general need is the same as that of the general public, but the particular need stems from BellSouth's application for in-region interLATA long distance authority pursuant to Section 271 of the Telecommunications Act of 1996. A central question in BellSouth's application revolves around the state of competition in North Carolina. The questions set out in the QCC were an attempt to garner this information with greater precision, although that information is relevant even outside of the Section 271 context.

Nevertheless, the Commission is not insensitive to the considerations and the hypotheticals that the Joint Petitioners have raised, although the Commission believes that the Joint Petitioners have exaggerated the harm that may result from the disclosure of the required inofirmation. These concerns may have much greater--perhaps even dispositive force--within the context of a totally deregulated and free market, like that for many goods and services. However, as noted above, the question of what is a "trade secret" must be approached contextually. In the instant case, the context is a regulated marketplace in transition, where the question of the extent of competition looms very large in the matter of both private and public choices. It is not simply a matter between companies and the Commission. It involves the public interest. We are still in the relatively early stages of this transition. However, as the bonds of regulation loosen and the evidence of pervasive and meaningful competition presumably increases, the reporting requirements such as those in question can safely be narrowed. The exact balance of disclosure versus confidentiality in this matter is best left to the Commission. Thus, it is conceivable that the QCC requirement can be modified once BellSouth has received permission to enter the in-region, interLATA market.

Accordingly, for the reasons cited above the Commission concludes that the Joint Petitioners' Motion for Reconsideration should be denied and that the information hitherto filed, and to be filed, under Rule R17-2(k) and QCC 1-11 should be made public two weeks from the date of issuance of this Order.

IT IS, THEREFORE, SO ORDERED.
ISSUED BY ORDER OF THE COMMISSION.
This the 28th day of January, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

QUESTIONS FOR COMPETING CARRIERS

1. Is (CLP name) providing telephone exchange service in North Carolina as defined in Section 3 (47) of the Telecommunications Act of 1996 ("the Act") but excluding exchange access?

2. Has (CLP name) required interconnection and signed an agreement with BellSouth? If answer to this item is yes, please respond to the following questions.

3. As a competing provider of telephone exchange service, that has an agreement with BellSouth approved under Section 252 of the Act, is (CLP name) providing telephone exchange service to residential customers in North Carolina?

4. As a competing provider of telephone exchange service that has a binding agreement with BellSouth, is (CLP name) providing telephone exchange service to business customers in North Carolina?

5. Is (CLP name) providing such telephone exchange service in North Carolina exclusively over its own facilities?

6. Is (CLP name) providing such telephone exchange service in North Carolina predominantly over its own facilities in combination with the resale of telecommunications from another carrier?

7. How many business customers are served using your own facilities or unbundled elements and when did you begin providing service?

8. How many business customers are served by reselling BellSouth's retail services, and when did you begin providing service?

9. How many residential customers are served using your own facilities or unbundled elements and when did you begin providing service?

10. How many residential customers are served by reselling BellSouth's retail service, and when did you begin providing services?

11. If you are not currently offering local service, when do you plan to begin offering local service?

12. Please provide detailed plans of how you intend to serve business customers using your own facilities or unbundled elements.

13. Please provide detailed plans of how you intend to serve residential customers using your own facilities or unbundled elements.

DOCKET NO. P-55, SUB 1022

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of Application of BellSouth Telecommunications, Inc., to Provide In-Region InterLATA Services Pursuant to Section 271 of the Telecommunications Act of 1996	))))	ORDER CONCERNING MOTIONS FOR CLARIFICATION AND RESCHEDULING HEARING

BY THE CHAIR: On September 9, 1998, and September 11, 1998, several parties to this docket filed Motions for Clarification and Revised Procedural Order. By this Order the Commission seeks to dispel the confusion surrounding the nature, scope and timing of this proceeding. The Chair's decision herein about the scope and schedule of this proceeding is predicated on a careful assessment of the various disparate and evolving characterizations of what is being requested, of the implications of our decision, of our obligations under statute, and of the fairest and most efficient way to proceed. Our goals include fairness to all parties and progress towards compliance with our responsibilities under House Bill 161 and the Telecommunications Act of 1996.

Motions

On September 8, 1998, AT&T of the Southern States, Inc. (AT&T) filed a Motion for Clarification and Revised Procedural Schedule. Specifically, AT&T requested that the Commission:

1. Clarify that the standard of approval for BellSouth's Revised SGAT is "generally offers" under Section 252(f) and not the higher "providing access and interconnection" standard under Section 251.

2. Establish a separate subdocket to address BellSouth's Revised SGAT and to specifically find that the approval of the Revised SGAT is not a determination that BellSouth is Section 271 compliant in North Carolina.

3. Establish revised rates for the filing of testimony by the parties until some reasonable period after the FCC's Order in BellSouth's Section 271 application for Louisiana to be issued on October 13, 1998.

4. Establish revised dates for the evidentiary hearing regarding BellSouth's Revised SGAT until after issuance of the FCC's Louisiana Order.

In its Motion AT&T referenced the Commission's August 21, 1996, Procedural Order requiring BellSouth to provide the Commission 120 days notice in advance of filing its Section 271 application for North Carolina with the FCC. Paragraph 2 of that Order instructed BellSouth to also present the evidence on which it relies to show that it meets the Section 271 requirements. While acknowledging that BellSouth did provide a "Notice" and purported evidence on August 5, 1997, in its "Notice of Intent to File a Section 271 Application for InterLATA Authority with the Federal

Communications Commission," AT&T complained that BellSouth had failed to comply with the Commission's August 21, 1996, procedural Order concerning notice and filing in this matter.

On September 9, 1998, ICG Telecom Group, Inc., Interpath Communications, Inc., Intermedia Communications, Inc., ITC DeltaCom, and KMC Telecom Group, Inc. (collectively, Respondents) filed a Motion for Clarification and Revised Procedural Schedule. The Respondents sought clarification that the Commission's review of BellSouth's Revised SGAT should be under the "generally offering" standard of Section 271(c)(1)(B) and requested that the hearing be postponed until after the FCC's Louisiana decision.

On September 11, 1998, MCI Access Transmission Services, Inc. (MCI) filed Comments Concerning Motions for Clarification. MCI maintained that the only substantive relief BellSouth requests in its petition is approval of the Revised SGAT; that BellSouth has not served a notice of intent to file a Section 271 application; that BellSouth has not filed the evidence necessary for a 271 hearing, and the Commission's August 21, 1998 Scheduling Order states that the evidence to be presented at the October 8, 1998 hearing must relate only to the proposed revisions to BellSouth's SGAT. Thus, the October 8, 1998 hearing cannot be a Section 271 proceeding, despite BellSouth's attempt to blur this distinction. MCI stated that, based on its understanding of the SGAT proceeding, it does not intend at the October 8, 1998, hearing to present much of the evidence it would submit in a Section 271 proceeding, but rather it will limit its evidence to the proposed revisions themselves and whether BellSouth generally is capable of performing the terms to be revised. If MCI is incorrect in its understanding, it wishes the Commission to so advise it.

<u>BellSouth Response</u>

On September 17, 1998, BellSouth filed a Response to the Motions for Reconsideration, in which BellSouth requested the Commission 1) to deny the relief sought by the movants; 2) to reaffirm that, through the evidentiary hearing, the Commission will determine wither the Revised SGAT cures the deficiencies noted by the Commission in its January 14, 1998, Order; and 3) to find that, if the Commission determines that BellSouth has corrected those deficiencies, BellSouth has met those checklist items under Section 271(d)(2)(B). Specifically, with respect checklist item 1, the Commission should determine whether BellSouth is currently providing or generally offering interconnection and access to local tandems and physical collocation in accordance with the requirements of Section 251(c)(2) and Section 252(d)(1) and, with respect to checklist item 2, whether BellSouth has fully developed adequate performance measurements to demonstrate that the electronic interfaces through which the CLPs will access the OSS are being provided in a nondiscriminatory matter. BellSouth contended that it was clear that this was what it was asking for from the start.

BellSouth characterized AT&T's Motion for Clarification as a "thinly disguised motion for reconsideration," and it rejected AT&T's call for a subdocket and for further delays based on the Petition for Collaborative Process or the issuance of the FCC's Louisiana Order. It also rejected AT&T argument that any determination of BellSouth's compliance with the Section 271 checklist should be dependent on a review of all the checklist items at this point, and it noted that it has already complied with the Commission's Order to provide 120 days notice. AT&T's view that the

Commission should withdraw its finding that BellSouth's entry into the interLATA marketplace is in the public interest is without merit.

WHEREUPON, the Chair reaches the following

CONCLUSIONS

After careful consideration, the Chair concludes the following:

1. That the August 21, 1998, Order in this docket should be clarified as follows:

   a. That the evidentiary hearing in this docket will be restricted solely "to substantive textual changes and proposed new rates," which shall include a consideration of

      1. Whether, with respect to checklist Item 1, BellSouth is currently providing or generally offering interconnection and access to local tandems and physical collocation in accordance with the requirements of Section 251(c)(2) and Section 252(d)(1); and

      2. Whether, with respect to checklist Item 2, BellSouth is currently providing or generally offering nondiscriminatory access to network elements in accordance with the requirements of Sections 251(c)(3) and 252(d)(1) with respect to the development of adequate performance measurements to demonstrate that the electronic interfaces through which the competing local providers will access the OSS are being provided in a nondiscriminatory manner.

   b. That, if the Commission determines that BellSouth has corrected the deficiencies referred to above, it will conclude that BellSouth has met those checklist items under Section 271(d)(2)(B).

   c. That, if the Commission determines BellSouth has carried its burden of proof with respect to all substantive textual changes and proposed new rates in the Revised SGAT, it will approve the Revised SGAT.

2. That the evidentiary hearing now scheduled for October 8, 1998, be rescheduled to begin on Monday, November 30, 1998, so that all parties may have a fair opportunity to prepare for this hearing. Prefiling dates will be correspondingly adjusted at approximately the same points before the hearing as before, as will authorization for data requests.

3. That all other requests in the Motions for Clarification in this docket be denied.

Scope of Hearing

In its August 21,1998, Order Scheduling Hearing, the Commission provided that the evidentiary hearing to be held in this docket on BellSouth's Revised SGAT would be restricted "to substantive textual changes and proposed new rates." Various CLPs have sought clarification as to whether the inquiry herein will be also limited to the "generally offers" standard or whether it will be broader.

This confusion is understandable. BellSouth in its Petition for Approval of Revised Statement of Generally Available Terms and Conditions stated that it was submitting a Revised SGAT that: 1) addresses the concerns noted by the Commission in its January 14, 1998 Order such that the entire Revised SGAT can now be approved by the Commission under Section 252(f); 2)amends the SGAT now in effect to reflect the decisions by the U.S. District Court in the appeals by AT&T and MCI of their respective Commission arbitration orders; and 3) revises the SGAT to reflect discussion between BellSouth and the FCC staff concerning the requirements for obtaining Section 271 relief. (Emphasis added)

Section 252(f)(1) states that "[a] Bell operating company may prepare and file with a State commission a statement of the terms and conditions that such company generally offers within that State to comply with the requirement of section 251 and the regulations thereunder and the standards applicable under this section." (Emphasis added). There is no mention in Section 252(f) concerning whether a Bell operating company is providing these services as well. Moreover, while an SGAT can enjoy an independent existence under Section 252(f), it can also be an element under Section 271(c)(1)(B) (the "Track B" approach) where the Bell operating company proceeding under this subsection must, among other points, show that it has an approved or allowed SGAT under Section 252(f) which "generally offers to provide such access and interconnection." (Emphasis added)

In the Commission's January 14, 1998, Order Regarding Section 271 Requirements, the Commission--except for specific issues related to checklist items 1 and 2--concluded that BellSouth was "providing or generally offering" all the other checklist items. The Commission similarly and correspondingly concluded that BellSouth's SGAT "meets the requirement" of each of these other checklist items. The issue related to checklist item one in which BellSouth was found to be deficient was that it was not currently providing or generally offering interconnection and access to local tandems and interconnection. Concerning item two, the specific issue was that BellSouth had not developed adequate performance measures to demonstrate that it is providing electronic interfaces to CLPs in a nondiscriminatory manner.

In view of the above, the Chair deems it appropriate that the scope of the hearing should be as set out in the "Conclusions" herein and that the hearing should be rescheduled to begin on November 30, 1998, to allow parties to make relevant and necessary accommodations to their prefiled testimony in light of this Order. The Chair rejects the view that the hearing should be postponed for the other reasons adduced by the Movants. The Commission is continuing the Section 271 review process with respect to the two enumerated checklist items and will determine whether to approve BellSouth's Revised SGAT. Accordingly, the Commission will examine evidence from BellSouth as to whether it has corrected the deficiencies noted by the Commission regarding checklist items 1 and 2. We will continue our Section 271 proceeding with respect to only these two items with a view toward determining whether the correction of these deficiencies has occurred and thus whether we should support approval of BellSouth's Revised SGAT. By rescheduling the hearing and clarifying its scope, we are affording a fair opportunity to be heard to all parties of record.

Notice Period

It has been suggested that the Commission's Orders which required BellSouth to give the Commission at least 120 days notice prior to its filing its application with the FCC and to provide evidence in support of its Section 271 application imposed a continuing reporting requirement on BellSouth. This is not the case.

The purpose of this requirement was to allow the Commission adequate time to conduct the evidentiary hearing necessary to compile a record which was designed to largely fulfill our advisory obligations to the FCC under Section 271(d)(2)(B). This evidentiary hearing has been held and an Order was issued on January 14, 1998. It is the Commission's view that BellSouth satisfied its obligation under our August 21, 1996, notice and filing Order in its August 5, 1997, "Notice of Intent of BellSouth Telecommunications, Inc. To File a Section 271 Application for InterLATA Authority with the Federal Communications Commission." This filing stated that BellSouth intended to file with the FCC "on or after December 3, 1997"--precisely 120 days from August 5, 1997. BellSouth's filing referenced the Commission's relevant procedural orders and provided the evidence on which it intended to rely. There is therefore no continuing requirement.

Nevertheless, the Chair does perceive a need to have some notice of a firm filing date by BellSouth with the FCC, so that it may prepare whatever additional information that the FCC may need or desire, notably information on the status of local competition. Accordingly, since the 120-day period requirement is no longer applicable, the Chair will require that BellSouth give the Commission 60-days notice of when it firmly plans to file with the FCC.

IT IS, THEREFORE, ORDERED as follows:

1. That the evidentiary hearing in this docket scheduled to begin on Thursday, October 8, 1998, be rescheduled to begin on Monday, November 30, 1998, at 1:30 p.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The subject matter of the hearing shall be limited solely to those matters set out in numbered Paragraph No. 1 of the Conclusions above.

2. That the affidavits hitherto submitted by BellSouth shall be treated as prefiled direct testimony; provided, however, the BellSouth may supplement, amend, or replace such filings by no later than Thursday, October 8, 1998.

3. That all other parties shall submit prefiled testimony by no later than Thursday, November 12, 1998.

4. That BellSouth may submit any rebuttal testimony by no later than Monday, November 23, 1998.

5. That parties may continue to issue data requests, but no data requests shall be issued after Friday, October 23, 1998.

6. That all other requests in the Motions for Clarification be denied.

7. That BellSouth give the Commission 60 days notice prior to a firm date on which it intends to make its Section 271 filing with the FCC.

ISSUED BY ORDER OF THE CHAIR.
This the _28th_ day of September, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

DOCKET NO. W-274, SUB 160

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Heater Utilities, Inc., Post Office Drawer 4889, Cary, North Carolina 27519, for Authority to Increase Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina	)))))	ORDER GRANTING PARTIAL RATE INCREASE

HEARD : Commission Hearing Room, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, on February 19, 1998, at 7:00 p.m., and on March 10, 1998, at 9:30 a.m.

BEFORE: Chair Jo Anne Sanford, Presiding; and Commissioners Judy Hunt and William R. Pittman

APPEARANCES:

For the Applicant:

Robert F. Page, Attorney at Law, Crisp, Page & Currin, L.L.P.,1305 Navaho Drive, Suite 302, Raleigh, North Carolina 27609

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

BY THE COMMISSION: On September 30, 1997, Heater Utilities, Inc. (Heater or Applicant), filed an application for authority to increase its rates for water and sewer utility service in all of its service areas in North Carolina. On October 14, 1997, the Commission issued an Order declaring the matter to be a general rate case and suspending the proposed new rates pursuant to G.S. 62-134.

On December 3, 1997, the Commission issued an Order authorizing discovery on issues relating to updating the test year. The Order scheduled the matter for hearing, authorized certain discovery, and required public notice.

On January 27, 1998, Heater prefiled its direct testimony. On February 27, 1998, the Public Staff prefiled its testimony. On March 5, 1998, Heater prefiled its rebuttal testimony.

On February 12, 1998, Heater and the Public Staff filed a joint stipulation, subject to Commission approval, regarding the capital structure, cost rates for debt and common equity, and overall cost of capital to be used in determining Heater's revenue requirement in this proceeding.

On February 19, 1998, a public hearing was held for the purpose of hearing the testimony of customers. The following customers appeared and testified: Wayne Maxwell, David Savage, Ander Skaar, Michael Lamar, Edmund Klemmer, Gregory Mobley, Walter Ezzell, Jr., Rob Davis, Tony Correale, Robert Greenberg, John Yoash, Ed Harvey, George Herring, Alan Billings, and Boyce Byerly.

On March 10, 1998, the hearing-in-chief was held as scheduled. The Applicant offered the direct and rebuttal testimony of William E. Grantmyre, Heater's president; the direct and rebuttal testimony of Freda Hilburn, Heater's director of accounting, controller, and treasurer; the rebuttal testimony of Richard Durham, Heater's director of operations; and the rebuttal testimony of Jerry Tweed, Heater's director of environmental and regulatory affairs. The Public Staff offered the testimony of David C. Furr, utilities engineer with the Water Division; John Robert Hinton, financial analyst; Frankie H. Carrigan, staff accountant; and Katherine A. Fernald, supervisor of the water section of the Accounting Division.

At the conclusion of the hearing, Heater moved that it be allowed to put the new rates into effect immediately. On March 16, 1998, the Commission issued an Order Authorizing Partial Rate Increase Pending Final Order, which granted that motion.

Based on the evidence of record in this matter, the Commission makes the following:

FINDINGS OF FACT

1. Heater is a corporation authorized to do business under the laws of North Carolina and is a wholly owned subsidiary of MP Water Resources Group, Inc., which is a wholly owned subsidiary of Minnesota Power and Light Company.

2. Heater is a public utility as defined by G.S. 62-3(23) and is properly before the Commission seeking an increase in its rates and charges pursuant to G.S. 62-133.

3. The test year appropriate for use in this proceeding is the twelve months ended March 31, 1997, updated for actual and known changes.

WATER AND SEWER - RATES

4. Heater's present rates and the rates requested in its application are:

WATER SERVICE

Base Charge, zero usage

Meter size	Heater Systems Existing Rates	Turner Farms, Turner Farms IV & V, Middle Creek Existing Rates	Hardscrabble Plantation Existing Rates	Spring Haven Existing Rates	Proposed Rates
<1"	$ 11.79	$8.45	$7.00	$8.00	$ 13.10
1"	$ 29.48				$ 32.75
1-1/2"	$ 58.95				$ 65.50
2"	$ 94.32				$104.80
3"	$176.85				$196.50
4"	$294.75				$327.50
6"	$589.50				$655.00
Usage charge, per 1,000 gals.	$ 2.84	$2.65	$2.00	$2.40	$ 3.55

	Existing	Proposed
Connection Charges:		
3/4" and 5/8" meters for taps made to existing mains installed inside franchised service areas	$525.00	$800.00
Reconnection Charges:		
If water service cut off by utility for good cause:	$25.00	$30.00
If water service disconnected at customers request:	$ 5.00	$ 5.00
New Customer Account Fee:	$ 0.00	$ 15.00

WATER AND SEWER - RATES

SEWER SERVICE

	Existing Rates	Proposed Rates
Residential Service:	$ 36.84	$ 44.80
Commercial (Non-residential) Service: (Metered rates, based on water usage)		
Minimum monthly charge, based on meter size (includes first 4,000 gallons)		
<1"meter	$ 25.00	$ 30.00
1"meter	$ 62.50	$ 75.00
1 ½" meter	$125.00	$150.00
2" meter	$200.00	$240.00
3" meter	$375.00	$450.00
4" meter	$625.00	$750.00
Commodity charge (per 1,000 gallons)	$ 6.00	$ 7.50
Windsor Oaks Metered Sewer Rates:		
Base monthly charge for zero usage	$ 28.40	$ 27.25
Commodity charge for zero to 6,000 gallons	$ 7.25	$ 8.81
There will be no sewer charge for monthly water usage over 6,000 gallons.		
Returned Check Charge:	$ 10.00	$ 20.00
New Customer Account Fee:	$ 0.00	$ 15.00

(If customer receives both water and wastewater utility service from Heater, then the customers shall only be charged a new account fee for water.)

5. At the end of the update period, October 31, 1997, the Applicant provided metered water utility service to approximately 14,219 residential and commercial customers on 136 water systems. Hardscrabble Plantation is an additional water system that Heater has acquired by transfer and is being included in this rate case proceeding, and it had 151 customers at the end of the update period.

6. At the end of the update period, October 31, 1997, the Applicant provided sewer utility service to 1,342 flat rate residential customers, 90 metered residential customers, and 4 metered

commercial customers in 8 systems. Heater purchases waste treatment from the Town of Cary for the 90 metered residential customers in Windsor Oaks Subdivision.

7. The overall quality of service provided by Heater is good. Heater has taken appropriate steps to address customer complaints raised at the public hearings in this case.

8. The appropriate level of rate base used and useful in providing water utility service is $13,132,994, consisting of: utility plant in service of $17,231,228; working capital allowance of $489,073; and meters and supplies inventory of $329,556; reduced by customers deposits of $28,162; accumulated deferred income taxes of $397,858; and accumulated depreciation of $4,490,843.

9. The appropriate level of rate base used and useful in providing sewer utility service is $1,020,723, consisting of: utility plant in service of $1,255,758; working capital allowance of $56,598; and meters and supplies inventory of $13,677; reduced by accumulated deferred income taxes of $28,070; and accumulated depreciation of $277,240.

10. The appropriate level of rate base used and useful in providing sewer utility for Windsor Oaks is $71,654, consisting of: utility plant in service of $102,512; working capital allowance of $1,162; and meters and supplies inventory of $915; reduced by accumulated deferred income taxes of $1,740; and accumulated depreciation of $31,195.

11. It is appropriate to make corrections to water consumption to adjust for abnormal usage patterns during the test year and update periods.

12. The appropriate levels of service revenues and miscellaneous revenues under present rates are:

	Service Revenues	Miscellaneous Revenues
Heater Utilities - water operations	$5,269,468	$ 170,780
Heater Utilities - sewer operations	600,449	9,107
Windsor Oaks	70,028	135

13. The appropriate levels of uncollectibles under present rates are:

	Uncollectibles
Heater Utilities - water operations	$8,441
Heater Utilities - sewer operations	962
Windsor Oaks	112

WATER AND SEWER - RATES

14. The appropriate levels of operating revenue deductions under present rates are:

	Operating revenue Deductions
Heater Utilities - water operations	$4,375,874
Heater Utilities - sewer operations	562,668
Windsor Oaks	63,719

15. The reasonable capital structure in this case consists of 53.68% debt and 46.32% equity.

16. The embedded cost of debt associated with this capital structure is 7.79%

17. The reasonable cost of equity in this case is 10.80%.

18. The reasonable overall weighted cost of capital is 9.18%.

19. The Commission finds that the Applicant's service rates for Heater Utilities - water operations and Heater Utilities - sewer operations should be increased by amounts which, after pro forma adjustments, will produce the following increases:

Heater Utilities - water operations	$218,431
Heater Utilities - sewer operations	80,945

These increases will allow the Applicant the opportunity to earn a 9.18% overall rate of return, which the Commission has found to be reasonable upon consideration of the findings in this Order. The Commission finds that the current rates for Windsor Oaks are reasonable and should not be changed.

20. It is appropriate to increase the reconnection charge when water utility service is cut off by the utility for good cause from $25 to $30.

21. It is appropriate to increase the returned check charge for sewer utility service from $10 to $20.

22. It is appropriate to increase the water connection charge from $500 to $800 for connections made to existing water mains installed inside franchised service areas.

23. It is appropriate to charge a new customer account fee of $15.

24. The Public Staff and Heater will attempt to resolve their differences regarding Heater's capitalization policy, and if they cannot do so, they may bring the matter back to the Commission after a year.

WATER AND SEWER - RATES

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 1 - 2

The evidence supporting these findings of fact is contained in the application and in the Commission's records. These findings are primarily jurisdictional and informational and are not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 3

The evidence supporting this finding of fact is contained in the application and in the testimony of Public Staff witnesses Furr and Hinton and Heater witness Tweed. The Public Staff updated the rate case for customer growth through October 31, 1997, and up through the date of the hearing for other actual and known changes. Although Heater has stipulated to the Public Staff's recommendation in this case, Heater has reserved the right to challenge the Public Staff's methodology of updating the test year for post test year customer growth in future proceedings.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 4-6

The evidence supporting these findings of fact is contained in the application and in the testimony of Public Staff witness Furr and is not contested.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 7

The evidence supporting this finding of fact is contained in the testimony of public witnesses, Public Staff witness Furr and Heater witness Durham.

Witness Furr testified that he had inspected 13 of Heater's water systems and most of their sewer systems. He also reviewed operational records and other information obtained on the utility systems. He stated that, with a few exceptions, the Applicant is providing adequate water and sewer service in its service areas. Where problems exist, Heater has corrected the problem or is actively working to eliminate the problem. He further stated that the Applicant's well houses, tanks, sewer treatment facilities, and other equipment are well maintained and are functioning properly. Improvements that are in process and proposed in the near future are expected to add to the reliability and consistency of water quality and service.

Witness Durham addressed each of the customer complaints and the issues raised by witness Furr in his rebuttal testimony. He stated that each problem is being dealt with.

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 8-10

The evidence supporting these findings of fact is found in the testimony and exhibits of Public Staff witnesses Carrigan and Fernald and Heater witnesses Hilburn and Grantmyre. In its rebuttal testimony, Heater indicated that while it disagreed with a number of the Public Staff positions, Heater accepted the revenue requirement for water and sewer operations filed by the Public Staff for purposes of this proceeding.

Therefore, the Commission concludes that the proper levels of rate base for use in this proceeding are:

HEATER UTILITIES - WATER OPERATIONS

Item	Amount
Plant in service	$17,231,228
Customer deposits	(28,162)
Accumulated deferred incomes taxes	(397,858)
Accumulated depreciation	(4,490,843)
Working capital allowance	489,073
Meters and supplies inventory	329,556
Total original cost rate base	$13,132,994

HEATER UTILITIES - SEWER OPERATION

Item	Amount
Plant in service	$1,255,758
Customer deposits	0
Accumulated deferred income taxes	(28,070)
Accumulated depreciation	(277,240)
Working capital allowance	56,598
Meters and supplies inventory	13,677
Total original cost rate base	$1,020,723

WINDSOR OAKS

Item	Amount
Plant in service	$102,512
Customer deposits	0
Accumulated deferred income taxes	(1,740)
Accumulated depreciation	(31,195)
Working capital allowance	1,162
Meters and supplies inventory	915
Total original cost rate base	$ 71,654

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 11

The evidence supporting this finding of fact is contained in the testimony of Public Staff witnesses Furr and Hinton and Heater witness Tweed.

WATER AND SEWER - RATES

Witness Furr testified that water consumption for the test year ended March 31, 1997, needed to be corrected due to abnormally low consumption during the period. A review of the 12 month moving average customer consumption reveals the lowest average monthly consumption over a period of 5 years coincided with the period ending March 1997. Witness Hinton testified that the rainfall during this period was considered statistically abnormal and that an adjustment to consumption due to weather was warranted. The major cause for low consumption during August through October of 1996 was the tremendous effect Hurricanes/Tropical Storms Fran and Bertha had on the Heater service areas. Therefore, witness Furr adjusted the consumption to a level equivalent to the average customer consumption over a 5 year period ending October 31, 1997.

Witness Furr also testified that water usage in the update period was above normal, and he likewise adjusted the consumption to a level equivalent to the average customer consumption over a 5 year period ending October 31, 1997.

Witness Hinton testified that weather conditions in the update period were considered normal for the service area. He also concluded that the weather during the overall five year period used by witness Furr to calculate average consumption was normal based on his review of historical weather data.

Witness Tweed testified that Heater does not totally disagree with the use of the five-year average consumption and may use the methodology in future rate filings. He did, however, disagree with some assumptions used in the Public Staff's testimony, testifying that Public Staff witness Hinton's analysis fails to recognize the timing of the rainfall and the timing of temperature extremes.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 12

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witnesses Carrigan and Furr and Heater witnesses Hilburn and Tweed. In its rebuttal testimony, Heater witnesses Hilburn and Tweed testified that while Heater disagreed with a number of the Public Staff positions, it accepted the revenue requirement for water and sewer operations filed by the Public Staff for purposes of this proceeding. The Heater witnesses testified that Heater considered these issues non-precedential and plans to litigate these issues in future rate proceedings.

Therefore, the Commission concludes that the proper levels of revenues for use in this proceeding are:

	Service Revenues	Miscellaneous Revenues
Heater Utilities - water operations	$5,269,468	$ 170,780
Heater Utilities - sewer operations	600,449	9,107
Windsor Oaks	70,028	135

WATER AND SEWER - RATES

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 13

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witness Carrigan and Heater witnesses Hilburn and Grantmyre. In its rebuttal testimony, Heater indicated that while it disagreed with a number of the Public Staff positions, it accepted the revenue requirement for water and sewer operations filed by the Public Staff for purposes of this proceeding.

Therefore, the Commission concludes that the proper level of uncollectibles for use in this proceeding are:

	Uncollectibles
Heater Utilities - water operations	$8,441
Heater Utilities - sewer operations	962
Windsor Oaks	112

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 14

The evidence supporting this finding of fact is found in the testimony and exhibits of Public Staff witnesses Carrigan, Fernald, and Furr and Heater witnesses Hilburn, Grantmyre, and Tweed. In its rebuttal testimony, Heater witnesses testified that while Heater disagreed with a number of the Public Staff positions, it accepted the revenue requirement for water and sewer operations filed by the Public Staff for purposes of this proceeding. The Heater witnesses testified Heater considered these issues non-precedential and plans to litigate these issues in future rate proceedings.

Therefore, the Commission concludes that the proper levels of operating revenue deductions for use in this proceeding are:

Item	Water	Sewer	Windsor Oaks
Salaries and wages - O&M	$ 711,548	$119,306	$ 6,544
Purchased water	7,132	2,614	0
Purchased power	399,546	56,742	205
Chemicals	187,252	23,765	0
Maintenance and repair	51,709	7,117	307
Testing	182,848	36,740	0
Transportation and equipment operation	81,287	11,935	629
Permit fees	24,075	2,550	0
Signal lines	11,649	0	0
Purchased sewage treatment	0	0	37,545
Sludge removal	0	63,946	0
Tank painting	18,399	0	0
Fran amortization	11,410	1,333	0
Freight and other misc.	47,013	12,646	86
Salaries and wages - G&A	354,923	30,968	2,072
Pensions and other benefits	107,907	16,632	948

Purchased power - office	10,732	1,105	74
Materials and supplies - office	44,296	4,489	300
Contract services	60,718	5,631	377
Rent	12,260	165	11
Transportation - G& A	2,277	214	14
Insurance	44,756	6,499	409
Regulatory commission expense	41,184	2,700	180
Miscellaneous - G & A	187,387	20,345	1,315
Interest expense - miscellaneous	1,697	0	0
Annualization adjustment	12,353	6,813	4
Depreciation and amortization expense	1,068,346	73,394	5,205
Amortization of abandoned wells	985	0	0
Taxes other than income taxes	136,215	15,818	1,030
Regulatory fee	4,889	548	63
Gross receipts tax	217,272	36,516	4,203
State income tax	60,941	390	401
Federal income tax	272,868	1,747	1,797
Total operating revenue deductions	$4,375,874	$562,668	$63,719

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 15-18

The evidence supporting these findings of fact is contained in the Joint Stipulation filed by the Applicant and the Public Staff on February 12, 1998. The Public Staff and Heater agreed and stated in the Stipulation that it has no precedential value and that it would not be cited by either party in any future proceeding. Inasmuch as the Stipulation is uncontested, the Commission concludes that it is reasonable and should be approved with respect to capital structure of 53.68% debt and 46.32% equity. The appropriate cost of debt is 7.79%. The parties also stipulated to a rate of return on equity of 10.80%. These capitalization ratios and cost rates resulted in an overall cost of capital of 9.18%, which is appropriate for use in this proceeding.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 19

The following schedules summarize the gross revenue and rate of return that the Company should have a reasonable opportunity to achieve based upon the increase approved in the 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

HEATER UTILITIES, INC.

DOCKET NO. W-274, SUB 160

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
HEATER UTILITIES - WATER OPERATIONS
For the Twelve Months Ended March 31, 1997

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$5,269,468	$ 218,431	$5,487,899
Miscellaneous Revenue	170,780	40,777	211,557
Uncollectibles	(8,441)	(350)	(8,791)
Total Operating Revenue	5,431,807	258,858	5,690,665
Operating Revenue Deductions:			
Operation & Maintenance Exp.	1,733,868	0	1,733,868
General Expenses	880,490	0	880,490
Depreciation	1,069,331	0	1,069,331
Taxes other than income taxes	136,215	0	136,215
Gross Receipts Tax And Regulatory Fee	222,161	10,588	232,749
Income Taxes - Federal	272,868	80,595	353,463
Income Taxes - State	60,941	17,999	78,940
Total Operating Revenue Deductions	4,375,874	109,182	4,485,056
Net Operating Income For Return	$1,055,933	$ 149,676	$ 1,205,609

WATER AND SEWER - RATES

SCHEDULE II

HEATER UTILITIES, INC.

DOCKET NO. W-274, SUB 160

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
HEATER UTILITIES - SEWER OPERATIONS
For the Twelve Months Ended March 31, 1997

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$600,449	$ 80,945	$681,394
Miscellaneous Revenue	9,107	3,569	12,676
Uncollectibles	(962)	(129)	(1,091)
Total Operating Revenue	608,594	84,385	692,979
Operating Revenue Deductions:			
Operation & Maintenance Exp.	338,694	0	338,694
General Expenses	95,561	0	95,561
Depreciation	73,394	0	73,394
Taxes other than income taxes	15,818	0	15,818
Gross Receipts Tax And Regulatory Fee	37,064	5,139	42,203
Income Taxes - Federal	1,747	25,725	27,472
Income Taxes - State	390	5,745	6,135
Total Operating Revenue Deductions	562,668	36,609	599,277
Net Operating Income For Return	$ 45,926	$ 47,776	$ 93,702

SCHEDULE III

HEATER UTILITIES, INC.

DOCKET NO. W-274, SUB 160

STATEMENT OF OPERATING INCOME AVAILABLE FOR RETURN
WINDSOR OAKS
For the Twelve Months Ended March 31, 1997

Item	Present Rates	Increase Approved	After Approved Increase
Operating Revenue:			
Service Revenue	$ 70,028	$ 195 [1]	$ 70,223
Miscellaneous Revenue	135	239	374
Uncollectibles	(112)	0	(112)
Total Operating Revenue	70,051	434	70,485
Operating Revenue Deductions:			
Operation & Maintenance Exp.	45,316	0	45,316
General Expenses	5,704	0	5,704
Depreciation	5,205	0	5,205
Taxes other than income taxes	1,030	0	1,030
Gross Receipts Tax And Regulatory Fee	4,266	26	4,292
Income Taxes - Federal	1,797	132	1,929
Income Taxes - State	401	30	431
Total Operating Revenue Deductions	63,719	188	63,907
Net Operating Income For Return	$ 6,332	$ 246	$ 6,578

[1] Due to the immateriality of the increase, the service rates were not affected.

SCHEDULE IV
HEATER UTILITIES, INC.
DOCKET NO. W-274, SUB 160

STATEMENT OF RATE BASE AND RATE OF RETURN
HEATER UTILITIES - WATER OPERATIONS
For the Twelve Months Ended March 31, 1997

Item	Amount
Plant in service	$17,231,228
Customer deposits	(28,162)
Accumulated deferred income taxes	(397,858)
Accumulated depreciation	(4,490,843)
Working capital allowance	489,073
Meter & supplies inventory	329,556
Total original cost rate base	$13,132,994
Rates of Return:	
Present	8.04%
Approved	9.18%

SCHEDULE V
HEATER UTILITIES, INC.
DOCKET NO. W-274, SUB 160

STATEMENT OF RATE BASE AND RATE OF RETURN
HEATER UTILITIES - SEWER OPERATIONS
For the Twelve Months Ended March 31, 1997

Item	Amount
Plant in service	$1,255,758
Customer deposits	0
Accumulated deferred income taxes	(28,070)
Accumulated depreciation	(277,240)
Working capital allowance	56,598
Meters & supplies inventory	13,677
Total original cost rate base	$1,020,723
Rates of Return:	
Present	4.50%
Approved	9.18%

SCHEDULE VI

HEATER UTILITIES, INC.

DOCKET NO. W-274, SUB 160

STATEMENT OF RATE BASE AND RATE OF RETURN
WINDSOR OAKS
For the Twelve Months Ended March 31, 1997

Item	Amount
Plant in service	$ 102,512
Customer deposits	0
Accumulated deferred income taxes	(1,740)
Accumulated depreciation	(31,195)
Working capital allowance	1,162
Meters & supplies inventory	915
Total original cost rate base	$ 71,654
Rates of Return:	
Present	8.84%
Approved	9.18%

EVIDENCE AND CONCLUSIONS FOR FINDINGS OF FACT NOS. 20-23

The evidence supporting these findings of fact is contained in the application and in the testimony of Public Staff witness Furr. No party contested these increases in charges, and witness Furr found them all to be justified and reasonable.

EVIDENCE AND CONCLUSIONS FOR FINDING OF FACT NO. 24

The evidence supporting this finding of fact is found in the testimony of Public Staff witness Fernald and Heater witness Grantmyre. The Commission concludes that the parties should meet and attempt to resolve their differences. The Commission understands that either party may bring this issue back before the Commission if it cannot be resolved in a year.

WATER AND SEWER - RATES

IT IS, THEREFORE, ORDERED as follows:

1. That Heater shall adjust its utility service rates and charges to produce, based on the adjusted test year level of operations, an increase in water service revenues of $218,431 and an increase in sewer service revenues of $80,945.

2. That Heater shall adjust its miscellaneous charges as follows: increase the reconnection charge when water utility service is disconnected by the utility for good cause to $30; increase the returned check charge for sewer utility service to $20; increase the water connection charge for connections made to existing water mains installed inside franchised service areas to $800; and begin to charge a new customer account fee of $15.

3. That the Schedule of Rates, attached as Appendix A, is approved for water and sewer utility service rendered by Heater. The Commission considers this Schedule of Rates to be filed as required by G.S. 62-138.

4. That a copy of the attached Appendix B shall be delivered by Heater to all its customers in conjunction with the next billing statement after the date of this Order.

5. That Heater shall file the attached Certificate of Service, properly signed and notarized, within ten days of completing the requirement of Ordering Paragraph No. 4.

6. That Heater and the Public Staff shall meet and attempt to resolve their differences over Heater's capitalization policy over the next twelve months.

ISSUED BY ORDER OF THE COMMISSION.

This the 13th day of May 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. W-274, SUB 160

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
Application by Heater Utilities, Inc., Post Office Drawer 4889, Cary, North Carolina 27519, for Authority to Increase Rates for Water and Sewer Utility Service in All Its Service Areas in North Carolina	)	NOTICE TO CUSTOMERS OF NEW RATES

BY THE COMMISSION: Notice is given that the North Carolina Utilities Commission has granted a rate increase to Heater Utilities, Inc., for water and sewer utility service provided in all its service areas in North Carolina. This decision was based upon evidence presented at the public hearings held on February 19, and March 10, 1998, in Raleigh, North Carolina. The new rates are as follows:

Water Utility Service:	
Monthly Base Charge (zero consumption)	
<1" meter	$ 12.10
1" meter	$ 30.25
1-1/2" meter	$ 60.50
2" meter	$ 96.80
3" meter	$ 181.50
4" meter	$ 302.50
Usage Charge, per 1,000 gallons	$ 2.95
Residential Sewer Utility Service: (excluding Windsor Oaks)	
Monthly Flat Rate	$ 41.81
Windsor Oaks Metered Sewer Utility Service:	
Monthly Base Charge (zero usage)	$ 28.40
Usage Charge (0 - 6,000 gallons of water usage)	$ 7.25 per 1,000 gallons
There will be no sewer charge for monthly water usage over 6,000 gallons	
Commercial (Non-residential) Sewer Utility Service: (based on water usage)	
Monthly Base Charge (includes first 4,000 gallons)	
<1" meter	$ 28.25
1" meter	$ 70.63
1-1/2" meter	$ 141.25
Usage Charge: (All over 4,000 gallons per month)	$ 6.77 per 1,000 gallons

ISSUED BY ORDER OF THE COMMISSION.
This the 13th day of May, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Geneva S. Thigpen, Chief Clerk

APPENDIX B

SCHEDULE OF RATES
for
HEATER UTILITIES, INC.
for providing water and sewer utility service in
ALL ITS SERVICE AREAS IN NORTH CAROLINA

WATER UTILITY SERVICE - Monthly

Metered Rates:

Base Charge, zero usage -	
<1" meter	$ 12.10
1" meter	30.25
1 1/2" meter	60.50
2" meter	96.80
3" meter	181.50
4" meter	302.50
6" meter	605.00
Commodity Charge, measured in gallons or cubic feet -	
Per 1,000 gallons	$ 2.95
Per 100 cubic feet	$ 2.21

Connection Charges: [1/]

3/4" x 5/8" meters -	
For taps made to existing mains installed inside franchised service area:	$800.00
Meters exceeding 3/4" x 5/8" -	120% of actual cost

Reconnection Charges:

If water service cut off by utility for good cause:	$30.00
If water service discontinued at customer's request:	$ 5.00

Meter Installation Fee: [2/] $70.00

Billing Service Charge: [3/] $ 2.00 per month per bill

Temporary Service: $40.00 - A one time charge to builder of a residence under construction payable in advance. Fee entitles builder to six months service, unless construction is completed earlier and the service is intended for only normal construction needs for water (not irrigation). Applicable only in the seven following subdivisions where such charge is specifically provided by contract with the developer as follows:

Chesterfield II	- Contract date August 24, 1988
Fairstone	- Contract date September 3, 1988
Fox N' Hound	- Contract date June 13, 1988

WATER AND SEWER - RATES

Pear Meadow	- Contract date January 19, 1988
Pebble Stone	- Contract date August 24, 1988
Southwoods Sect. III	- Contract date May 25, 1988
South Hills Ext.	- Contract date May 25, 1988

New Customer Account Fee: $15.00

SEWER UTILITY SERVICE - Monthly

Residential Service:

Windsor Oaks Subdivision: (Based on water usage)

Base Charge, zero usage		$28.40, minimum
Usage Charge, per 1,000 gallons	$ 7.25	

(No sewer charge for water usage over 6,000 gallons per month)

All Other Residential Service Areas:

Flat Rate $41.81 per month

Commercial (Non-residential) Service: (Metered rates, based on water usage)

Minimum monthly charge, based on meter size (includes first 4,000 gallons)

<1" meter	$ 28.25
1" meter	70.63
1 1/2" meter	141.25
2" meter	226.00
3" meter	423.75
4" meter	706.25
Commodity charge -	$ 6.77 per 1,000 gallons (All over 4,000 gallons per month)

Connection Charges: None when tap and service line installed by developer. Actual cost if Heater Utilities, Inc., makes tap or installs service line.

Wastewater Treatment Plant Capacity Charge:

(Applicable to areas feeding into the Hawthorne Wastewater Treatment Plant in Wake County) — $1,080 per residential equivalent unit

Reconnection Charges:

If sewer service cut off by utility for good cause by disconnecting water:	None
If sewer service cut off by utility for good cause by any method other than noted above:	Actual cost

WATER AND SEWER - RATES

New Customer Account Fee: $15.00

(If customer receives both water and sewer utiltity service from Heater, then the customer shall only be charged a new account fee for water.)

OTHER MATTERS

Returned Check Charge:	$20.00
Bills Due:	On billing date
Bills Past Due:	15 days after billing date
Billing Frequency:	Shall be monthly for service in arrears
Finance Charges for Late Payment:	1% per month will be applied to the unpaid balance of all bills still past due 25 days after billing date.

1/ In most areas, connection charges do not apply pursuant to contract and only the $70.00 meter installation fee will be charged to the first person requesting service (generally the builder). Where Heater must make a tap to an existing main, the charge will be $800.00, and where main extension is required, the charge will be 120% of the actual cost.

2/ The fee will be charged only where cost of meter installation is not otherwise recovered through connection charges.

3/ Heater is authorized to include on its monthly water bill to the residents of Cary Oaks and Oak Chase Subdivisions the charges resulting from sewer service provided by the Town of Cary. Heater will bill the Town of Cary $2.00 per month per bill for providing this service.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket No. W-274, Sub 160, on this the 13th day of May, 1998.

CERTIFICATE OF SERVICE

I, ______________________________, mailed with sufficient postage or hand delivered to all affected customers the attached Notice to Customers issued by the North Carolina Utilities Commission in Docket No. W-274, Sub 160, and the Notice was mailed or hand delivered by the date specified in the Order.

This the ____ day of ________________ 1998.

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 Notice to Customers was mailed or hand delivered to all affected customers, as required by the Commission Order dated ________________ in Docket No. W-274, Sub 160.

Witness my hand and notarial seal, this the ____ day of ________________ 1998.

____
Notary Public

____
Address

(SEAL) My Commission Expires: ________________________
Date

DOCKET NO. W-354, SUB 118
DOCKET NO. W-354, SUB 128
DOCKET NO. W-354, SUB 161
DOCKET NO. M-100, SUB 113

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

DOCKET NO. W-354, SUB 118 In the Matter of Carolina Water Service, Inc., of North Carolina - Investigation of Tap and Plant Modification Fees DOCKET NO. W-354, SUB 128 In the Matter of Application by Carolina Water Service, Inc., of North Carolina, for Authority to Increase Rates for Water and Sewer Utility Service in all Its Service Areas in North Carolina DOCKET NO. W-354, SUB 161 In the Matter of Application by Carolina Water Service, Inc., of North Carolina, for a Certificate of Public Convenience and Necessity to Furnish Water and Sewer Utility Service in Matthews Commons Subdivision in Mecklenburg County, North Carolina, and for Approval of Rates DOCKET NO. M-100, SUB 113 In the Matter of The Tax Reform Act of 1986	ORDER OF CLARIFICATION

BY THE COMMISSION: On September 24, 1997, Carolina Water Service, Inc. of North Carolina (CWS), filed a Motion in Docket No. W-354, Sub 161, requesting the Commission to issue a Certificate of Public Convenience and Necessity and to approve connection fees without cost-based justification. On September 29, 1997, the Public Staff filed a response to CWS's Motion. The Public Staff moved that the Commission rule that connection fees should be justified based on costs and to instruct CWS to provide cost justification of the requested connection fees for Matthews Commons.

Additionally, on September 29, 1997, the Public Staff filed a Motion for Interpretation in Docket Nos. M-100, Sub 113, and W-354, Subs 118 and 128. The Public Staff's Motion raised the following four issues:

1. Is CWS authorized by the Commission to charge a uniform connection fee?
2. Can the Company vary its tariffed meter fees, management fees, and oversizing fees without Commission approval?
3. Can the Company continue to collect gross-up on contributions in aid of construction (CIAC) received after June 12, 1996?

4. Can CWS receive a franchise for a system before providing the original cost information for the system?

Further, the Public Staff's Motion indicated that CWS would file a response setting forth its position. CWS did not file a response. However, in its Motion filed on September 24, 1997, in Docket No. W-354, Sub 161, CWS addresses the connection fee issue.

DISCUSSION OF ISSUES RAISED BY THE PUBLIC STAFF

Uniform Connection Fees

The Public Staff begins its discussion of this issue with a recitation of CWS's tariff history. Because of its pertinence, said history is repeated here. Findings of Fact Nos. 6 - 11, in the Commission's Order of March 22, 1994, in Docket No. W-354, Sub 118, state as follows:

> 6. CWS first requested and received approval to charge uniform usage rates and connection fees in Docket No. W-354, Sub 16, effective January 27, 1982. The uniform plant modification and expansion fees were applicable in all areas. The uniform tap fees were applicable in all areas except where otherwise prohibited by contract as approved by the Commission.
>
> 7. Both the amount of the connection fees and applicable language were changed in the Company's next general rate case, Docket No. W-354, Sub 26. The phrase "unless prohibited by contract as approved by the North Carolina Utilities Commission," authorizing variation from the uniform connection fees, was inadvertently omitted from the Schedule of Rates approved in the Sub 26 case.
>
> 8. In the Company's next general rate case, Docket No. W-354, Sub 39, certain restrictive tariff language approved in the previous rate case was excluded from the Company's Schedule of Rates. Neither CWS nor the Public Staff noted that the phrase "unless prohibited by contract as approved by the North Carolina Utilities Commission" had been inadvertently omitted from the tariff in the Sub 26 case or raised the issue of whether such phrase should be reinserted in the approved tariff in the Sub 39 docket.
>
> 9. In the Company's next general rate case, Docket No. W-354, Sub 69, the Commission in its Order dated January 7, 1989, found that CWS was not uniformly charging the connection fees approved in Docket No. W-354, Sub 39. Language was added back to the Schedule of Rates allowing CWS to seek approval by contract to deviate from charging its uniform tap fees and plant modification fees. This change, in effect, reinserted the phrase back into CWS's approved tariff which had been inadvertently omitted in the Sub 39 case. The Commission required CWS to file copies of all contracts and a tap fee report.
>
> 10. The Schedule of Rates approved in the Company's next general rate case, Docket No. W-354, Sub 81, which became effective on June 13, 1990, contained minor changes regarding uniform tap fees and plant impact fees. The language regarding deviation from those fees was changed to require not only that the Commission approve any contracts calling for different fees, but that those contracts be "on file with the Commission."

11. The Schedule of Rates approved by the Commission on October 12, 1992, in the Company's last general rate case, Docket No. W-354, Sub 111, did not change from the Schedule of Rates approved in W-354, Sub 81, regarding tap fees and plant impact fees. The Commission stated that the approval for deviations must be prior approval.

Ordering Paragraph No. 2 of the same Order in Docket No. W-354, Sub 118, states, ". . . [i]n all contracts that have provisions which allow for connection charges (tap-on fees) and/or plant impact fees that differ from the tariffed uniform connection charges and/or plant impact fees . . . ." Such language indicates that the Commission obviously considered that CWS has uniform connection fees.

Ordering Paragraph No. 3 of the Docket No. W-354, Sub 118, Order requires CWS to ". . . prepare amendments to its tariffs detailing its connection fee practices and procedures on a subdivision-by-subdivision basis and shall include applicable management and oversizing fees in its tariffs. CWS shall file these tariff revisions with its rebuttal testimony in the Company's pending general rate case, Docket No. W-354, Sub 128." In the Evidence and Conclusions for Findings of Fact Nos. 13 - 27, in the Docket No. W-354, Sub 118, Order, the Commission notes that ". . . CWS correctly asserts that the Commission provided in the Sub 69 Order that the tariffs should be adjusted so that the fees could be published as a point of speedy reference." Accordingly, the subdivision-by-subdivision tariffs were filed and incorporated into the Schedule of Rates attached to the Order issued on June 10, 1994, in Docket No. W-354, Sub 128.

The Public Staff is correct in its observation that said Schedule of Rates does not contain a specific reference to a uniform connection charge or plant modification fee. This disparity between the Docket Nos. W-354, Sub 118 and Sub 128 Orders is unfortunate. However, an examination of the Schedule of Rates reveals apparent uniform connection charges and/or plant impact fees.

According to the Schedule of Rates, in a majority (63 of 88 - 72%) of the subdivisions in which CWS provides water utility service, the connection charge is $100 and the plant modification fee is $400 and in a majority (28 of 45 - 62%) of the subdivisions in which CWS provides sewer utility service, the connection charge is $100 and the plant modification fee is $1,000. These are CWS's uniform connection fees embedded in the speedy reference table published as a part of the Schedule of Rates. As previously mentioned, unfortunately the June 10, 1994, Order in Docket No. W-354, Sub 128, failed to include a specific reference to uniform connection fees, instead it simply listed the applicable fees for each specific subdivision.

The Commission is of the opinion that the Schedule of Rates should be revised and reissued to reflect CWS's uniform connection fees and provide the Speedy Reference Tables. The Commission also suggests that the Public Staff and CWS periodically provide comments to the Commission so that the Speedy Reference Table can be updated. The Commission finds that CWS's uniform connection fees [(connection charge (CC) and plant modification fee (PMF)]are as follows:

	CC	PMF
Water	$100	$ 400
Sewer	$100	$1,000

unless specified differently by contract approved by and on file with the North Carolina Utilities Commission. These are the same uniform connection fees that were approved and specifically set forth as such in Docket Nos. W-354, Subs 26, 39, 69, 81, and 111.

Further, the Public Staff requested that, if the Commission rules that the Company is still authorized to charge a uniform connection fee, the Company should be required to provide justification for any instances where it has varied in its uniform connection fee. The Public Staff cited several examples of contractual agreements where CWS has agreed to collect from the developer a connection fee amount that is different than the uniform connection fee.

The Commission Order issued in Docket No. W-354, Sub 118, contains an explanation of how the contract defined connection fees are set and explains when and why uniform connection fees are used in other situations. The following are excerpts from the Evidence and Conclusions for Findings of Fact Nos. 13 - 27, of the Order issued on March 22, 1994, in Docket No. W-354, Sub 118:

> "The evidence in this case indicates that CWS has utilized two primary methods over its 22-year history in North Carolina to acquire new systems and expand into new areas. One method has been the purchase of existing utility systems. The other method has been to contract with developers of areas contiguous to an already certificated CWS system for the authority to provide water and/or sewer utility service. The systems generally are constructed by others in order to facilitate the construction of residential subdivisions. In obtaining systems during the time it has operated in North Carolina, CWS has followed a consistent pattern. CWS has entered into contracts with the sellers of systems through which the Company has sought to minimize development risk for CWS and its ratepayers. CWS's objectives have been to maximize contributions in aid of construction (CIAC) collected from developers of new areas and to obtain existing systems at a reasonable cost per connection. CWS asserts that it has sought to obtain systems where there was an opportunity to expand in the future and take advantage of economies of scale.
>
> "Each contract CWS enters into when it acquires systems contains provisions addressing the mechanism through which CWS accomplishes its investment objectives. The consideration exchanged by CWS and the developer or builder is established through contractual provisions identifying facilities the seller conveys and setting forth the compensation, if any, CWS pays for such facilities.
>
> "This pattern of compensation and facility transfer differs with each CWS system acquisition. Each service area is unique; each seller, developer or builder has different needs and objectives. The varying competitive market forces dictate what compensation the seller requires for the facilities conveyed in an arms-length transaction to CWS and the price CWS is willing to pay for the those facilities. The sales prices for the systems are not regulated per se, for there is no tariff or Commission rule controlling the price of facilities CWS acquires. However, regulation does exist in the form of oversight in certificate of public convenience and necessity proceedings or subsequent general rate cases.
>
> "Issues such as the level of connection fees, whether connection fees are waived or collected, the timing of collection of such fees, and whether the fees are retained by CWS or remitted to a third party, are necessarily tied to the agreed upon compensation paid for the facilities conveyed. For the reasons outlined above, CWS has negotiated contracts that call for many different approaches to the timing, mechanics, and level of compensation, reflecting the different risks and circumstances of each situation. This has caused different mechanisms and levels of connection fees to be charged to builders. CWS asserts that the delicate balance between the purchase price paid for utility facilities and CIAC collected has resulted in a

reasonable and appropriate investment per connection and that the reasonableness of the Company's investment is evidenced by the approvals granted in general rate case and certificate of public convenience and necessity Orders issued over a long period of time. According to CWS, accomplishment of its investment goal has resulted in a reasonable rate base and the payment of a reasonable amount as return on that rate base through rates paid by consumers. CWS takes the position that the evidence for this conclusion is found not only in the record of this proceeding but in the Orders entered by the Commission during the Company's 22-year history.

"An examination of CWS's investment practices over its history in North Carolina reveals that the Company's practices have been consistent in that the mechanism of connection fees has been used to obtain funds from or convey funds to sellers of systems. Where CWS has a contract establishing connection fees, the Company has relied upon those contractual terms as dictating its subsequent activities regarding the connection fees. . . ."

"Although CWS relies primarily upon its contracts with the seller to determine the connection fees charged within a service area, occasions arise where connections are made that are not covered by any contract. For example, the developer may complete the sales of homes within a subdivision and leave a number of lots without new homes. Subsequently, someone else will buy the lots and construct homes in situations not covered under the contract with the original developer. In other situations, a portion of the subdivision will be sold by the original developer to a third party before homes are constructed. CWS may have no contract with the subsequent developer of the new section.

"Without a provision in the Company's tariffs authorizing it to assess connection fees in those situations, CWS would have difficulty collecting any connection fees at all. Consequently, in 1981, CWS requested uniform system-wide rates in the Sub 16 docket and at that time sought a tariffed set of connection fees. In its filing, CWS clearly indicated that the tariffed tap fees established by the Commission were to apply only where no contract existed calling for a different fee.

"The phrase "unless prohibited by contract as approved by the North Carolina Utilities Commission," which was approved by the Commission in the Company's Sub 16 general rate case and which authorized variation from the uniform connection fees, was inadvertently omitted from the Schedule of Rates approved for CWS in the Company's Sub 26 general rate case. . . ."

As explained above, in the excerpts from the Docket No. W-354, Sub 118 Order, the contract defined connection fees are based upon an arms-length transaction between CWS and the seller. Each transaction is based upon its own unique circumstances and, therefore, such details as connection fees may be unique and vary from transaction to transaction. Connection fees defined in a contract (approved by and on file with the Commission) for a given subdivision shall be the governing connection fees in that subdivision. Otherwise, the approved uniform connection fees shall apply in the absence of a contract.

Based upon the foregoing, the Commission finds that the Public Staff's request that CWS should be required to provide justification where it has varied in its uniform connection fee should be denied. The presence of a contract, approved by the Commission and on file with the Commission, provides CWS the justification it needs to charge a connection fee that varies from its uniform connection fee. As noted above, in the case where different connection fees are specified in an approved contract, the contract governs. In the absence of an approved contract, the uniform connection fees govern.

The Public Staff also requested that, if the Company is allowed to collect a uniform connection fee, the portion of the connection fees related to different plant costs should be identified so that the correct amount can be removed when a plant item is sold. The Public Staff noted that the issue of the appropriate amount of uniform connection fees, if any, to include in the net book value of plant sold has arisen in the most recent gain on sale proceeding.

Consistent with the Commission's decision in its Order issued on August 5, 1996, in Docket Nos. W-354, Subs 148, 149, 150, 151, 155, 156, and 157, the Commission finds that the net investment in the system should be calculated using the plant, accumulated depreciation, and CIAC for the system sold. Utilizing the actual amounts related to each system, and not average or uniform amounts, is appropriate for use in gain on sale calculations and removal of plant and associated accounts from the Company's books and records.

Meter Fees, Management Fees, and Oversizing Fees

The Public Staff noted in its motion that during the course of its investigation related to Docket No. W-354, Sub 165, a general rate case proceeding that was later withdrawn by the Company, the Public Staff found that the Company had varied from its tariff in the collection of meter fees, management fees, and oversizing fees. The Company did not respond to these allegations.

Regarding the Company's alleged deviation from authorized tariffs, the Commission stated in its Order issued on March 22, 1994, in Docket No. W-354, Sub 118, ". . . future deviations will not be tolerated . . . ." In its pending Motion, the Public Staff has requested that the Commission reiterate its policy regarding the requirement that CWS adhere to its authorized tariffs, i.e. - ". . . future deviations will not be tolerated . . . ." The Commission is of the opinion that a reiteration of its policy that ". . . future deviations will not be tolerated . . . ." is unnecessary. This language was contained in the Commission's Order of March 22, 1994, and it still stands.

The Commission notes that, although an Appendix detailing the alleged variances was attached to the Public Staff's Motion, said Appendix has not been identified or entered into the official record of a proceeding before the Commission, nor has the Company had an opportunity to rebut it as an official record. Either party may request that this matter be resolved in a separate proceeding before the Commission or in CWS's next general rate case proceeding.

Collection of Gross-up on CIAC Received after June 12, 1996

The Commission issued an Order on August 27, 1996, in Docket No. M-100, Sub 113, in which it ordered; ". . . [t]hat all water and sewer companies cease collecting gross-up on collections of CIAC received after June 12, 1996." There was no latitude given in said Order. This Order applied to all water and sewer companies including CWS and any other company that had a provision for the collection of gross-up of CIAC. The Commission required the collection of gross-up in response to the Tax Reform Act of 1986, and the Commission has now required the cessation of collection of gross-up in response to the Small Business Job Protection Act of 1996, contracts notwithstanding. Therefore, in accordance with prior Commission Order, the Commission concludes that CWS should not be allowed to continue to collect gross-up on CIAC received after June 12, 1996.

However, the Commission did determine in Docket No. W-354, Sub 118, that contracts with deferred payments do create taxable CIAC. In said docket, the Public Staff correctly stated that the liability to pay taxes on CIAC is incurred at the time CIAC is received. Once again, in Docket No. W-354, Sub 147, the Public Staff correctly asserted that the deferred or contingent payment contract in that case created taxable CIAC. Accordingly, the Commission issued an Order, in Docket No. W-354, Sub 147, denying the granting of a Certificate of Public Convenience and Necessity until the Company collected the gross-up for taxes on CIAC where the liability for such taxes was incurred prior to June 12, 1996. Similarly, when a utility contracts with a developer to collect the connection charges and/or plant modification fees from the developer in several payments, a liability to pay taxes on CIAC is incurred upon the execution of the contract if entered on or before June 12, 1996. The liability is not spread out like the payments. If the liability is incurred on or before June 12, 1996, the collection of gross-up must be completed, even if completed after June 12, 1996.

Granting of Franchise before Provision of Original Cost Data

In its discussion of this issue, the Public Staff correctly notes that when a franchise application is filed in a timely manner, all of the actual cost data may not be available at the time of filing. The Commission has granted a number of Certificates of Public Convenience and Necessity which were conditioned upon the collection of CIAC gross-up within 180 days of the Order and the filing of an affidavit regarding the actual cost data of the transaction within 190 days of the Order.

The Public Staff stated that it did not oppose the Applicant being allowed six months to provide the actual cost data, as long as a reasonably accurate estimate is provided at the time of filing. The Public Staff recommended that any franchise granted be conditional upon receipt of the actual cost data within 180 days. The Commission concurs with this recommendation and will grant a Certificate of Public Convenience and Necessity conditioned upon the filing of the actual cost data within a reasonable period of time (180 days), if the applicant provides a reasonably accurate estimate of the cost data at the time of application.

DISCUSSION OF CWS'S MOTION IN DOCKET NO. W-354, SUB 161

CWS requested in its Motion that the Commission grant a Certificate of Public Convenience and Necessity and approve connection fees without cost-based justification. In its Response, the Public Staff made three comments regarding the language in the contract dated March 27, 1996, for Matthews Commons:

(1) The contract misstates the facts concerning the existence of an authorized water and sewer connection fee of $2,627.

(2) If the $2,627 fee is the old uniform tap fee, including gross-up, as stated by the Company in its data request response, then any amounts collected after June 12, 1996, should be reduced to remove gross-up.

(3) If all of the $2,627 is connection fee, and does not include gross-up, as the Company implies in its motion, then it appears that the Company has failed to comply with the gross-up requirements.

As discussed above, the Commission has found that CWS is authorized to charge its uniform connection fees unless provided differently by contract approved by the Commission. The total uniform connection fees for water and sewer is $1,600 and the remaining balance of the $2,627 fee noted in the contract is $1,027 for CIAC gross-up.

Technically, CIAC gross-up is not a part of the uniform connection fees, but the Commission is of the opinion that in most cases the contracting party does not understand the difference. Hence, CWS apparently chose to lump the CIAC gross-up and the connection fees together in the contract; $2,627 per connection is the bottom line amount that the developer would pay to CWS for uniform connection fees.

In Docket No. W-354, Sub 147, the Public Staff contended that CWS should collect gross-up for CIAC because, even though payments were made after June 12, 1996, CWS was liable for taxes on CIAC as of the date of the contract. The Public Staff cites the Order issued by the Commission in Docket No. W-354, Sub 118, in which the Commission, in Finding of Fact No. 57, determined that "[t]he contracts with deferred payments [the construction agreements] do create taxable CIAC." Now, in the matter of Docket No. W-354, Sub 161, the Public Staff insists that CWS not collect gross-up for CIAC for payments made after June 12, 1996, on a contract dated March 27, 1996. The Public Staff would have CWS collect gross-up on the first installment payment, but not on the other two payments.

For the same reasoning the Commission used to find that gross-up should have been collected in Docket No. W-354, Sub 147, gross-up should also be collected for all the payments in Docket No. W-354, Sub 161. CWS was liable for taxes on CIAC as of the date of the contract, March 27, 1996.

Based upon the foregoing, the Commission is of the opinion that a further order should be issued in Docket No. W-354, Sub 161, approving CWS's contract with the developer, granting a Certificate of Public Convenience and Necessity for Matthews Commons Subdivision, and approving CWS's uniform connection fees as the appropriate connection fees for this service area.

IT IS, THEREFORE, ORDERED as follows:

1. That the Schedule of Rates, attached hereto as Appendix A, is hereby approved and deemed to be filed with the Commission pursuant to G.S. 62-138.

2. That, if connection fees are specified in a Commission approved contract, the contract governs. In the absence of an approved contract, the uniform connection fees govern.

3. That a reiteration of the Commission's policy that ". . . . future deviations will not be tolerated . . . ." is unnecessary. This language was contained in the Commission's Order of March 22, 1994, in Docket No. W-354, Sub 118, and it is still in effect.

4. That CWS shall not be allowed to collect gross-up on CIAC received after June 12, 1996.

5. That if a liability to pay taxes on CIAC is incurred on or before June 12, 1996, the collection of gross-up must be completed, even if completed after June 12, 1996.

6. That, if an applicant provides a reasonably accurate estimate of the cost data at the time of application, the Commission will grant a Certificate of Public Convenience and Necessity conditioned upon the filing of the actual cost data within a reasonable period of time (180 days).

7. That the Commission shall issue a further order in Docket No. W-354, Sub 161, approving CWS's contract with the developer, granting a Certificate of Public Convenience and Necessity for Matthews Commons Subdivision, and approving CWS's uniform connection fees as the appropriate connection fees for that service area.

ISSUED BY ORDER OF THE COMMISSION.
This the 27th day of February, 1998.

NORTH CAROLINA UTILITIES COMMISSION
Gail L. Mount, Deputy Clerk

WATER AND SEWER - RATES

APPENDIX A

SCHEDULE OF RATES

for

CAROLINA WATER SERVICE, INC. OF NORTH CAROLINA
for providing water and sewer utility service in
ALL ITS SERVICE AREAS IN NORTH CAROLINA

WATER RATES AND CHARGES

METERED SERVICE:

BASE FACILITIES CHARGES

A.	Residential Single Family Residence	$ 10.10
B.	Where Service is Provided Through a Master Meter and Each Dwelling Unit is Billed Individually	$ 10.10
C.	Where Service is Provided Through a Master Meter and a Single Bill is Rendered for the Master Meter (As in a Condominium Complex)	$ 9.10
D.	Commercial and Other (Based on Meter Size): 5/8" x 3/4" meter	$ 10.10
	1" meter	$ 25.25
	1-1/2" meter	$ 50.50
	2" meter	$ 80.80
	3" meter	$151.50
	4" meter	$252.50
	6" meter	$505.00

USAGE CHARGE:

A.	Treated Water/1,000 gallons	$ 3.03
B.	Untreated Water/1,000 gallons (Brandywine Bay Irrigation Water)	$ 2.00

FLAT RATE SERVICE:

A.	Single Family Residential	$ 21.65
B.	Commercial/SFE	$ 21.65

AVAILABILITY RATES:

Applicable only to property owners in Carolina Forest and Woodrun Subdivision in Montgomery County — $ 2.00

WATER AND SEWER - RATES

UNIFORM CONNECTION FEES [1/]:

Connection Charge (CC):	$100.00
Plant Modification Fee (PMF):	$400.00

(Unless specified differently by contract approved by and on file with the North Carolina Utilities Commission.)

SPEEDY REFERENCE TABLE OF CONNECTION FEES

A. 5/8" Meter

Subdivision	CC	PMF
Abington	$ 0.00	$ 0.00
Bahia Bay	$ 100.00	$400.00
Bainbridge	$ 100.00	$400.00
Bainbridge II	$ 0.00	$ 0.00
Bainbridge III	$ 100.00	$400.00
Bear Paw Resort	$ 100.00	$400.00
Beechbrook	$ 100.00	$400.00
Belvedere	$ 100.00	$400.00
Bent Creek	$ 0.00	$ 0.00
Blue Mountain at Wolf Laurel	$ 925.00	$ 0.00
Brandonwood	$ 200.00	$ 0.00
Brandywine Bay	$ 100.00	$400.00
Buffalo Creek, Phase I	$ 825.00	$ 0.00
Cabarrus Woods	$ 100.00	$400.00
Cambridge	$ 382.00	$ 0.00
Carolina Forest	$ 0.00	$ 0.00
Chapel Hills	$ 150.00	$400.00
College Park	$ 100.00	$400.00
Corolla Light	$ 500.00	$ 0.00
Country Hills	$ 100.00	$400.00
Country Club Annex	$ 100.00	$400.00
Courtney/Hampton Green	$ 100.00	$400.00
Crest View Estates	$ 100.00	$400.00
Crystal Mountain	$ 100.00	$400.00
Danby	$ 100.00	$400.00
Eastgate	$ 100.00	$400.00
Eastwood Forest	$ 100.00	$400.00
Emerald Pointe/Rock Island	$ 0.00	$ 0.00
Farmington	$ 100.00	$400.00
Farmwood/Apple Creek/Tara Woods	$ 100.00	$400.00
Farmwood 20	$ 0.00	$ 0.00

WATER AND SEWER - RATES

Subdivision	CC	PMF
Farmwood 21	$ 100.00	$400.00
Forest Brook/Ole Lamp Place	$ 0.00	$ 0.00
Grandview at T-Square/Lockhurst	$ 100.00	$400.00
Habersham	$ 100.00	$400.00
Harbor House Estates	$ 100.00	$400.00
Hestron Park	$ 0.00	$ 0.00
Hidden Hills	$ 0.00	$ 0.00
High Meadows	$ 100.00	$400.00
Holly Acres	$ 100.00	$400.00
Hound Ears	$ 300.00	$ 0.00
Huntington Forest	$ 100.00	$400.00
Idlewood	$ 100.00	$400.00
Kings Grant/Willow Run	$ 0.00	$ 0.00
Lamplighter Village East	$ 100.00	$400.00
Lamplighter Village South	$ 100.00	$400.00
Lawyers Station	$ 0.00	$ 0.00
Mallard Crossing	$ 100.00	$400.00
Mallard Crossing (Summey Bldrs.)	$ 0.00	$ 0.00
Misty Mountain	$ 100.00	$400.00
Monteray Shores	$ 500.00	$ 0.00
Monteray Shores (Degabrielle Bldrs.)	$ 0.00	$ 0.00
Mossy Creek	$ 100.00	$400.00
Mt. Mitchell	$ 100.00	$400.00
Oakdale Terrace	$ 100.00	$400.00
Olde Point	$ 100.00	$400.00
Park Farms/Raeburn	$ 0.00	$ 0.00
Pine Knoll Shores	$ 100.00	$400.00
Pinnacle Shores	$ 100.00	$400.00
Powder Horn Mountain	$ 100.00	$400.00
Providence Ridge/Hearth Stone	$ 100.00	$400.00
Providence West	$ 100.00	$400.00
Quail Ridge	$ 750.00	$ 0.00
Queens Harbour/Yachtsman	$ 0.00	$ 0.00
Riverbend	$ 100.00	$400.00
Riverbend (Plantation Landing)	$ 100.00	$400.00
Riverbend (Lakemere)	$1,250.00	$ 0.00
Riverbend (Norbury Park)	$ 100.00	$400.00
Riverbend (Pier Pointe)	$1,250.00	$ 0.00
Riverbend (Canebrake)	$1,250.00	$ 0.00
Riverbend (Lochbridge)	$1,250.00	$ 0.00

WATER AND SEWER - RATES

Subdivision	CC	PMF
Riverpointe	$ 300.00	$ 0.00
Riverpointe (Simonini Bldrs.)	$ 0.00	$ 0.00
Roxbury	$ 100.00	$400.00
Saddlebrook	$ 100.00	$400.00
Saddlebrook (Summey Bldrs.)	$ 0.00	$ 0.00
Saddlewood/Oak Hollow	$ 100.00	$400.00
Saddlewood/Oak Hollow (Summey Bldrs.)	$ 0.00	$ 0.00
Sherwood Forest	$ 950.00	$ 0.00
Sherwood Park	$ 100.00	$400.00
Ski Country	$ 100.00	$ 0.00
Ski Mountain	$ 100.00	$400.00
Southwoods/Brandywine at Mint Hill	$ 0.00	$ 0.00
Stonehedge (Bradford Park)	$ 441.00	$ 0.00
Suburban Heights	$ 100.00	$400.00
Suburban Woods	$ 100.00	$400.00
Sugar Mountain/Grouse Forest/ Mushroom Park/Western Highland	$ 100.00	$400.00
Tanglewood Estates	$ 100.00	$400.00
Tanglewood South	$ 100.00	$400.00
Trexler Park	$ 100.00	$400.00
Victoria Park	$ 344.00	$ 0.00
Watauga Vista	$ 100.00	$400.00
Waterglyn	$ 100.00	$400.00
Westwood Forest	$ 100.00	$400.00
Whispering Pines	$ 100.00	$400.00
White Oak Plantation	$ 0.00	$ 0.00
Wildwood Green/McLlwaine Acres	$ 100.00	$400.00
Williams Station	$ 0.00	$ 0.00
Willowbrook	$ 0.00	$ 0.00
Windsor Chase	$ 100.00	$400.00
Winghurst	$ 100.00	$400.00
Wood Hollow/Forest Ridge	$ 100.00	$400.00
Woodhaven/Pleasant Hills	$ 100.00	$400.00
Woodrun	$ 0.00	$ 0.00
Woodside Falls	$ 500.00	$ 0.00
Yorktown	$ 100.00	$400.00
Zemosa Acres	$ 100.00	$400.00

WATER AND SEWER - RATES

B.	Meters Larger than 5/8"	Actual Cost	N/A
C.	Commercial and Other/SFE (Payable by Developer or Builder)	N/A	$400.00

METER TESTING FEE [2/]: $20.00

NEW WATER CUSTOMER CHARGE: $27.00

RECONNECTION CHARGES [3/]:

If water service is cut off by utility for good cause:	$27.00
If water service is disconnected at customer's request:	$27.00

CMUD BILLING CHARGES: $ 2.20/billing

MANAGEMENT FEE (in the following subdivisions only) :

Cambridge	$250.00
Habersham	$363.00
Riverbend (Lochbridge)	$250.00
Riverbend (Canebrake)	$250.00
Riverbend (Lakemere)	$250.00
Riverbend (Pier Pointe)	$250.00
Southwoods/Brandywine at Mint Hill	$300.00
Windsor Chase	$ 63.00
Wolf Laurel	$150.00

OVERSIZING FEE (in the following subdivision only) :

Winghurst	$400.00

METER FEE (in the following subdivisions only) : $ 50.00

Abington
Bainbridge
Bainbridge II
Bainbridge III
Bent Creek
Blue Mountain at Wolf Laurel
Brandywine Bay
Cambridge
Eastgate
Emerald Point/Rock Island
Farmington
Farmwood 21
Grandview at T-Square/Lockhurst
Habersham
Hidden Hills
Monteray Shores
Mossy Creek
Olde Pointe
Parks Farm/Raeburn
Powder Horn Mountain
Riverbend (Norbury Park)
Riverbend (Lochbridge)
Riverbend (Canebrake)
Riverbend (Pier Pointe)
Riverbend (Lakemere)
Riverpointe
Roxbury
Ski Country
Southwoods/Brandywine at Mint Hill
Stonehedge (Bradford Park)
Tanglewood Estates
Tanglewood South
Victoria Park
Willowbrook
Windsor Chase
Winghurst
Wolf Laurel

WATER AND SEWER - RATES

SEWER RATES AND CHARGES

METERED SERVICE: Commercial and Other

A. Base Facility Charge (Based on Meter Size)

5/8" x 3/4" meter	$ 10.10
1" meter	$ 25.25
1-1/2" meter	$ 50.50
2" meter	$ 80.80
3" meter	$151.50
4" meter	$252.50
6" meter	$505.00

B. Usage Charge/1,000 gallons (based on metered water usage) $ 4.55

C. Minimum Monthly Charge $ 30.55

D. Sewer customers who do not receive water service from the Company/SFE $ 30.55

FLAT RATE SERVICE: Per Dwelling Unit [4] $ 30.55

COLLECTION SERVICE ONLY [5]: (When sewage is collected by utility and transferred to another entity for treatment)

A. Single Family Residence $ 11.00

B. Commercial/SFE $ 11.00

UNIFORM CONNECTION FEES [1]:

Connection Charge (CC):	$ 100.00
Plant Modification Fee (PMF):	$1,000.00

(Unless specified differently by contract approved by and on file with the North Carolina Utilities Commission.)

SPEEDY REFERENCE TABLE OF CONNECTION FEES

A. 5/8" meter

Subdivision	CC	PMF
Abington	$ 0.00	$ 0.00
Ashley Hills	$ 0.00	$ 0.00
Bainbridge	$ 100.00	$1,000.00
Bainbridge Phase II	$ 0.00	$ 0.00
Bainbridge Phase III	$ 100.00	$1,000.00
Bear Paw	$ 100.00	$1,000.00
Belvedere	$ 100.00	$1,000.00

WATER AND SEWER - RATES

Subdivision	CC	PMF
Bent Creek	$ 0.00	$ 0.00
Brandywine Bay	$ 100.00	$1,456.00
Cabarrus Wood	$ 100.00	$1,000.00
Cambridge	$ 841.00	$ 0.00
College Park	$ 100.00	$1,000.00
Corolla Light	$ 700.00	$ 0.00
Danby	$ 100.00	$1,000.00
Emerald Pointe/Rock Island	$ 0.00	$ 0.00
Farmwood 20	$ 100.00	$1,000.00
Farmwood 21	$ 100.00	$1,000.00
Habersham	$ 100.00	$1,000.00
Hestron Park	$ 0.00	$ 0.00
Hound Ears	$ 300.00	$ 0.00
Huntwick	$ 0.00	$ 0.00
Independent/Hemby Acres/ Beacon Hills (Griffin Bldrs.)	$ 0.00	$ 0.00
Independent/Hemby Acres/ Beacon Hills	$ 100.00	$1,000.00
Interlaken	$ 100.00	$1,000.00
Kings Grant	$ 0.00	$ 0.00
Kings Grant/Willow Run	$ 0.00	$ 0.00
Kynwood	$ 0.00	$ 0.00
Lamplighter Village South	$ 100.00	$1,000.00
Lamplighter Village East	$ 100.00	$1,000.00
Monteray Shores	$ 700.00	$ 0.00
Monteray Shores (Degabrielle Bldrs)	$ 0.00	$ 0.00
Mossy Creek	$ 100.00	$1,000.00
Mt. Carmel	$ 100.00	$1,000.00
Mt. Carmel/Section 5A	$ 500.00	$ 0.00
Olde Pointe	$ 100.00	$1,000.00
Park Farms/Raeburn	$ 0.00	$ 0.00
Queens Harbor/Yachtsman	$ 0.00	$ 0.00
Riverbend	$ 100.00	$1,000.00
Riverbend (Norbury Park)	$ 100.00	$1,000.00
Riverbend (Lakemere)	$1,250.00	$ 0.00
Riverbend (Pier Pointe)	$1,250.00	$ 0.00
Riverbend (Lochbridge)	$1,250.00	$ 0.00
Riverbend (Plantation Landing)	$ 100.00	$1,000.00
Riverbend (Canebrake)	$1,250.00	$ 0.00
Riverpointe	$ 300.00	$ 0.00
Riverpointe (Simonini Bldrs.)	$ 0.00	$ 0.00

WATER AND SEWER - RATES

Subdivision	CC	PMF
Saddlewood/Oak Hollow	$ 100.00	$1,000.00
Sequoia Place	$ 0.00	$ 0.00
Southwoods/Brandywine @ Minthill	$ 0.00	$ 0.00
Spooners Creek	$ 100.00	$1,000.00
Steeplechase	$ 100.00	$1,000.00
Steeplechase (Spartabrook)	$ 0.00	$ 0.00
Stonehedge (Bradford Park)	$ 971.00	$ 0.00
Sugar Mountain/Grouse Forest/ Mushroom Park/Western Highland	$ 100.00	$1,000.00
Trevor Downs	$ 100.00	$1,000.00
Victoria Park	$ 756.00	$ 0.00
White Oak Plantation	$ 0.00	$ 0.00
Williams Station	$ 0.00	$ 0.00
Willowbrook	$ 0.00	$ 0.00
Windsor Chase	$ 100.00	$1,000.00
Winghurst	$ 100.00	$1,000.00
Wood Hollow/Forest Ridge	$ 100.00	$1,000.00
Woodside Falls	$ 0.00	$ 0.00

B.	Meters Larger than 5/8"	Actual Cost	N/A
C.	Commercial and Other/SFE (Payable by Developer or Builder)	N/A	$1,000.00

NEW SEWER CUSTOMERS CHARGES [6]: $ 22.00

RECONNECTION CHARGES [7]:

If sewer service is cut off by utility for good cause: Actual Cost

MISCELLANEOUS UTILITY MATTERS

BILLS DUE: On billing date

BILLS PAST DUE: 21 days after billing date

BILLING FREQUENCY: Bills shall be rendered monthly in all service areas, except for Mt. Carmel which will be billed bi-monthly, and the availability charges in Carolina Forest and Woodrun Subdivisions which will be billed semi-annually.

WATER AND SEWER - RATES

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.
CHARGES FOR PROCESSING NSF CHECKS:	$10.00

NOTES:

1/ These fees are only applicable one time, when the unit is initially connected to the system.

2/ If a customer requests a test of a water meter more frequently than once in a 24-month period, the Company will collect a $20 service charge to defray the cost of the test. If the meter is found to register in excess of the prescribed accuracy limits, the meter test charge will be waived. If the meter is found to register accurately or below such prescribed accuracy limits, the charge shall be retained by the Company. Regardless of the test results, customers may request a meter test once in a 24-month period without charge.

3/ Customers who request to be reconnected within nine months of disconnection at the same address shall be charged the base facility charge for the service period they were disconnected.

4/ Dwelling unit shall exclude any unit which has not been sold, rented, or otherwise conveyed by the developer or contractor building the unit.

5/ The utility shall charge for sewage treatment service provided by the other entity; the rate charged by the other entity will be billed to CWS' affected customers on a pro rata basis, without markup.

6/ These charges shall be waived if sewer customer is also a water customer within the same service area.

7/ The utility shall itemize the estimated cost of disconnecting and reconnecting service and shall furnish this estimate to customer with cut-off notice. This charge will be waived if customer also receives water service from Carolina Water Service within the same service area.

Issued in Accordance with Authority Granted by the North Carolina Utilities Commission in Docket Nos. W-354, Sub 118, W-354, Sub 128, W-354, Sub 161, and M-100, Sub 113 on this the 27th day of February, 1998.

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Bruce E. Woodard, dba Express Tours	Statewide	B-660	02-06-98
Burke International Tours, Inc.	Statewide	B-684	07-13-98
Charles Elmore, Jr., dba C & M Motor Coach	Statewide	B-682	06-10-98
Marion Hollingsworth, dba Hollingsworth Bus Company	Statewide	B-668	02-11-98
Wallace Hedgspeth, dba Hedgspeth Charter	Statewide (Temp)	B-685	05-28-98
James Davis, dba J & J Bus Line	Statewide	B-663	02-06-98
Laidlaw Transit Services, Inc.	Statewide	B-683	07-24-98
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High Point Delivery Company, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-2230
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Phillip Wayne Marshall, dba Insured Transportation Systems - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-1782
T-2909, Sub 3 (10-22-98)

Long Transportaton Services, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-2212
T-2523, Sub 8 (10-22-98)

Derric Pearce Fozard, dba Miracle Movers - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-2224
T-4083, Sub 2 (10-22-98)

Morehead Moving & Storage, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-630
T-918, Sub 6 (10-22-98)

ORDERS AND DECISIONS LISTED

Roy W. Cashion and L. F. Cashion, Jr., dba Sanford Transfer and Storage Company - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-735
T-1018, Sub 4 (10-22-98)

Tryon Moving & Storage, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-2215
T-854, Sub 9 (10-22-98)

Wainwright Transfer Co. of Fayetteville, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority under Certificate No. C-1063
T-861, Sub 9 (10-22-98)

MOTOR TRUCKS - AUTHORITY GRANTED

Walter Barber, dba Barber's Moving & Storage - Recommended Order Granting Application, in Part
T-4117 (06-23-98)

Masoud Mansouri, dba Benelux Moving Company - Recommended Order Granting Application, in Part
T-4112 (01-23-98) Final Order Ruling on Exceptions and Granting Application (03-12-98)

Roy Holloway, dba Holloway Moving - Recommended Order Granting Application
T-4122 (09-30-98)

Truck-N-Time, Ltd. - Recommended Order Granting Application, In Part
T-4113 (03-06-98) Final Order Ruling on Exceptions and Granting Application (05-14-98)

Wayne Moving & Storage Co. of North Carolina, Inc. Recommended Order Granting Application
T-4120 (07-16-98)

MOTOR TRUCKS - AUTHORITY REINSTATED

Ezzell Trucking, Inc. - Order Vacating Orders of September 10, 1998, and October 22, 1998, and Reinstating Operating Authority
T-1536, Sub 12 (10-28-98)

Derric Pearce Fozard, dba Miracle Movers - Order Vacating Orders of September 10, 1998, and October 22, 1998, and Reinstating Operating Authority
T-4083, Sub 2 (11-04-98)

Morehead Moving & Storage, Inc. - Order Vacating Orders of September 10, 1998, and October 22, 1998, and Reinstating Operating Authority
T-918, Sub 6 (10-30-98)

Pitt Movers, Inc., dba A & A Moving - Order Vacating Orders of August 27, 1997, and October 15, 1997, and Reinstating Operating Authority
T-2939, Sub 3 (07-30-98)

Tryon Moving & Storage, Inc. - Order Vacating Orders of September 10, 1998, and October 22, 1998, and Reinstating Operating Authority
T-854, Sub 9 (10-30-98)

Umstead Brothers, Inc. - Order Vacating Orders of August 27, 1997, and October 15, 1997, and Reinstating Operating Authority
T-1439, Sub 4 (01-09-98)

Wainwright Transfer Co. of Fayetteville, Inc. - Order Vacating Orders of September 10, 1998, and October 22, 1998, and Reinstating Operating Authority
T-861, Sub 9 (10-30-98)

Williams Transfer and Storage, Inc. - Order Vacating Orders of August 27, 1997, and October 15, 1997, and Reinstating Operating Authority
T-1010, Sub 5 (02-24-98)

MOTOR TRUCKS - AUTHORIZED SUSPENSION

Abernethy Transfer & Storage Company, Inc. - Order Granting Authorized Suspension under Common Carrier Certificate No. C-547 until April 1, 1999
T-744, Sub 3 (03-31-98)

Askins Moving & Storage, Incorporated - Order Granting Authorized Suspension under Common Carrier Certificate No. C-1977
T-3658, Sub 1 (03-31-98)

City Transfer & Storage Company of Fayetteville, Inc. - Order Granting Authorized Suspension under Common Carrier Certificate No. C-722 until March 1, 1999
T-994, Sub 4 (02-26-98)

MOTOR TRUCKS - COMPLAINTS

Asheville Transfer & Storage, Inc. - Recommended Order Requiring Refund in Complaint of Linda W. Langley
T-9, Sub 3 (05-27-98)

ORDERS AND DECISIONS LISTED

MOTOR TRUCKS - NAME CHANGE/TRADE NAME

Accredited Relocation Systems, Inc. - Order Approving Name Change from May Moving of Goldsboro, Inc. to Accredited Relocation Systems, Inc.
T-1584, Sub 3 (04-06-98)

Armstrong Relocation Co., Inc. - Order Approving Name Change from Armstrong Transfer & Storage Co., Inc., dba Armstrong Relocation Co., Inc.
T-3206, Sub 1 (12-08-98)

Easy Movers, Inc. - Order Approving Name Change from Donovan Fitzeric Reid, dba Easy Movers to Easy Movers, Inc.
T-4087, Sub 2 (08-03-98)

Forsyth Initiative for Residential Self Help Treatment, Inc., dba First Movers - Order Approving Name Change from Forsyth Initiative for Residential Self Treatment, Inc., dba First, Inc.
T-4102, Sub 1 (07-24-98)

Lee Brothers Moving & Storage, Inc. - Order Approving Name Change from Cashion-Lee Moving and Storage, Inc. to Lee Brothers Moving & Storage, Inc.
T-4108, Sub 1 (03-20-98)

Moving Systems, Inc. - Order Approving Name Change from OmniStorage, Inc., dba OmniStorage & Moving Co. to Moving Systems, Inc.
T-4080, Sub 1 (08-6-98)

MOTOR TRUCKS - RATES

North Carolina Motor Common Carriers of Household Goods - Recommended Order Approving Rate Increase
T-825, Sub 332 (09-29-98)

MOTOR TRUCKS - SALES/TRANSFERS/CHANGE OF CONTROL

Advantage Moving & Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-1977 from Askins Moving & Storage, Incorporated
T-4119 (05-26-98)

All American Moving & Storage, Inc. - Order Approving Transfer of Certificate No. C-1590 from West Brothers Moving and Storage, Inc.
T-4121 (06-24-98)

ORDERS AND DECISIONS LISTED

Americas Logistics Group, Inc., dba Queen City Moving & Transportation - Order Approving Sale and Transfer of Certificate No. C-655 from Lawrence Transit Systems, Inc., dba Queen City Transfer and Storage
T-4116 (03-25-98) Errata Order to Correct Transferee's Name to Americas Logistics Group, Inc., dba Queen City Transfer & Storage (07-07-98)

Design Systems, Inc., dba Burnham Service Company - Order Approving Sale and Transfer of Certificate No. C-2208 from Burnham Service Company, Inc.
T-951, Sub 16 (12-23-98)

Excel Moving and Storage, Inc. - Order Approving Sale and Transfer of Certificate No. C-731 from Williams Transfer and Storage, Inc.
T-4118 (04-29-98)

Fox Brothers of Boone, Inc. - Order Approving Transfer of Control of Fox Brothers of Boone, Inc. By Stock Transfer from Max Fox and Benny Fox to Buford Fox and Ben A. Fox, Jr.
T-1208, Sub 3 (02-23-98)

Gregory Leroy Dills, dba Smoky Mountain Moving Co. - Order Approving Sale and Transfer of Certificate No. C-2219 from Scott's Moving Co.
T-4111 (01-28-98)

North American Van Lines, Inc. - Order Approving Transfer of Control from Norfolk Southern Corporation to NA Holding Corporation
T-2108, Sub 3 (03-25-98)

Security Storage Company of Charlotte, Inc. - Order Approving Sale and Transfer of Certificate No. C-655 from Americas Logistics Group, Inc., dba Queen City Transfer & Storage
T-4123 (11-18-98)

Weathers Brothers Transfer Company, Inc. - Order Approving Sale and Transfer of Certificate No. C-572 from Weathers Brothers Moving and Storage Company, Inc.
T-4114 (02-23-98)

TELEPHONE

TELEPHONE - APPLICATIONS CANCELLED, WITHDRAWN OR DENIED

Catholic Telecom, Inc. - Order Allowing Withdrawal of Application for a Certificate to Offer Long Distance Telecommunications Services as a Switchless Reseller
P-700 (05-13-98)

EZ Phone, Inc. - Order Dismissing Application for a Certificate to Provide Long Distance Service
P-664 (01-14-98)

ORDERS AND DECISIONS LISTED

Guarantel, Inc. - Order Allowing Withdrawal of Application for Certificate to Offer Local Exchange Services and Closing Docket
P-699 (05-05-98)

Insurance Information Exchange, L.L.C. - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate Telecommunications Services as a Switchless Reseller and Closing Docket
P-657 (08-05-98)

Keystone Telecommunications, Inc.; Chadwick Telecommunications Corporation - Order Allowing Withdrawal of Application and Closing Dockets
P-587; P-352, Sub 1 (12-29-98)

MIDCOM Communications, Inc.; Phoenix Network, Inc. - Order Granting Motion to Withdraw Petition for Approval of the Merger of Phoenix and MIDCOM and Closing Docket
P-308, Sub 14; P-239, Sub 8 (01-21-98)

National Collegiate, Inc. - Order Allowing Withdrawal of Application for Certificate to Provide Long Distance Service as Switchless Reseller
P-727 (08-31-98)

New Millennium Communications Corporation - Order Allowing Withdrawal of Application for Certificate to Provide Intrastate Telecommunications Services
P-770 (11-19-98)

NEXTLINK North Carolina, Inc. - Order Allowing Withdrawal of Application for Certificate to Provide Telecommunications Services as a Switchless Reseller
P-732, Sub 1 (12-09-98)

NYNEX Long Distance Company - Order Allowing Withdrawal of Application without Prejudice and Closing Docket
P-574 (09-17-98)

Online Telecommunications, Inc. - Order Dismissing Application for Certificate to Provide Long Distance Telecommunications Services Without Prejudice
P-636, Sub 0 (01-21-98)

Sterling International Funding, Inc. - Recommended Order Denying Application for Certificate to Operate as a Reseller of Local Exchange and Exchange Access Services
P-665 (08-06-98)

Strategic Telecom Systems, Inc. - Order Allowing Withdrawal of Application
P-645 (04-22-98)

Time Warner Communications of North Carolina, L.P. - Order Denying Time Warner's Petition to Amend Certificate of Public Convenience and Necessity
P-472, Sub 6 (01-07-98)

ORDERS AND DECISIONS LISTED

Time Warner Communications of North Carolina, L.P. - Order Allowing Withdrawal of Petition for Arbitration of Interconnection Agreement with Concord Telephone Company
P-472, Sub 9 (06-23-98)

Value-Added Communications, Inc. - Order Allowing Withdrawal of Application for Certificate to Provide Long Distance Telecommunications Services as a Switchless Reseller
P-747 (11-20-98)

Western Tele-Communications, Inc./Retail Sales Group, dba People Link by TCI - Order Allowing Withdrawal of Application for Certificate to Offer Long Distance Service as a Switchless Reseller
P-731 (09-11-98)

TELEPHONE - CERTIFICATES

@ 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-742 (10-20-98)

Access Point, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Services as a Competing Local Provider
P-570, Sub 1 (09-17-98)

Ameritech Communications International, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-556, Sub 1 (06-04-98)

Annox, Inc. - Recommended Order Granting Certificate to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-696 (05-05-98)

Atlas 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-532, Sub 1 (03-12-98)

BellSouth BSE, Inc. - Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-691 (07-22-98)

BellSouth Telecommunications, Inc. - Order Granting Interim Construction Authority
P-55, Sub 1117 (12-22-98)

ORDERS AND DECISIONS LISTED

Buehner-Fry, Inc. - Final Order Denying Exceptions and Affirming Recommended Order of December 3, 1997
P-577 (02-04-98)

Cyberlight International, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange Resold Telecommunications Services
P-709 (09-22-98)

DukeNet Communications, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange Telecommunications Services
P-426, Sub 2 (07-22-98)

Eagle Communications, Inc., dba Eagle Communications of NC, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-661 (03-04-98)

Easton Telecom 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-471, Sub 1 (03-13-98)

Frontier Telemanagement, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-698 (06-08-98)

GIETEL, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Service as a Competing Local Provider
P-726 (09-30-98) Order Allowing Recommended Order to Become Final (10-06-98)

Group Long Distance, Inc. - Recommended Order Granting Probationary Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Services as a Competing Local Provider
P-350, Sub 2 (09-22-98)

Interpath Communications, Inc. - Order Amending its Certificate to Provide Non-Switched Facilities-Based Long Distance Telecommunications Services to Also Authorize the Provision of Switched Long Distance Telecommunications Services
P-708, Sub 2 (09-29-98)

Jerry La Quiere, dba LEC-Link - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-679 (04-23-98)

ORDERS AND DECISIONS LISTED

LDM Systems, 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-437, Sub 1 (02-19-98)

Long Distance International, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long-Distance Telecommunications Services as a Reseller
P-644 (04-16-98) Order Allowing Recommended Order to Become Final (04-21-98)

MEBTEL Integrated Communications Solutions, L.L.C. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services
P-736 (09-24-98)

Network Operator Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long Distance Telecommunications Services as a Reseller
P-722 (10-02-98)

New East Telephony, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Service as a Competing Local Provider
P-718 (08-12-98)

North American Telecommunications Corporation - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-701 (08-31-98)

NOW Communications, Inc. - Recommended Order Granting Certificate to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-756 (12-30-98)

OmniCall, Inc., dba OmniCall 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-668 (01-20-98)

OnePoint Communications-Georgia, LLC - Recommended Order Granting Certificate to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-671 (01-08-98) Order Allowing Recommended Order to Become Final (01-13-98)

The Other Phone Company, Inc., dba Access One Communications - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-738, Sub 1 (12-01-98)

ORDERS AND DECISIONS LISTED

Quintelco, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Telecommunications Services as a Competing Local Provider
P-682 (07-23-98)

SouthNet Telecomm Services, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Service as a Competing Local Provider
P-764, Sub 1 (12-11-98)

State Communications, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Basic Local Exchange Telephone Service as a Competing Local Provider
P-744, Sub 1 (12-03-98)

Teleglobe USA Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide and Resell Intrastate Interexchange Long-Distance Telecommunications Services
P-716 (11-16-98)

TeleHub Network Services Corporation - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long-Distance Telecommunications Services as a Reseller
P-704 (12-01-98)

Teligent, Inc., dba Delaware Teligent, Inc. - Recommended Order Granting a Certificate of Public Convenience and Necessity to Provide Local Exchange and Exchange Access Service as a Competitive Local Provider
P-703 (07-15-98)

Teligent, Inc., dba Delaware Teligent, Inc. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Interexchange Long Distance Telecommunications Services
P-703, Sub 1 (07-14-98)

Time Warner Communications of North Carolina, L.P. - Order Amending Certificate and Approving Tariffs
P-472, Sub 5 (01-20-98)

TransWire Communications, 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-746 (12-04-98)

VoCall Communications Corp. - Recommended Order Granting Certificate of Public Convenience and Necessity to Provide Intrastate Long-Distance Telecommunications Services as a Reseller
P-677 (02-27-98)

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Telephone Certificates (Intrastate Interexchange Telephone Service by Switchless Resellers)

Docket No.	Company	Date
P-474, Sub 4	MCImetro Access Transmission Services, Inc.	03-04-98
P-509	CTC Communications Corp.	07-27-98
P-612	CSI Corp.	04-15-98
P-631	EQuality, Inc.	08-07-98
P-647	CapRock Communications Corp.	04-16-98
P-648	Adelphia Telecommunications, Inc.	04-22-98
P-649, Sub 1	Telephone Company of Central Florida, Inc.	03-12-98
P-660	New Century Telecom, Inc.	08-05-98
P-667	Efficy Group, Inc.	04-23-98
P-668, Sub 1	Omnicall, Inc.	03-26-98
P-670	Telco Partners, Inc.	11-16-98
P-671, Sub 1	OnePoint Communications-Georgia, LLC	01-08-98
P-675	Electric Lightwave, Inc.	08-05-98
P-676	KCI Long Distance, Inc.	05-13-98
P-682, Sub 1	Quintelco, Inc.	08-20-98
P-684	Z-Tel, Inc.	10-15-98
P-687	Community Long Distance, Inc.	07-07-98
P-688	Intelnet International Corp.	11-19-98
P-692	Vista Group International, Inc.	10-20-98
P-705	Americatel Corporation	11-06-98
P-710	ACS Systems, Inc.	05-05-98
P-724	ETCOM, LLC	07-22-98
P-729	Comcast Telecommunications, Inc., dba Comcast Long Distance	10-02-98
P-735	NXLD Company, dba Nextel Long Distance	08-05-98
P-749	Madison River Long Distance Solutions, Inc., dba MEBTEL Long Distance Solutions	09-29-98
P-758	Carotel, LLC	12-22-98
P-780	Prime Time Communications, Inc.	11-06-98

TELEPHONE - CERTIFICATES CANCELLED

A.B.T.S. International Corporation, dba Intelnet - Order Canceling Certificate
P-557, Sub 1 (12-04-98)

Amerifax, Inc., dba AmeriConnect, Inc. - Order Canceling Certificate
P-321, Sub 2; P-239, Sub 10 (10-16-98)

Anchor Communications Corporation - Order Affirming Previous Commission Order Cancelling Operating Authority
P-563, Sub 1 (02-13-98)

ORDERS AND DECISIONS LISTED

Apollo Communications Services, LLC - Order Canceling Certificate Without Prejudice
P-519, Sub 1 (03-05-98)

BASF Corporation - Order Canceling Certificate
STS-36, Sub 1 (12-15-98)

Capital Network System, Inc. - Order Canceling Certificate
P-385, Sub 6 (06-25-98)

CapRock Communications Corporation - Order Canceling Certificate
P-647, Sub 1 (06-18-98)

Caribbean Telephone and Telegraph, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
P-444, Sub 1 (02-13-98)

Coast to Coast Telecommunications, Inc. - Order Canceling Certificate Without Prejudice
P-608, Sub 1 (12-10-98)

Host Network, Inc. - Order Canceling Certificate
P-521, Sub 1 (04-15-98)

InterLink Telecommunications, Inc. - Order Canceling Certificate To Provide Intrastate Long Distance Services, Dismissing Application for Certificate to Provide Local Service, and Closing Docket
P-478, Sub 1; P-478, Sub 2 (02-27-98)

OpTex, Inc. - Order Canceling Certificate and Tariffs
P-548, Sub 2 (04-08-98)

RealCom Office Communications, Inc.; WorldCom Technologies, Inc. - Order Canceling STS Certificate No. 5
P-659, Sub 2; STS-5, Sub 1 (09-18-98)

U.S. Telco - Order Canceling Certificate
P-634, Sub 1 (06-16-98)

WATS/800, Inc. - Order Affirming Previous Commission Order Cancelling Operating Authority
P-274, Sub 4 (02-13-98)

TELEPHONE - CERTIFICATES REINSTATED

North American Communications Control, Inc. - Order Vacating Orders and Reinstating Operating Authority
P-595, Sub 1 (01-22-98)

Providian Group, LLC - Order Vacating Orders and Reinstating Operating Authority
P-610, Sub 1 (01-20-98)

TELEPHONE - COMPLAINTS

AT&T Communications of the Southern States - Order Closing Docket in Complaint of IRM Services, Inc.
P-140, Sub 54 (07-07-98)

AT&T Communications of the Southern States, Inc. - Order Closing Docket in Complaint of Donna J. Ferguson
P-140, Sub 56 (12-16-98)

AT&T Communications of the Southern States - Order Closing Docket in Complaint of Farah and Jeffrey Carter
P-140, Sub 57 (05-06-98)

AT&T Communications of the Southern States - Order Accepting Settlement of Complaint and Closing Docket in Complaint of Dr. Paul K. Browning
P-140, Sub 60 (06-25-98)

AT&T Communications of the Southern States - Order Closing Docket in Complaint of Carl Albrecht and Marcia Jackson
P-140, Sub 62 (04-28-98)

AT&T Communications of the Southern States - Order Closing Docket in the Complaint of Shandra Umazar
P-140, Sub 66 (09-04-98)

America's Tele-Network Corporation - Order Closing Docket in the Complaint of Delores Armstrong
P-502, Sub 1 (10-09-98)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Robert S. Pilot
P-55, Sub 1034 (04-09-98) Order Closing Docket (08-21-98)

BellSouth Telecommunications, Inc. - Order Dismissing Complaints of Forest A. Smith, dba Wake Electric Company and Closing Dockets
P-55, Sub 1063; P-55, Sub 1064 (10-29-98)

BellSouth Telecommunications, Inc. - Order Canceling Hearing and Closing Docket in Complaint of Barron Proctor
P-55, Sub 1088 (09-15-98)

BellSouth Telecommunications, Inc. - Order Granting Dismissal and Closing Docket in Complaint of Elsie B. Billiot
P-55, Sub 1090 (08-21-98)

ORDERS AND DECISIONS LISTED

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of T. Jack Bailey, Jr., President, Matthews Radio Service
P-55, Sub 1091 (05-06-98)

BellSouth Telecommunications, Inc. - Order Dismissing Complaint of Tel-Save, Inc. And Closing Docket
P-55, Sub 1097 (09-15-98)

BellSouth Telecommunications, Inc. - Order Closing Docket in Complaint of Ms. Cassandra Paquin v. BellSouth Telecommunications, Inc. And MCI Telecommunications Corporation
P-89, Sub 57 (09-04-98)

BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc. - Order Dismissing Complaint of James Holloway Against BellSouth
P-89, Sub 68 (12-11-98)

Business Discount Plan – Order Serving Notice of Settlement and Closing Docket in the Complaint of Dr. J. Edward McFadden, dba The Counseling Group, Inc.
P-344, Sub 4 (02-23-98) Order Closing Docket (03-04-98)

Business Discount Plan, Inc. - Order Serving Answer, Notice of Settlement, and Closing Docket in the Complaint of Statesman Furniture, Inc.
P-344, Sub 5 (04-09-98) Order Closing Docket (08-13-98)

Business Discount Plan, Inc. - Order Closing Docket in Complaint of Piedmont Credit Union
P-344, Sub 7 (08-13-98)

Carolina Telephone and Telegraph Company - Recommended Order Dismissing Complaint of Kim Jernigan with Prejudice
P-7, Sub 864 (09-28-98)

Carolina Telephone and Telegraph Company - Order Closing Docket in Complaint of Felicia Robinson
P-7, Sub 865 (07-27-98)

Carolina Telephone & Telegraph Company - Order Closing Docket in Complaint of Fayetteville Publishing Company, et. al.
P-89, Sub 48 (04-20-98)

Carolina Telephone and Telegraph Company; Sprint Communications Company, LP - Order Serving Reply, Notice of Settlement, Canceling Hearing, and Closing Docket in Complaint of Dorothy Roberts
P-89, Sub 59 (04-14-98)

Carolina Telephone and Telegraph Company and AT&T - Order Closing Docket in the Complaint of Larry Roberts
P-89, Sub 60 (06-25-98)

ORDERS AND DECISIONS LISTED

Carolina Telephone and Telegraph Company and AT&T Communications of the Southern States - Order Closing Docket in the Complaint of Judy Melendez
P-89, Sub 63 (11-25-98)

Central Telephone Company - Recommended Order Allowing Partial Recovery in the Complaint of Ithaca Industries, Inc.
P-10, Sub 500 (06-26-98) Order Overruling Exceptions and Affirming Recommended Order (08-19-98)

Central Telephone Company - Order Closing Docket in the Complaint of Carol A. Keyser
P-10, Sub 510 (02-17-98)

Central Telephone Company - Order Closing Docket in the Complaint of Howard Lochaby
P-10, Sub 512 (06-01-98)

Dial & Save of North Carolina, Inc. - Order Serving Notice of Settlement and Closing Docket in Complaint of Paul H. Hulth
P-414, Sub 6 (04-22-98)

Equalnet Communications, Inc. - Order Closing Docket in the Complaint of Sam Martin, dba Sam's Motorcycle Repair
P-383, Sub 4 (06-25-98)

Excel Telecommunications, Inc. - Order Closing Docket in the Complaint of Edsoll J. Hunnings, %Hunnings, Inc.
P-270, Sub 9 (02-19-98)

GTE South, Inc. and AT&T Communications of the Southern States - Order Closing Docket in Complaint of Anthony Diggs
P-89, Sub 62 (12-07-98)

Hospitality Communications Corporation, dba HCC Telemanagement - Order Closing Docket in Complaint of Richard C. Flynt, dba Town & Country Real Estate
P-403, Sub 2 (02-26-98)

LDC Telecommunications, Inc. - Order Closing Docket in Complaint of Perry Whisnant, dba Metro Waste, Inc.
P-470, Sub 1 (08-13-98)

LDC Telecommunications, Inc. - Order Closing Docket in Complaint of Austin Canvas Speciality Co., Inc.
P-470, Sub 2 (04-28-98)

MCI Telecommunications, Inc. - Order Giving Notice of Settlement and Closing Docket in the Complaint of Charles M. Bowman
P-141, Sub 39 (07-30-98) Order Closing Docket (08-24-98)

MCI Telecommunications Corporation; Excel Telecommunications, Inc. and BellSouth Telecommunications, Inc. - Order Closing Docket in the Complaint of George G. Brown
P-89, Sub 56 (06-23-98)

Minimum Rate Pricing, Incorporated - Order Closing Docket in Complaint of Suzette G. Allen
P-518, Sub 1 (04-22-98)

Minimum Rate Pricing, Incorporated - Order Closing Docket in Complaint of Eugene V. Allison and Agnes F. Allison
P-518, Sub 2 (03-17-98)

Minimum Rate Pricing, Incorporated - Order Closing Docket in Complaint of Lynn Werk
P-518, Sub 3 (04-21-98)

North State Telephone Company - Order Closing Docket in Complaint of Communications Central, Inc.
P-42, Sub 116 (04-20-98)

Southern Bell Telephone and Telephone Company - Order Closing Docket in Complaint of Sandra Alfred
P-55, Sub 1014 (12-11-98)

Sprint Communications Company, L.P. - Order Closing Docket in Complaint of Michael Tove
P-294, Sub 11 (03-20-98)

Sprint Communications Company L.P. - Order Serving Notice of Settlement, Canceling Hearing, and Closing Docket in Complaint of Andrew Silver
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TELEPHONE - EXTENDED AREA SERVICE (EAS)

Carolina Telephone and Telegraph Company - Order Approving Mamie to Kill Devil Hills Extended Area Service
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Carolina Telephone and Telegraph Company - Order Approving Robeson County Extended Area Service
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TELEPHONE - INTERCONNECTION AGREEMENTS

AT&T Communications of the Southern States, Inc. - Order Requiring Conclusion of Negotiations and Filing of Contract Amendments
P-140, Sub 50 (11-10-98) Order Requiring Filing of Proposed Contract Amendments and Statements of Position (12-10-98)

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ALLTEL Carolina, Inc. - Order on Negotiated Interconnection Agreement between ALLTEL Carolina, Inc. and BellSouth Carolinas PCS, Inc.
P-118, Sub 87 (01-21-98)

ALLTEL Carolina, Inc. - Order on Negotiated Interconnection Agreement between ALLTEL and E-Z Tel, Inc.
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BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement between BellSouth and WinStar Telecommunications, Inc.
P-55, Sub 1024 (09-30-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and US LEC of North Carolina, LLC
P-55, Sub 1027 (09-22-98)

BellSouth Telecommunications, Inc. - Order on Amendment, filed on June 19, 1998, to Negotiated Interconnection Agreement between BellSouth and LCI International Telecom Corp.
P-55, Sub 1031 (08-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and ICG Telecom Group, Inc.
P-55, Sub 1033 (02-17-98) Order on Amendment to Negotiated Interconnection Agreement (06-16-98) Order on Amendment filed on May 18, 1998 (08-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth Telecommunications, Inc. and 360° Communications Company
P-55, Sub 1035 (04-15-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and DeltaCom, Inc.
P-55, Sub 1036 (09-30-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between Bellsouth and Bellsouth Personal Communications, Inc.
P-55, Sub 1037 (06-16-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement between BellSouth and KMC Telecom, Inc.
P-55, Sub 1038 (02-17-98) Order on Amendment to Negotiated Interconnection Agreement (04-28-98) Errata Order (04-29-98) Order on Amendment to Negotiated Interconnection Agreement (04-19-98) Order on Amendment filed on July 15, 1998 (08-18-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and GTE Mobilnet, Inc.
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BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement between BellSouth and ALLTEL Mobile Communications, Inc.
P-55, Sub 1041 (03-11-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and AT&T Wireless Services, Inc.
P-55, Sub 1042 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement between BellSouth and United States Cellular Corporation
P-55, Sub 1043 (03-11-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement between BellSouth and Time Warner Connect
P-55, Sub 1046 (11-30-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and Teleport Communications Group, Inc.
P-55, Sub 1048 (01-13-98) Order on Amendment filed on June 9, 1998 (08-06-98) Order on Amendment filed on June 19, 1998 (08-06-98) Order on Amendment filed on July 15, 1998 (08-18-98) Order on Amendment filed on October 9, 1998 (12-08-98) Order on Amendment filed on October 16, 1998 (12-16-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and BellSouth Long Distance, Inc.
P-55, Sub 1057 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Telephone Company of Central Florida
P-55, Sub 1068 (02-17-98)

BellSouth Telecommunications, Inc. - Order on Amendment filed on July 14, 1998, to Negotiated Interconnection Agreement between BellSouth and CTC Exchange Services, Inc.
P-55, Sub 1069 (08-18-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and Time Warner Communications
P-55, Sub 1072 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and Time Warner Communications
P-55, Sub 1072 (01-21-98)

BellSouth Telecommunications, Inc. - Order on Amendment to Interconnection Agreement between BellSouth and DeltaCom, Inc.
P-55, Sub 1073 (01-06-98)

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BellSouth Telecommunications, Inc. - Order on Amendment to Negotiated Interconnection Agreement between BellSouth and Interlink Telecommunications, Inc.
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BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Frontier Telemanagement, Inc.
P-55, Sub 1076 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Business Telecom, Inc.
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BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Jerry LaQuiere
P-55, Sub 1078 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Omnicall, Inc.
P-55, Sub 1079 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Sterling International Funding, Inc., dba Reconex
P-55, Sub 1080 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Guarantel, Inc.
P-55, Sub 1081 (01-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement between BellSouth and WorldCom Technologies, Inc.
P-55, Sub 1082 (03-11-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement between BellSouth and North American Telecommunications Corp.
P-55, Sub 1085 (02-05-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and US West Interprise America dba Interprise America
P-55, Sub 1086 (02-17-98) Order on Amendment filed on June 10, 1998 (08-06-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Teligent, Inc.
P-55, Sub 1089 (04-15-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Cellular & Paging Services, Inc.
P-55, Sub 1092 (05-19-98)

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BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and The Other Phone Company
P-55, Sub 1095 (07-01-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and EZ Talk Communications, Inc.
P-55, Sub 1098 (08-12-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Interpath Communications, Inc.
P-55, Sub 1099 (08-18-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Interpath Communications, Inc.
P-55, Sub 1100 (10-29-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and NEXTLINK North Carolina, L.L.C.
P-55, Sub 1102 (10-29-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and Teligent, Inc.
P-55, Sub 1103 (11-17-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Interconnection Agreement between BellSouth and North American Telecommunications Corp.
P-55, Sub 1104 (11-30-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Collocation Agreement between BellSouth and Level 3 Communications, L.L.C.
P-55, Sub 1108 (11-17-98)

BellSouth Telecommunications, Inc. - Order on Negotiated Resale Agreement between BellSouth and Teleconex, Inc.
P-55, Sub 1109 (12-02-98)

BellSouth Telecommunications, Inc. - Order Dismissing Petition Without Prejudice of Transwire Operations, LLC for Arbitration of an Interconnection Agreement between Transwire and BellSouth
P-55, Sub 1110 (10-13-98)

Carolina Telephone & Telegraph Company and Central Telephone Company - Order Allowing Withdrawal of Resale Agreement between Carolina, Central and Diamond Communications International
P-7, Sub 854; P-10, Sub 502 (03-23-98)

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Carolina Telephone & Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement
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Carolina Telephone & Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement between Carolina, Central and KMC Telecom II, Inc.
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Carolina Telephone & Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement between Carolina, Central and Comm South, dba E-Z Tel, Inc.
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Carolina Telephone & Telegraph Company and Central Telephone Company - Order Allowing Withdrawal of Resale and Interconnect Agreement between Carolina, Central and Dakota Services Limited
P-7, Sub 860; P-10, Sub 509 (03-24-98)

Carolina Telephone & Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement between Carolina, Central and Telephone Company of Central Florida
P-7, Sub 863; P-10, Sub 511 (05-19-98)

Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement between Carolina, Central and PrimeCo Personal Communications, L.P.
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Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreement between Carolina, Central and SprintCom, Inc.
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Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreements between Carolina, Central and Preferred Carrier Services, Inc.
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Carolina Telephone and Telegraph Company and Central Telephone Company - Order on Negotiated Interconnection Agreements between Carolina, Central and CTC Exchange Services, Inc.
P-7, Sub 870; P-10, Sub 517 (12-08-98)

Central Telephone Company - Order on Negotiated Interconnection Agreement between Central and BellSouth Carolina PCS, L.P.
P-10, Sub 513 (08-18-98)

Concord Telephone Company - Order on Negotiated Interconnection Agreement between Concord and US LEC of North Carolina, L.L.C.
P-16, Sub 185 (07-01-98) Order on Amendment to Negotiated Interconnection Agreement (10-20-98)

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GTE South, Inc. - Order on Amendment to Negotiated Interconnection Agreement between GTE South, Inc. and Business Telecom, Inc.
P-19, Sub 297 (10-20-98)

GTE South, Inc. - Order on Negotiated Interconnection Agreements between GTE and North Carolina #4, Inc.
P-19, Sub 299 (01-06-98)

GTE South, Inc. - Order Allowing Withdrawal of Agreement Without Prejudice Between GTE and EZ Phone
P-19, Sub 300 (03-02-98)

GTE South, Inc. - Order on Negotiated Interconnection Agreement between GTE and BellSouth Personal Communications, Inc., dba BellSouth Mobility DCS
P-19, Sub 302 (03-11-98)

GTE South, Inc. - Order on Negotiated Interconnection Agreement between GTE and UNICOM Communications
P-19, Sub 303 (07-01-98)

GTE South, Inc. - Order on Negotiated Interconnection Agreement between GTE and Telephone Company of Central Florida
P-19, Sub 304 (07-08-98)

GTE South, Inc. - Order on Negotiated Interconnection Agreements between GTE and 360° Communications Company
P-19, Sub 305 (10-13-98)

LEXCOM Telephone Company - Order on Negotiated Commercial Mobile Radio Service Agreement between LEXCOM and NEXTEL South Corporation
P-31, Sub 134 (11-17-98)

MCImetro Access Transmission Services, Inc. - Order on Amendment to Negotiated Interconnection Agreement between MCImetro and BellSouth
P-141, Sub 29 (12-08-98) Order Requiring Conclusion of Negotiations and Filing of Contract Amendments (12-10-98)

Telephone Company of Central Florida, Inc. - Order Dismissing Petition for Arbitration without Prejudice
P-649, Sub 2 (09-16-98)

Time Warner Communications of North Carolina, L.P. - Order on Negotiated Interconnection Agreement between Time Warner and Concord Telephone Company
P-472, Sub 7 (01-21-98) Order on Amendment filed on August 10, 1998 to Negotiated Interconnection Agreement (09-30-98)

ORDERS AND DECISIONS LISTED

Time Warner Communications of North Carolina, L.P. - Order on Negotiated Interconnection Agreement between Time Warner and Concord Telephone Company
P-472, Sub 11 (08-12-98)

TELEPHONE - MERGERS

ACC Corp.; Teleport Communications Group, Inc. - Order Approving Transfer of Control of ACC to Teleport
P-646, Sub 2; P-435, Sub 3 (01-29-98)

Advanced Management Service, Inc.; United Digital Network, Inc.; STAR Telecommunications, Inc. - Order Approving Acquisition and Merger
P-391, Sub 1 (06-12-98)

Consolidated Communications Telecom Services, Inc.; McLeodUSA Telecommunications Services, Inc. - Order Approving Merger of Consolidated into McLeodUSA and Certificate Cancellation
P-516, Sub 2; P-617, Sub 1 (01-29-98)

Communications Central, Inc.; Davel Communications Groups, Inc. - Order Approving Transfer of Control Through the Merger of CCI with and into Davel
SC-7, Sub 2; SC-473, Sub 4 (01-21-98)

Eastern Telecom International Corporation; Network Long Distance, Inc. - Order Approving Merger and Certificate Cancellation
P-416, Sub 4; P-318, Sub 4 (03-10-98) Errata Order (03-18-98)

GTE Corporation; Bell Atlantic Corporation - Order Approving Merger
P-19, Sub 306; P-446, Sub 2 (10-30-98)

LCI International Telecom Corp. - Order Approving Merger of LCI International Management Services, Inc. into LCI International Telecom Corp. and Granting Request for Exemption from Securities Regulation
P-386, Sub 15 (05-08-98)

MCI Telecommunications Corporation; MCImetro Access Transmission Services, Inc. and SouthernNet, Inc. - Order Rescinding Authority and Closing Docket
P-141, Sub 32; P-474, Sub 2; P-156, Sub 27 (09-22-98)

MCImetro Access Transmission Services, Inc. - Order Approving Merger and Transfer of Control into MCImetro Access Transmission Services LLC
P-474, Sub 7 (06-16-98)

Pinnacle Merger Sub, Inc.; 360° Communications Company - Order Approving Corporate Merger and Transfer of Control
P-568, Sub 1; P-613, Sub 1 (06-17-98)

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Teleglobe, Inc.; Excel Communications, Inc. - Order Approving Merger
P-270, Sub 10 (09-17-98)

UniDial Holdings, Inc.; MetraCom Corportation - Order Approving Transfer of Control of MetraCom to UniDial
P-389, Sub 3; P-384, Sub 1 (08-19-98)

United Wats, Inc,; Network Long Distance, Inc. - Order Approving Merger of United Wats, Inc. into Network Long Distance, Inc. and Certificate Cancellation
P-445, Sub 2; P-416, Sub 3 (01-29-98)

WinStar Wireless of North Carolina, Inc.; WinStar Wireless, Inc. - Order Approving Merger and Transfer of Certificates
P-507, Sub 4; P-783, Sub 0 (11-03-98)

TELEPHONE - PENALTIES

CSI Corporation - Order Imposing Penalty
P-612 (03-17-98)

TELEPHONE - SALES/TRANSFERS

CaroNet, LLC; Interpath Communications, Inc. - Order Approving Transfer of Certificate from CaroNet to Interpath
P-462, Sub 3; P-708, Sub 0 (02-04-98)

Econophone Services, Inc. - Order Transferring Certificate from Econophone, Inc. To Econophone Services, Inc.
P-565, Sub 1 (10-08-98)

IDT Corporation and IDT America, Corp. - Order Approving Certificate Transfer from IDT Corporation to IDT America, Corp.
P-419, Sub 1; P-799, Sub 0 (12-16-98)

ITC^DeltaCom Communications, Inc.; PSP Marketing Group, Inc. dba I.T. Group Communications Company - Order Approving Asset Purchase Agreement
P-410, Sub 2; P-500, Sub 7 (05-06-98)

KMC Telecom, Inc.; KMC Telecom II, Inc. - Order Approving Reorganization and Transfer of Certificates from KMC Telecom, Inc. To KMC Telecom II, Inc.
P-597, Sub 2; P-706, Sub 0 (01-29-98)

LCI International Telecom Corp.; USLD Communications, Inc. - Order Approving Transfer of Control to Qwest Communications International, Inc.
P-386, Sub 16; P-360, Sub 6 (05-13-98)

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MIDCOM Communications, Inc.; Winstar Wireless of North Carolina, Inc. - Order Approving Asset Transfer from MIDCOM to WinStar and Canceling Certificate of MIDCOM
P-507, Sub 3; P-308, Sub 16 (06-16-98)

Network Long Distance, Inc. - Order Approving Transfer of Control to IXC Long Distance, Inc.
P-416, Sub 5 (03-11-98)

NEXTLINK North Carolina, LLC - Order Approving Intracorporate Reorganization and Certificate Transfer
P-619, Sub 2; P-732 (08-19-98)

North American InTeliCom, Inc. - Order Approving Transfer of Control from Diamond Shamrock, Inc. To TSC Communications Corp.
SC-1126, Sub 2 (10-08-98)

North American Telephone Network, L.L.C. - Order Approving Transfer of Control to IntraTel Group, Ltd.
P-539, Sub 1 (05-08-98)

Peoples Telephone Company, Inc.; Davel Communications Group, Inc. - Order Approving Transfer of Control of Peoples Telephone Company, Inc. to Davel Communications Group, Inc.
SC-7, Sub 3; SC-286, Sub 6; SC-473, Sub 5 (11-09-98)

Phoenix Network, Inc. - Order Approving Transfer of Control of Phoenix Network, Inc. to Qwest Comunications Corporation dba Qwest Communications The Power of Connections
P-239, Sub 9 (03-18-98)

Premiere Communications, Inc. - Order Approving Asset Acquisition
P-380, Sub 4 (10-08-98)

SBC Communications, Inc. and Southern New England Telecommunications Corp. - Order Approving Transfer of Control
P-473, Sub 1 (06-12-98)

Startec Global Communications Corp.; Startec Global Licensing Company - Order Approving Corporate Reorganization and Transfer of Certificate
P-596, Sub 1; P-773, Sub 0 (09-17-98)

Teleport Communications Group, Inc.; AT&T Corp. - Order Approving Transfer of Control of Teleport to AT&T
P-646, Sub 3; P-140, Sub 63 (04-07-98)

TotalTel USA - Order Transferring Certificate to TotalTel, Inc.
P-417, Sub 2 (05-20-98)

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TresCom International, Inc.; Primus Telecommunications Group, Inc. - Order Approving Transfer of Control of TresCom to Primus
P-451, Sub 1; P-542, Sub 2 (05-11-98)

USDL Communications, Inc.; LCI International Telecom Corp. - Order Approving Transfer of Assets of USLD Communications, Inc. to LCI International Telecom Corp.
P-386, Sub 18; P-360, Sub 7 (11-06-98)

UniDial Incorporated - Order Approving Transfer of Control to UniDial Holdings, Inc.
P-389, Sub 2 (05-13-98)

Universal Communications Group, Inc., dba Universal Telecommunications Group, Inc.; National Communications Association, Inc. - Order Approving Transfer of Certificate from National Communications Association, Inc. to Universal Telecommunications
P-737; P-305, Sub 1 (08-20-98)

Westinghouse Electric Corporation dba Westinghouse Communications and RSL COM U.S.A., Inc. - Order Approving Transfer of Assets from Westinghouse to RSL
P-422, Sub 6; P-632, Sub 2 (06-12-98)

TELEPHONE - SECURITIES

American Telco, Inc. - Order Approving Transfer of Control of Stock from American Telco, Inc. to Dobson Wireline Company
P-550, Sub 1 (08-31-98)

Frontier Corporation; Allnet Communications Services, Inc., dba Frontier Communications Services - Order Approving Reorganization and Related Transactions
P-244, Sub 15; P-337, Sub 3 (05-29-98)

Frontier Corporation; Allnet Communications Services, Inc., dba Frontier Communications Services; and Frontier Communications International, Inc. - Order Approving Reorganization and Asset Transfer
P-244, Sub 17; P-400, Sub 5 (12-16-98)

I-Link Communications, Inc. - Order Approving Transfer of Control from Family Telecommunications, Inc. and Name Change
P-590, Sub 1 (02-04-98)

Interpath Communications, Inc. - Order Approving Acquisition of TriNet Services, Inc.
P-708, Sub 1 (05-13-98)

LDM Systems, Inc.; RSL COM U.S.A., Inc. - Order Approving Transfer of Control of LDM to RSL
P-437, Sub 2; P-632, Sub 1 (01-29-98)

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Matrix Telecom, Inc. - Order Approving Transfer of Control Through the Share Transfer from Matrix to AvTel Communications, Inc.
P-224, Sub 4 (01-21-98)

National Telephone & Communications, Inc. - Order Approving Stock Transfer
P-423, Sub 1 (12-16-98)

Network Plus, Inc. - Order Approving Transfer of Control
P-314, Sub 2 (12-15-98)

Preferred Carrier Services, Inc. - Order Approving Transfer of Control of Stock from Preferred Carrier Services, Inc. To Phones for All, Inc.
P-544, Sub 3 (08-31-98)

US LEC of North Carolina LLC - Order Approving Transfer of Control and Conversion to Stock Corporation
P-561, Sub 8 (05-08-98)

US WATS, Inc. - Order Approving Transfer of Control to ACC Corp.
P-260, Sub 2 (01-21-98)

Value-Added Communications, Inc. - Order Approving Transfer of Control from Institutional Energy Management, Inc. To TSC Communications Corp.
SC-804, Sub 3 (08-19-98)

TELEPHONE - SPECIAL CERTIFICATES (Issued and Reinstated)

Docket No.	Company	Date
SC-1142, Sub 2	T.E.C. PAY.COM. INC.	08-07-98
SC-1247, Sub 2	Royal Payphones, Inc.	09-11-98
SC-1259, Sub 1	East Carolina Telecommunications, LLC	04-09-98
SC-1411, Sub 1	Southeastern Telephone Service, Inc.	04-09-98
SC-1437	TSC Payphone Corp.	01-20-98
SC-1438	Gary L. Taylor	01-23-98
SC-1439	William P. Young	01-30-98
SC-1440	Kingsdown, Incorporated	02-03-98
SC-1441	J-Phones, Inc.	02-06-98
SC-1442	Calls for Less, Inc.	02-06-98
SC-1443	James E. Palmer, dba Palmer and Son	02-06-98
SC-1444	Charles D. Bostic	02-06-98
SC-1445	Blue Max Trucking, Inc.	02-10-98
SC-1446	Richard B. Plunkett, II	02-17-98
SC-1447	TRINET, INC.	02-17-98
SC-1448	Eugene S. Hadden	02-27-98
SC-1449	Norman Clark Marion, Jr.	02-24-98
SC-1450	Fuzion Cafe I, L.L.C.	03-09-98

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SC-1451	Lee G. Bouthiller	03-11-98
SC-1452	TelSouth Incorporated of N.C.	03-11-98
SC-1453	Alan's Jewelry & Pawn, Inc.	03-16-98
SC-1454	Samuel S. Graham, dba Graham Payphone Enterprises	03-31-98
SC-1455	Van Reypen Associates, Inc., dba The Gin Mill Southend	03-31-98
SC-1456	Ameritel Communications, LLC, dba South Carolina Ameritel Communications, LLC	03-31-98
SC-1457	Myoung Sun Ahn	03-31-98
SC-1458	Athena Chasteen	04-09-98
SC-1459	SmartStop, Inc.	04-13-98
SC-1460	Vernon Ewell Riggs, Jr., dba Regional Telephone Service	04-09-98
SC-1461	Ven-Lux International, Inc.	04-16-98
SC-1462	Cornelis J. De Jong	04-20-98
SC-1463	Kenneth L. Crouch	04-20-98
SC-1464	Bass Lake Resort, LLC	04-20-98
SC-1465	Ameritech Payphone Services, Inc.	04-20-98
SC-1466	Stonehouse Timber Lodge, Inc.	04-28-98
SC-1467	Cutting Edge Communications, Inc.	04-28-98
SC-1468	Zemmie Pendergrass	04-28-98
SC-1469	Intercontinental Communications Group, Inc.	04-29-98
SC-1470	Antwand Demond Brown	05-05-98
SC-1471	Robert Perry	05-05-98
SC-1472	Metrophone Telecommunications, Inc.	05-15-98
SC-1473	J. Michael Lybrand, dba Clear Tone Payphones	05-15-98
SC-1474	Sprint Payphone Services, Inc.	05-21-98
SC-1475	John R. Pendleton, Jr.	05-21-98
SC-1476	Johnnie Walker	05-21-98
SC-1477	KELLEE Communications Group, Inc.	05-21-98
SC-1478	Mill Creek Communications, Inc.	05-21-98
SC-1479	Hang It Up, LLC	05-26-98
SC-1480	Mary B. Smith	06-12-98
SC-1481	Charles L. Alexander II	06-12-98
SC-1482	Pacific Coin	06-23-98
SC-1482	Thomas Glenn Walters, dba Forest Communications	06-23-98
SC-1484	Neil Walters, dba Wal-Tel Communications	06-23-98
SC-1485	Lisa L. Horne, dba Tanning Down Under	07-01-98
SC-1486	Southeastern Cable Products, Inc.	07-01-98
SC-1487	Vaughn D. Gibson	07-01-98
SC-1488	TELE SOUTH, INC.	07-14-98
SC-1489	Nancy K. Baumgarten, dba Carolina Mountain Communications	07-14-98
SC-1490	Yadkin Valley Telecom, Inc.	07-14-98
SC-1491	East Coast Payphones	08-05-98
SC-1492	Edward Coffman, dba Quail Telephone	08-07-98
SC-1493	Douglas B. Koger	08-19-98
SC-1494	TON Services, Inc.	08-25-98

SC-1495	Gregory Soustek	08-25-98
SC-1496	NOSC Corp.	09-01-98
SC-1497	A Gathering of Angels, Inc.	09-11-98
SC-1498	Rick Mullinax	09-11-98
SC-1499	Steve Huff	09-15-98
SC-1500	Mansoor Ahmad, dba Payphone Concepts	09-15-98
SC-1501	Khalid Saleh	09-28-98
SC-1502	Anthony D. Hildreth	09-28-98
SC-1503	Kenneth and Gail Harlan	10-02-98
SC-1504	Freeport Communications, Inc.	10-02-98
SC-1505	Edward C. Tatum, dba Southeastern Pay Phone and Communications Company	10-02-98
SC-1506	Loman Scott	10-22-98
SC-1507	World Communications Network, LLC	10-22-98
SC-1509	H. Q. Entertainment Services, Inc.	10-27-98
SC-1510	Thomas L. Jacobs and Kevin Houston, dba JA & KE Communications	10-28-98
SC-1511	Skyway Lanes, Inc.	11-10-98
SC-1512	Jerry W. Allgood	11-10-98
SC-1513	Thomas M. Burr, dba Burr Communications	11-19-98
SC-1514	Measurement Incorporated	11-18-98
SC-1515	Purnima Sanghrajka, dba Carolina Telecoms	12-07-98
SC-1516	Vinod Sanghrajka, dba Carolina Tele-Comps	12-07-98
SC-1517	Manuel R. Marbet, Jr.	12-15-98
SC-1518	Regulator Marine, Inc.	12-18-98
SC-1519	Phoenix Telecom, L.L.C.	12-18-98
SC-1520	Jacobs Izuogu	12-18-98

TELEPHONE - SPECIAL CERTIFICATES (Amended, Name Changed, Reissued)

Docket No.	Company	Date
SC-311, Sub 3	Smoky Mountain Systems, Inc.	03-16-98
SC-311, Sub 4	Smoky Mountain Systems, Inc.	04-09-98
SC-313, Sub 3	National Telcom, Inc.	07-01-98
SC-485, Sub 4	PhoneTel Technologies, Inc.	04-29-98
SC-485, Sub 5	PhoneTel Technologies, Inc.	09-11-98
SC-804, Sub 4	Value-Added Communications, Inc.	12-15-98
SC-864, Sub 8	Talton Telecommunications of Carolina, Inc.	11-19-98
SC-932, Sub 1	Scarborough Farms, Inc.	09-01-98
SC-950, Sub 3	Clay H. Koontz, dba Christian Pay Phone & Communications	03-16-98
SC-979, Sub 1	The Word of Faith Fellowship	08-05-98
SC-985, Sub 2	Robert W. Longbrake	12-18-98
SC-1091, Sub 1	Marjorie L. Acker, dba Acker Enterprises	03-09-98
SC-1126, Sub 3	North American Intelecom, Inc.	07-01-98
SC-1197, Sub 1	James W. Kornegay	02-17-98

SC-1200, Sub 2	Clay Koontz, dba Telephone Communication Services	04-29-98
SC-1219, Sub 2	Robert M. Reid, dba Pro Talk Communications	10-28-98
SC-1226, Sub 1	Russell Grant/Donald B. Ray, dba Roanoke Valley Telephone Company	01-23-98
SC-1262, Sub 1	Leo Reger	06-23-98
SC-1268, Sub 1	Richard A. Workman	06-23-98
SC-1284, Sub 1	Sean Trainor, dba The Ocracoke Telephone Company	04-09-98
SC-1314, Sub 1	Michael L. Wester	04-28-98
SC-1327, Sub 1	Southwest Pay Telephone Corporation	06-03-98
SC-1327, Sub 2	Southwest Pay Telephone Corporation	12-03-98
SC-1378, Sub 1	Orville R. Crabtree	06-23-98
SC-1406, Sub 1	FAFCOM, Inc.	05-26-98
SC-1423, Sub 1	Richard Wilson, dba Payphone Systems	07-14-98
SC-1427, Sub 2	Talton InVision, Inc.	11-19-98
SC-1432, Sub 1	John F. Parker	01-08-98
SC-1437, Sub 1	TSC Payphone Corporation	07-01-98
SC-1446, Sub 1	Richard B. Plunkett, II, dba DP Services	03-31-98
SC-1447, Sub 1	Trinet, Inc.	06-12-98
SC-1452, Sub 1	TelSouth Incorporated of NC	04-28-98
SC-1494, Sub 1	TON Services, Inc.	12-08-98
SC-1499, Sub 1	Steve Huff	11-24-98

TELEPHONE - SPECIAL CERTIFICATES (Revoked, Cancelled or Closed)

Docket No.	Company	Date
SC-142, Sub 1	F. W. Hildebrand, t/a Putt Putt Golf and Games	05-08-98
SC-245, Sub 3	Hal K. Snyder	10-15-98
SC-250, Sub 2	Edwin P. McKnight	10-16-98
SC-286, Sub 5	Peoples Telephone Company, Inc.	03-19-98
SC-318, Sub 1	E. G. Eakes	05-29-98
SC-368, Sub 1	Clifford Justice	08-31-98
SC-429, Sub 2	Hooters of Raleigh Venture	10-01-98
SC-451, Sub 1	Prestige Pillow, Inc.	06-05-98
SC-500, Sub 5	Cecil B. Hatcher	12-08-98
SC-536, Sub 1	Homestead Lodge	04-16-98
SC-541, Sub 4	London Communications, Inc.	11-04-98
SC-543, Sub 1	Dr. Ashok K. Kapur	04-08-98
SC-546, Sub 2	Coastal Payphone Systems, Inc.	10-16-98
SC-547, Sub 2	Charge-A-Call, Inc.	10-16-98
SC-568, Sub 1	Rick's Goodtimes, Inc.	01-22-98
SC-601, Sub 1	Hollomans Food Mart	03-25-98
SC-643, Sub 1	Roger Popkin	05-29-98
SC-652, Sub 1	James S. Umstead	01-06-98
SC-704, Sub 1	Dan M. Howle, Jr.	06-05-98
SC-730, Sub 2	William H. Clementi, dba Pay-Com	08-10-98
SC-731, Sub 1	Twin City Laundry & Dry Cleaners, Inc.	07-25-98

ORDERS AND DECISIONS LISTED

SC-746, Sub 2	General Communications of North Carolina, Inc.	10-02-98
SC-786, Sub 1	Barbara Soloman	02-27-98
SC-814, Sub 1	Wic-Orange, Inc.	03-09-98
SC-825, Sub 1	Howell A. Robinson, Jr.	01-23-98
SC-832, Sub 1	Southeastern Telephone Company, Inc.	10-16-98
SC-876, Sub 1	C.Z. Independence, Inc.	05-15-98
SC-881, Sub 2	Sam's Mart, Inc.	03-09-98
SC-910, Sub 1	Carl J. Brown	03-09-98
SC-926, Sub 1	Vendormatic, Inc.	10-01-98
SC-930, Sub 1	Wayne E. Coleman, dba Ocean Highway Opportunities	06-05-98
SC-956, Sub 1	Seawell Turner	06-05-98
SC-958, Sub 1	Piedmont Public Fax, Inc.	11-19-98
SC-968, Sub 1	Troy A. Haugen	06-05-98
SC-973, Sub 1	Jack L. Hargett	06-05-98
SC-974, Sub 1	Sub Conscious Properties, Inc.	06-05-98
SC-975, Sub 1	Larry W. Self	06-05-98
SC-988, Sub 2	Laura Lete, dba Dollars & Cents Pay Phones	11-04-98
SC-996, Sub 1	North American Communications Corporation, dba North American Communications of North Carolina, Inc.	10-01-98
SC-1008, Sub 1	Fonati Johnathan Koffa, dba Masteko Communications	06-05-98
SC-1032, Sub 2	Rodney O. Davis	07-27-98
SC-1036, Sub 2	Jerry Montoya, dba QuarterCom	12-15-98
SC-1055, Sub 1	Maurice Williams	06-05-98
SC-1057, Sub 1	Ronald W. Bailey, dba RKB Enterprises	04-15-98
SC-1062, Sub 3	R. S. McKee, Inc.	06-09-98
SC-1063, Sub 2	William C. Cushman	01-22-98
SC-1067, Sub 1	John L. Fetzer	10-07-98
SC-1075, Sub 1	Steven Monroe Brock	06-05-98
SC-1080, Sub 1	My Mart, Incorporated	06-05-98
SC-1094, Sub 1	Alexander Mullinax	09-04-98
SC-1103, Sub 1	Maurice C. Gortney	03-09-98
SC-1107, Sub 1	Kerry Brunson, dba Fashion Design	12-14-98
SC-1113, Sub 3	AmeriTel Pay Phones, Inc.	12-08-98
SC-1116, Sub 1	Ronnie Douglas Fox	06-05-98
SC-1118, Sub 1	Rowena M. Sweezy	06-05-98
SC-1119, Sub 1	Thomas A. McCullough	06-05-98
SC-1132, Sub 2	Shawn Bippley	06-05-98
SC-1137, Sub 1	Robert Lee Jones	06-05-98
SC-1141, Sub 1	Alonzo Rayner	09-02-98
SC-1143, Sub 1	Romie K. Throckmorton	06-05-98
SC-1144, Sub 1	Greensboro Subway, Inc., dba Boone Dairy Queen	10-09-98
SC-1149, Sub 1	Janie W. Kirk	06-05-98
SC-1151, Sub 1	Thomas Brantley Jenkins, II, dba T.B.J. Communications	05-15-98
SC-1160, Sub 1	William P. Edwards, Jr., dba Sunbelt Telecommunications	06-05-98
SC-1165, Sub 2	William F. Houghton	01-16-98
SC-1173, Sub 1	Gregory S. Sizemore	06-05-98

ORDERS AND DECISIONS LISTED

SC-1174, Sub 1	Robert Harris, Jr.	03-16-98
SC-1178, Sub 1	Carolyn D. McKinney	06-05-98
SC-1182, Sub 1	Autumn Rose and Michael E. Melson, dba Payphones Unlimited	03-13-98
SC-1189, Sub 1	Jeffrey A. Martin	06-05-98
SC-1202, Sub 1	Prakash and Loretta Ramsingh, dba Ramsingh Enterprises	04-24-98
SC-1203, Sub 1	Jim Rafferty, dba System Paytel	03-13-98
SC-1204, Sub 1	Michael Rezek	06-11-98
SC-1205, Sub 1	Johnny Eugene Chapman, Jr., dba Carolina Phone	06-05-98
SC-1207, Sub 1	ALJO Enterprises, Inc.	07-27-98
SC-1215, Sub 1	Aaron G. Walp, dba A&T Coin Phones	05-15-98
SC-1218, Sub 1	William Shipley	01-22-98
SC-1223, Sub 1	Rainbow Station, Inc., dba Bellcomm S.E.	06-05-98
SC-1228, Sub 2	George Streeter and Frances Streeter	02-26-98
SC-1236, Sub 1	James L. Burns, dba Eastern Telecom	01-29-98
SC-1244, Sub 1	Leonard and Annette Graves, dba Lincoln Grove Laundry Express Service	06-05-98
SC-1245, Sub 1	Kenneth E. Walker	10-16-98
SC-1247, Sub 1	Royal Payphones, Inc.	06-05-98
SC-1250, Sub 1	Charles Lavern Robinson, dba Robinsons Communications	06-05-98
SC-1256, Sub 1	Cynthia T. Brown, dba TerryCom PayTel Co.	07-13-98
SC-1260, Sub 1	Shawn Harvey	06-05-98
SC-1263, Sub 1	Octavious D. Spruill	06-05-98
SC-1266, Sub 2	Ellen Boyles, dba Teleconnections	08-25-98
SC-1270, Sub 1	Alexis C. Pearce, dba ACP-SAV	06-05-98
SC-1271, Sub 1	Tim Wood	12-10-98
SC-1276, Sub 1	James T. Hoyle, III, dba D-Tel	11-04-98
SC-1277, Sub 1	Jonathan Bennett, dba JB Enterprises	06-05-98
SC-1289, Sub 1	Jenny Butler Jenkins	05-21-98
SC-1290, Sub 1	Furniture Associates, Inc.	06-05-98
SC-1295, Sub 1	Dennis David Kid	04-09-98
SC-1310, Sub 1	David Schopper	05-26-98
SC-1313, Sub 1	Lance E. Johnson	10-01-98
SC-1314, Sub 2	Michael L. Wester	10-22-98
SC-1315, Sub 1	Timothy Donaldson	06-05-98
SC-1326, Sub 2	Bob Ross, dba Ross Telecommunications	10-15-98
SC-1328, Sub 1	Douglas Adkins and Robert E. White, Jr.	06-05-98
SC-1334, Sub 1	Toni and Jeffrey Shue, dba All Type Vending	10-15-98
SC-1341, Sub 1	Carolina Communications of Charlotte, Inc.	05-08-98
SC-1343, Sub 1	Richard L. Exum, dba Extel Communications	02-20-98
SC-1345, Sub 1	David L. Graham, Jr.	09-23-98
SC-1348, Sub 1	Reginald Todd Hines	06-05-98
SC-1352, Sub 1	Cynthia Cameron	05-29-98
SC-1354, Sub 1	Good Ol' Days, Inc., dba Good Ol' Days Restaurant	01-16-98
SC-1359, Sub 1	Power House of Deliverance Church	05-15-98

SC-1360, Sub 1	Nathan J. and Brenda Beiler, dba Seaboard Communications	10-01-98
SC-1366, Sub 1	Roger H. Hice, dba R. H. Enterprises	10-02-98
SC-1379, Sub 1	Nesbitt Noble	06-05-98
SC-1384, Sub 1	Jerry R. Goodson	10-15-98
SC-1401, Sub 1	Derrick A. Ward, dba D & S Communications	10-28-98
SC-1407, Sub 1	Russell H. Fleming, Jr.	01-20-98
SC-1413, Sub 1	Advantage Mail Network, Inc.	06-05-98
SC-1428, Sub 1	New York Fashions, Inc.	12-03-98
SC-1430, Sub 2	Hector E. Davis, dba Davis Communications Enterprises	06-15-98
SC-1439, Sub 1	William P. Young	04-24-98
SC-1444, Sub 1	Charles D. Bostic	07-08-98
SC-1446, Sub 2	Richard B. Plunkett, II	12-08-98
SC-1473, Sub 1	J. Michael Lybrand, dba Clear Tone Payphones	10-27-98

TELEPHONE - TARIFFS

BellSouth Telecommunications, Inc.; Carolina Telephone and Telegraph Company; Central Telephone Company - Order Requiring Flow-Through Tariff Filings
P-55, Sub 1013; P-7, Sub 825; P-10, Sub 479 (09-10-98) Order Ruling on Sprint Communications Company, L.P.'s Tariff Filing to Flow Through the 1998 Access Charge Reductions (10-07-98)

BellSouth Telecommunications, Inc. - Recommended Order Allowing Tariff Filing to Add Measured Rate ISDN-BRI Option to Become Effective
P-55, Sub 1105 (09-11-98) (Commissioner Judy Hunt dissents. Chairman Jo Anne Sanford and Commissioners J. Richard Conder and Robert V. Owens, Jr. did not participate in this decision.) Order Overruling Exceptions and Allowing Recommended Order to Become Final (10-15-98) (Commissioner Judy Hunt dissents. Commissioner William R. Pittman did not participate in this decision-making.)

Capital Network System, Inc. - Order Approving Tariff, Dismissing Show Cause, and Closing Docket
P-385, Sub 5 (05-20-98)

MCI Telecommunications Corporation - Order Suspending Tariffs
P-141, Sub 36 (04-07-98)

MCI Telecommunications Corporation - Order Disallowing Rate Increase Pending Adequate Notice
P-141, Sub 37 (04-29-98) Order Allowing Tariff to Become Effective (05-14-98)

Switched Services Communications, LLC - Order Approving Tariffs, Dismissing Show Cause, and Closing Docket
P-457, Sub 2 (05-20-98)

ORDERS AND DECISIONS LISTED

TELEPHONE - MISCELLANEOUS

AT&T Communications of the Southern States, Inc. - Order on Reconsideration of June 26, 1998, Order Requiring Continuance of RCC 800 Routing Service
P-140, Sub 65 (11-17-98)

Americom Technologies, Inc. - Order Closing Docket in the Matter of Investigation into the Solicitation and Billing Practices of Americom
P-526, Sub 1 (02-12-98)

Bellsouth Telecommunications, Inc. - Order Approving Special Promotion
P-55, Sub 1106 (09-11-98) (Chairman Jo Anne Sanford and Commissioners J. Richard Conder and Robert V. Owens, Jr. did not participate in this decision.)

CalTel Inc. of North Carolina - Order Dismissing Petition of the Public Staff for Order to Cease and Desist and to Show Cause and Closing Docket
SC-1170, Sub 1 (07-02-98)

Level 3 Communications, LLC - Order Granting Interim Construction Authority
P-779, Sub 0; P-779, Sub 1 (10-01-98)

North State Telephone Company - Order Accepting Affiliated Contracts for Filing Pursuant to G.S. 62-153(a)
P-42, Sub 122 (08-06-98)

Payphone Partners, Inc. - Order Dismissing Public Staff Petition and Closing Docket
SC-1375, Sub 1 (08-24-98)

Peoples Telephone Company, Inc. - Order Authorizing Installation of Instruction Cards
SC-286, Sub 4 (04-09-98) Order Dismissing Petition of the Public Staff and Closing Docket (08-10-98)

Piedmont Communications, Inc. - Order Canceling Hearing, Dismissing Petition of the Public Staff, and Closing Docket
SC-1237, Sub 2 (08-17-98)

Joe D. Hutchinson, dba Scott Communications - Order Dismissing Petition of the Public Staff and Closing Docket
SC-578, Sub 3 (08-06-98)

Stan C. Lee, dba SCL Communications - Order Imposing Reporting Requirements and Canceling Certificate
SC-863, Sub 1 (08-21-98)

Theresa and Howard Terwilliger - Order Dismissing Petition of the Public Staff and Closing Docket
SC-1034, Sub 1 (09-04-98)

ORDERS AND DECISIONS LISTED

Time Warner Communications of North Carolina, L.P. - Order Approving Change of Ownership
P-472, Sub 8 (05-08-98)

WinStar Gateway Network, Inc. - Order Dismissing the Petition of the Public Staff and Closing Docket in the Matter of Solicitation of Consumers in a Misleading and Deceptive Manner and Failure to Properly Confirm Long Distance Carrier Change Requests
P-317, Sub 7 (06-25-98)

WATER AND SEWER

WATER AND SEWER - APPLICATIONS WITHDRAWN, DENIED, OR DISMISSED

Baywood Water, Inc. - Order Allowing Withdrawal of Application for Authority to Increase Rates for Water Utility Service in Baywood Subdivision in Cumberland County and Closing Docket
W-1018, Sub 2 (07-30-98)

Crooked Creek Utilities - Order Allowing Withdrawal of Application to Transfer Ownership of the Sewer Utility System to Crooked Creek Community Association, Inc. (Owner Exempt from Regulation) and Closing Docket
W-1048, Sub 1 (03-25-98)

North Topsail Water & Sewer, Inc. - Recommended Order Allowing Withdrawal of Request for Tariff Revision and Closing Docket
W-754, Sub 24 (02-16-98)

Outer Banks Beach Club, Inc. - Order Allowing Withdrawal of Application for Rate Increase for Sewer Utility Service in Its Franchised Area in Kill Devil Hills in Dare County and Keeping Docket Open
W-887, Sub 2 (02-11-98)

WATER AND SEWER - CERTIFICATES

Bay Tree Utility Company - Recommended Order Granting Franchise to Provide Water and Sewer Utility Service in Bay Tree Lakes Subdivision in Bladen County, Approving Rates, Requiring Late Filed Exhibits, and Requiring Customer Notice
W-1080 (08-11-98)

CWS Harbor Cove/Montclair Associates, Ltd., & CWS Lakewood/Montclair Associates, Ltd. - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Montclair Parc Apartments in Mecklenburg County and Approval of Rates
WR-13 (12-01-98)

CWS Systems, Inc. - Order Approving Contract, Granting Franchise to Provide Water Utility Service in Hidden Hollow Subdivision in Wake County, and Approving Rates
W-778, Sub 32 (04-14-98)

ORDERS AND DECISIONS LISTED

Campus Edge Club, LLC, dba Campus Edge Club and Apartments - Order Granting Authority for Resale of Water and Sewer Utility Service in Campus Edge Club and Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-8 (09-22-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Brewster Place Subdivision, Phase 1, in New Hanover County and Approving Rates
W-279, Sub 31 (09-09-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Market Street, Gordon Road, etc., Property, in New Hanover County and Approving Rates
W-279, Sub 36 (09-09-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in High Grove Estates Subdivision in New Hanover County and Approving Rates
W-279, Sub 37 (09-09-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Demarest Landing Subdivision in New Hanover County and Approving Rates
W-279, Sub 32 (04-28-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Covil Estates Subdivision, Phase III, in New Hanover County and Approving Rates
W-279, Sub 33 (04-28-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Middle Point Subdivision in New Hanover County and Approving Rates
W-279, Sub 34 (04-28-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Lords Creek Subdivision in New Hanover County and Approving Rates
W-279, Sub 35 (03-26-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Halcyon Forest Subdivision in New Hanover County and Approving Rates
W-279, Sub 38 (05-13-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Woods Edge Subdivision in New Hanover County and Approving Rates
W-279, Sub 39 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Beacon Woods Subdivision in New Hanover County and Approving Rates
W-279, Sub 40 (07-07-98)

ORDERS AND DECISIONS LISTED

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Vineyard Green Subdivision in New Hanover County and Approving Rates
W-279, Sub 41 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Treybrooke Subdivision in New Hanover County and Approving Rates
W-279, Sub 42 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Mason Bend Subdivision in New Hanover County and Approving Rates
W-279, Sub 43 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Hollyholm Subdivision in New Hanover County and Approving Rates
W-279, Sub 44 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Masonboro Forest Subdivision in New Hanover County and Approving Rates
W-279, Sub 45 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Ogden Commons Shopping Center in New Hanover County and Approving Rates
W-279, Sub 46 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Bermuda Run Subdivision in New Hanover County and Approving Rates
W-279, Sub 47 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Shell Ford Village Subdivision in New Hanover County and Approving Rates
W-279, Sub 48 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Georgetowne Subdivision in New Hanover County and Approving Rates
W-279, Sub 49 (07-07-98)

Cape Fear Utilities, Inc.- Order Recognizing Contiguous Expansion of Water Utility Service in Maxwell Place Subdivision in New Hanover County and Approving Rates
W-279, Sub 50 (07-07-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Harvest Grove Subdivision in New Hanover County and Approving Rates
W-279, Sub 51 (09-29-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Landsdowne Subdivision, in Section F, G & H, in New Hanover County and Approving Rates
W-279, Sub 52 (09-29-98)

ORDERS AND DECISIONS LISTED

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Purviance Subdivision in New Hanover County and Approving Rates
W-279, Sub 53 (09-29-98)

Cape Fear Utilities, Inc. - Order Approving Bond, Recognizing Contiguous Extension of Water Utility Service in The Lakes at Johnson Farms Subdivision, Phase IV, in New Hanover County, and Approving Rates
W-279, Sub 54 (08-05-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in The Lakes at Johnson Farms Subdivision, Phase V, in New Hanover County and Approving Rates
W-279, Sub 55 (08-05-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service for the Peiffer Avenue Extension for Friends Day School in New Hanover County and Approving Rates
W-279, Sub 56 (09-29-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Crosswinds Subdivision, Section 5, in New Hanover County and Approving Rates
W-279, Sub 58 (09-29-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service along SR 1420 (Hooker Road) to Timberlynn Village MHP in New Hanover County and Approving Rates
W-279, Sub 59 (09-29-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Seagate Apartments in New Hanover County and Approving Rates
W-279, Sub 60 (09-29-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Heritage Woods Subdivision, Phase II, in New Hanover County and Approving Rates
W-279, Sub 63 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Heritage Woods Subdivision, Phases 2A & 2B, in New Hanover County and Approving Rates
W-279, Sub 64 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Prospect Avenue Extension, in New Hanover County and Approving Rates
W-279, Sub 65 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Wedgefield at Crossroads South Subdivision, in New Hanover County and Approving Rates
W-279, Sub 66 (11-19-98)

ORDERS AND DECISIONS LISTED

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Headwater Cove Subdivision, in New Hanover County and Approving Rates
W-279, Sub 67 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Grove Point Subdivision, in New Hanover County and Approving Rates
W-279, Sub 68 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Heritage Woods Subdivision, Phase I, in New Hanover County and Approving Rates
W-279, Sub 69 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Lumina Station Commercial Center, in New Hanover County and Approving Rates
W-279, Sub 70 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Wyck Farms Subdivision, in New Hanover County and Approving Rates
W-279, Sub 71 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Linden Ridge Subdivision, in New Hanover County and Approving Rates
W-279, Sub 72 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to South Point Subdivision, in New Hanover County and Approving Rates
W-279, Sub 73 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Sentry Oaks Subdivision, in New Hanover County and Approving Rates
W-279, Sub 74 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Airlie Forest Subdivision, in New Hanover County and Approving Rates
W-279, Sub 75 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Greenville Sound Point Subdivision, in New Hanover County and Approving Rates
W-279, Sub 76 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to The Forum Subdivision, in New Hanover County and Approving Rates
W-279, Sub 77 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Forest Grove Subdivision, in New Hanover County and Approving Rates
W-279, Sub 78 (11-19-98)

ORDERS AND DECISIONS LISTED

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Lord's Creek Subdivision, Tract I, in New Hanover County and Approving Rates
W-279, Sub 79 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Bar Lake Subdivision, in New Hanover County and Approving Rates
W-279, Sub 80 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Lord's Creek Subdivision, Phase II, in New Hanover County and Approving Rates
W-279, Sub 81 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Twin Magnolias Subdivision, in New Hanover County and Approving Rates
W-279, Sub 82 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Joshua's Landing Subdivision, in New Hanover County and Approving Rates
W-279, Sub 83 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Tidal Reach Subdivision, in New Hanover County and Approving Rates
W-279, Sub 84 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Austin Commons Subdivision, in New Hanover County and Approving Rates
W-279, Sub 85 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to US Highway 17 (Market Street) Extension, in New Hanover County and Approving Rates
W-279, Sub 86 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Russell Landing Subdivision, in New Hanover County and Approving Rates
W-279, Sub 87 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Myrtle Grove Business Park, in New Hanover County and Approving Rates
W-279, Sub 88 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Junction Creek Subdivision, in New Hanover County and Approving Rates
W-279, Sub 89 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Gulfstream Shopping Center, in New Hanover County and Approving Rates
W-279, Sub 90 (11-19-98)

ORDERS AND DECISIONS LISTED

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to The Cottages at Hewlett's Creek Subdivision, in New Hanover County and Approving Rates
W-279, Sub 91 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Sea Spray Landing Subdivision, in New Hanover County and Approving Rates
W-279, Sub 92 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Emerald Forest Subdivision, Section 6, Phase 2, in New Hanover County and Approving Rates
W-279, Sub 93 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Greenbriar South Subdivision, in New Hanover County and Approving Rates
W-279, Sub 94 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Emerald Forest Subdivision, Section 5 & 6, Phase 1, in New Hanover County and Approving Rates
W-279, Sub 95 (11-19-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Intracoastal Watch Subdivision, in New Hanover County and Approving Rates
W-279, Sub 96 (11-24-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Masonboro Village at Crosswinds South Subdivision, in New Hanover County and Approving Rates
W-279, Sub 97 (11-24-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Woodscape Subdivision, in New Hanover County and Approving Rates
W-279, Sub 98 (11-24-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Newhall Subdivision, in New Hanover County and Approving Rates
W-279, Sub 99 (11-24-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Treetops Subdivision, in New Hanover County and Approving Rates
W-279, Sub 100 (12-02-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to High Grove Estates Subdivision, in New Hanover County and Approving Rates
W-279, Sub 101 (12-08-98)

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Myrtle Grove Shopping Center, in New Hanover County and Approving Rates
W-279, Sub 102 (12-08-98)

ORDERS AND DECISIONS LISTED

Cape Fear Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service to Myrtle Grove Presbyterian Church, in New Hanover County and Approving Rates
W-279, Sub 103 (12-08-98)

Carmel Valley Associates - Order Granting Authority for Resale of Water and Sewer Utility Service in The Marquis of Carmel Valley Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-10 (09-01-98)

Carolina Oaks Corporation - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Carolina Oaks Apartments in Guilford County, Approving Rates, and Requiring Customer Notice
W-1103 (02-03-98) WR-4; W-1103 Order Reassigning Docket Number and Closing Docket (03-17-98)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchise to Furnish Water Utility Service in Riverwood Subdivision in Johnston County and Approving Rates
W-354, Sub 147 (05-13-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Granting Franchise to Provide Water and Sewer Utility Service in Matthews Commons Subdivision, Phase I in Mecklenburg County, and Approving Rates
W-354, Sub 161 (02-27-98) Errata Order (03-10-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Granting Franchise to Furnish Water and Sewer Utility Service in Turtle Rock Subdivision, Phases I & II, in Mecklenburg County, and Approving Rates
W-354, Sub 162 (05-11-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Recognizing Contiguous Extension of Water Utility Service in Riverwood Subdivision, Phase 2, in Yancey County, and Approving Rates
W-354, Sub 166 (05-19-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Recognizing Contiguous Extension of Water and Sewer Utility Service in Strathmoor Subdivision in Mecklenburg County, and Approving Rates
W-354, Sub 167 (05-11-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Recognizing Contiguous Extension of Sewer Utility Service in Southwoods Subdivision, Phases 3A, 3B, and 4, in Mecklenburg County, and Approving Rates
W-354, Sub 168 (05-19-98)

ORDERS AND DECISIONS LISTED

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Recognizing Contiguous Extension of Water and Sewer Utility Service in Abington Subdivision, Phase 14, in Forsyth County, and Approving Rates
W-354, Sub 169 (05-19-98)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension of Water and Sewer Utility Service in Hammock Place Subdivision, Phases I & II, in Carteret County, and Approving Rates
W-354, Sub 174 (12-16-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Recognizing Contiguous Extension of Water and Sewer Utility Service in Glen Finnan Subdivision in Mecklenburg County, and Approving Rates
W-354, Sub 177 (05-11-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Recognizing Contiguous Extension of Water and Sewer Utility Service in Lamplighter Village 2 Subdivision in Mecklenburg County, and Approving Rates
W-354, Sub 186 (05-19-98)

Carolina Water Service, Inc. of North Carolina- Order Approving Service Contract for Property Within the Belvedere Plantation Service Area in Pender County
W-354, Sub 187 (06-09-98)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension of Water Utility Service in Whispering Winds Subdivision in Moore County and Approving Rates
W-354, Sub 188 (11-24-98)

Carolina Water Service, Inc. of North Carolina - Order Granting Franchise to Furnish Water and Sewer Utility Service in Avensong Subdivision in Mecklenburg County and Approving Rates
W-354, Sub 190 (11-24-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Stone Hollow Subdivision in Mecklenburg County, and Approving Rates
W-354, Sub 191 (05-11-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in the Harbour Subdivision in Iredell County, Approving Rates, Canceling Hearing, and Requiring Customer Notice
W-354, Sub 193 (03-31-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Middle Point Subdivision and North Topsail Elementary School in Pender County, and Approving Rates
W-354, Sub 194 (06-09-98)

ORDERS AND DECISIONS LISTED

Carolina Water Service, Inc. of North Carolina - Order Approving Contract, Granting Franchise to Provide Water Utility Service in Whitehart Subdivision, Phase I, in Wake County and in Wood Trace Subdivision in Wake County, and Approving Rates
W-354, Sub 196 (03-10-98)

Carolina Water Service, Inc. of North Carolina - Order Recognizing Contiguous Extension of Water Utility Service in Buffalo Creek Subdivision, Phase 2, in Johnston County, and Approving Rates
W-354, Sub 205 (10-29-98)

Crabtree Water Systems, Inc. - Recommended Order Granting Franchise to Provide Water Utility Service in Riverwoods Subdivision in Burke County, Approving Rates, Releasing Bond, and Requiring Customer Notice
W-967, Sub 4 (04-14-98)

Crestview, LLC - Recommended Order Granting Certificate to Provide Water and Sewer Utility Service in Crestview Estates Mobile Home Park and Approving Rates
W-1096 (03-25-98)

The Currituck Associates-Residential Partnership, dba The Currituck Club Water Company - Order Approving Bond, Granting Franchise to Furnish Water Utility Service in The Currituck Club Subdivision in Currituck County, Approving Rates, and Requiring Customer Notice
W-1100 (08-04-98) Errata Order (09-30-98)

Fairways Utilities, Inc. - Order Recognizing Contiguous Expansion of Water and Sewer Utility Service in Saponos Point, Cypress Island, and Soundside Subdivisions in New Hanover County and Requiring Notice
W-787, Sub 12 (03-18-98) Errata Order (03-25-98)

Fairways Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Arrondale Subdivision, Phase I and Phase IB, in New Hanover County and Approving Rates
W-787, Sub 13 (11-03-98)

The Forest at Biltmore Park, L.L.C.; Atlantic Multifamily Limited Partnership I - Order Granting Authority for Resale of Water and Sewer Utility Service in The Forest at Biltmore Park Apartments in Buncombe County, Approving Rates, Requiring Customer Notice, Canceling Franchise, and Releasing Bond
W-1070, Sub 1; WR-15 (11-30-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Sewer Utility Service in Wellesley Place Subdivision, in Forsyth County and Approving Rates
W-274, Sub 178 (03-25-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Olde Creedmoor Subdivision, Phase V, in Wake County and Approving Rates
W-274, Sub 179 (02-06-98)

ORDERS AND DECISIONS LISTED

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Sun Ridge Farms Subdivision, Phase I, in Wake County and Approving Rates
W-274, Sub 180 (03-25-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water and Sewer Utility Service in Barton's Creek Bluff Subdivision, Phase 4A, in Wake County and Approving Rates
W-274, Sub 181 (03-25-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Hardscrabble Plantation Subdivision, Phase II, Section III-V, in Durham County and Approving Rates
W-274, Sub 184 (02-24-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Keltic Meadows Subdivision, Phase 3, in Gaston County and Approving Rates
W-274, Sub 185 (03-17-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Expansion of Water Utility Service in Turner Farms Subdivision, Section 4, Phase 7, in Wake County and Approving Rates
W-274, Sub 186 (03-25-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Foxmoor Subdivision in Wake County and Approving Rates
W-274, Sub 187 (05-07-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Eagle Creek Subdivision, Phase III, in Wake County and Approving Rates
W-274, Sub 188 (05-07-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Sadalia Place Subdivision in Wake County and Approving Rates
W-274, Sub 189 (05-27-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Sheffield Place Subdivision, in Wake County and Approving Rates
W-274, Sub 190 (05-07-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Auburn Hills Subdivision, in Wake County and Approving Rates
W-274, Sub 192 (05-07-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Wilders Ridge Subdivision, Phases I & II, in Wake County and Approving Rates
W-274, Sub 196 (06-03-98)

ORDERS AND DECISIONS LISTED

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Brayton Park Subdivision, Phase I, in Wake County and Approving Rates
W-274, Sub 197 (08-05-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Crossgate Subdivision, Phase VI, in Wake County and Approving Rates
W-274, Sub 198 (09-22-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Royal Senter Ridge Subdivision, Phase II, in Wake County and Approving Rates
W-274, Sub 200 (08-14-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in South Lake Subdivision, Phase 2, in Wake County and Approving Rates
W-274, Sub 201 (09-29-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Willow Bluffs Subdivision, Phase 2, in Wake County and Approving Rates
W-274, Sub 203 (08-14-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Greenfield Manor Subdivision in Wake County and Approving Rates
W-274, Sub 205 (09-22-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Wilder's Ridge Subdivision, Phase 2, in Wake County and Approving Rates
W-274, Sub 206 (09-22-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Moorefields Subdivision, Phase II, in Wake County and Approving Rates
W-274, Sub 207 (10-22-98)

Heater Utilities, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Settler's Creek Subdivision, Phase II, in Wake County and Approving Rates
W-274, Sub 208 (10-22-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Crooked Creek Subdivision, Tract D, in Wake County and Approving Rates
W-274, Sub 209 (10-27-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Spencer's Gate Subdivision, Phase I, in Franklin County and Approving Rates
W-274, Sub 211 (11-17-98)

Heater Utilities, Inc. - Order Granting Franchise to Provide Water Utility Service in Mount Vernon Subdivision, Phase I, in Wake County and Approving Rates
W-274, Sub 212 (11-24-98)

ORDERS AND DECISIONS LISTED

Hydraulics, Ltd - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in River Oaks Subdivision in Guilford County, and Approving Rates
W-218, Sub 107 (04-16-98)

Hydraulics, Ltd. - Order Approving Contract, Recognizing Contiguous Extension of Water Utility Service in Laurel Acres Subdivision, Phase III, in Guilford County, and Approving Rates
W-218, Sub 109 (10-12-98)

Hydraulics, Ltd. - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Cameron Point Subdivision in Gaston County, and Approving Rates
W-218, Sub 114 (04-16-98)

Hydraulics, Ltd. - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Ashton Park Subdivision in Guilford County, and Approving Rates
W-218, Sub 115 (04-16-98)

Hydraulics, Ltd. - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Meadow Ridge Subdivision, Phase I, in Guilford County, and Approving Rates
W-218, Sub 117 (10-13-98)

Hydraulics, Ltd. - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Foxbury Subdivision, in Guilford County, and Approving Rates
W-218, Sub 118 (10-13-98)

Hydraulics, Ltd. - Order Approving Contract, Recognizing Contiguous Extension of Water Utility Service in Pine Meadows Subdivision, Phase II, in Rowan County, and Approving Rates
W-218, Sub 119 (10-12-98)

Hydraulics, Ltd. - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Stoney Point Subdivision, in Forsyth County, and Approving Rates
W-218, Sub 120 (10-13-98)

Hydraulics, Ltd. - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in McConnell Subdivision, in Guilford County, and Approving Rates
W-218, Sub 121 (10-13-98) Errata Order Correcting Reference from Guilford County to Gaston County (12-22-98)

Hydraulics, Ltd. - Order Approving Contract, Recognizing Contiguous Extension of Water Utility Service in River Oaks Subdivision, Phase IV, in Guilford County, and Approving Rates
W-218, Sub 122 (10-12-98)

Hydraulics, Ltd. - Order Approving Contract, Granting Franchise to Furnish Water Utility Service in Mallard Crossing Subdivision, in Gaston County, and Approving Rates
W-218, Sub 123 (10-13-98) Errata Order (10-15-98)

ORDERS AND DECISIONS LISTED

LaGrange Waterworks Corporation, Inc. - Order Approving Bond, Recognizing Contiguous Expansion of Water Utility Service in Hunter's Crossing Subdivision, Cumberland County, and Approving Rates
W-200, Sub 33 (01-08-98)

LaGrange Waterworks Corporation, Inc. - Order Approving Bond, Recognizing Contiguous Expansion of Water Utility Service in Harris Place Subdivision, Section 1, Cumberland County, and Approving Rates
W-200, Sub 34 (01-08-98)

LaGrange Waterworks Corporation, Inc. - Order Approving Bond, Recognizing Contiguous Expansion of Water Utility Service in Colony Village Subdivision, Section II, Cumberland County, and Approving Rates
W-200, Sub 36 (01-08-98)

LaGrange Waterworks Corporation - Order Recognizing Contiguous Expansion of Water Utility Service in Lake Rim North Subdivision in Cumberland County and Approving Rates
W-200, Sub 37 (02-04-98)

Clyde J. Motley, dba Locust Grove Mobile Home Park - Recommended Order Granting Franchise to Provide Water and Sewer Utility Service in Locust Grove Mobile Home Park in Buncombe County, Approving Rates, and Requiring Customer Notice
W-1106 (08-21-98)

Metro Water Systems, Inc. - Recommended Order Approving Bond, Granting Franchise to Provide Water and Sewer Utility Service in Whispering Pines Mobile Home Park in Buncombe County, Approving Rates, and Requiring Customer Notice
W-1109 (09-09-98)

Mid South Water Systems, Inc. - Order Granting Franchise to Provide Water and Sewer Utility Service in Harbor Club Subdivision in Mecklenburg County, Approving Rates, and Requiring Customer Notice
W-720, Sub 84 (05-27-98)

Mid South Water Systems, Inc. - Order Granting Franchise to Provide Sewer Utility Service in Governor's Island Subdivision in Lincoln County, Approving Rates, and Requiring Customer Notice
W-720, Sub 159 (05-27-98)

Mid South Water Systems, Inc. - Order Granting Franchise to Provide Water Utility Service in Harbor View Subdivision in Iredell County, Approving Rates, and Requiring Customer Notice
W-720, Sub 172 (05-27-98)

North Charlotte Limited Partnership - Order Granting Authority for Resale of Water and Sewer Utility Service in Hackberry Creek Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-9 (09-01-98)

ORDERS AND DECISIONS LISTED

North Chatham Water and Sewer Company, LLC - Order Recognizing Contiguous Extension of Water and Sewer Utility Service for Chatham Commons Shopping Center in Chatham County and Approving Rates
W-1101, Sub 1 (12-08-98)

Red Tower, Inc. - Recommended Order Approving Bond, Granting Franchise to Provide Water and Sewer Utility Service in Erwin Hills Mobile Home Park in Buncombe County, Approving Rates, and Requiring Customer Notice
W-1108 (07-27-98)

Reserve, Ltd. - Order Granting Authority for Resale of Water and Sewer Utility Service in The Reserve Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-7 (07-17-98)

Royal Palms Mobile Home Park, LLC, dba Royal Palms Water and Sewer System - Order Approving Bond, Granting Franchise to Furnish Water and Sewer Utility Service in Royal Palms Mobile Home Park in New Hanover County, Approving Rates, and Requiring Customer Notice
W-1105 (07-30-98)

South Asheville Water Works - Recommended Order Granting Franchise to Provide Water and Sewer Utility Service in Johnson Siler Mobile Home Park in Buncombe Coumty, Approving Rates, and Requiring Customer Notice
W-1104 (05-08-98)

Southern Water Service, Inc. - Order Recognizing Contiguous Extension of Water Utility Service in Huntdell Subdivision, Phase II, in Wake County and Approving Rates
W-1094, Sub 2 (02-04-98)

Star Investments of Cary, LLC, dba Century Oaks Apartments - Order Granting Authority for Resale of Water and Sewer Utility Service in Century Oaks Apartments, Phase II, in Durham County, Approving Rates, and Requiring Customer Notice
WR-5 (05-27-98)

Sterling Bay Apartments - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Sterling Bay Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
W-1098 (02-03-98) Errata Order (02-04-98) WR-2; W-1098 Order Reassigning Docket Number and Closing Docket (03-16-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Arbors Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 1 (08-10-98)

ORDERS AND DECISIONS LISTED

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Green Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 2 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Lake Apartments in Wake County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 3 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Touchstone Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 4 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Ballantyne Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 5 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Foxcroft Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 6 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Sedgebrook Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 7 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Redbourne Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 8 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Creek Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 9 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Square Apartments in Durham County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 10 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Hill Apartments in Durham County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 11 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Fairview Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 12 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Crossing Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 13 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Norcroft Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 14 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Simsbury Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 15 (08-10-98)

Summit Properties, Inc., dba Summit Properties Partnership, L.P. - Order Granting Authority for Resale of Water and Sewer Utility Service in Summit Hollow Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-6, Sub 16 (08-10-98)

Sun-Tech Water Corporation - Recommended Order Granting Franchise to Provide Water Utility Service in Kings Grant Subdivision in Catawba County, Approving Rates, and Requiring Customer Notice
W-1088 (06-15-98)

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Windgate Subdivision in Surry County, Approving Rates, and Requiring Customer Notice
W-314, Sub 35 (05-26-98)

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Mill Creek Subdivision in Yadkin County, Approving Rates, and Requiring Customer Notice
W-314, Sub 36 (05-26-98)

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Woodbridge Subdivision in Surry County, Approving Rates, and Requiring Customer Notice
W-314, Sub 37 (05-26-98)

ORDERS AND DECISIONS LISTED

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in South Ridge Subdivision in Surry County, Approving Rates, and Requiring Customer Notice
W-314, Sub 38 (05-26-98)

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Willow Creek Subdivision in Stokes County, Approving Rates, and Requiring Customer Notice
W-314, Sub 39 (05-26-98)

Surry Water Company, Inc. - Order Granting Franchise to Furnish Water Utility Service in Hunting Creek Subdivision in Yadkin County, Approving Rates, and Requiring Customer Notice
W-314, Sub 40 (05-26-98)

The Spanos Corporation - Order Granting Authority for Resale of Water and Sewer Utility Service in Parkside Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-11, Sub 0 (09-17-98)

The Spanos Corporation - Order Granting Authority for Resale of Water and Sewer Utility Service in Cheswyck at Ballantyne Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-11, Sub 1 (09-17-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Harbour Pointe Apartments in Wake County, Approving Rates, Requiring Customer Notice, and Closing Docket
WR-3; W-1091, Sub 1 (03-13-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company; Southwest Properties Limited Partnership - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Copper Mill Apartments in Durham County, Approving Rates, Requiring Customer Notice, Canceling Temporary Operating Authority, Releasing Bond, and Closing Dockets
WR-3, Sub 1; W-1091; W-1071, Sub 3; W-1071 (03-13-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company; Southwest Properties Limited Partnership - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Providence Court Apartments in Mecklenburg County, Approving Rates, Requiring Customer Notice, Canceling Temporary Operating Authority, Releasing Bond, and Closing Dockets
WR-3, Sub 2; W-1091; W-1071, Sub 3; W-1071, Sub 1 (03-13-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Dominion Walnut Creek Apartments in Wake County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 3 (04-14-98)

ORDERS AND DECISIONS LISTED

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Dominion Courtney Place Apartments in Wake County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 4 (04-14-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Trinity Park Apartments in Wake County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 5 (04-14-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Dominion on Spring Forest Apartments in Wake County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 6 (04-14-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Lake Lynn Apartments in Wake County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 7 (04-14-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in The Creek Apartments in New Hanover County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 8 (04-14-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in The Village of Cliffdale Apartments in Cumberland County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 9 (04-21-98) Errata Order (09-30-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Morganton Place Apartments in Cumberland County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 10 (04-21-98) Errata Order (09-30-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Cape Harbor Apartments in New Hanover County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 11 (04-21-98) Errata Order (09-30-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Dominion Ramsgate Apartments in Orange County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 12 (04-22-98) Errata Order (09-30-98)

ORDERS AND DECISIONS LISTED

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Clear Run Apartments in New Hanover County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 13 (04-22-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Forest Hills Apartments in New Hanover County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 14 (04-22-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Authority for Resale of Water and Sewer Utility Service in Liberty Crossing Apartments in Onslow County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 15 (06-09-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Mill Creek Apartments in New Hanover County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 16 (04-22-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Authority for Resale of Water and Sewer Utility Service in Brynn Marr Apartments in Onslow County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 18 (06-09-98)

UDRT of North Carolina, LLC., dba Resource Conservation Services Company - Order Granting Certificate of Authority for Resale of Water and Sewer Utility Service in Crosswinds Apartments in New Hanover County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 19 (04-22-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Stoney Pointe Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 20 (08-18-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Woodberry Apartments in Buncombe County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 21 (08-18-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Dominion Harris Pond Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 22 (08-18-98)

ORDERS AND DECISIONS LISTED

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Dominion Crown Point Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 23 (08-18-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Dominion Mallard Creek (M) Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 24 (08-18-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Dominion Peppertree Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 25 (08-18-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Dominion Mallard Creek (A) Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 26 (08-18-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Dominion at Sharon Apartments in Mecklenburg County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 27 (08-18-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Steeplechase Apartments in Guilford County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 28 (08-25-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Lake Brandt Apartments in Guilford County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 29 (08-25-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Northwinds Apartments in Guilford County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 30 (08-25-98) Errata Order (09-02-98)

UDRT of North Carolina, LLC. - Order Granting Authority for Resale of Water and Sewer Utility Service in Beechwood Apartments in Guilford County, Approving Rates, and Requiring Customer Notice
WR-3, Sub 31 (08-25-98)

Waterford Creek Limited Partnership - Order Reassigning Docket Number and Closing Docket
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ORDERS AND DECISIONS LISTED

WATER AND SEWER - CERTIFICATES CANCELLED OR REVOKED

Southern Water Service, Inc. - Order Canceling Water Utility Franchise in University Manor Subdivision in Orange County and Releasing Bond
W-1094, Sub 3 (03-13-98) Errata Order (05-20-98)

WATER AND SEWER - COMPLAINTS

CWS Systems, Inc. - Order Closing Docket in Complaint of Bryan J. Griner, dba G & G Properties
W-778, Sub 45 (11-16-98)

Cape Fear Utilities, Inc. - Order Closing Docket in Complaint of Debra S. Brown
W-279, Sub 57 (10-09-98)

Carolina Water Service, Inc. of North Carolina - Recommended Order Granting Complaint of The Lodge Condominium Association
W-354, Sub 183 (02-03-98) Order Overruling Exceptions and Affirming Recommended Order as Final Order of the Commission (07-23-98)

Carolina Water Service, Inc. of North Carolina - Order Closing Docket in the Complaint of Randy Harvell
W-354, Sub 200 (06-25-98)

Hidden Creek Utilities Company - Recommended Order Granting Approval of Settlement in Complaint of Oak Valley Associates Limited Partnership
W-982, Sub 2 (09-04-98)

Hydraulics, Ltd. - Order Closing Docket in Complaint of Wayne Lewallen and Rebecca Lewallen
W-218, Sub 116 (02-04-98)

Hydraulics, Ltd. - Order Closing Docket in Complaint of Terra H. Smith
W-218, Sub 126 (10-23-98)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Paul Fabio
W-720, Sub 173 (03-17-98)

Mid South Water System, Inc. - Order Closing Docket in Complaint of Stan Garrison, Property Manager, The Bridgeport
W-720, Sub 174 (10-12-98)

Mid South Water Systems, Inc. - Order Closing Docket in Complaint of Rick Smith, President, Langtree Homeowners Association
W-720, Sub 183 (11-25-98)

Rayco Utilities, Inc. - Recommended Order in the Complaint of Mark C. Holloway and William J. Sweeney
W-899, Sub 20 (01-07-98)

Riviera Utilities of North Carolina, Inc. - Order Closing Docket in Complaint of L. Michael Cayton, General Manager, Lake Royale Property Owners Association
W-665, Sub 6 (10-09-98)

WATER AND SEWER - DISCONTINUANCE OF SERVICE, DISCONNECTIONS

C. Cliff Meyer, Inc. - Order Authorizing Discontinuance of Water Utility Service in Charmeldee Acres Subdivision in Buncombe County, and Requiring Customer Notice
W-919, Sub 4 (06-03-98)

Cregg Bess, Inc. - Order Authorizing Discontinuance of Water Utility Service in Cedar Oak Park Subdivision in Gaston County and Requiring Customer Notice
W-281, Sub 13 (03-25-98)

H. C. Huffman Water Systems, Inc. - Order Authorizing Discontinuance of Water Utility Service in Eastview Heights Subdivision in Catawba County and Requiring Customer Notice
W-95, Sub 21 (05-27-98)

Jackson-Hamlet Water Company, Inc. - Order Authorizing Discontinuance of Water Utility Service in Jackson-Hamlet Subdivision in Moore County
W-575, Sub 4 (12-23-98)

Mid South Water Systems, Inc. - Order Authorizing Discontinuance of Water Utility Service in Country Club Estates I Subdivision in Gaston County and Requiring Customer Notice
W-720, Sub 179 (09-17-98)

Mid South Water Systems, Inc. - Order Authorizing Discontinuance of Water Utility Service in Country Club Estates II Subdivision in Gaston County
W-720, Sub 180 (09-17-98)

WATER AND SEWER - EMERGENCY OPERATOR

Chimney Rock Water Works - Order Discharging Emergency Operator
W-102, Sub 12 (05-20-98)

Harrco Utility Corporation - Order Discharging Emergency Operator at River Oaks Subdivision
W-796, Sub 12 (08-19-98) Order Reinstating Emergency Operator at River Oaks Subdivision (09-04-98)

ORDERS AND DECISIONS LISTED

Harrco Utility Corporation - Order Discharging Emergency Operator at Sheffield Manor and Woods of Tiffany Subdivisions
W-796, Sub 12 (12-01-98)

Intech Utilities, Inc. - Order Discharging Emergency Operator at Yates Mill Run Subdivision
W-957, Sub 1 (12-01-98)

Mr. Bill Triplett, dba Mountain Ridge Estates Water System - Order Appointing New Emergency Operator for Mountain Ridge Estates Subdivision in Watauga County and Requiring Customer Notice
W-975, Sub 3 (09-30-98)

Mr. Lawrence Litaker, dba Northwestern Woods Well System - Order Discharging Emergency Operator
W-860, Sub 1 (01-26-98)

A. G. Proctor - Recommended Order Declaring Utility Status and Appointing Emergency Operator for the Radar Base Development in Halifax County
W-1115 (12-14-98) Order Allowing Recommended Order to Become Effective and Final (12-14-98)
Errata Order (12-17-98)

Sedgefield Development Corporation - Order Appointing New Emergency Operator (Envirolink, Inc.) and Approving Rates
W-1036 (03-30-98)

Sedgefield Development Corporation - Order Appointing New Emergency Operator (John Poteat, dba Environment Plus) and Approving Rates
W-1036 (07-22-98)

WATER AND SEWER - RATES

Beacon's Reach Master Association, Inc. - Order Approving Rate Increase for Sewer Utility Service in Beacon Reach Development and the Ramada Inn in Carteret County and Requiring Customer Notice
W-966, Sub 1 (06-03-98)

C. Cliff Meyer, Inc. - Order Closing Docket in the Matter of Application for Authority to Impose a One-Time Charge to Recoup Recent Unusual and Unexpected Expenses
W-919, Sub 5 (02-20-98)

C. Cliff Meyer, Inc. - Order Granting Rate Increase for Water Utility Service in Charmeldee Acres Subdivision in Buncombe County and Requiring Customer Notice
W-919, Sub 6 (04-28-98)

ORDERS AND DECISIONS LISTED

CWS Systems, Inc. - Errata Order
W-778, Sub 31 (01-20-98) Order Approving Refund Plan (02-16-98) Order Closing Docket (03-10-98)

Carolina Pines Utility Company, Inc. - Recommended Order Granting Rate Increase for Sewer Utility Service in its Service Area in Craven County
W-870, Sub 4 (01-02-98)

Community Water Works, Inc. - Order Granting Rate Increase for Water Utility Service in River Hills Heights and Lincoln Estates Subdivisions in Iredell County, Requiring Improvements, Canceling Hearing, and Requiring Customer Notice
W-316, Sub 3 (08-10-98)

Cross-State Development Company - Order Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-408, Sub 7 (12-01-98)

Dogwood Knolls Water Company - Recommended Order Granting Partial Rate Increase for Water Utility Service in Dogwood Knolls Subdividion in Buncombe County and Requiring Improvements
W-792, Sub 6 (05-20-98)

Environmental Maintenance Systems, Inc. - Order Approving Interim Rates for Water Utility Service in Brightwater Subdivision in Henderson County, Scheduling Hearing, and Requiring Customer Notice
W-1054, Sub 6 (12-22-98)

Etowah Sewer Company - Recommended Order Granting Partial Rate Increase for Sewer Utility Service in Etowah Valley in Henderson County
W-933, Sub 2 (07-08-98) Errata Order (07-14-98)

Fisher Utilities, Inc. - Order Allowing the Discontinuance of Progress Reports and Closing Docket
W-365, Sub 38 (06-10-98)

Harold D. McMahan - Order Granting Partial Rate Increase for Water Utility Service in Beard Acres Mobile Home Park in Randolph County, Canceling Hearing, and Requiring Customer Notice
W-791, Sub 2 (02-25-98)

Heater Utilities, Inc. - Order Authorizing Partial Rate Increase Pending Final Order
W-274, Sub 160 (03-16-98)

Homestead Community Water - Recommended Order Granting Partial Rate Increase for Water Utility Service in Northwest Acres Subdivision in Pitt County and Requiring Customer Notice
W-452, Sub 3 (10-21-98)

Mid South Water Systems, Inc. - Order Granting Increase in Rates for Water Utility Service in the Former Ruff Service Areas
W-720, Sub 143 (05-20-98)

ORDERS AND DECISIONS LISTED

Mid South Water Systems, Inc. - Order Granting Increase in Rates for Water Utility Service in the Former Falls Service Areas
W-720, Sub 145 (05-20-98)

Nags Head Village Service Company - Recommended Order Denying Notice of Withdrawal of Application and Requiring Rate Decrease for Sewer Utility Service in Nags Head Village Subdivision in Dare County
W-882, Sub 3 (05-29-98) Order Denying Motion for Additional Rate Case Expense (06-24-98) Order Allowing Withdrawal of Application (08-27-98)

Snow and Sims, LLC, dba Orchard View Park - Recommended Order Granting Partial Rate Increase for Water Utility Service in Orchard View Park in Surry County
W-1069, Sub 1 (09-03-98) Order on Refunds (12-10-98)

River Hills, Inc. - Order Granting Partial Rate Increase for Sewer Utility Service in River Hills Subdivision in Pitt County and Requiring Customer Notice
W-461, Sub 2 (02-25-98)

Riverbend Water Systems, Inc. - Recommended Order Granting Partial Rate Increase for Water Utility Service in Riverbend Estates Subdivision in Macon County
W-390, Sub 9 (07-09-98)

South Rowan Investment Company - Order Granting Rate Increase for Water Utility Service in Sherrill Park Subdivision in Rowan County and Requiring Customer Notice
W-807, Sub 1 (04-07-98)

Water Resources, Inc. - Order Granting Partial Rate Increase for Water Utility Service in All Its Service Areas, Canceling Hearing, and Requiring Customer Notice
W-1034, Sub 2 (02-24-98)

Webb Creek Water and Sewage, Inc. - Recommended Order Granting Rate Increase for Sewer Utility Service in Onslow County
W-864, Sub 4 (09-03-98)

Wellington Mobile Home Park, Inc. - Recommended Order Granting Rate Increase for Water and Sewer Utility Service in Wellington Mobile Home Park in Buncombe County
W-1011, Sub 4 (12-03-98)

West Wilson Water Corporation - Recommended Order Granting Partial Rate Increase in All Its Service Areas and Requiring Customer Notice
W-781, Sub 27 (10-21-98) Order Allowing Recommended Order to Become Effective and Final (10-21-98)

John D. Hook, dba Whispering Pines Village - Recommended Order Granting Partial Rate Increase for Water and Sewer Utility Service in Whispering Pines Village Mobile Home Park in Cumberland County
W-1042, Sub 1 (09-29-98)

ORDERS AND DECISIONS LISTED

WATER AND SEWER - SALES/TRANSFERS

Baywood Water, Inc. - Order Approving Transfer of the Water Utility System Serving Baywood Subdivision in Cumberland County to the City of Fayetteville Public Works Commission (Owner Exempt from Regulation) and Requiring Customer Notice
W-1018, Sub 3 (10-23-98)

Birchwood Farms, Inc. - Order Approving Transfer of the Water Utility System Serving Cypress Lakes Subdivision in Cumberland County to the City of Fayetteville-Public Works Commission (Owner Exempt from Regulation) and Requiring Customer Notice
W-656, Sub 5 (05-13-98)

Carolina Blythe Utility Company - Order Closing Docket in the Transfer of Ownership of its Water and Sewer Systems in Brunswick County to the Town of Calabash (Owner Exempt from Regulation)
W-503, Sub 7 (07-02-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water and Sewer Utility Assets Serving Parks Farm Subdivision in Mecklenburg County to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 195 (02-10-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility Assets Serving Williams Station Subdivision in Mecklenburg County to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 201 (08-17-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility Assets Serving Bainbridge Subdivision in Mecklenburg County to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, and Requiring Customer Notice
W-354, Sub 202 (08-17-98)

Carolina Water Service, Inc. of North Carolina - Order Approving Transfer of Water Utility Assets Serving Providence Ridge, Roxbury, and Hearthstone Subdivisions in Mecklenburg County to the Charlotte Mecklenburg Utility Department (Owner Exempt from Regulation), Canceling Franchise, Determining Regulatory Treatment of Gain on Sale, and Requiring Customer Notice
W-354, Sub 204 (11-24-98)

Heater Utilities, Inc. - Order Approving Bond, Granting Transfer of the Franchise to Provide Sewer Utility Service in Crooked Creek Subdivision in Wake County from C.C. Partners, Inc. dba Crooked Creek Utilities, Releasing Bond, and Requiring Customer Notice
W-274, Sub 183 (06-25-98)

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Heater Utilities, Inc. - Order Granting Transfer of Certificate to Provide Water Utility Service in Woodland Park Subdivision in Durham County from Goss Utility Company and Requiring Customer Notice
W-274, Sub 195 (07-07-98) Order Approving Customer Assessments and Requiring Customer Notice (12-22-98)

Hydraulics, Ltd. - Order Allowing Purchase Price and Closing Docket
W-218, Sub 92 (03-11-98)

King's Grant Water Company - Order Closing Docket in the Matter of Transfer of Water Systems to the New Hanover County Water and Sewer District (Owner Exempt from Commission Regulation)
W-250, Sub 11 (02-16-98)

L & L Construction, Inc. - Order Approving Transfer of Water Utility System Serving Ridgewood Subdivision in Burke County to Triple Community Water Corporation (Owner Exempt from Regulation)
W-854, Sub 1 (11-24-98)

Mid South Water Systems, Inc. - Order Granting Transfer of Franchises to Provide Water Utility Service in Providence Acres, Rustic Trails, Watts, Autumn Acres, Bay Berry, Brook Forest, Cedar Valley, East Chestnut, Forest Cove, Keltic Meadows, Magnolia Springs, Southfork, Moss Haven, and Oak Hall Subdivisions in Gaston County from Lewis Water Company to Mid South, Approving Rates, and Requiring Customer Notice
W-720, Sub 157 (05-27-98) Order Releasing Bond and Surety (11-03-98)

Mid South Water Systems, Inc. - Order Granting Transfer of Franchises to Provide Water Utility Service in Gallagher Trails and Shangri-La Subdivisions in Gaston County from Bradshaw Water Company to Mid South, Approving Rates, and Requiring Customer Notice
W-720, Sub 169 (05-27-98)

Mid South Water Systems, Inc. - Order Granting Transfer of the Franchise to Provide Water Utility Service in Fox Fire Subdivision in Gaston County from James A. Cunningham, dba Fox Fire Water System to Mid South, Approving Rates, and Requiring Customer Notice
W-720, Sub 171 (05-27-98)

North Chatham Water and Sewer Company, LLC - Recommended Order Approving Transfer of Water and Sewer Systems Serving Cole Place Development and Cole Park Plaza Shopping Center in Chatham County from Hudson-Cole Water and Sewer Company and Adopting Consent Order
W-1101, Sub 0; W-875, Sub 10 (01-14-98)

Piedmont Construction and Water Company, Inc. - Order Approving Bond, Granting Franchise to Furnish Water Utility Service in Ashley Woods Subdivision in Iredell County, and Approving Rates
W-262, Sub 54 (07-16-98)

ORDERS AND DECISIONS LISTED

Rayco Utilities, Inc. - Order Approving Transfer of Franchise to Provide Water and Sewer Utility Service in Walnut Tree Subdivision in Stokes County to the County of Stokes (Owner Exempt from Regulation) and Requiring Customer Notice
W-899, Sub 22 (01-08-98)

Rock Barn Properties, Inc. - Order Approving Transfer of Franchise to Provide Sewer Utility Service in Rock Barn Subdivision, Catawba County, to the City of Conover (Owner Exempt from Regulation) and Releasing Bond
W-1092, Sub 1 (12-08-98)

Southern Water Service, Inc. - Errata Order
W-1094 (01-07-98)

Southern Water Service, Inc. - Errata Order
W-1094, Sub 1 (01-07-98)

Trent Utilities, Inc. - Order Approving Transfer of Ownership of the Sewer Utility System Serving the Country Club Hills and Bellefern Subdivisions in Craven County to the City of New Bern (Owner Exempt from Regulation), Requiring Refunds, and Requiring Customer Notice
W-1020, Sub 2 (08-13-98)

Water Quality Services, Inc. - Order Approving Bond, Granting Transfer of the Franchise to Provide Sewer Utility Service in 105 Place Service Area in Watauga County from 105 Place Utility Corporation, Approving Rates, and Releasing Bond
W-1099 (07-16-98)

Willowbrook Utility Company, Inc. - Order Approving Transfer of the Water Utility System Serving Willowbrook Subdivision in Mecklenburg County to Charlotte Mecklenburg Utility Department (Owner Exempt from Commission Regulation), Canceling Franchise, and Requiring Customer Notice
W-981, Sub 3 (04-21-98)

WATER AND SEWER - SECURITIES

Trent Homes, Inc., dba Anderson Creek Homes Water System - Order Approving Stock Sale from Oscar Haire to George C. Martin, III
W-724, Sub 4 (12-17-98)

Brookwood Water Corporation - Order Approving Corporate Surety Bond and Releasing Bonds
W-177, Sub 45 (04-15-98)

Cape Fear Utilities, Inc. - Order Accepting and Approving Bond and Letter of Credit Surety
W-279, Sub 61 (11-03-98)

ORDERS AND DECISIONS LISTED

Cape Fear Utilities, Inc.; Quality Water Supplies, Inc. - Recommended Order Approving Transfer of Stock and Non-Essential Assets
W-279, Subs 61 & 62; W-225, Subs 25 & 26 (12-18-98) Order Allowing Recommended Order to Become Effective and Final (12-21-98)

Heater Utilities, Inc. - Order Approving Corporate Surety Bond and Releasing Bonds
W-274, Sub 191 (04-15-98)

Hydraulics, Ltd. - Order Accepting and Approving Bond and Releasing Bond
P-218, Sub 125 (09-22-98)

LaGrange Waterworks Corporation - Order Approving Corporate Surety Bond and Releasing Bonds
W-200, Sub 38 (04-15-98)

M-I Utility Corporation - Order Releasing Bond and Surety to MI Utility Corporation
W-952, Sub 3 (05-13-97) Errata Order (05-20-98)

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 (06-09-98)

<u>WATER AND SEWER - TARIFFS</u>

Cregg Bess, Inc. - Order Approving Tariff Revision to Increase Rates for Water Utility Service for Increase in Bulk Water Service in Tablerock Subdivision in Gaston County
W-281, Sub 12 (02-03-98)

Heater Utilities, Inc. - Order Amending Tariff to Perform Sewer Billing in Particular Service Areas for the Town of Cary
W-274, Sub 182 (10-22-98)

Heater Utilities, Inc. - Order Approving Tariff Revision of a Production and Storage Contribution in Aid of Construction Fee and Establishing Notification Procedure
W-274, Sub 193 (09-17-98)

Heater Utilities, Inc. - Order Amending Tariff to Perform Sewer Billing in Particular Service Areas for the Town of Fuquay-Varina
W-274, Sub 194 (06-09-98) Errata Order (06-10-98)

Clyde J. Motley, dba Locust Grove Mobile Home Park - Order Approving Tariff Revision to Increase Rates for Increased Purchased Water Costs in Locust Grove Mobile Home Park in Buncombe County and Requiring Customer Notice
W-1106, Sub 1 (11-17-98)

ORDERS AND DECISIONS LISTED

John Gensinger, dba Pineview Water System - 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 7 (02-04-98)

Sanford E. Ross - Order Approving Tariff Revision to Amend Tariff for Water Utility Service in Hidden Valley Estates Subdivision in Haywood County
W-618, Sub 5 (09-14-98)

Gladys B. Haynes and George W. Smith, dba Viewmont Acres - Order Approving Tariff Revision and Requiring Customer Notice
W-856, Sub 4 (10-23-98)

West Wilson Water Corporation - Order Approving Tariff Revision to Increase Rates for Increased Purchased Water Costs
W-781, Sub 28 (12-01-98)

WATER AND SEWER - TEMPORARY OPERATING AUTHORITY

Carolina Water Service, Inc. of North Carolina - Order Granting Temporary Operating Authority to Provide Water Utility Service to Harbour Subdivision in Iredell County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-354, Sub 193 (02-09-98) Errata Order (02-11-98)

Surry Water Company, Inc. - Order Granting Temporary Operating Authority to Provide Water Utility Service in Windgate Subdivision in Surry County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-314, Sub 35 (02-06-98)

Surry Water Company, Inc. - Order Granting Temporary Operating Authority to Provide Water Utility Service in Mill Creek Subdivision in Yadkin County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-314, Sub 36 (02-06-98)

Surry Water Company, Inc. - Order Granting Temporary Operating Authority to Provide Water Utility Service in Woodbridge Subdivision in Surry County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-314, Sub 37 (02-06-98)

Surry Water Company, Inc. - Order Granting Temporary Operating Authority to Provide Water Utility Service in South Ridge Subdivision in Surry County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-314, Sub 38 (02-06-98)

ORDERS AND DECISIONS LISTED

Surry Water Company, Inc. - Order Granting Temporary Operating Authority to Provide Water Utility Service in Willow Creek Subdivision in Stokes County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-314, Sub 39 (02-06-98)

Surry Water Company, Inc. - Order Granting Temporary Operating Authority to Provide Water Utility Service in Hunting Creek Subdivision in Yadkin County, Approving Interim Rates, Scheduling Hearing, and Requiring Customer Notice
W-314, Sub 40 (02-06-98)

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