

**STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH**

DOCKET NO. P-100, SUB 133d

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of		
General Proceeding to Determine)	ORDER ADDRESSING EXCEPTIONS
Permanent Pricing for Unbundled)	FILED ON RECOMMENDED ORDER
Network Elements)	CONCERNING ALL PHASE I AND
)	PHASE II ISSUES EXCLUDING
)	GEOGRAPHIC DEAVERAGING

BY THE COMMISSION: The Commission established a Phase I and Phase II structuring of issues in the UNE docket to consider the effects of the *UNE Remand*¹ and *Line Sharing*² Orders of the Federal Telecommunications Commission (FCC), as well as issues raised in arbitration proceedings³ and deferred to this docket.

On November 4, 1999, the Commission issued an Order scheduling a hearing on geographically deaveraged UNE rates for April 17, 2000. However, by Order issued on January 11, 2000, the procedural schedule was held in abeyance pending the adoption of final UNE rates. On March 13, 2000, the Commission issued its Order adopting final UNE rates.

On March 30, 2000, the Commission issued an Order adopting procedural schedules to consider several UNE issues. The Order established a Phase I proceeding to consider geographic deaveraging of UNE rates, the FCC's *UNE Remand Order*, and the FCC's *Line Sharing Order* and a Phase II proceeding to consider arbitration issues transferred to this generic docket. The Commission stated in its Order:

¹ *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order, CC Docket No. 96-98, November 5, 1999.

² *In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Dockets 98-147 and 96-98, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98, December 9, 1999.

³ ICG Telecom Group, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-582, Sub 6; ITC^DeltaCom Communications, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-500, Sub 10; Intermedia Communications, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-55, Sub 1178; BlueStar Networks, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket No. P-847, Sub 1; MCImetro Access Transmission Service, LLC/BellSouth Telecommunications, Inc. Arbitration, Docket No. P-474, Sub 10; and AT&T Communications of the Southern States, Inc. and TCG of the Carolinas, Inc./BellSouth Telecommunications, Inc. Arbitration, Docket Nos. P-140, Sub 73 and P-646, Sub 7.

PHASE I - By this Order, the Commission is re-establishing a procedural schedule which includes prefiled testimony and rebuttal testimony, and an evidentiary hearing to consider geographically deaveraging the original UNEs for which the Commission by Order dated March 13, 2000 has set permanent prices. In the context of the Phase I proceeding, the Commission will consider the impact the *UNE Remand Order* has, if any, on the original UNEs for which the Commission has already set permanent prices. The Commission notes that its November 4, 1999 *Order Scheduling Hearing for the Purpose of Developing Geographically Deaveraged UNE Rates* outlined the specific issues to be considered with respect to geographical deaveraging (Attachment A to said Order).

In addition, the Commission finds it appropriate to address the impacts of the *Line Sharing Order* in the Phase I proceeding. The Commission will first establish interim rates for line sharing and then address line sharing (including setting a permanent price for line sharing) in the Phase I proceeding. To establish interim rates, the Commission is soliciting industry proposals for an interim rate with a comment cycle on the proposals filed.

Overall, the Commission will address the following issues in the Phase I proceeding:

- (1) loops;
 - (a) inside wiring;
 - (b) xDSL loops and loop conditioning;
 - (c) dark fiber;
 - (d) IDLC and attached electronics;
 - (e) high-capacity loops; and
 - (f) loop qualification information and cross-connects (including splitters).
- (2) NID;
- (3) local switching;
- (4) vertical features;
- (5) interoffice transmission facilities;
 - (a) dedicated transport (including dark fiber); and
 - (b) shared transport.
- (6) signaling networks and call-related databases;
- (7) OSS and OSS access to loop qualification data;
- (8) OS/DA (availability of customized routing); and
- (9) line sharing and spectrum management;

- (a) set the price of the high frequency portion of the loop;
- (b) determine which technologies are acceptable for deployment (provisioning);
- (c) determine the disposition of known disturbers; and
- (d) implementation schedule.

PHASE II - The Commission finds it appropriate to establish a Phase II proceeding which includes prefiled testimony and rebuttal testimony, and an evidentiary hearing to consider: (1) issues raised in arbitration proceedings and deferred to this docket; and (2) any new UNEs to be considered by the Commission as a result of the *UNE Remand Order*. The specific issues to be addressed in the Phase II proceeding are as follows:

- (1) address each of the UNE issues raised in the ICG Arbitration;
 - (a) the EEL as a UNE;
 - (b) packet switching capabilities as UNEs; and
 - (c) volume and term discounts for UNEs.
- (2) address each of the UNE issues raised in the ITC^DeltaCom Arbitration;
 - (a) Provision of unbundled loops using IDLC technology;
 - (b) UNEs and combinations BellSouth should be required to provide;
 - (c) Charges to ITC^DeltaCom for use of BellSouth's OSS;
 - (d) Provision of EELs and loop-port combinations;
 - (e) Recurring and nonrecurring rates for ADSL/HDSL loops, SL1 and SL2 loops, extended loops, and loop-port combinations;
 - (f) Disconnection charge; and
 - (g) Charges when customers are converted from resale to UNEs.
- (3) address each of the UNE issues raised in the Intermedia Arbitration;
 - (a) What is the appropriate definition of "currently combines" pursuant to FCC Rule 51.315(b)?
 - (b) Should BellSouth be required to provide access to EELs at UNE rates?

- (c) Should BellSouth be required to allow Intermedia to convert existing special access services to EELs at UNE rates?
 - (d) Should BellSouth be required to furnish access to the following as UNEs: (i) User to Network Interface (UNI); (ii) Network-to-Network Interface (NNI); and (iii) Data Link Control Identifiers (DLCI), at Intermedia-specified committed information rates (CIR)?
 - (e) What are the appropriate charges for interconnection trunks between the Parties' frame relay switches?
 - (f) What are the appropriate charges for frame relay NNI ports?
 - (g) What are the appropriate charges for permanent virtual circuit (PVC) segments (i.e. DLCI and CIR)?
 - (h) What are the appropriate charges for requests to change a PVC segment or PVC service order record?; and
- (4) subloops.

The Commission finds it appropriate to first require each party to prepare a matrix of the specific issues from the list above they plan to address in the Phase II proceeding. Further, the Commission notes that initially it will only consider whether any of the issues outlined above are new UNEs. The Commission will request cost studies and consider geographical deaveraging only after it finds a particular element to be a new UNE, and the price for the new UNE will be determined subsequent to a Commission order declaring any new UNEs.

By Order issued on April 24, 2000, the Commission postponed the Phase I and Phase II hearings until September 25, 2000, and October 23, 2000, respectively; transferred the issue concerning subloops from Phase II to Phase I; and resolved other procedural issues.

The Phase I and Phase II hearings were held as scheduled.

On June 7, 2001, the Commission issued its *Recommended Order Concerning All Phase I and Phase II Issues Excluding Geographic Deaveraging*. The Commission made the following **Findings of Fact**:

1. The issue of inside wiring in this proceeding is addressed in the context of subloop unbundling, concerning two subloop elements — unbundled network terminating wire (NTW) and unbundled intrabuilding network cable (INC) — which are addressed in Finding of Fact No. 7.

2(a). It is not appropriate to distinguish between loops extending less than or equal to, or more than 18,000 feet from the central office for the purpose of deriving recurring rates for BellSouth's unbundled copper loop (UCL). Further, all of the loops regardless of length in BellSouth's copper loop sample should be reflected in developing BellSouth's recurring rates for UCL.

2(b). The appropriate fallout rate for use in calculating nonrecurring costs is 10%. BellSouth, and the other participating incumbent local exchange companies (ILECs) to the extent necessary, should revise their nonrecurring cost studies to reflect a fallout rate of 10% for all phases of the ordering process including the downstream provisioning activities.

2(c). The basic methodology used by BellSouth to produce the nonrecurring charges for its xDSL-capable loops is sound and no party has presented adequate justification for modifying them, except in regard to the fallout rate, addressed in Finding of Fact No. 2(b), and the costs of loop conditioning, addressed in Finding of Fact No. 2(e). Further, a competing local provider (CLP) should be able to determine for itself, based on loop qualification information provided by the ILEC and its own testing, whether a voice-grade, service level one (SL1) loop meets its needs, without having to pay for a designed loop, if it so chooses. Thus, in those cases, the CLP is permitted to reserve the loop as a SL1 loop without the guarantee of specific attributes included in a designed xDSL-capable loop offering.

2(d). The ILECs are allowed to impose nonrecurring charges for conditioning loops.

2(e). BellSouth's proposal to condition 10 pairs at a time, on average, for loops 18,000 feet or less from the central office is a reasonable and appropriate assumption to use to calculate its nonrecurring rates in its cost study. Furthermore, since BellSouth's assumption is in line with reasonable telecommunications practice, it is appropriate to require Verizon to redo its cost study to develop nonrecurring rates that reflect the conditioning of 10 pairs at a time on loops that are 18,000 feet or less from the central office. Consequently, Sprint is allowed to recalculate its nonrecurring rates in its cost study to reflect the removal of only 10 pairs at a time, rather than 25 pairs, if it so chooses.

It is appropriate to assume costs for loops greater than 18,000 feet, which reflect that only one loop at a time will be conditioned. It is not appropriate to distinguish between

loops extending less than or equal to, or more than 18,000 feet from the central office for the purpose of deriving nonrecurring rates for loop conditioning.

BellSouth is required to adopt Sprint's factors for load coils and bridged taps, and Verizon is required to adopt Sprint's factors for bridged taps for use in their cost studies. However, BellSouth is allowed to conduct actual studies of the location of load coils and bridged taps in its outside plant facilities and file them with the Commission for review in order to support any adjustments to the load coil and bridged tap removal factors ordered herein, if it so chooses. Verizon is also allowed to conduct an actual study of the location of bridged taps in its outside plant facilities and file it with the Commission for review in order to support any adjustment to the bridged tap removal factors ordered herein, if it so chooses.

In regard to BellSouth and Verizon, the Commission directs the Parties to attempt to negotiate mutually agreeable work times for loop conditioning. Further, the Commission directs BellSouth and Verizon to complete time and motion studies should such negotiation efforts fail.

BellSouth and Verizon are required to file proposed rates and supporting cost studies for repeater removal.

2(f). BellSouth is not allowed to impose an unbundled loop modification (ULM) rate additive which would result in the CLPs paying for unloaded and unused loops. Such a charge would be inappropriate.

3. The dark fiber rates proposed by the ILECs, with the adjustments and changes ordered herein, are their respective appropriate rates for dark fiber, i.e., these cost studies should provide statewide average rates for dark fiber and disconnection costs should be included in the monthly recurring charges. It is not appropriate to adopt the limitations that Verizon seeks to place on the availability of dark fiber at this time.

4. There is not an issue regarding integrated digital loop carrier (IDLC) to be addressed. The Commission has previously found in its *Recommended Order Concerning Geographic Deaveraging* that the recurring rates for loops should be deaveraged.

5. BellSouth and Verizon are required to file rates, with supporting cost data, for DS3, OC3, OC12, and OC48 high-capacity loops by no later than July 9, 2001. The rates proposed by Sprint, with any adjustments and changes ordered elsewhere in this *Recommended Order* that may be applicable, are their appropriate rates for high-capacity loops.

6. BellSouth is not providing nondiscriminatory access to loop qualification information. BellSouth is required to provide access to the Corporate Facilities database.

BellSouth is required to provide access to both the LFACS and LQS databases, on a permanent rather than interim basis. Additionally, since BellSouth's retail operations have had access to such data through electronic means and BellSouth was required to provide similar access to CLPs by May 17, 2000, CLPs will be allowed to pay only the nonrecurring charge for electronic processing, even when manual intervention is in fact required, until beta testing is complete and a final version of the electronic interface is available to all CLPs. BellSouth's proposed manual loop makeup nonrecurring charges are appropriate and reasonable. BellSouth is required to indicate by no later than July 9, 2001, whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data of the nonrecurring charge and, if so, what portion. Depending on the information received, the Commission may need to modify the nonrecurring charge for this UNE.

Sprint is providing nondiscriminatory access to loop qualification information. Sprint's proposed nonrecurring charge for loop qualification is appropriate and reasonable. Sprint should be required to indicate by no later than July 9, 2001 whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data of the nonrecurring charge and, if so, what portion. Depending on the information received, the Commission may need to modify the nonrecurring charge for this UNE.

Verizon is not providing nondiscriminatory access to loop qualification information. Verizon's denial of CLP access to information on the presence of repeaters is discriminatory. Verizon is required to provide information on the presence of repeaters. Verizon may not charge CLPs for access to loop makeup data until after Verizon has proposed such rates and those rates have been approved. Verizon is required to develop rates for access to loop qualification information, and to file such rates, along with supporting cost data. Such filing should also provide whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data of the nonrecurring charge and, if so, what portion. Such rates, with supporting cost data, should be filed by no later than July 9, 2001.

7. BellSouth is allowed to provide subloops through an access terminal such as BellSouth has proposed, and the Parties should negotiate a mutually agreeable rate for the provision of the access terminal. The rates proposed by BellSouth and Sprint for access to INC and NTW, with certain exceptions, are appropriate. BellSouth, Sprint, and Verizon should refile their subloop rates on a geographically deaveraged basis subject to the Commission *Recommended Order Concerning Geographic Deaveraging*. Verizon's recurring and nonrecurring rates for access to INC and NTW other than those filed on a case-by-case basis are approved, but Verizon's proposal to develop individual total element long-run incremental cost (TELRIC)-based costs once a request is made for a particular location is rejected. Verizon must submit a study with proposed rates for INC and NTW by no later than July 9, 2001.

8. No action needs to be taken regarding the ILECs' prices that have already been previously approved relating to the network interface device (NID). Further, BellSouth's proposed NID cross connect, nonrecurring rate element is appropriate.

9. No action needs to be taken at this time to amend permanent rates for local switching which have already been established. No reason for a change has been proposed.

10. Vertical features should be priced separately from the switch, consistent with the Commission's previous rulings on the issue.

11. The rates proposed by the ILECs, with the appropriate adjustments and changes concluded in Finding of Fact No. 3 - Dark Fiber, are their respective appropriate rates for the dark fiber UNEs. Sprint's rates for dark fiber interoffice and dark fiber feeder should be developed as statewide average rates.

12. BellSouth is entitled to compensation based on the incremental costs to provide call-related database access to the CLPs.

13. The issue of changes to BellSouth's previous Commission-approved operations support systems (OSS) rates is outside the scope of this proceeding.

14. BellSouth is allowed to remove operator services/directory assistance (OS/DA) from its UNE price list because BellSouth is currently providing customized or selective routing which would enable parties to use an alternative OS/DA provider. When Sprint offers customized routing on a statewide basis, Sprint will be allowed to remove OS/DA from its UNE price list. In addition, Verizon's proposal to negotiate UNE rates for customized routing on a case-by-case basis does not satisfy the FCC's rules, and thus, Verizon is not allowed to remove its UNE rates for OS/DA at this time.

15. The Commission declines to allocate any portion of the cost of the local loop to line sharing. Further, once final cross connect rates are established by the Commission in the collocation docket, the ILECs shall apply those same approved cross connect rates for line sharing. Finally, loop conditioning rates for line sharing shall be the same as the Commission-approved loop conditioning rates for stand-alone loops for xDSL service.

16. The Commission accepts the stipulated, interim line sharing OSS rates presented by BellSouth, approves Sprint's proposed line sharing OSS rates, and requires Verizon to file proposed line sharing OSS rates along with supporting cost data by no later than July 9, 2001.

17(a). The ILECs shall have discretion as to whether they will provide ILEC-owned splitters for CLP use in line sharing. Further, ILECs are not obligated to offer splitters on

a per-port basis. ILECs have the discretion of offering splitters on a per-port basis, if they so desire. Finally, the ILECs should provide CLPs the same test access to splitters as the ILECs afford themselves until the FCC reaches a decision on the issue of test access.

17(b). Each ILEC should re-examine its rates for the ILEC-owned splitter option (if offered) to determine if its proposed rates are comparable to the splitter cost the ILEC incurs to provide its own splitters. Further, for CLP-owned splitter rates, the Parties are directed to attempt to negotiate appropriate rates for CLP-owned splitter options. If negotiations fail, the Parties may opt to perform a time and motion study to determine the appropriate CLP-owned splitter rates.

17(c). ILECs are not required to place splitters on the main distribution frame (MDF). ILECs should place CLP splitters an average of the same distance from the MDF as the ILEC places its own splitters used for its retail xDSL service.

18. The Parties are bound to the rules outlined by the FCC in its *Advanced Services First Report and Order* on spectrum management. Further, any technology which does not significantly degrade the performance of other services is acceptable for deployment.

19. ILECs are required to provision line sharing in the lesser of: (1) the provisioning interval for the ILEC to provision xDSL-capable loops to CLPs; **OR** (2) the provisioning interval the ILEC has for itself to provision its own retail xDSL services.

20. ILECs may disconnect the splitter when the CLP is providing voice service to the end user using unbundled network element platform (UNE-P).

21. ILECs are not required to provide line sharing unless they provide voice service over the loop to the end user. ILECs must provide line sharing when their voice customers are served by digital loop carrier (DLC) facilities.

22. CLPs should be able to obtain unbundled access to enhanced extended loops (EELs) by purchasing the elements that compose EELs in the circumstances as set out in this *Recommended Order*. CLPs are not allowed to convert special access service to EELs unless these EELs are used to provide the end user with a significant amount of local exchange service and as governed by the FCC's *Supplemental Clarification Order*.

23. An ILEC is not required to provide CLPs with unbundled access to packet switching capabilities (including frame relay) unless the conditions in FCC Rule 51.319(c)(5) have been met.

24. It is not appropriate to establish volume and term discounts for UNEs in this proceeding.

25. It is appropriate to defer ruling on whether, as a general matter, provision of “ordinarily combined” UNE combinations by ILECs to CLPs is legally required pending a more definitive ruling by the United States Supreme Court. In the meantime, ILECs are encouraged to provide such combinations on a voluntary basis at TELRIC prices.

26. The issue of whether BellSouth should be required to furnish access to the following as UNEs: (i) User to Network Interface (UNI); (ii) Network-to-Network Interface (NNI); and (iii) Data Link Control Identifiers (DLCI), at Intermedia-specified committed information rates (CIR) will not be addressed in this docket.

27. The issue of the appropriate charges for interconnection trunks between the Parties’ frame relay switches will not be addressed in this docket.

28. The issue of the appropriate charges for frame relay NNI ports will not be addressed in this docket.

29. The issue of the appropriate charges for permanent virtual circuit (PVC) segments (i.e. DLCI and CIR) will not be addressed in this docket.

30. The issue of the appropriate charges for requests to change a PVC segment or PVC service order record will not be addressed in this docket.

31. The existing procedure for the recovery of disconnection costs should continue as set out in the Commission’s *December 10, 1998 Order* in this docket.

On June 20, 2001, the Commission issued its *Order Granting Motion for Extension of Time for All Parties to File Exceptions and Granting Motion for Extension of Time for All Parties to File Cost Studies*. In its *Order*, the Commission granted a Motion for Extension of Time to File Exceptions filed by Verizon and allowed all Parties an extension of time to file exceptions on or before July 6, 2001. The *Order* also granted a Motion for Extension of Time to File Cost Studies filed by Verizon. The Commission stated that it would establish a date for the filing of cost studies by BellSouth, Sprint, and Verizon in the Commission’s order ruling on exceptions filed in the docket. Therefore, the July 9, 2001 filing date outlined in the June 7, 2001 Order was delayed pending further order by the Commission.

On July 6, 2001, Exceptions to the *Recommended Order* were filed. The following chart details the Exceptions filed:

Findings of Fact Nos.	Party(ies) Filing Exceptions to Findings of Fact
Finding of Fact No. 2(a)	WorldCom
Finding of Fact No. 2(b)	Verizon
Finding of Fact No. 2(c)	WorldCom, Covad, Sprint, and BellSouth
Finding of Fact No. 2(d)	WorldCom
Finding of Fact No. 2(e)	WorldCom, BellSouth, Verizon, Covad, and Sprint
Finding of Fact No. 5	BellSouth
Finding of Fact No. 6	BellSouth
Finding of Fact No. 7	AT&T
Finding of Fact No. 14	ALLTEL, Verizon, and AT&T
Finding of Fact No. 17(a)	AT&T and WorldCom
Finding of Fact No. 17(c)	Covad
Finding of Fact No. 20	AT&T and WorldCom
Finding of Fact No. 21	Sprint
Finding of Fact No. 22	ALLTEL
Finding of Fact No. 25	AT&T and WorldCom

On July 12, 2001, an *Order Requesting Comments on the Exceptions* was issued. Initial Comments were filed on August 1, 2001 by BellSouth, Covad, the Public Staff, Sprint, Verizon, and WorldCom, and Reply Comments were filed on August 22, 2001 by BellSouth, the Public Staff, Sprint, Verizon, and WorldCom.

On October 19, 2001, BellSouth filed a Motion to Allow Expedited Filings of Cost Studies. In its Motion, BellSouth requested that when the Commission issues its final order ruling on its June 7, 2001 *Recommended Order*, the Commission allow the Parties to file compliant cost studies/associated rates as soon as possible, but no later than 30 days from the date of the Order. Likewise, BellSouth also requested that rather than giving the Public Staff a date certain by which to finalize its review of all ILEC-submitted cost studies/rates, the Commission allow the Public Staff to submit its comments as soon

as possible upon receipt of any ILEC cost studies/rates, but not to exceed 30 days from said receipt.

Following is a discussion, by Finding of Fact, of the Exceptions filed to the *Recommended Order*.

FINDING OF FACT NO. 2(a): UNE Rates for UCL-short and UCL-long

INITIAL COMMISSION DECISION

The Commission concluded that it is not appropriate to distinguish between loops extending less than or equal to, or more than 18,000 feet from the central office for the purpose of deriving recurring rates for BellSouth's unbundled copper loop (UCL). Further, the Commission concluded that all of the loops regardless of length in BellSouth's copper loop sample should be reflected in developing BellSouth's recurring rates for UCL.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom objected to Finding of Fact No. 2(a) and Finding of Fact No. 2(c) stating that these findings:

. . . which in calculating recurring and nonrecurring rates improperly take into consideration factors other than forward-looking economic cost, in violation of the FCC's pricing rules, in particular 47 C.F.R. §51.505. If implemented the Recommended Order would constitute a barrier to entry prohibited by 47 U.S.C. §253 (a).

WorldCom noted that, as stated by the Public Staff, the Commission concluded in its March 13, 2000 *Order Adopting Permanent UNE Rates* that BellSouth's cost studies complied with the FCC's total element long-run incremental cost (TELRIC) methodology. Further, WorldCom stated that the Commission concluded in its *Recommended Order*

Concerning All Phase I And Phase II Issues Excluding Geographic Deaveraging (Recommended Order), in the discussion concerning Issue 2(d), that the methodology used by BellSouth to produce the nonrecurring charges for its xDSL-capable loops is sound. WorldCom argued that the basic methodology adopted by the Commission is “unsound” for determining both recurring and nonrecurring rates. WorldCom asserted that the ILECs use their actual, embedded and historical costs and practices, which are not forward-looking economic cost.

It is WorldCom’s position that by using historic routes and configurations of a sample of loops currently in place, BellSouth has overstated loop lengths based on past inefficiencies, and therefore, overstated loop costs. WorldCom contended that BellSouth’s loop costing procedure has inappropriately incorporated the additional costs of structure deployments, cable size, cable utilization percentages, fill factors, engineering costs, installation costs, drop lengths, and other embedded characteristics of purchase prices and operating procedures that the FCC’s pricing rules have prohibited. Thus, WorldCom asserted that BellSouth’s methodology is not a scorched-node cost model.

Further, WorldCom commented that none of the rates proposed by the ILECs should be accepted. WorldCom explained that TELRIC is not the cost that the ILEC is incurring or will incur, rather it is the cost that a hypothetical carrier should incur if it were operating using current technology and industry best practices with the benefit of a long-run planning horizon. The problem with the ILECs’ models and studies, according to WorldCom, is that they continue to be infused with embedded cost characteristics and assumptions, which affect nearly all aspects of UNE pricing. Consequently, WorldCom contended that a statewide, scorched-node cost modeling approach, using forward-looking, least-cost inputs must be adopted in order to develop UNE rates that are forward-looking and conducive to the development of efficient competition in the local exchange market. WorldCom argued that the *Recommended Order*, if adopted, would create a barrier to entry which is prohibited by Section 253(a) of TA96.

INITIAL COMMENTS

BELLSOUTH: BellSouth stated in its initial comments that the Commission rejected WorldCom’s argument in the initial phase of this proceeding, finding that “the cost studies presented by the ILECs, with appropriate modifications and input adjustments, follow the FCC’s TELRIC principles, are consistent with Section 252(d) of the Act, and are an appropriate basis for determining permanent prices for UNEs.” (Per Commission *Order Ruling on Motions for Reconsideration and Clarification and Comments*, issued August 18, 1999.) BellSouth stated that it has used the same methodology as it did previously. BellSouth asserted that WorldCom offers no valid reason for this Commission to re-examine its decision and, in fact, there is no reason to do so.

Further, BellSouth explained that no state commission in BellSouth's jurisdiction has refused to use BellSouth's loop samples to develop costs for unbundled loops. BellSouth pointed out that each commission considered the option of adopting a proxy model, like the Hatfield Model supported by WorldCom, or BellSouth's sample-based loop model. BellSouth noted that each of the nine State Commissions used BellSouth's loop model, with modified inputs, to establish rates for UNEs and services.

BellSouth also remarked that WorldCom provided alleged examples of BellSouth's embedded inputs such as the "costs of structure deployments, cable size, cable utilization percentages, fill factors, engineering costs, installation costs, [and] drop lengths." According to BellSouth, this Commission extensively examined these inputs and made adjustments where necessary, and BellSouth incorporated the Commission-ordered adjustments into the costs the Commission used to set rates previously, as well as in the cost study filed in this phase. Again, BellSouth commented that WorldCom offers no new evidence that would support a change in the Commission's prior decisions.

COVAD: Covad did not provide initial comments on this objection.

PUBLIC STAFF: The Public Staff stated in its initial comments that WorldCom has not provided any information on this matter which the Commission has not previously considered and noted that WorldCom is just restating the same contentions which had been previously set forth in WorldCom's Proposed Order — that the methodology utilized by the ILECs does not comply with the FCC's pricing rules. The Public Staff asserted that the Commission should once again affirm its conclusion that the basic methodology used by the ILECs conforms to TELRIC principles and that their proposed rates, subject to the changes ordered by the Commission in other findings, comply with the pricing rules of the FCC. Thus, the Public Staff contended that it found WorldCom's exception to be without merit.

SPRINT: Sprint did not provide initial comments on this objection.

VERIZON: Verizon asserted in its initial comments that WorldCom's objection, which requests that the Commission reject the cost models upon which all of North Carolina's permanent rates are based and to reopen the process in which it adopted those models and set permanent rates, is beyond the scope of this proceeding.

Verizon argued that WorldCom's purely hypothetical, scorched-node methodology is inconsistent with the Act and must be rejected. Verizon stated that the FCC and this Commission have rejected such a methodology where prices would be based on the costs that a purely hypothetical carrier would incur to provide the requested UNEs. Verizon explained that the FCC's definition of TELRIC at least considers "the most efficient technology deployed in the incumbent LEC's current wire center locations." (Per FCC *First Interconnection Order*, Paragraph 685.) Yet, Verizon stated even this standard has been

vacated because it is too hypothetical. Verizon commented that the *Iowa Utils. Bd.*, 219 F.3d at 750-51 concluded that in enacting the Act's pricing requirements, "Congress was dealing with reality, not fantasizing about what might be."

Additionally, Verizon asserted that its cost studies and its permanent and proposed rates submitted in this proceeding comply with the FCC's TELRIC pricing rules, including those invalidated by the Eighth Circuit. Verizon recommended that the Commission should reject WorldCom's objection as this Commission, the FCC, and the Eighth Circuit have all rejected its substance in the past.

WORLDCOM: WorldCom did not provide initial comments on this objection.

REPLY COMMENTS

BELLSOUTH: BellSouth did not provide reply comments on this objection.

PUBLIC STAFF: The Public Staff did not provide reply comments on this objection.

SPRINT: Sprint did not provide reply comments on this objection.

VERIZON: Verizon did not provide reply comments on this objection.

WORLDCOM: WorldCom did not provide reply comments on this objection.

DISCUSSION

As stated above, WorldCom has objected to Findings of Fact Nos. 2(a) and 2(c) on the premise that the Commission has improperly taken into consideration factors other than forward-looking economic cost, in violation of the FCC's pricing rules. WorldCom recommended that a statewide, scorched-node cost model, using forward-looking, least-cost inputs should be filed in North Carolina and that the Commission should commence a proceeding to determine TELRIC-derived rates. WorldCom asserted that if implemented, the *Recommended Order* would create a barrier to entry which is prohibited by Section 253(a) of the Act which states that "(n)o state or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service."

WorldCom's argument is the same as previously presented in this proceeding and, as provided January 16, 2001, in its Proposed Order for this case under its Evidence and Conclusions for Finding of Fact No. 28. Therein, WorldCom characterized the issue relating to its discussion of its Finding of Fact No. 28 as follows: "Issue: Whether the ILECs' cost studies and methodology fully comply with the FCC pricing rules, and, if not, what should the Commission do?" In its discussion under its Evidence and Conclusions

for Finding of Fact No. 28, WorldCom acknowledged that this issue “was not an issue specifically raised by the Commission in its pre-hearing orders”. However, WorldCom asserted that this issue “is inherent in every cost issue in this case.” Therein, WorldCom stated its position to be as follows:

The ILECs’ cost studies and models are irreparably infused with embedded and historical practices that are not TELRIC. Nor do the ILECs assume a hypothetical carrier or the “scorched node” required by the FCC pricing rules currently in effect. Hence the Commission must conduct its own analysis, using data presented; until that occurs, the best approach is to adopt the positions and reasoning of the New Entrants.

In previous orders issued by the Commission, the Commission has not found it appropriate to accept WorldCom’s argument. In its *Order Ruling on Motions for Reconsideration and Clarification and Comments*, issued August 18, 1999, in this docket, the Commission concluded that it “hereby reaffirms its previous conclusion that the cost studies presented by the ILECs, with appropriate modifications and input adjustments, follow the FCC’s TELRIC principles, are consistent with Section 252(d) of the Act, and are an appropriate basis for determining permanent prices for UNEs.” Further, in the *Recommended Order*, beginning on page 4, the Commission provided the list of Phase I and Phase II issues to be addressed, such issues listing does not include WorldCom’s issue of “(w)hether the ILECs’ cost studies and methodology fully comply with the FCC pricing rules, and, if not, what should the Commission do?”

Additionally, as indicated in the initial comments, BellSouth, the Public Staff, and Verizon were the only Parties who filed comments on WorldCom’s objection. They all recommended that WorldCom’s exception in this regard should be rejected by the Commission. No party filed any reply comments, including WorldCom.

Based upon the record of evidence in this proceeding, the Commission finds it appropriate to deny WorldCom’s exception and once again affirm its conclusion that the basic methodologies used by BellSouth, Sprint (Carolina/Central), and Verizon conform to TELRIC principles and that their proposed rates, subject to the changes ordered by the Commission in other findings, comply with the FCC’s pricing rules.

CONCLUSIONS

The Commission affirms and upholds its original decision in this regard.

FINDING OF FACT NO. 2(b): Fallout Rate

INITIAL COMMISSION DECISION

The Commission concluded that the appropriate fallout rate for use in calculating nonrecurring costs is 10%. Further, the Commission concluded that BellSouth, and the other participating ILECs to the extent necessary, should revise their nonrecurring cost studies to reflect a fallout rate of 10% for all phases of the ordering process including the downstream provisioning activities.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon objected to Finding of Fact No. 2(b) stating that the Commission erred in this finding when it required Verizon to apply a 10% fallout rate to all phases of the ordering process including the downstream provisioning activities.

Verizon stated that many factors that cause an order to fallout of Verizon's electronic ordering system are beyond Verizon's control. For example, Verizon explained that a CLP's failure to provide accurate or complete ordering information would require manual intervention by Verizon and would increase the fallout rate. Additionally, Verizon commented that many of Verizon's more complex UNE offerings will always require manual intervention in the ordering process.

Further, Verizon remarked that it would not be economically feasible for Verizon to fully mechanize the ordering process for UNEs for which there is little demand. In order to meet the 10% fallout rate for such UNEs, Verizon asserted that it would need to invest large sums of money to upgrade its OSS. It is Verizon's position that if the Commission insists on imposing a 10% fallout rate for all of Verizon's ordering processes, then Verizon would be compelled to file appropriately high OSS rates to recover its costs of upgrading its OSS to meet this requirement. However, Verizon noted that even with this investment in its OSS, it still may not meet the 10% fallout rate, given the rate of CLP errors in the ordering process.

Verizon noted that for certain UNE products for which Verizon has enhanced its OSS to allow mechanized flow-through, the percentage of CLP order fallout is 96.3%. As a result, Verizon contended that the imposition of the 10% fallout rate would result in Verizon's rates reflecting a significantly lower cost for manual error correction than the actual cost generated by the CLPs. Verizon stated that its actual fallout rate was calculated based on North Carolina data from February through April 2001.

Verizon concluded that rather than applying an arbitrary and unrealistic fallout rate, the Commission should be guided by Verizon's real-world experience with its ordering process. Consequently, Verizon excepted to the imposition of a 10% fallout rate to its ordering process.

Further, Verizon also requested that the Commission clarify that Verizon is not required to apply a 10% fallout rate to its downstream provisioning activities. In this regard, Verizon noted that the only cost components of its provisioning process that will be affected by the *Recommended Order*, if adopted, are circuit assignment and record keeping. Verizon commented that because it charges CLPs only where Verizon actually touches the CLP order, it has not developed a fallout rate for its provisioning process. Therefore, Verizon stated that its provisioning processes would not be affected by the requirements of the *Recommended Order*. Verizon stated that in any event it would be cost prohibitive for it to develop mechanized processes to provision certain UNEs. For example, Verizon asserted that because requests for subloops seek only a segment of the loop, then circuit facility assignment will always require manual intervention, and thus, such fallout rate would always be 100%. Consequently, Verizon stated that it does not believe that the Commission intended to apply the 10% fallout rate to Verizon's provisioning processes where the imposition of that rate will be without effect at best, and unattainable at worst. Therefore, Verizon requested that the Commission provide clarification that the 10% fallout rate does not apply to Verizon's downstream provisioning activities, if otherwise, then Verizon also excepted to Finding of Fact No. 2(b) on this additional ground.

WORLDCOM: WorldCom did not object to this Finding of Fact.

INITIAL COMMENTS

BELLSOUTH: BellSouth stated in its initial comments that it concurs with Verizon's comments on this issue to the extent that Verizon seeks clarification that the 10% fallout rate for downstream provisioning only applies to fallout from databases. Specifically, BellSouth noted that the Commission's December 10, 1998 Order (*1998 Order*) in this docket defined the fallout rate as "the percentage of CLP orders that do not flow through the OSS automatically but require some manual intervention." Accordingly, BellSouth stated that the fallout rate referenced in the *1998 Order* appears to only pertain to fallout from databases — OSS. BellSouth explained that certain manual activities will be

necessary in connection with the provisioning of a UNE or service. For example, BellSouth stated that the nonrecurring cost of an unbundled loop is impacted by the probability that a dispatch to the field will be required to complete the order. BellSouth noted that its SL1 nonrecurring cost reflects a 20% dispatch rate and explained that it would be inappropriate to treat that dispatch rate as a fallout rate, and thus, reduce the probability to 10%. Further, BellSouth commented that a probability of occurrence such as a dispatch rate is separate and distinct from a “percentage of orders that do not flow through the OSS.” Accordingly, BellSouth asserted that the 10% fallout rate should not be expanded to include assumptions related to actual provisioning activities. Thus, BellSouth requested that the Commission clarify that the 10% fallout rate only applies to fallout from databases.

COVAD: Covad stated in its initial comments that Verizon’s argument concerning a 10% fallout rate is misplaced and untimely. The Commission adopted the 10% fallout rate in its *1998 Order*. Covad noted that Verizon did not except to this finding then, and thus, concluded that it is too late for Verizon to do so now.

Further, Covad stated that the issue before the Commission at the time it issued its *Recommended Order* was not whether the right factor was 10%, but how broadly should that factor be applied. According to Covad, Verizon did not offer testimony on this issue, nor did it address it in its Proposed Order. Covad recommended that the Commission affirm this portion of the *Recommended Order*.

PUBLIC STAFF: The Public Staff stated in its initial comments that Finding of Fact No. 2(b) is nothing more than a clarification of a finding in the Commission’s *1998 Order* in this docket, where the Commission held that “the reasonable and appropriate fallout rate for use by the ILECs in their calculations of nonrecurring costs is 10%.” The Public Staff pointed out that the Commission did not limit its finding in the *1998 Order* to the initial step of the electronic ordering process. The Public Staff noted that, as it had commented in its Proposed Order, the Commission recognized that the ordering process includes numerous steps and that an order could fall out at more than one point in the process. Further, the Public Staff explained that as a rate calculated on TELRIC principles, the nonrecurring charge should reflect recovery of forward-looking costs, not embedded costs as Verizon proposed.

The Public Staff noted that in Verizon’s exception, Verizon claimed a fallout rate exceeding 96% for CLP orders, even after enhancing the ordering process. In contrast, the Public Staff pointed out that Verizon’s testimony at the March 1998 hearing in this docket indicated that the average CLP fallout rate was 35%. In its *1998 Order*, the Commission rejected a fallout rate of 20% as excessive in a competitive environment. The Public Staff stated that it concurs with that conclusion and believes that the Commission’s 10% rate is representative of what the fallout rate should be on a forward-looking, long-term basis. Additionally, the Public Staff commented that as the Commission pointed

out in the *1998 Order*, a 10% fallout rate approximates the long-term rate experienced by BellSouth with interexchange carrier (IXC) orders for exchange access.

The Public Staff remarked that the Commission's finding in the *1998 Order* that "a fallout rate of 10% is reasonable and appropriate for BellSouth as well as for the other ILECs," as well as the discussion in its *Recommended Order*, issued June 7, 2001, clearly indicate an intent to apply the 10% fallout rate to all phases of Verizon's ordering and provisioning activities. Accordingly, the Public Staff opposed Verizon's exception and recommended that Finding of Fact No. 2(b) should not be modified.

SPRINT: Sprint did not provide initial comments on this objection.

VERIZON: Verizon did not provide initial comments on this objection.

WORLDCOM: WorldCom stated in its initial comments that Verizon's exception maintains that the Commission's finding does not reflect how Verizon actually does things. WorldCom asserted that factors that are "internal to Verizon", or are reflective of upgrading manual OSS based on assumptions presently used by Verizon, so that Verizon can fully recover costs it actually incurs do not answer the question as to how a hypothetical carrier utilizing forward-looking, most-efficient technology, design and configuration, at least-cost, would do business. Accordingly, WorldCom contended that Verizon's argument is irrelevant.

REPLY COMMENTS

BELLSOUTH: BellSouth stated in its reply comments that it did not except to the *Recommended Order* on this issue because it believed that Finding of Fact No. 2(b), when read in conjunction with earlier Commission decisions, mandated application of the 10% fallout rate only to fallout from databases. However, BellSouth stated that to the extent that other Parties in this proceeding interpret this finding to require a different result, then it would now be appropriate for the Commission to clarify its decision.

PUBLIC STAFF: The Public Staff noted in its reply comments that BellSouth expressed concerns in its initial comments that the Commission's decision could be interpreted to require the fallout rate to apply to processes beyond OSS. The Public Staff stated that in the *1998 Order* issued by the Commission in this docket, the Commission defined fallout rate as "the percentage of CLP orders that do not flow through the OSS automatically but require some manual intervention." The Public Staff pointed out that the Commission restated this definition in its discussion of this finding in the *Recommended Order*. Consequently, the Public Staff stated that the fallout rate clearly applies only to the electronic ordering and provisioning activities relating to OSS, and thus concluded that this finding does not need to be modified or clarified.

SPRINT: Sprint did not provide reply comments on this objection.

VERIZON: Verizon stated in its reply comments that the Commission's 10% fallout rate, as defined by the Commission, only applies to ILECs' OSS. Verizon explained that it excepted to this requirement for two independent reasons. First, Verizon asserted that the 10% fallout rate is far too low and second, even if the Commission were to establish the appropriate fallout rate for Verizon, it would not make sense to apply that rate to Verizon's provisioning processes.

Verizon again asserted that the Commission's 10% fallout rate is unlawful because it would prohibit Verizon from recovering its actual costs of processing CLP orders. Verizon stated that the fallout rate recorded by Verizon for the UNEs contained in Phase I and Phase II of this proceeding is currently over 96%. Further, Verizon commented that in the absence of any error in the ordering process, 73% of CLP orders for the UNEs considered in Phase I and Phase II of this proceeding will require some manual intervention in order to complete the order. Verizon noted that it filed this 73% fallout rate in its most recent cost study. Verizon contended that its fallout rate is reasonable given the complexity of the UNEs considered in this proceeding and asserted that there is no evidence supporting any other rate for Verizon, particularly not as unreasonable as the recommended 10% fallout rate. Additionally, Verizon argued that regardless of the steps that Verizon may take, the recommended 10% fallout rate is likely unattainable.

Additionally, Verizon commented on the Public Staff's initial comments regarding the Public Staff's statement that in 1998, Verizon predicted that it would experience a 35% fallout rate. Verizon argued that the 35% fallout rate is an inappropriate reference because it reflected Verizon's anticipated experience with loops, ports, and other simple UNE offerings. Furthermore, Verizon contended that its predicted 35% fallout rate was merely an estimate and was not based on actual experience.

Verizon again stated that compliance with the 10% fallout rate would require Verizon to invest substantially in its OSS, beyond the level that is economically justified. Verizon asserted that the CLPs would continue to make the economic decision to use error-prone methods, knowing that it is less costly to bear the relatively minimal costs associated with a 10% fallout rate than to upgrade their own systems or processes. Rather than using a 10% fallout rate, Verizon argued that the Commission should be guided by Verizon's actual experience with its ordering process. Further, Verizon contended that if the Commission requires a 10% fallout rate it must be prepared to allow Verizon to fully recover its investment in OSS should Verizon undertake substantial OSS investments to attempt to reduce its fallout rate.

Verizon again expressed its opinion concerning the application of an appropriate fallout rate to its provisioning process. Verizon asserted that it would be nonsensical to apply the fallout rate to a provisioning process like Verizon's, where many of the steps are

not automated and would always require manual activity. Verizon explained that its provisioning costs are developed solely from orders requiring manual processing. For example, Verizon stated that when it receives requests for certain UNEs such as dark fiber or subloops, it must first determine if the requested element exists. Verizon noted that a manual examination of the facility records is necessary to determine if fiber exists in the route requested or to locate the logical points for the CLP to access the subloop. Then if the requested UNE is available, Verizon remarked that manual entries have to be made to record the circuit information. Thereafter, Verizon would create circuit design layouts to allow the appropriate work group to update its records or perform any necessary work activities to complete the CLP's request for dark fiber or subloops. In addition to facility assignment, Verizon stated that the provisioning of Phase I and Phase II UNEs will generally always require the physical dispatch of outside plant or central office personnel to complete the appropriate connections. For example, Verizon stated that line sharing requests will require Verizon technicians to connect jumper wires to provision the UNE. It is Verizon's position that these types of processes do not fall within the Commission's definition of the fallout rate. Accordingly, Verizon asserted that it would be inappropriate to apply any fallout rate to Verizon's provisioning processes.

WORLDCOM: WorldCom did not provide reply comments on this objection.

DISCUSSION

Verizon is the only party who objected to the 10% fallout rate. Verizon objected on two bases: first, Verizon asserted that the 10% fallout rate is far too low, as it would not allow Verizon to recover its actual costs of processing CLP orders; second, Verizon commented that it made no sense to apply the 10% rate to a provisioning process like Verizon's, where many of the steps are not automated and would always require manual activity.

As explicitly stated in the *Recommended Order*, Issue 2(b) concerned the issue of "whether the Commission intended for the previous Commission-approved fallout rate of 10%, for use in the ILEC's calculations of nonrecurring costs, to apply to all provisioning activities or just to the initial step." Additionally, the Commission also noted in the *Recommended Order* that the fallout rate is the percentage of CLP orders that do not flow through the OSS automatically but require some manual intervention.

Finding of Fact No. 2(b) of the *Recommended Order* clarified the Commission's finding in its *1998 Order* in this docket, where the Commission held that "the reasonable and appropriate fallout rate for use by the ILECs in their calculations of nonrecurring costs is 10%." In the *1998 Order*, the Commission noted that Sprint's (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. In addition, the Commission also mentioned that Verizon argued against the

Nonrecurring Cost Model recommended by AT&T and MCI because it used an unrealistic assumption of a 2% fallout rate for all provisioning processes. In the *Recommended Order*, the Commission stated that it understood that there was more than one step in the electronic ordering process and that fallout rates apply to more than one of those steps. The Commission concluded that the finding in the *1998 Order* did not limit the 10% fallout rate to the initial ordering process. The Commission concluded that the appropriate fallout rate for use in calculating nonrecurring costs is 10%. Therefore, to the extent that a fallout rate is used in the calculation of costs for electronic ordering, the Commission concluded that the rate should be 10%. Consequently, in the *Recommended Order*, the Commission concluded that BellSouth, and the other ILECs to the extent necessary, should revise their nonrecurring cost studies to reflect a fallout rate of 10% for all phases of the ordering process including the downstream provisioning activities.

The 10% fallout rate was investigated and adopted in the *1998 Order* and no exceptions were filed on that finding. The Commission does not now find any support in Verizon's objections or comments to support a conclusion that Verizon's actual embedded fallout rates of 96% or 73% should be characterized as being appropriate for determining forward-looking costs. Furthermore, Verizon did not even address the matter of an appropriate fallout rate in its Proposed Order filed on January 16, 2001. The Commission continues to believe that a 10% fallout rate, as noted by the Public Staff, is still representative of what the rate should be on a forward-looking, long-term basis.

In regard to Verizon's and BellSouth's clarification concerns that the Commission's decision could be interpreted to require the fallout rate to apply to processes beyond OSS, the Commission believes that the *Recommended Order* was clearly referring to electronic ordering and provisioning activities related to OSS. The *Recommended Order* specifically defined the fallout rate stating that "the fallout rate is the percentage of CLP orders that do not flow through the OSS automatically but require some manual intervention." Accordingly, the Commission does not believe there is any need for further clarification in this regard.

Based upon the foregoing, the Commission finds it appropriate to affirm its finding that a 10% fallout rate applies to all phases of the ordering process including the downstream provisioning activities.

CONCLUSIONS

The Commission affirms and upholds its original decision in this regard.

FINDING OF FACT NO. 2(c): Designed Loop - Test Point and Design Layout

INITIAL COMMISSION DECISION

The Commission concluded that the basic methodology used by BellSouth to produce the nonrecurring charges for its xDSL-capable loops is sound and no party had presented adequate justification for modifying them, except in regard to the fallout rate, addressed in Finding of Fact No. 2(b), and the costs of loop conditioning, addressed in Finding of Fact No. 2(e). Further, the Commission concluded that a CLP should be able to determine for itself, based on loop qualification information provided by the ILEC and its own testing, whether a voice-grade, service level one (SL1) loop meets its needs, without having to pay for a designed loop, if it so chooses. Thus, the Commission found that in those cases, the CLP is permitted to reserve the loop as a SL1 loop without the guarantee of specific attributes included in a designed xDSL-capable loop offering.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth objected to Finding of Fact No. 2(c) stating that the Commission should not require BellSouth to modify its provisioning process to permit CLPs to reserve specific loops as SL1 loops. BellSouth explained, as pointed out in its Proposed Order, that rather than purchasing one of its designed xDSL-capable loops, the CLPs always have the option to purchase a SL1 loop to support their xDSL service. However, BellSouth also noted that the xDSL service may or may not work, depending on the type of facilities used to provide the SL1 loop.

In response to CLP requests in North Carolina and elsewhere in BellSouth's region, BellSouth stated that it has:

developed a non-designed xDSL-capable loop (referred to as an Unbundled Copper Loop—Non-Designed or UCL-ND) that enables CLPs to obtain a copper loop without the design features of BellSouth's other xDSL-capable loop offerings. In fact, some of the same parties to this proceeding (Covad, among others) executed a Settlement Agreement on March 27, 2001 in connection with a generic proceeding before the Georgia Public Service Commission concerning the rates, terms and conditions for xDSL-capable loops. . . . Consistent with the terms of the Settlement Agreement, BellSouth offers the UCL-ND to CLPs in North Carolina at the SL1 recurring rates until such time as this Commission establishes permanent cost-based rates for the UCL-ND.

Because the UCL-ND is a “clean copper loop” that can be reserved by the CLP, and the rate the CLP will pay for the UCL-ND is the same as the SL1 loop, BellSouth requested that the Commission conclude that BellSouth’s offer to provide the UCL-ND to CLPs in North Carolina, as detailed in Exhibit A of its exceptions, makes it unnecessary for BellSouth to provide CLPs with the ability to reserve an SL1 loop.

COVAD: Covad objected to Finding of Fact No. 2(c) stating that:

First, one of the key cost drivers of BellSouth’s nonrecurring charges for xDSL loops is its unfounded assumption that these loops require a dispatch 100% of the time. Ample evidence exists in the record contradicting this conclusion. Second, in subsequent cost dockets throughout the region, BellSouth has admitted that certain costs for service order work should be removed from the UCL with Loop Makeup and that various assumptions about performance of loop makeup were unfounded. Third, BellSouth rates far exceed rates recently approved by both the Florida and Georgia Commissions, leaving North Carolina’s rates (as proposed by BellSouth) the highest in the region, if not the highest in the nation.

First, Covad remarked that the New Entrants offered evidence in this proceeding that undermined BellSouth’s claim that 100% of xDSL loops require dispatch by BellSouth. For example, Covad noted that where a spare facility is fully connected, BellSouth will not be obligated to dispatch a truck to complete the installation. Thus, Covad asserted that BellSouth’s dispatch assumption is erroneous.

Second, Covad asserted that subsequent to the close of evidence in this proceeding, BellSouth acknowledged a series of errors in its cost studies. In particular, Covad noted that in the Alabama and Louisiana cost proceedings, among others, those errors were identified and corrected. However, Covad stated that BellSouth has not accordingly revised its cost studies in this proceeding to correct errors in its nonrecurring charges proposed in North Carolina which it should be required to do. Covad provided some examples of such errors. For example, Covad raised concerns that BellSouth’s nonrecurring charges attempt to double recover for the cost of service inquiry related functions — once in the nonrecurring charge for the UNE and once through the service order elements (N elements). Covad stated that Ms. Caldwell, testifying for BellSouth in a Louisiana proceeding, agreed that BellSouth should not double recover in this manner. Accordingly, Covad pointed out that BellSouth removed the Local Carrier Service Center (LCSC) times from all the xDSL loops with Loop Makeup (ADSL, HDSL, UCL).

Similarly, Covad stated that BellSouth has admitted in subsequent cost proceedings that its calculation of the manual loop makeup inquiry was in error. Covad explained that in North Carolina, BellSouth assumed that loop makeup information would not be found in the Loop Facility Assignment Control System (LFACS) database (or some other

electronic database) 58.8% of the time. Yet, Covad pointed out that BellSouth's OSS witness Pate has simultaneously testified that 80% of the loops in metropolitan areas will have detailed information in the LFACS database. As a result, Covad stated that BellSouth agreed to adjust its manual loop makeup charge to reflect that 80% of loops would have loop makeup information available electronically. Covad contended that this change in the factor from 58.8% to 20% dramatically reduces the cost of manual loop makeup, and thus, affects all nonrecurring charges for all xDSL loops. Therefore, Covad concluded that BellSouth should be ordered to make a similar change in its percentage assumption of the time that loop makeup information will be found in LFACS in the costs in North Carolina.

Finally, Covad contended that the Commission should re-evaluate its conclusion that BellSouth has met its burden of proving that its proposed rates properly reflect the forward-looking costs of providing xDSL loops. Covad also noted that both the Florida and Georgia Commissions had found that BellSouth's proposed nonrecurring rates for xDSL loops needed to be modified. Covad asserted that if BellSouth's rates remain largely unchanged, then North Carolina will have some of the highest xDSL rates in the region, if not the entire country.

SPRINT: Sprint requested clarification on Finding of Fact No. 2(c). Sprint stated that it desires the following clarification/confirmation with respect to this Finding:

If a CLP purchases a SL1 loop that can support xDSL, the ILEC cannot change the specifications on that loop and then charge the CLP for the more expensive xDSL capable loop offering or claim technical feasibility issues of maintaining the service.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom objected to Finding of Fact No. 2(c) and Finding of Fact No. 2(a) stating that these Findings:

. . . which in calculating recurring and nonrecurring rates improperly take into consideration factors other than forward-looking economic cost, in violation of the FCC's pricing rules, in particular 47 C.F.R. §51.505. If implemented the Recommended Order would constitute a barrier to entry prohibited by 47 U.S.C. §253 (a).

WorldCom's discussion of its objection is the same as previously provided in the discussion of its objection to Finding of Fact No. 2(a), as WorldCom had combined Finding of Fact No. 2(a) and Finding of Fact No. 2(c) into a single discussion. Thus, such discussion will not be repeated here.

Additionally, WorldCom noted that BellSouth has filed a new loop model, the BSTLM, with new cost studies, in the other states of the BellSouth region. WorldCom recommended that this model should be filed in North Carolina and that the Commission should commence a proceeding to determine TELRIC-derived rates.

Further, WorldCom noted that Finding of Fact No. 2(c) allows a CLP to reserve the loop as a SL1. WorldCom commented that it is unclear, however, whether the Commission would allow BellSouth to convert a SL1 loop to fiber. In particular, as presented in the *Recommended Order*, at page 23, WorldCom noted that BellSouth “will not ensure that a CLP-purchased, voice-grade SL1 loop will not possibly be converted later to a fiber facility, [and thus] it cannot be relied upon by CLPs.” Consequently, WorldCom requested that the Commission clarify this point and remove a potential issue from dispute.

Further, according to WorldCom, the CLPs do not want BellSouth to charge for test points and a design layout. Therefore, WorldCom recommended that BellSouth should provide a nondesigned unbundled copper loop, which is what has been proposed in other states.

INITIAL COMMENTS

BELLSOUTH: In regard to Covad’s objections, BellSouth stated in its initial comments that Covad’s statement that BellSouth’s xDSL loops require a dispatch 100% of the time is correct to the extent that Covad is referring to designed xDSL loops. BellSouth explained that it will always dispatch a technician for designed circuits to ensure that the circuit meets certain operation and transmission parameters. However, BellSouth also explained that it is now offering a nondesigned xDSL loop, the UCL-ND, and its dispatch rate for the UCL-ND is not 100%. Instead, BellSouth stated that it is equal to the SL1 loop dispatch rate of 20%.

In regard to Covad’s comments concerning the alleged series of errors in BellSouth’s cost studies in other states, BellSouth remarked that the first alleged error discussed by Covad was a reported “double recovery of service inquiry related functions.” BellSouth acknowledged that in other states it had admitted and explained why LCSC costs were initially incorrectly included in both the element and as a separate service order element in the studies it corrected. However, BellSouth asserted that the same situation does not exist in North Carolina and therefore no adjustment is required.

In regard to Covad’s comments concerning the change to the amount of time a loop will not be found in the LFACS database, BellSouth explained that the BellSouth cost study in this proceeding assumed that loop makeup information would not be found in the LFACS database 58.8% of the time. BellSouth stated that percentage was an accurate statewide average figure. Further, BellSouth noted that Covad was correct that Mr. Pate has testified that loop makeup information would not be found in the LFACS database 20%

of the time. However, BellSouth pointed out that the 20% relates only to metropolitan areas. Nevertheless, BellSouth agreed to use the 20% figure during other state proceedings conducted after the North Carolina hearings were completed. Accordingly, BellSouth stated that it is now willing to incorporate the 20% figure in its compliance filing which will be submitted after a final order is issued in this docket.

In regard to WorldCom's exception, BellSouth contended, as stated previously in its initial comments regarding Finding of Fact No. 2(a), that the Commission has found that "the cost studies presented by the ILECs, with appropriate modifications and input adjustments, follow the FCC's TELRIC principles, are consistent with Section 252(d) of the Act, and are an appropriate basis for determining permanent prices for UNEs." Further, BellSouth asserted that its rates for UNEs and services in the *Recommended Order* are TELRIC-compliant.

Additionally, BellSouth noted that WorldCom has requested that the Commission initiate a new "proceeding to determine TELRIC-derived rates" based on the fact that BellSouth has filed a new loop model (BSTLM) in other states. BellSouth responded that if ordered to do so by the Commission, BellSouth is willing to refile cost support based on updated models and updated inputs. However, BellSouth asserted that irrespective of whether it files such updated models and inputs, the rates for UNEs and services in the *Recommended Order* are TELRIC-compliant.

COVAD: Covad did not provide initial comments on this objection.

PUBLIC STAFF: The Public Staff noted in its initial comments that Covad had provided three arguments in support of its exception. With regard to Covad's first and third arguments which are as follows — "First, one of the key cost drivers of BellSouth's nonrecurring charges for xDSL loops is its unfounded assumption that these loops require a dispatch 100% of the time. . . . Third, BellSouth rates far exceed rates recently approved by both the Florida and Georgia Commissions, leaving North Carolina's rates (as proposed by BellSouth) the highest in the region. . ." — the Public Staff stated that those arguments are not persuasive. In regard to Covad's argument concerning dispatch, the Public Staff stated that the Commission has already considered the arguments set forth in Covad's Proposed Order as to the percentage of dispatch. And in regard to Covad's argument concerning the matter of other states having established rates for xDSL capable loops at lower levels than those in this proceeding, the Public Staff pointed out that the Commission had properly noted in its *Recommended Order* that "rates should not be disallowed merely because they are higher than rates approved in other states or proposed by other companies."

However, with regard to Covad's second argument which is as follows — "Second, in subsequent cost dockets throughout the region, BellSouth has admitted that certain costs for service order work should be removed from the UCL with Loop Makeup and that

various assumptions about performance of loop makeup were unfounded.” — the Public Staff agreed with Covad’s position. The Public Staff stated that based on Exhibit A attached to Covad’s exceptions filed on July 6, 2001, it appears that BellSouth has revised its cost study results in several states. The Public Staff commented that it is clearly in the public interest that the benefit of these cost reductions should also be available to competing carriers in North Carolina. Consequently, the Public Staff recommended that the Commission should direct BellSouth to refile its rates for xDSL service, to the extent that these rates are based on cost support which has been modified in other states, or are based on a methodology which subsequently has been altered. However, the Public Staff recommended that if BellSouth contends that any of the study revisions identified by Covad should not be applicable in North Carolina, then BellSouth should be required to file documentation supporting its position. The Public Staff suggested that BellSouth be required to file revised rates or its supporting documentation within 30 days of the issuance date of the Commission order ruling on the exceptions to the *Recommended Order*.

The Public Staff disagreed with BellSouth’s position concerning BellSouth’s statements in its exceptions as follows:

In response to CLP requests in North Carolina and elsewhere in BellSouth’s region, BellSouth developed a non-designed xDSL-capable loop (referred to as an Unbundled Copper Loop—Non-Designed or UCL-ND) that enables CLPs to obtain a copper loop without the design features of BellSouth’s other xDSL-capable loop offerings. In fact, some of the same parties to this proceeding (Covad, among others) executed a Settlement Agreement on March 27, 2001 in connection with a generic proceeding before the Georgia Public Service Commission concerning the rates, terms and conditions for xDSL-capable loops. . . . Consistent with the terms of the Settlement Agreement, BellSouth offers the UCL-ND to CLPs in North Carolina at the SL1 recurring rates until such time as this Commission establishes permanent cost-based rates for the UCL-ND. Because the UCL-ND is a ‘clean copper loop’ that can be reserved by the CLP, and the rate the CLP will pay for the UCL-ND is the same as the SL1 loop, BellSouth requests this Commission to find that BellSouth’s offer to provide the UCL-ND to CLPs in North Carolina as detailed in Exhibit A makes it unnecessary for BellSouth to provide CLPs with the ability to reserve an SL1 loop.

The Public Staff stated that BellSouth’s development of the UCL-ND is a positive step. The Public Staff acknowledged that the CLPs are free to reach agreements with BellSouth regarding the UCL-ND loops if they so choose; but noted that possibility should not relieve BellSouth from its obligation to allow CLPs to reserve SL1 loops when such a loop would satisfy their requirements. Further, the Public Staff commented that after permanent rates for the UCL-ND are established, BellSouth may, with agreement by the CLP, transition the

CLP's xDSL loops from the SL1 loop to the UCL-ND. However, until permanent rates for the UCL-ND are established, the Commission should affirm its original finding.

In regard to Sprint's request for clarification of this finding as follows — "If a CLP purchases a SL1 loop that can support xDSL, the ILEC cannot change the specifications on that loop and then charge the CLP for the more expensive xDSL capable loop offering or claim technical feasibility issues of maintaining the service." — the Public Staff stated that such clarification has merit. The Public Staff contended that if an ILEC were allowed to use network rearrangements or facility upgrades as an excuse for interfering with services provided to an end user by a CLP, the concept of competition in the local exchange would be stifled before ever getting off the ground. Accordingly, the Public Staff recommended that the Commission should affirm its original finding with a clarification that after a CLP purchases a UNE, or a group of UNEs, the ILEC should not rearrange its network in a way that interferes with the service being provided to the CLP's customer over those network elements nor should the ILEC rearrange those facilities in a way that would require the CLP to pay for a more expensive UNE arrangement.

In regard to WorldCom's exception, the Public Staff contended, as stated previously in its initial comments regarding Finding of Fact No. 2(a), that the Commission should once again affirm its conclusion that the basic methodology used by the ILECs conforms to TELRIC principles and that their proposed rates, subject to the changes ordered by the Commission in other findings, comply with the pricing rules of the FCC. Thus, the Public Staff contended that it found WorldCom's exception to be without merit.

SPRINT: As stated previously, Covad asserted that BellSouth's assumption that 100% of xDSL loops require dispatch by BellSouth is erroneous. Covad also asserted that subsequent to the close of evidence in this proceeding, BellSouth acknowledged a series of errors in its cost studies. In particular, Covad noted that in the Alabama and Louisiana cost proceedings, among others, those errors were identified and corrected. However, Covad stated that BellSouth has not accordingly revised its cost studies in this proceeding to correct errors in its nonrecurring charges proposed in North Carolina which it should be required to do. In regard to these two exceptions, Sprint stated in its initial comments that it agrees with Covad.

VERIZON: In regard to WorldCom's exception, Verizon contended, as stated previously in its initial comments regarding Finding of Fact No. 2(a), that Verizon's cost studies and its permanent and proposed rates submitted in this proceeding comply with the FCC's TELRIC pricing rules, including those invalidated by the Eighth Circuit. Verizon contended that the purely hypothetical scorched-node methodology advocated by WorldCom is inconsistent with the Act and should be rejected.

WORLDCOM: In regard to BellSouth's objections, WorldCom noted in its initial comments that BellSouth proposed that the UCL-ND that can be reserved by the CLP and

that the rate the CLP will pay for the UCL-ND is the same as the SL1 loop. WorldCom noted that BellSouth argued that this UCL-ND offering makes it unnecessary for CLPs to be able to reserve a SL1. WorldCom pointed out that what BellSouth does not explain is that the UCL-ND, like its other xDSL-type loops, would be subject, but for the Commission action, to the ULM-Additive proposed by BellSouth.

Aside from the fact that the characteristics and costing of the UCL-ND were not addressed in the hearings in this proceeding, WorldCom asserted that there is the issue of the extent to which the CLPs, rather than the ILECs, should have the discretion to make their own determination about the ability of loops to support xDSL service. WorldCom explained that whether a SL1 will suffice for providing advanced services, when a CLP has researched the loop makeup information, is a determination to be made by the CLP, not BellSouth. Further, WorldCom contended that if BellSouth maintains the sole discretion to alter the characteristics of the SL1 that has been reserved or is in use by the CLP to provide xDSL, then the CLP does not enjoy a true choice of loops.

Additionally, WorldCom contended that an ILEC should not be able unilaterally to migrate a line providing advanced services to a different configuration and loop characteristics. As was stated by the FCC in the *Line Sharing Reconsideration Order* released January 19, 2001, WorldCom provided that the FCC in Paragraph 11, stated as follows:

. . . a competitive LEC might undertake to collocate a DSLAM in an incumbent's central office to provide line-shared xDSL services to customers, only to be told by the incumbent that it was migrating those customers to fiber-fed facilities and the competitor would now have to collocate another DSLAM at a remote terminal in order to continue providing line-shared services to those same customers. If our conclusion in the *Line Sharing Order* that incumbents must provide access to the high frequency portion of the loop at the remote terminal as well as the central office is to have any meaning, then competitive LECs must have the option to access the loop at either location, not the one that the incumbent chooses as a result of network upgrades entirely under its own control. This approach is consistent with the dual goals expressed in the *Line Sharing Order* of allowing incumbents to deploy whatever network architecture they deem to be most efficient, while also requiring them to engage in good faith negotiations regarding their unbundling obligations.

Accordingly, WorldCom concluded that the same consideration should apply in this proceeding.

Further, in regard to Sprint's request for clarification concerning an ILEC's restriction from changing specifications or rates on a loop where a CLP has purchased a

SL1 loop to support xDSL service, WorldCom stated that it agrees with Sprint that an ILEC cannot unilaterally change the specifications of a SL1 loop that is used by a CLP to support xDSL. However, WorldCom again remarked that it does not support the rate structures and methodologies used by the ILECs to justify their proposed loop rates.

REPLY COMMENTS

BELLSOUTH: BellSouth remarked in its reply comments that the SL1 loop represents the vast majority of voice-grade loops in BellSouth's network. Further, BellSouth explained that voice-grade services, such as those typically provisioned over a SL1 loop, can operate on loops that may be provisioned over different types of facilities, such as fiber, copper, or digital loop carrier, may be loaded or unloaded, and may be of any length. Further, BellSouth asserted that the cost associated with reserving a loop is not reflected in the existing rate for an SL1 loop. BellSouth commented that the flexibility to offer voice service over a variety of facilities is the primary reason the rate for the SL1 loop is low when compared to other loops that require specific types of facilities. Furthermore, BellSouth argued that such flexibility would be eliminated if a CLP is permitted to dictate that a particular facility be reserved as a SL1 loop. Accordingly, BellSouth stated that the Commission should not require BellSouth to implement reservation of a specific facility as a SL1 loop. BellSouth contended that the basis for the CLPs' request to reserve specific SL1 loops was their stated need for a clean copper loop that did not include the design process, i.e., a clean copper loop at a lower rate. BellSouth asserted that the UCL-ND offering satisfies that need.

PUBLIC STAFF: The Public Staff did not provide reply comments on this objection.

SPRINT: Sprint did not provide reply comments on this objection.

VERIZON: Verizon did not provide reply comments on this objection.

WORLDCOM: WorldCom did not provide reply comments on this objection.

DISCUSSION

Four of the seven Parties filing objections on the *Recommended Order*, filed exceptions or requests for clarification to Finding of Fact No. 2(c). These exceptions involve the following five issues:

(1) BellSouth objected to permitting CLPs to reserve specific loops such as SL1 loops, explaining that it will offer the UCL-ND instead;

(2) Covad objected to BellSouth's assumption that 100% of xDSL loops require dispatch by BellSouth;

(3) Covad asserted that certain inputs should be updated as they have been in other states, Covad contended that BellSouth's rates in North Carolina far exceed xDSL loop rates recently approved by both the Florida and Georgia Commissions, and WorldCom noted that BellSouth has filed a new loop model, the BSTLM, with new cost studies, in the other states of the BellSouth region;

(4) Sprint and, similarly, WorldCom requested clarification such that when a CLP purchases a SL1 loop that can support xDSL, the ILEC cannot change the specifications on that loop and then charge the CLP for the more expensive xDSL capable loop offering or claim technical feasibility issues of maintaining the service; and

(5) WorldCom contended that a statewide, scorched-node cost modeling approach, using forward-looking, least-cost inputs must be adopted by the Commission.

FIRST ISSUE:

The first issue to be addressed is BellSouth's objection to the Commission allowing CLPs to reserve specific loops as SL1 loops. BellSouth argued that because it is now offering to provide the UCL-ND to CLPs in North Carolina, it is unnecessary for BellSouth to provide CLPs with the ability to reserve a SL1 loop. BellSouth stated that it will offer the UCL-ND to CLPs in North Carolina at the SL1 recurring rates until such time as this Commission establishes permanent cost-based rates for the UCL-ND.

The Public Staff disagreed with BellSouth's position and asserted that the CLPs should be allowed to choose the UCL-ND loops if they so desire, but that BellSouth should still be required to allow CLPs to reserve SL1 loops when such a loop would satisfy their requirements. However, the Public Staff commented that after permanent rates for the UCL-ND are established, BellSouth may, with agreement by the CLP, transition the CLP's xDSL loops from the SL1 loop to the UCL-ND.

WorldCom requested in its objections that BellSouth provide an UCL-ND loop, which is what has been proposed in other states. However, WorldCom noted that the characteristics and costing of the UCL-ND were not addressed in the hearings in this proceeding.

In the *Recommended Order*, the Commission concluded that a CLP should be able to determine for itself, based upon loop qualification information provided by the ILEC and its own testing, whether a SL1 loop meets its needs, without having to pay for a designed loop, if it so chooses. In those cases, the Commission found that the CLP should be permitted to reserve the loop as a SL1. At this time, the Commission has not addressed the costs, nor the specifications of an UCL-ND loop and until permanent rates for the UCL-ND are established, the Commission finds it appropriate to affirm its original finding in this regard.

SECOND ISSUE:

The second issue to be addressed is Covad's objection to BellSouth's assumption that 100% of xDSL loops require dispatch by BellSouth. Covad argued that where a spare facility is fully connected, BellSouth will not be obligated to dispatch a truck to complete the installation. Thus, Covad asserted that BellSouth's dispatch assumption is erroneous.

BellSouth has asserted that it will dispatch a technician for designed circuits 100% of the time to ensure that the circuit meets certain operation and transmission parameters.

The Public Staff commented that Covad's argument was not persuasive and that it has already been considered by the Commission.

Sprint stated that it agreed with Covad, but offered no supporting argument.

The Commission finds no new evidence in Covad's argument concerning the percentage of dispatch assumption. Thus, the Commission concludes there is no adequate justification for the Commission to now require BellSouth to modify its dispatch assumption in this regard.

THIRD ISSUE:

The third issue to be addressed is Covad's assertion that certain inputs should be updated as they have been in other states and that BellSouth's rates in North Carolina far exceed xDSL loop rates recently approved by both the Florida and Georgia Commissions and WorldCom's concern that BellSouth has filed a new loop model, the BSTLM, with new cost studies, in the other states of the BellSouth region. Covad noted that in the Alabama and Louisiana cost proceedings, among others, BellSouth has identified and corrected errors in its cost studies. However, Covad stated that BellSouth has not accordingly revised its cost studies in this proceeding to correct errors in its nonrecurring charges proposed in North Carolina which it should be required to do. As set forth in the prior narrative describing Covad's objections, Covad cited examples of such errors.

BellSouth stated that, in regard to Covad's examples, the first alleged error discussed by Covad was a reported "double recovery of service inquiry related functions." BellSouth asserted that the same situation does not exist in North Carolina and therefore no adjustment is required. However, in regard to Covad's argument that there is an error concerning the change to the amount of time a loop will not be found in the LFACS database, BellSouth explained that the BellSouth cost study in this proceeding assumed that loop makeup information would not be found in the LFACS database 58.8% of the time. BellSouth acknowledged that Mr. Pate has since testified that loop makeup information would not be found in the LFACS database 20% of the time. BellSouth stated that it is now willing to incorporate the 20% figure into its compliance filing which will be

submitted after a final order is issued in this docket. Additionally, in regard to WorldCom's comments that BellSouth has filed a new loop model (BSTLM) in other states, BellSouth responded that if ordered to do so by the Commission, BellSouth is willing to refile cost support based on updated models and updated inputs.

The Public Staff stated that based on Exhibit A attached to Covad's exceptions, it appears that BellSouth has revised its cost study results in several states. The Public Staff commented that it is clearly in the public interest that the benefit of these cost reductions should also be available to competing carriers in North Carolina. Consequently, the Public Staff recommended that the Commission should direct BellSouth to refile its rates for xDSL service, to the extent that these rates are based on cost support which has been modified in other states, or are based on a methodology which subsequently has been altered. In regard to Covad's objection concerning the matter of other states having established rates for xDSL capable loops at lower levels than those in this proceeding, the Public Staff pointed out that the Commission had properly noted in its *Recommended Order* that "rates should not be disallowed merely because they are higher than rates approved in other states or proposed by other companies."

Sprint stated that it agreed with Covad's objection concerning the requirement that BellSouth correct certain errors that have been identified and corrected in BellSouth's cost studies in the Alabama and Louisiana cost proceedings, among others.

Based upon the foregoing, the Commission believes that it would be entirely appropriate in this instance to require BellSouth to refile its rates for xDSL service based upon cost studies that reflect cost inputs reflective of corrections/modifications that have subsequently been made in the other BellSouth states and/or based on a subsequent change in methodology. The Commission agrees with the Public Staff that it would certainly be in the public interest for the benefit of these cost reductions to also be available to the CLPs operating in North Carolina. Further, if BellSouth believes that any of the study modifications identified by Covad should not be applicable in North Carolina, then the Commission finds it appropriate to require BellSouth to provide detailed written documentation supporting such a position. Additionally, the Commission finds it appropriate to require BellSouth to file its revised rates and supporting documentation on or before January 30, 2002.

FOURTH ISSUE:

The fourth issue to be addressed is Sprint's and, similarly, WorldCom's requests for clarification such that when a CLP purchases a SL1 loop that can support xDSL, the ILEC cannot change the specifications on that loop and then charge the CLP for the more expensive xDSL capable loop offering or claim technical feasibility issues of maintaining the service. WorldCom stated that it is unclear whether the Commission would later allow BellSouth to convert a SL1 loop to fiber, which would mean the CLP would be unable to

rely upon the facility. Further, WorldCom remarked that if BellSouth maintains the sole discretion to alter the characteristics of the SL1 that has been reserved or is in use by the CLP to provide xDSL, then the CLP does not enjoy a true choice of loops.

BellSouth opposed this requested clarification. BellSouth explained that voice-grade services, such as those typically provisioned over an SL1 loop, can operate on loops that may be provisioned over different types of facilities, such as fiber, copper, or digital loop carrier, may be loaded or unloaded, and may be of any length. BellSouth commented that the flexibility to offer voice service over a variety of facilities is the primary reason the rate for the SL1 loop is low when compared to other loops that require specific types of facilities. Furthermore, BellSouth argued that such flexibility would be eliminated if a CLP is permitted to dictate that a particular facility be reserved as a SL1 loop. Accordingly, BellSouth stated that the Commission should not require BellSouth to implement reservation of a specific facility as an SL1 loop. BellSouth contended that its UCL-ND offering would satisfy the CLPs' need for a clean copper loop at a lower rate.

The Public Staff stated that if an ILEC were allowed to use network rearrangements or facility upgrades as an excuse for interfering with services provided to an end user by a CLP, the concept of competition in the local exchange would be stifled before ever getting off the ground. Accordingly, the Public Staff recommended that the Commission should affirm its original finding with a clarification that after a CLP purchases a UNE, or a group of UNEs, the ILEC should not rearrange its network in a way that interferes with the service being provided to the CLP's customer over those network elements nor should the ILEC rearrange those facilities in a way that would require the CLP to pay for a more expensive UNE arrangement.

In the *Recommended Order*, the Commission concluded that BellSouth's proposed xDSL-capable loop rates are appropriate based on the assumption that a CLP may be willing to pay BellSouth for the guarantee of the specific attributes offered in BellSouth's xDSL-capable loop which BellSouth considers necessary to provide xDSL service. However, the Commission also found that a CLP should not be restricted to using only the specifications proposed by BellSouth, and thus, concluded that a CLP should be permitted to reserve the loop as a SL1. The Commission finds it appropriate to affirm this decision and to provide further clarification, as suggested by Sprint, WorldCom, and the Public Staff. In order to avoid future disputes and to ensure that the CLPs may purchase reliable facilities, the Commission finds it appropriate to add a clarification that after a CLP purchases an UNE, or a group of UNEs, the ILEC should not rearrange its network in a way that interferes with the service being provided to the CLP's customer over those network elements nor should the ILEC rearrange those facilities in a way that would require the CLP to pay for a more expensive UNE arrangement.

FIFTH ISSUE:

The fifth and final issue to be addressed is WorldCom's contention that a statewide, scorched-node cost modeling approach, using forward-looking, least-cost inputs must be adopted by the Commission. This issue has been previously addressed in our discussion of Finding of Fact No. 2(a). Consistent with that conclusion, the Commission finds it appropriate to deny WorldCom's exception in this regard and to, once again, affirm its conclusion that the basic methodologies used by BellSouth, Sprint (Carolina/Central), and Verizon conform to TELRIC principles.

CONCLUSIONS

The Commission affirms its *Recommended Order*, in part, and amends its *Recommended Order*, in part, in this regard.

The Commission amends its finding such that BellSouth is required to refile its rates for xDSL service based upon cost studies that reflect cost inputs reflective of corrections/modifications that have subsequently been made in the other BellSouth states and/or based on a subsequent change in methodology. Further, if BellSouth believes that any of the cost study modifications identified by Covad should not be applicable in North Carolina, then the Commission finds it appropriate to require BellSouth to provide detailed written documentation supporting such a position. The Commission finds it appropriate to require BellSouth to file its revised rates and supporting documentation on or before January 30, 2002.

The Commission further finds it appropriate to clarify its finding such that after a CLP purchases a UNE, or a group of UNEs, the ILEC should not rearrange its network in a way that interferes with the service being provided to the CLP's customer over those network elements, nor should the ILEC rearrange those facilities in a way that would require the CLP to pay for a more expensive UNE arrangement.

In all other respects, the Commission affirms its Finding of Fact No. 2(c), including its requirement that a CLP should be permitted to reserve the loop as a SL1.

FINDING OF FACT NO. 2(d): Charging for Loop Conditioning

INITIAL COMMISSION DECISION

The Commission concluded that the ILECs are allowed to impose nonrecurring charges for conditioning loops.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom objected to Finding of Fact No. 2(d) and Finding of Fact No. 2(e) stating that these findings:

. . . since they violate the FCC's pricing rules, 47 C.F.R. §51.501 *et seq.*, in particular, Rule 505 (d), erroneously apply the UNE Remand Order, and are not supported by the evidence in the record.

WorldCom alleged that the Commission, while purporting to use TELRIC to determine recurring rates, abandons TELRIC and instead relies on historical, embedded costs and practices to determine to what extent nonrecurring rates should be imposed. Thus, WorldCom argued that the Commission's finding is not only in violation of the FCC's pricing rules, but is internally inconsistent.

WorldCom noted that the Commission cited certain paragraphs, including Paragraph 193, of the *UNE Remand Order* in support of its finding that ILECs are entitled to recover their loop conditioning costs. WorldCom commented that the Commission failed to mention Paragraph 194, which expressly continues the discussion in Paragraph 193. Paragraph 194, of the *UNE Remand Order*, is stated as follows:

We recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these costs may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits. We defer to the states to ensure that the costs incumbents impose on competitors for line conditioning are in compliance with our pricing rules for nonrecurring costs. (Footnote omitted.)

It is the position of WorldCom that the FCC's pricing rules do not allow consideration of, or recovery for, an embedded network. WorldCom stated that FCC Rule 505 expressly prohibits any consideration of embedded costs, retail costs, lost incumbent LEC revenues, and revenues that subsidize other services. In particular, WorldCom cited Rule 505(d) which is stated as follows:

(d) Factors that may not be considered. The following factors shall not be considered in a calculation of the forward-looking economic cost of an element:

(1) Embedded costs. Embedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts.

(2) Retail costs. Retail costs include the costs of marketing, billing, collection, and other costs associated with offering retail telecommunications services to subscribers who are not telecommunications carriers, described in § 51.609 of this part.

(3) Opportunity costs. Opportunity costs include the revenues that the incumbent LEC would have received for the sale of telecommunications services, in the absence of competition from telecommunications carriers that purchase elements.

(4) Revenues to subsidize other services. Revenues to subsidize other services include revenues associated with elements or telecommunications service offerings other than the element for which a rate is being established.

Further, WorldCom commented that it is clear from the record that a forward-looking network would not include load coils and other disturbers for loops less than 18,000 feet. WorldCom pointed out that the New Entrants Witness Panel testified that in a forward-looking network, load coils and other disturbers would not be present on copper loops. WorldCom noted that the FCC also concluded in the *UNE Remand Order* that loops less than 18,000 feet should not require load coils and other voice enhancing devices. WorldCom asserted that BellSouth and Sprint acknowledged this in their testimony — Greer Rebuttal and McMahon Intervenor Direct. Additionally, WorldCom stated that the Florida Commission in its Order, released May 25, 2001, regarding its investigation of UNE pricing, determined that there should be no nonrecurring rates for loop conditioning.

Moreover, WorldCom also stated that in Finding of Fact No. 2(f), the Commission held that the unbundled loop modification (ULM) additive is inappropriate and so concluded, because "(i)n a forward-looking cost study it is appropriate to assume that eventually either BellSouth or CLPs will use these unloaded and unused loops, in which

case there will be no pairs that are unloaded and unused.” WorldCom asserted that the evidence demonstrates that a forward-looking network has no load coils for short loops and that recovery for conditioning loops less than 18,000 feet will subsidize the building of ILECs’ xDSL networks at the expense and detriment of CLPs.

INITIAL COMMENTS

BELLSOUTH: BellSouth remarked in its initial comments that WorldCom has resurrected WorldCom’s argument that allowing rates for loop conditioning “is a violation of the FCC’s pricing rules” since load coils and bridged tap would not be considered in the forward-looking network. Contrary to WorldCom’s position that loop conditioning is an embedded cost, BellSouth stated that the FCC recognized that voice-transmission enhancing devices are sometimes present on existing loops, and that costs would be incurred by the ILEC to condition such loops at the CLP’s request. BellSouth asserted that the FCC clearly determined that its rules allow for the ILEC to recover loop conditioning cost from the CLP. BellSouth also explained that it is up to this Commission to determine the appropriate charges for such loop conditioning. BellSouth argued that WorldCom has offered nothing to challenge the specific costs the Commission has recognized in regard to BellSouth’s loop conditioning activities.

Furthermore, BellSouth noted that the FCC’s definition of embedded costs states that “(e)mbedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC’s books of accounts.” Thus, BellSouth explained that since the cost to condition a loop is only incurred when a Local Service Request (LSR) is received, it is impossible to classify such conditioning costs as embedded as WorldCom has argued. Additionally, BellSouth commented that WorldCom’s assertion that the ILECs’ recovery for loop conditioning subsidizes the building of ILECs’ xDSL networks, at the expense and detriment of CLPs, is absurd. BellSouth contended that it is hardly a “subsidy” situation considering that BellSouth incurs 100% of the conditioning costs and charges the CLP 1/10th.

COVAD: Covad did not provide initial comments on this objection.

PUBLIC STAFF: The Public Staff stated in its initial comments that the argument posed by WorldCom that the recovery of nonrecurring charges for conditioning loops permits recovery of embedded costs is in violation of the FCC pricing rules is ingenious. First, the Public Staff explained that WorldCom acknowledges that the *UNE Remand Order* permits ILECs to recover costs associated with the removal of impediments to the high frequency bandwidth such as load coils and bridged taps. However, as the Public Staff commented then WorldCom argues that the ILECs cannot include rates to recover conditioning costs because they reflect recovery of embedded costs which is prohibited by the FCC’s pricing rules. Thus, as noted by the Public Staff, after recognizing that the FCC, in its *UNE Remand Order*, permits ILECs to recover the costs associated with line

conditioning, WorldCom claims that the FCC's pricing rules do not allow the ILECs to charge for this service.

The Public Staff contended that WorldCom's argument is flawed in that the nonrecurring charges to condition lines do not represent embedded costs. Instead, the Public Staff commented that the costs of line conditioning are current costs which the ILECs only incur after a request is made by a CLP to condition a line. Consequently, the Public Staff remarked that these costs are not costs reflected on the books of the ILECs, as alleged by WorldCom, and therefore these costs are not embedded, and WorldCom's argument is without merit.

SPRINT: Sprint stated in its initial comments that WorldCom's assertion that allowing rates for loop conditioning "is a violation of the FCC's pricing rules" is wrong. Sprint explained that the FCC has specifically authorized nonrecurring charges for loop conditioning. Sprint noted that in the *UNE Remand Order*, at Paragraphs 190-195, the FCC discusses loops capable of providing high-speed data services. In particular, Sprint commented that Paragraph 193 explicitly states "(t)hus, under our rules, the incumbent should be able to charge for conditioning such loops." Further, Sprint stated that the FCC goes on to discuss how costs should comply with pricing standards. Additionally, Sprint commented that FCC Rule 51.319(a)(3) defines "line conditioning", and allows ILECs to recover line conditioning costs in accordance with Section 252(d)(1) of the Act and FCC Rule 51.507(e). Consequently, Sprint contended that the Commission's Finding of Fact No. 2(d) is consistent with and supported by the Act and the FCC's authority.

VERIZON: Verizon stated in its initial comments that WorldCom's position that the costs incurred to remove "disturbers" present on the ILEC's network are backward-looking sunken costs, the recovery of which is inconsistent with the FCC's TELRIC pricing method, is untenable. Verizon asserted that by definition, loop conditioning costs are not embedded. Verizon explained that they are loop conditioning costs incurred by the ILEC, on a going-forward basis, on behalf of the requesting CLPs. In support of its position, Verizon noted that consistent with the nature of loop conditioning costs, the FCC created the TELRIC standard and also found that the ILEC could charge for loop conditioning as reflected in the *First Interconnection Order*, at Paragraph 382, as follows:

Our definition of loops will in some instances require the incumbent LEC to take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities. . . . The requesting carrier would, however, bear the cost of compensating the incumbent LEC for such conditioning.

Further, Verizon stated that the FCC also specifically found that ILECs are entitled to recover their loop conditioning costs for loops shorter than 18,000 feet, on which

“disturbers” are generally not required to provide voice service as indicated in the *UNE Remand Order* at Paragraph 193 as follows:

We agree that networks built today normally should not require voice-transmission enhancing devices on loops of 18,000 feet or shorter. Nevertheless, the devices are sometimes present on such loops, and the incumbent LEC may incur costs in removing them. Thus, under our rules, the incumbent should be able to charge for conditioning such loops.

Verizon also commented that the FCC reiterated this position in its *Line Sharing Order* at Paragraph 82.

Additionally, Verizon remarked that the FCC knew its own pricing standard would apply when it determined that CLPs must pay for loop conditioning, even on loops shorter than 18,000 feet. Thus, Verizon contended that the recovery of loop conditioning costs is in no way inconsistent with the FCC pricing rules, nor does it represent the recovery of embedded costs. Further, Verizon stated that, in order to promote efficient competition, prices for loop conditioning should be based on actual costs. Accordingly, Verizon concluded that WorldCom’s exception is without merit.

WORLDCOM: WorldCom did not provide initial comments on its objection.

REPLY COMMENTS

BELLSOUTH: BellSouth did not provide reply comments on this objection.

PUBLIC STAFF: The Public Staff did not provide reply comments on this objection.

SPRINT: Sprint did not provide reply comments on this objection.

VERIZON: Verizon stated in its reply comments that all Parties who have commented on WorldCom’s exception support the Commission’s position and disagree with WorldCom’s position that the ILECs should be prohibited from recovering their loop conditioning costs. Verizon contended that loop conditioning costs are, by definition, not embedded, but are costs actually incurred by ILECs on a going-forward basis. Verizon also stated that the FCC has found that ILECs should be permitted to recover such costs. Thus, Verizon again recommended that the Commission reject WorldCom’s exception.

WORLDCOM: WorldCom stated in its reply comments that BellSouth, the Public Staff, Sprint, and Verizon contended that, because the ILECs seek recovery for current costs, WorldCom’s TELRIC argument is flawed. WorldCom again asserted that TELRIC does not permit the recovery of costs, current or embedded, for an actual network whose design, configuration, and characteristics do not reflect least-cost, most-efficient

technology. Further, WorldCom stated that for loops under 18,000 feet, no Party should seriously contend a carrier would today install load coils, excessive bridged taps, and other disturbers. Therefore, WorldCom concluded that BellSouth's, Sprint's, and Verizon's current costs are based on a network configuration that is admittedly not least-cost and most-efficient, thus even current costs should be irrelevant.

DISCUSSION

WorldCom is the only party who objected to the Commission's finding allowing the ILECs to impose nonrecurring charges for loop conditioning. It is WorldCom's position that the FCC's pricing rules do not allow consideration of, or recovery for, an embedded network. WorldCom commented that the New Entrants Witness Panel testified that in a forward-looking network, load coils and other disturbers would not be present on copper loops. WorldCom asserted that TELRIC does not permit the recovery of costs, current or embedded, for an actual network whose design, configuration, and characteristics do not reflect least-cost, most-efficient technology. WorldCom stated that for loops under 18,000 feet, no Party should seriously contend that a carrier would today install load coils, excessive bridged taps, and other disturbers. Therefore, WorldCom concluded that BellSouth's, Sprint's, and Verizon's current costs are based on network configurations that are admittedly not least-cost and most-efficient, thus even current costs should be irrelevant.

BellSouth remarked that WorldCom has resurrected its argument that allowing rates for loop conditioning "is a violation of the FCC's pricing rules" since load coils and bridged tap would not be considered in a forward-looking network. Contrary to WorldCom's position that loop conditioning is an embedded cost, BellSouth stated that the FCC recognized that voice-transmission enhancing devices are sometimes present on existing loops, and that costs would be incurred by the ILEC to condition such loops at the CLP's request. Thus, BellSouth asserted that the FCC clearly determined that its rules allow for the ILEC to recover loop conditioning costs from the CLP. Furthermore, BellSouth noted that the FCC's definition of embedded costs states that "(e)mbedded costs are the costs that the incumbent LEC incurred in the past and that are recorded in the incumbent LEC's books of accounts." Thus, BellSouth explained that since the cost to condition a loop is only incurred when a LSR is received, it is impossible to classify such conditioning costs as embedded as WorldCom has argued.

Similar to the comments of BellSouth, the Public Staff contended that WorldCom's argument is flawed in that the nonrecurring charges to condition lines do not represent embedded costs. Instead, the Public Staff commented that the costs of line conditioning are current costs which the ILECs incur only after a request is made by a CLP to condition a line.

Likewise, Sprint argued that WorldCom's assertion is wrong. Sprint explained that the FCC has specifically authorized nonrecurring charges for loop conditioning. Sprint contended that the Commission's Finding of Fact No. 2(d) is consistent with and supported by the Act and the FCC's authority.

Correspondingly, Verizon contended that WorldCom's position is without merit. Verizon asserted that by definition, loop conditioning costs are not embedded. Verizon explained that they are loop conditioning costs incurred by the ILEC, on a going-forward basis, on behalf of the requesting CLPs. Verizon concluded that the recovery of loop conditioning costs is in no way inconsistent with the FCC's pricing rules, nor does it represent the recovery of embedded costs.

The Commission agrees with the ILECs and the Public Staff that the ILECs should be allowed to impose nonrecurring charges for conditioning loops. The arguments presented by WorldCom provide no support for the Commission to change its prior decision in this regard. As noted in the *Recommended Order*, in Paragraph 193 of the *UNE Remand Order*, the FCC recognized that ILECs sometimes have load coils or other similar voice-transmission enhancing devices on loops, even on loops less than 18,000 feet. The FCC further recognized that the ILEC may incur costs in removing these devices and specifically concluded that, under the FCC's rules, the ILECs should be allowed to charge for conditioning such loops. The Commission affirms this finding.

CONCLUSIONS

The Commission affirms and upholds its original decision in this regard.

FINDING OF FACT NO. 2(e): Loop Conditioning - Load Coils, Bridged Taps, and Repeaters

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth's proposal to condition 10 pairs at a time, on average, for loops 18,000 feet or less from the central office is a reasonable and appropriate assumption to use to calculate its nonrecurring rates in its cost study. Furthermore, since BellSouth's assumption is in line with reasonable telecommunications practice, the Commission concluded that it is appropriate to require Verizon to redo its cost study to develop nonrecurring rates that reflect the conditioning of 10 pairs at a time on loops that are 18,000 feet or less from the central office. Consequently, the Commission concluded that Sprint is allowed to recalculate its nonrecurring rates in its cost study to reflect the removal of only 10 pairs at a time, rather than 25 pairs, if it so chooses.

The Commission concluded that it is appropriate to assume costs for loops greater than 18,000 feet, which reflect that only one loop at a time will be conditioned. The

Commission concluded that it is not appropriate to distinguish between loops extending less than or equal to, or more than 18,000 feet from the central office for the purpose of deriving nonrecurring rates for loop conditioning.

The Commission concluded that BellSouth is required to adopt Sprint's factors for load coils and bridged taps, and Verizon is required to adopt Sprint's factors for bridged taps for use in their cost studies. However, the Commission concluded that BellSouth is allowed to conduct actual studies of the location of load coils and bridged taps in its outside plant facilities and file them with the Commission for review in order to support any adjustments to the load coil and bridged tap removal factors ordered herein, if it so chooses. Further, the Commission concluded that Verizon is also allowed to conduct an actual study of the location of bridged taps in its outside plant facilities and file it with the Commission for review in order to support any adjustment to the bridged tap removal factors ordered herein, if it so chooses.

In regard to BellSouth and Verizon, the Commission directed the Parties to attempt to negotiate mutually agreeable work times for loop conditioning. Further, the Commission directed BellSouth and Verizon to complete time and motion studies should such negotiation efforts fail.

Finally, the Commission concluded that BellSouth and Verizon are required to file proposed rates and supporting cost studies for repeater removal.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth objected to Finding of Fact No. 2(e) stating that the Commission should not require BellSouth to submit additional cost studies or proposed rates for removing repeaters.

BellSouth pointed out that in the *Recommended Order*, the Commission concluded that BellSouth had not submitted proposed rates or cost study support for removing repeaters from unbundled loops, and accordingly, the Commission had ordered BellSouth to do so. BellSouth explained that its cost studies already include repeaters in Elements A.17.1, A.17.2, and A.17.5, relating to "Load Coil/Equipment Removal". BellSouth stated that these elements which are titled as follows: Element A.17.1 — ULM Load Coil/Equipment Removal-Short, Element A.17.2 — ULM Load Coil/Equipment Removal-Long, and Element A.17.5 — Unbundled Subloop Modification - 2-w/4-w Copper Distribution Load Coil/Equipment Removal — apply for any and all equipment removal from the copper loop, including both load coils and repeaters. BellSouth commented that this

is explained in the narrative description of these elements in the cost study provided in Hearing Exhibit DDC-1, at Page 55, as follows:

The activities of conditioning a loop take place through the removal of equipment (such as load coils, low-pass filters, range extenders, etc.) and/or by removing bridged taps that have been attached to the copper loop. The ULM associated with removing load coils, low-pass filters, and other equipment, such as range extenders, is sub-divided into specific offerings: ULM Load Coil Short (ULM/LC-S) which is for equipment removal on short loops (i.e., 18 kilofeet or less); sub-loop ULM Load Coil Long (ULM/LC-L) which is for equipment removal on long loops (i.e., over 18 kilofeet); and ULM LC and BT for 2-wire or 4-wire copper distribution.

Thus, BellSouth stated that its nonrecurring costs for load coil removal and repeater removal are the same. Accordingly, BellSouth requested that the Commission revise its finding to adopt the same nonrecurring charges for removing repeaters as those that the Commission ordered for removing load coils.

COVAD: Covad objected to Finding of Fact No. 2(e) stating that the evidence in the record supports a finding that an efficient carrier conditions at least 25 pairs at a time, like Sprint does. Covad remarked that Sprint offered testimony that it contracts for conditioning 25 pairs at a time, and that likewise, the evidence also shows that BellSouth's own contracts support this same degree of efficiency. Accordingly, Covad asserted that this evidence is far more probative of forward-looking, efficient methods and should be given the greater weight than BellSouth's assumption that only 10 pairs will be conditioned at a time.

SPRINT: Sprint requested clarification on Finding of Fact No. 2(e). Sprint stated that it desires the following clarification with respect to this finding:

Specifically, Sprint desires clarification as to a time limit or prescribed schedule for the parties "to negotiate mutually agreeable work times for loop conditioning" as stated in the fourth paragraph of Finding of Fact No. 2(e). The present wording with regard to negotiating mutually agreeable work times is indefinite and open-ended as to when that negotiation process should be completed, and Sprint believes that all parties would benefit from having a Commission-prescribed time limit to complete the negotiation process. (Sprint suggests 120 days from the date of the Commission's Final Order as a reasonable time limit to complete the negotiation process.)

VERIZON: Verizon objected to Finding of Fact No. 2(e) stating that the Commission erred in this finding when it required Verizon to develop nonrecurring rates for loop conditioning that assume the conditioning of 10 pairs at a time on loops that are 18,000 feet

or less from the central office. Further, Verizon stated that the Commission also erred in this finding when it required Verizon to adopt Sprint's factors for bridged tap removal for use in its cost studies.

In regard to the Commission's finding concerning the conditioning of 10 pairs at a time on loops that are 18,000 feet or less from the central office, Verizon asserted that the Commission erred in that finding. Verizon explained that it conditions pairs as they are ordered, rather than assuming an arbitrary level of demand that may never occur. Verizon contended that it will be denied full cost recovery of the cost it incurs in conditioning loops if it is required to develop its loop conditioning rates on an assumption, rather than its real-world practice. Verizon asserted that most (9/10^{ths}) of its cost will be unrecovered under the Commission's approach. Furthermore, Verizon stated that Section 252(d)(1) of the Act provides that the ILECs are entitled to recover their full costs of providing UNEs to CLPs, including a reasonable "profit". It is Verizon's position that the loop conditioning rates established by the Commission are unlawful because they do not allow Verizon to recover their full costs of loop conditioning.

Further, Verizon contended that there is no record evidence to support the Public Staff's conclusion that conditioning 10 pairs at a time is "in line with reasonable telecommunications practice", which was adopted by the Commission. Verizon stated that the fact that BellSouth may condition multiple pairs at a time does not mean it is an industry practice or that it is reasonable to assume the same practice for Verizon.

Next, Verizon asserted that it is unable to perform the complex and technical record keeping that would be necessary to recover the other 9/10^{ths} of its loop conditioning costs.

Verizon also expressed concern about its ability to condition loops in a timely fashion if it were to condition 10 pair at a time. Verizon contended that in response to each CLP request to condition a loop, Verizon would need to research nine other loops to determine which contain load coils or bridged tap, their lengths, their current use, and other factors. Thus, Verizon stated that this process will add considerably to the amount of time required to provision the single loop requested by the CLP.

Additionally, Verizon commented that if it conditions more loops than requested by a CLP, this presumes a demand for conditioned loops that does not exist. Thus, Verizon contended that it could not recover its costs until and unless the assumed demand actually materializes. Verizon stated that it expects, under a best case scenario, demand for an additional two loops out of every ten it conditions. Thus, Verizon noted that it would likely recover only between 1/10th and 3/10^{ths} of its actual loop conditioning costs and that unless it is allowed to recover the remaining loop conditioning costs, the rates resulting from the *Recommended Order* are unlawful.

Finally, Verizon stated that the Commission notes, at Page 39 of the *Recommended Order*, the Public Staff position that “it is questionable whether all of those pairs will ever need to be unloaded, and whether some of the unloaded pairs will need to be reloaded at a later date.” Verizon commented that those are precisely its concerns. Thus, Verizon stated that there is no logical basis for distinguishing between a requirement to assume the conditioning of 25 pairs and 10 pairs. Accordingly, Verizon excepts to the requirement that for purposes of calculating its nonrecurring costs and rates that it should assume it will condition more than a single loop at a time.

In regard to the matter of the Commission’s requirement that Verizon adopt Sprint’s factors for bridged tap removal for use in its cost studies, Verizon stated that it did not have a clear understanding of what the Sprint factors are or upon what they were based. Verizon explained that it had not yet had an opportunity to receive or to analyze the information it had requested from Sprint. Thus, Verizon requested that it be allowed to reserve the right to take exception to this requirement once it has had the opportunity to analyze its bases and to assess its impact on the Company.

WORLDCOM: WorldCom objected to Finding of Fact No. 2(d) and Finding of Fact No. 2(e) stating that these findings:

. . . since they violate the FCC’s pricing rules, 47 C.F.R. §51.501 *et seq.*, in particular, Rule 505 (d), erroneously apply the *UNE Remand Order*, and are not supported by the evidence in the record.

WorldCom’s discussion of its objection to Finding of Fact No. 2(e) concerning loop conditioning was combined with its discussion of Finding of Fact No. 2(d), and thus, the arguments made in regard to Finding of Fact No. 2(d) will not be repeated here.

However, WorldCom did provide some specific comments regarding Finding of Fact No. 2(e) which are not included in the foregoing discussion of its objection to Finding of Fact No. 2(d). Specifically, in regard to Finding of Fact No. 2(e), wherein the Commission concluded that “BellSouth’s proposal to condition 10 pairs at a time, on average, for loops 18,000 feet or less from the central office is a reasonable and appropriate assumption to use to calculate its nonrecurring rates in its cost study”, WorldCom stated that there should be no nonrecurring rate for conditioning as discussed above under WorldCom’s objection to Finding of Fact No. 2(d). It is WorldCom’s position that the test that should have been used by the Commission is TELRIC, rather than reasonableness.

However, for the sake of argument, WorldCom stated that even if some conditioning costs would be appropriately included in nonrecurring rates, then the record itself demonstrates that an efficient carrier would condition at least 25 pairs at a time. WorldCom commented that because the Commission, however, finds that conditioning 10 loops at a time is reasonable, it reaches the absurd conclusion that Sprint should recalculate its

nonrecurring rates by lowering their assumption from 25 pairs at a time, to what apparently is the lowest common denominator in North Carolina, 10 pairs at a time. WorldCom asserted that this Commission conclusion in itself demonstrates that the nonrecurring rates for conditioning loops are not based on forward-looking economic cost.

Furthermore, WorldCom noted that the Commission is uncomfortable with the work times presented by BellSouth and Verizon for loop conditioning and ordered the Parties to negotiate work times for loop conditioning. WorldCom pointed out that this is not a resolution of the issue. Should those negotiations fail, which WorldCom expects that they will, then the Commission directs BellSouth and Verizon to complete time and motion studies. WorldCom asserted that such studies will merely indicate the embedded practices and networks of nonefficient carriers. Consequently, WorldCom argued that such studies would be irrelevant to TELRIC and that by implementing the results of such studies the Commission would be no closer to a determination of TELRIC-derived nonrecurring rates. Therefore, it is WorldCom's position that the Commission has again failed to decide an issue and has placed the CLPs in a continuous loop with the ILECs, with no resolution in sight. Finally, WorldCom concluded that when the Commission stated that it "believes that the work times that reflect ILEC-specific characteristics are the most appropriate basis for developing costs if they are reasonable", it did not state the correct test, which remains TELRIC, ascertained from the standpoint of a hypothetical carrier.

INITIAL COMMENTS

BELLSOUTH: BellSouth stated in its initial comments that several parties have questioned the Commission's decision, that on average, 10 loops would be conditioned at a time on short loops, but they have presented no new evidence. BellSouth remarked that it agrees with the Commission's finding on this input. BellSouth noted, however, that the cost study for conditioning long loops actually reflects conditioning two loops at a time, not one as stated in the *Recommended Order*.

Next, BellSouth provided comments concerning the Commission's finding that required BellSouth to utilize "Sprint factors" relating to load coils and bridged taps. BellSouth has interpreted this finding to require that BellSouth use Sprint's assumptions regarding the probabilities that load coils will appear in the underground environment — 61.8% for the first load coil and 51.1% for the second load coil. BellSouth explained that it has used these assumptions to develop an input that is compatible with its cost study. BellSouth explained that, as the Commission knows, its study assumed that if a short loop (18,000 feet or less) requires load coil removal, then, on average, it is necessary to remove 2.1 load coils. BellSouth also stated that its study assumed that if a long loop (over 18,000 feet) requires load coil removal, then, on average, it is necessary to remove 3.15 load coils. Accordingly, BellSouth noted that the underground inputs it will use for short and long loops are, respectively, 53.76% $((61.8\%+51.1\%)\div 2.1)$ and 35.84% $((61.8\%+51.1\%)\div 3.15)$. Then, BellSouth commented that it will weight the results to

produce one loop conditioning charge, as directed by the Commission. For bridged tap removal, BellSouth stated that it will adjust its input to reflect the assumption that there would be no bridged tap removal in an underground environment.

In regard to Sprint's suggestion that 120 days from the date of the Commission's final order would be a reasonable time limit to complete the negotiation process to negotiate mutually agreeable work times for loop conditioning, BellSouth agrees that a time limit should be set, but believes that a 30-day time limit would be appropriate. Further, BellSouth stated that it has prepared preliminary cost results that reflect "Sprint factors", New Entrants' work times, and the assumption of, on average, conditioning 10 loops at a time. BellSouth contended that these results are an appropriate compromise.

COVAD: Covad stated in its initial comments that Verizon's exception to this finding regarding the conditioning of 10 pairs at a time on loops that are 18,000 feet or less from the central office should be dismissed. Covad asserted that Verizon advocates the most backward-looking, most costly method — conditioning loops one at a time. Covad stated that Verizon offered several excuses which Covad characterized as follows: Verizon's real-world experience dictates one-loop conditioning; Verizon cannot recover its costs of multiple-pair conditioning; multiple-pair conditioning is not in line with telecommunications industry practice; and Verizon's systems are not sophisticated enough to keep track of multiple-pair conditioning. Covad contended that none of these excuses are credible. In particular, Covad asserted that Verizon is one of the largest telecommunications companies in the world and its suggestion that its systems are not sophisticated enough to keep track of multiple-pair conditioning is both embarrassing and ridiculous.

Covad explained that the FCC's pricing rules dictate that prices be set on the basis of a least-cost, forward-looking network and not on the basis of current practices. Covad argued that the evidence in this record is that efficient carriers condition at least 25 loops per dispatch. Further, Covad also stated that the Florida Commission in an Order concerning the pricing of UNEs, released May 25, 2001, had concluded that load coil removal on loops less than 18,000 feet is not consistent with forward-looking technology. Additionally, Covad also noted that, in that Order, the Florida Commission rejected BellSouth's proposed loop conditioning rates for short loops and ordered that rates for bridged tap removal should be based on an average of 50 pairs at a time. Also, Covad stated that the Texas Commission has concluded that loop conditioning should be based on an average of 50 pairs at a time.

In regard to Sprint's request for clarification concerning a time limit for completion of the negotiation process on work times for loop conditioning, Covad supported Sprint's request, but recommended that a deadline of 45 days from the date of the Commission's final order is a reasonable time limit to complete the negotiation process, rather than the 120 days suggested by Sprint. Further, Covad commented that the likelihood of such negotiations being productive is very minimal.

PUBLIC STAFF: The Public Staff stated in its initial comments that in regard to BellSouth's exception, BellSouth asserted that it has already filed rates and supporting cost studies for repeater removal in Elements A17.1, A17.2, and A17.5 of its cost studies, which relate to "Load Coil/Equipment Removal". According to BellSouth, these elements "apply for any and all equipment removal from the copper loop, including both load coils and repeaters," and "the nonrecurring costs for load coil removal and repeater removal are the same." Consequently, as stated in its exceptions, BellSouth contended that the rates approved for BellSouth by the Commission for removing load coils should also be approved for removing repeaters. The Public Staff stated in its initial comments that it does not contest such assertion by BellSouth. Thus, the Public Staff recommended that the Commission accept the filed cost studies and proposed rates for Load Coil/Equipment Removal as being applicable to the removal of repeaters from copper loops, and that the Commission eliminate its requirement to file additional studies on this element.

In regard to the exceptions entered by Covad and WorldCom, the Public Staff stated in its initial comments that it disagreed with their arguments. The Public Staff noted that WorldCom contended that if there are going to be any nonrecurring charges for line conditioning, then the Commission should have based the charges on an assumption that at least 25 cable pairs will be conditioned at a time. Further, the Public Staff remarked that WorldCom considered that the use of BellSouth's practices in calculating UNE rates constitutes a violation of TELRIC principles and is inconsistent with the FCC's pricing rules. Likewise, the Public Staff noted that Covad contended that the Commission in setting rates for loop conditioning should have assumed that 25 loops would be conditioned at a time. The Public Staff asserted that the issue is not simply a matter of determining how many pairs can be conditioned at a time. Instead, the Public Staff stated that the issue is the matter of what represents a reasonable telecommunications practice for a forward-looking network. The Public Staff explained that the Commission's finding is correct because it looks at an ILEC's telecommunications network as a whole. Additionally, the Public Staff noted that the *Recommended Order* at page 40, provided a number of valid reasons why reasonable forward-looking network engineering practices do not require an assumption that 25 pairs should be unloaded at a time. Accordingly, the Public Staff stated that the Commission should not require the ILECs to make such an assumption.

In regard to Sprint's request for clarification, concerning the matter of establishing a deadline for the Parties to negotiate mutually agreeable work times for loop conditioning, the Public Staff supported Sprint's request, but recommended that a deadline of 60 days from the date of the Commission's final order is a reasonable time limit to complete the negotiation process, rather than the 120 days suggested by Sprint.

In regard to the first of Verizon's two arguments in its exceptions, the one concerning the matter of Verizon's objection to the Commission requiring Verizon to develop nonrecurring rates for loop conditioning that assume the conditioning of 10 pairs at a time on loops that are 18,000 feet or less from the central office, the Public Staff disagrees with

Verizon's position. The Public Staff remarked that Verizon's argument on this issue is the same as it made in its Proposed Order. The Public Staff explained that the Commission did not hold that Verizon must condition 10 pairs at a time, rather the Commission found that conditioning 10 pairs at a time is a reasonable telecommunications practice and that rates should be based on an assumption that 10 pairs will be conditioned at a time. Further, the Public Staff stated that finding is supported by the evidence presented at the hearing. Furthermore, the Public Staff commented that if Verizon is unable to condition 10 pairs at a time without delaying its response to orders, then it is free to condition pairs as they are ordered, however, its allowed rates should be based upon the reasonable telecommunications practice of conditioning loops in groups of 10.

In regard to the second of Verizon's two arguments in its exceptions, the one concerning the matter of Verizon's request to reserve its right to except at a later date to the Commission requiring Verizon to adopt Sprint's factors for bridged tap removal for use in its cost studies "once it has had an opportunity to analyze its bases and to assess its impact on the Company", the Public Staff concluded that Verizon should not be entitled to reserve a right to except to this finding at a later date. Instead, the Public Staff recommended that the Commission proceed as if Verizon had in fact filed an exception to this finding and decline to make any change in the finding in this regard. The Public Staff asserted that the evidence presented at the hearing supported such a finding and that Verizon's exception presented no valid reason for the Commission to change its decision. Accordingly, the Public Staff recommended that the Commission not change its finding in this regard. However, the Public Staff recommended that the Commission should now require Sprint to provide Verizon with all the necessary information about the factors in question.

SPRINT: Sprint stated in its initial comments that it agrees with Covad's exception wherein Covad contended that the evidence in the record supports a finding that an efficient carrier conditions at least 25 pairs at a time, like Sprint does.

Further, in regard to Verizon's objection wherein it advocated conditioning as little as one pair at a time, Sprint remarked that this is the ultimate in inefficiency. Sprint asserted that Verizon would have the Commission completely disregard any reasonable standards of efficiency and allow Verizon to recover its full costs regardless of how wasteful and inefficient Verizon's practices might be. Thus, Sprint concluded that Verizon's objection is not worthy of serious consideration.

VERIZON: Verizon stated in its initial comments that Covad's and WorldCom's objections, wherein they contended that an efficient carrier would condition at least 25 pairs at a time, would go well beyond the requirement in the *Recommended Order* that ILECs should assume the conditioning of 10 loops at a time. Verizon noted that it had explained in its exceptions how the Commission-approved assumption of conditioning 10 pairs at a time would deny Verizon the opportunity to recover its actual loop conditioning costs and

would only permit Verizon to recover 3/10^{ths}, or less, of its loop conditioning costs. Accordingly, Verizon asserted that Verizon's cost recovery would be even more severely limited if the Commission required the Company to condition an average of 25 pairs at a time. Thus, Verizon contended that the Commission should reject Covad's and WorldCom's exceptions in this regard.

Additionally, Verizon explained that it understands that the "rule of 10" only applies to the removal of load coils and not to the removal of repeaters and bridged taps.

WORLD COM: WorldCom maintained in its initial comments that no loop conditioning costs should be recovered with respect to loops under 18,000 feet.

In regard to BellSouth's objection, WorldCom contended that a separate rate for load coil recovery is double cost recovery, since the absence of load coils is assumed in BellSouth's network and thus in its recurring rates. Further, WorldCom asserted that the same assumptions must apply to repeaters.

In regard to Verizon's objection, WorldCom stated that Verizon's exception maintains that the Commission's finding does not reflect how Verizon actually does things. WorldCom asserted that factors that are reflective of calculating loop conditioning based on assumptions presently used by Verizon, so that Verizon can fully recover costs it actually incurs do not answer the question as to how a hypothetical carrier utilizing forward-looking, most-efficient technology, design and configuration, at least-cost, would do business. Accordingly, WorldCom contended that Verizon's argument is irrelevant.

In regard to Sprint's request for clarification concerning a time limit for completion of the negotiation process on work times, WorldCom stated that it is opposed to the Commission's finding that the parties must "negotiate" work times for loop conditioning.

REPLY COMMENTS

BELLSOUTH: BellSouth stated in its reply comments that, in general, it disagrees with the Parties' comments that suggest BellSouth's exceptions should be overruled. BellSouth commented that its original pleading addressed its exception to Finding of Fact No. 2(e) and it did not believe that further comments were necessary.

PUBLIC STAFF: The Public Staff did not provide reply comments on this objection.

SPRINT: Sprint stated in its reply comments that it has made every effort to provide timely responses to all requests for information/clarification from Verizon regarding factors for bridged tap removal, and Sprint is informed that Verizon now has all information necessary to comply with the Commission's finding relating to bridged tap removal cost studies. Accordingly, Sprint hereby represented to the Commission, to Verizon, and to the

Public Staff that all issues stated or implied in Verizon's exception in this regard and in the Public Staff's initial comments have been satisfied, and that any subsequent order in this docket, need not address this matter.

VERIZON: Verizon stated in its reply comments that while each commenting Party raises a slightly different argument, not a single Party addressed the heart of Verizon's exception — partial cost recovery in an environment of limited CLP demand for conditioned loops. Verizon again contended that the assumption of 10-pair-at-a-time conditioning ignored Verizon's real world costs. Verizon asserted that rates that do not permit Verizon to recover its actual loop conditioning costs are unlawful. Further, Verizon remarked that whether it actually conditions 10 loops at a time or only assumes that it does, the finding of the *Recommended Order* permits Verizon to only charge CLPs only for a fraction of Verizon's actual cost of loop conditioning. Again, Verizon stated that unless CLPs request conditioning on the remaining nine loops in the assumed group of 10, Verizon will only be afforded partial cost recovery.

In regard to the other matter raised in Verizon's exceptions concerning Sprint's factors for bridged tap removal, Verizon stated that it has now received the necessary information from Sprint and thus there is no need for the Commission to require Sprint to provide any additional information to Verizon. Verizon explained that it has now reviewed the Sprint factors and intends to either apply those factors or to conduct its own study of its network consistent with the *Recommended Order*. In summary, Verizon stated that it no longer excepts to this portion of Finding of Fact No. 2(e).

WORLDCOM: WorldCom did not provide reply comments on this objection.

DISCUSSION

Five of the seven Parties filing objections, filed exceptions or requests for clarification to Finding of Fact No. 2(e). These exceptions involve the following five issues:

(1) BellSouth contended that the Commission should not require BellSouth to submit additional cost studies or proposed rates for removing repeaters;

(2) Covad and, similarly, WorldCom asserted that the evidence in the record supports a finding that an efficient carrier conditions at least 25 pairs at a time, like Sprint does, rather than 10 pairs, whereas Verizon argued that the Commission should not assume that Verizon will condition more than one pair at a time;

(3) Sprint requested clarification as to a time limit or prescribed schedule for the parties "to negotiate mutually agreeable work times for loop conditioning", and WorldCom objected to the work times conclusion, stating that what the Commission has ordered is not a resolution;

(4) Verizon contended that the Commission erred when it required Verizon to adopt Sprint's factors for bridged tap removal for use in its cost studies; and

(5) WorldCom objected to the Commission's finding allowing the ILECs to impose nonrecurring charges for loop conditioning.

FIRST ISSUE:

The first issue to be addressed is BellSouth's contention that the Commission should not require BellSouth to submit additional cost studies or proposed rates for removing repeaters. BellSouth explained in its initial comments that its cost studies already include repeaters in Elements A.17.1, A.17.2, and A.17.5, relating to "Load Coil/Equipment Removal". BellSouth stated that its nonrecurring costs for load coil removal and repeater removal are the same. Accordingly, BellSouth requested that the Commission revise its finding to adopt the same nonrecurring charges for removing repeaters as those that the Commission ordered for removing load coils.

The Public Staff commented that it does not contest BellSouth's assertion in this regard. Accordingly, the Public Staff recommended that the Commission accept the filed cost studies and proposed rates for Load Coil/Equipment Removal as being applicable to the removal of repeaters from copper loops, and eliminate its requirement to file additional studies on this element.

In the *Recommended Order*, the Commission stated that in reviewing the evidence, it did not appear that BellSouth had addressed the repeater removal issue in its testimony. Furthermore, the Commission noted that the issue was not explicitly addressed in BellSouth's Proposed Order or Brief. Consequently, the Commission did not realize that BellSouth's proposed rates for Load Coil/Equipment Removal were also applicable to repeater removal. Based upon the foregoing, the Commission finds it appropriate to accept that BellSouth's filed cost studies and proposed rates for Load Coil/Equipment Removal are also applicable to the removal of repeaters from copper loops, and thus, the Commission should eliminate its requirement for BellSouth to file additional cost studies for repeater removal.

SECOND ISSUE:

The second issue to be addressed concerns Covad's and, similarly, WorldCom's assertion that the evidence in the record supports a finding that an efficient carrier conditions at least 25 pairs at a time, like Sprint does, rather than 10 pairs and, additionally, concerns Verizon's exception contending that the Commission should not assume that Verizon will condition more than one pair at a time.

Covad remarked that Sprint offered testimony that it contracts for conditioning 25 pairs at a time, and that likewise, the evidence also shows that BellSouth's own contracts support this same degree of efficiency. Accordingly, Covad contended that this evidence is far more probative of forward-looking, efficient methods and should be given the greater weight than BellSouth's assumption that only 10 pairs will be conditioned at a time.

Likewise, WorldCom stated for the sake of argument that if some conditioning costs would be appropriately included in nonrecurring rates, then the evidence demonstrated that an efficient carrier would condition at least 25 pairs at a time. However, as discussed previously in the narrative concerning Finding of Fact No. 2(d), WorldCom asserted that there should be no nonrecurring charge for loop conditioning.

At the other extreme, Verizon argued that the Commission should have required Verizon to develop nonrecurring rates for loop conditioning that assume the conditioning of one pair at a time on loops that are 18,000 feet or less from the central office, instead of 10 pairs. Verizon explained that it conditions pairs as they are ordered, rather than assuming an arbitrary level of demand that may never occur. Verizon contended that it will be denied full cost recovery if it is required to develop its loop conditioning rates on an assumption, rather than its actual, real-world practice. Further, Verizon contended that there is no record evidence to support the Public Staff's conclusion that conditioning 10 pairs at a time is "in line with reasonable telecommunications practice", which was adopted by the Commission. Additionally, Verizon commented that it expects, under a best case scenario, demand for an additional two loops out of every 10 it conditions. Thus, Verizon noted that it would likely recover only between 1/10th and 3/10^{ths} of its actual loop conditioning costs and that unless it is allowed to recover the remaining loop conditioning costs, the rates resulting from the *Recommended Order* are unlawful. Further, of course, Verizon contended that the Commission should reject Covad's and WorldCom's exceptions in this regard.

BellSouth disagreed with these objections and stated that the Parties have presented no new evidence. BellSouth remarked that it agrees with the Commission's finding in this regard. However, BellSouth commented that the cost study for conditioning long loops actually reflects conditioning two loops at a time, not one as stated in the *Recommended Order*.

In regard to Verizon's argument for recognizing that loops should be conditioned one pair at a time, rather than 10 pairs at a time, Covad commented that Verizon's exception should be dismissed. Covad observed that Verizon is advocating the most backward-looking and most costly method. Covad explained that the FCC's pricing rules dictate that prices must be set on the basis of a least-cost, forward-looking network and not on the basis of current practices. Covad argued that the evidence in this record is that efficient carriers condition at least 25 loops per dispatch.

In regard to the exceptions entered by Covad and WorldCom, the Public Staff stated that it disagreed with their arguments. The Public Staff asserted that the issue is not simply a matter of determining how many pairs can be conditioned at a time. Instead, the Public Staff stated that the issue is the matter of what represents a reasonable telecommunications practice for a forward-looking network. The Public Staff explained that the Commission's finding is correct because it looks at an ILEC's telecommunications network as a whole. Additionally, the Public Staff noted that the *Recommended Order* at page 40, provided a number of valid reasons why reasonable forward-looking network engineering practices do not require an assumption that 25 pairs should be unloaded at a time. Accordingly, the Public Staff stated that the Commission should not require the ILECs to make such an assumption.

In regard to Verizon's objection to the Commission requiring Verizon to develop nonrecurring rates for loop conditioning that assume the conditioning of 10 pairs at a time on short loops, the Public Staff disagreed with Verizon's position. The Public Staff remarked that Verizon's argument on this issue is the same as it made in its Proposed Order. The Public Staff explained that the Commission did not hold that Verizon must condition 10 pairs at a time, rather the Commission found that conditioning 10 pairs at a time is a reasonable telecommunications practice and that rates should be based on an assumption that 10 pairs will be conditioned at a time. Further, the Public Staff stated that finding is supported by the evidence presented at the hearing. Furthermore, the Public Staff commented that if Verizon is unable to condition 10 pairs at a time without delaying its response to orders, then it is free to condition pairs as they are ordered, however, its allowed rates should be based upon the reasonable telecommunications practice of conditioning loops in groups of 10.

Sprint agreed with Covad's exception.

In regard to Verizon's objection advocating one-pair-at-a-time conditioning, Sprint remarked that this is the ultimate in inefficiency and is not worthy of serious consideration. Likewise, WorldCom contended that Verizon's argument is irrelevant as it does not answer the question as to how a hypothetical carrier utilizing forward-looking, most-efficient technology, design and configuration, at least-cost, would do business.

In the *Recommended Order*, the Commission's conclusions, regarding multiple-pair conditioning on loops 18,000 feet or less from the central office, provided the following valid technical reasons for not unloading 25 pairs at a time: (1) in metropolitan areas many loops as short as 12,000 feet are loaded to improve the transmission characteristics for Centrex and PBX trunks; (2) copper pairs with paper and pulp insulation can be fragile and if they are unloaded more than necessary, this could leave exposed copper pairs and introduce trouble; (3) the churn in outside plant engineering facilities has spread working feeder pairs throughout the entire complement of available pairs, such that there are few clean loop feeder cable pair counts that are all spare and could have load coils removed from all pairs

at once without adversely affecting service; (4) removing load coils from loops that use the load coil for proper transmission performance is problematic when the customer is being served by that loop, the loop may need to be re-engineered to account for the lack of load coils; and (5) feeder pairs in a given crossbox must be capable of serving any loop distribution pair in that crossbox, the entire feeder complement must be loaded if the design of the distribution area requires loaded pairs. The Parties have not presented any new evidence on this issue. The Commission believes that it is still reasonable to conclude that forward-looking network engineering practices do not require an assumption that 25 pairs should be unloaded at a time and that conditioning 10 pairs at a time is a reasonable telecommunications practice. Thus, the Commission affirms its decision regarding multiple-pair conditioning on loops 18,000 feet or less from the central office.

THIRD ISSUE:

The third issue to be addressed concerns Sprint's request for clarification as to a time limit or prescribed schedule for the parties "to negotiate mutually agreeable work times for loop conditioning" and WorldCom's objection to the work time conclusion, arguing that what the Commission has ordered is not a resolution.

Sprint stated that the present wording with regard to negotiating mutually agreeable work times is indefinite and open-ended as to when that negotiation process should be completed. Sprint believes that all Parties would benefit from having a Commission-prescribed time limit to complete the negotiation process. Sprint suggested that a reasonable time limit for completing the negotiation process would be 120 days from the date of the Commission's final order.

WorldCom stated that the Commission has ordered the Parties to negotiate work times for loop conditioning for BellSouth and Verizon. WorldCom asserted that this is not a resolution of the issue and observed that should those negotiations fail, which WorldCom expects that they will, then the Commission directs BellSouth and Verizon to complete time and motion studies. WorldCom again contended that no resolution is in sight as such studies would merely indicate the embedded practices and networks of nonefficient carriers; and thus, they would be irrelevant to a determination of TELRIC-derived nonrecurring rates.

BellSouth agreed with Sprint that a time limit should be set as to when such negotiation process should be completed. However, BellSouth contended that a 30-day time limit would be appropriate. Additionally, BellSouth stated that it has prepared preliminary cost results that reflect "Sprint factors", New Entrants' work times, and the assumption, on average, of conditioning 10 loops at a time. BellSouth observed that these results are an appropriate compromise.

Covad supported Sprint's request for a time limit on the work time negotiation process. However, Covad contended that a 45-day time limit would be appropriate. Furthermore, Covad commented that the likelihood of such negotiations being productive is very minimal.

The Public Staff supported Sprint's request for a time limit on the work time negotiation process. However, the Public Staff contended that a 60-day time limit would be appropriate.

The Commission agrees with the Parties that it would be appropriate to establish a time limit for the negotiation process on work times to be completed. The Parties have suggested a wide range of recommendations — 30 days, 45 days, 60 days, and 120 days. The Commission is particularly encouraged by BellSouth's comments explaining its compromise position wherein it would assume the New Entrant's work times and by BellSouth's suggestion for a 30-day time frame. Based upon the foregoing, the Commission concludes that a time limit for completing the negotiation process should be by January 30, 2002.

FOURTH ISSUE:

The fourth issue to be addressed is Verizon's contention that the Commission erred when it required Verizon to adopt Sprint's factors for bridged tap removal for use in its cost studies. As stated in its reply comments, Verizon has now reviewed the Sprint factors and intends to either apply those factors or to conduct its own study of its network consistent with the *Recommended Order*. Consequently, Verizon has now withdrawn its exception to this portion of Finding of Fact No. 2(e). Thus, the Commission concludes that no further action is required in this regard.

FIFTH ISSUE:

The fifth and final issue to be addressed is WorldCom's objection to the Commission's finding allowing the ILECs to impose nonrecurring charges for loop conditioning. This issue has already been previously addressed in our discussion of Finding of Fact No. 2(d). Consistent with that conclusion, the Commission finds it appropriate to deny WorldCom's exception in this regard and once again affirm its conclusion that the ILECs should be allowed to impose nonrecurring charges for conditioning loops.

CONCLUSIONS

The Commission affirms its *Recommended Order*, in part, and amends its *Recommended Order*, in part, in this regard.

The Commission amends its decision such that it eliminates its requirement for BellSouth to file additional cost studies for repeater removal.

The Commission also clarifies this finding such that it establishes a time limit for the negotiation process to be completed concerning the Parties' negotiation of mutually agreeable work times for loop conditioning. The Commission concludes that the negotiation process should be completed by January 30, 2002.

In all other respects, the Commission affirms its Finding of Fact No. 2(e).

FINDING OF FACT NO. 5: LOOPS - High-Capacity Loops

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth and Verizon are required to file rates, with supporting cost data, for DS3, OC3, OC12, and OC48 high-capacity loops by no later than July 9, 2001. The Commission concluded that the rates proposed by Sprint, with any adjustments and changes ordered elsewhere in the *Recommended Order* that may be applicable, are their appropriate rates for high-capacity loops.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth objected to Finding of Fact No. 5 stating that the Commission should not require BellSouth to refile its proposed rates and cost study information for high-capacity loops. BellSouth asserted that its proposed rates already include North Carolina-specific utilizations, vendor meld, distribution to code, and route-to-air ratios. For example, BellSouth explained that the material prices for the electronics associated with the DS3 unbundled local loop in North Carolina shown in the file DS3ULL.XLS Worksheet Input Recurring are different from those filed in other states due to the use of state-specific utilizations and vendor meld. BellSouth noted that the material prices for fiber also shown on that worksheet are different from those filed in other states due to the use of North Carolina-specific distributions to code as well as utilizations and vendor meld. BellSouth stated that the route-to-air ratio is included on the same worksheet and is also North Carolina specific. Further, BellSouth contended that its cost study contains similar state-specific inputs for each of the other high-capacity loops. In regard to the probabilities of occurrence of OC3, OC12, and OC48 electronics, BellSouth stated that these are the same for every state because these are based on forward-looking deployment plans, and they do not differ by state.

BellSouth maintained that it has included North Carolina-specific data for those factors that can differ significantly from one state to another, and would thus have a material impact on the proposed rates. BellSouth asserted that it would be inefficient to collect state-specific data on every assumption or factor in a cost study. BellSouth contended that it has taken a balanced approach to include state-specific data where appropriate. Consequently, BellSouth requested that the Commission: (1) clarify its *Recommended Order* to require North Carolina-specific data only where state-specific data will have a material impact on the cost study, and thus, on the proposed rates and (2) to recognize that BellSouth's cost studies are therefore appropriate.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom did not object to this Finding of Fact.

INITIAL COMMENTS

BELLSOUTH: BellSouth did not provide initial comments on its objection.

COVERED: Coved did not provide initial comments on this objection.

PUBLIC STAFF: The Public Staff stated in its initial comments that while it is true that some assumptions relating to forward-looking cost elements may be similar from state to state, there is evidence in the record that state-specific data could result in a substantial reduction in BellSouth's rates for this element. The Public Staff commented that there is also evidence suggesting that some assumptions used in the BellSouth cost study for these rate elements may be based on inefficient network practices, contrary to TELRIC principles. The Public Staff noted that this evidence was provided in the testimony of Sprint witnesses Dickerson and McMahon, which was filed confidentially, and was summarized in the *Recommended Order*. Additionally, the Public Staff also pointed out that while BellSouth contends that it would be inefficient or impossible to provide a state-specific cost study on high-capacity loops, Verizon has also been required to submit such a study and has not filed an exception to this finding. It is the opinion of the Public Staff that BellSouth has offered no persuasive reason to support its argument. Consequently, the Public Staff believes that the Commission acted properly in requiring BellSouth to submit a study based entirely on North Carolina-specific data.

SPRINT: Sprint stated in its initial comments that BellSouth's high capacity loops cost study grossly overstated costs. In particular, Sprint explained that BellSouth's study used a probability of occurrence or weighting factor to determine the frequency of

occurrence of each Synchronous Optical Network Terminal (SONET) size, and the costs associated with various high-capacity loop bandwidths. Sprint stated that BellSouth used a generic weighting factor, rather than a state-specific or geographic-specific factor, to develop costs for its DS3 level high-capacity loops. Sprint asserted that BellSouth's weighting factor for each terminal size is not representative of its actual network, nor is it representative of an efficient and forward-looking network. Accordingly, Sprint contended that BellSouth's weighting factor produced rates that are higher than necessary.

Further, Sprint stated that the weighting factor used by BellSouth in the North Carolina proceeding was identical to that used by BellSouth in a similar proceeding in Florida and possibly other states as well. Sprint asserted that the weighting factor for a particular terminal size cannot be the same for BellSouth in all exchanges in all states; geographic, demographic, and market conditions in the numerous exchanges in the several states served by BellSouth are simply too diverse for such a possibility to be true. Sprint stated that all ILECs should be required to use state-specific data in this proceeding, and Sprint developed North Carolina-specific weighting factors based upon actual terminal sizes and customer billing data. Accordingly, Sprint asserted that BellSouth should be required to do the same.

VERIZON: Verizon did not provide initial comments on this objection.

WORLDCOM: WorldCom remarked that BellSouth made a statement, in its exceptions, that unlike its cost studies for the DS3 loop, "the probabilities of occurrence of OC-3, OC-12, and OC-48 electronics are the same for every state because these probabilities are based on forward-looking deployment plans (not actual), and these do not differ by state." WorldCom asserted that this statement merely underscores how BellSouth's actual cost assumptions regarding the DS3 loop fail to comply with the FCC's TELRIC pricing rules for UNEs.

REPLY COMMENTS

BELLSOUTH: BellSouth stated in its reply comments that, in general, it disagrees with the Parties' comments that suggest BellSouth's exceptions should be overruled. BellSouth stated that WorldCom has incorrectly inferred in its initial comments that BellSouth's cost assumptions related to the DS3 loops are not forward-looking. In discussing this issue in its exceptions, BellSouth stated that "the probabilities of occurrence of OC3, OC12, and OC48 electronics are the same for every state because these probabilities are based on forward-looking deployment plans (not actual), and these do not differ by state." In its reply comments, BellSouth asserted that its references to the OC3, OC12, and OC48 electronics was not intended to exclude other examples. BellSouth explained that certain assumptions regarding DS3 loops are also nonstate specific, as revealed by a review of the cost study documentation. In conclusion, BellSouth stated that

it disagreed sharply with WorldCom's contention that BellSouth's proposed rates for DS3 loops are not TELRIC-compliant.

PUBLIC STAFF: The Public Staff did not provide reply comments on this objection.

SPRINT: Sprint did not provide reply comments on this objection.

VERIZON: Verizon did not provide reply comments on this objection.

WORLDCOM: WorldCom did not provide reply comments on this objection.

DISCUSSION

BellSouth is the only party who objected to this finding. BellSouth requested that the Commission amend the *Recommended Order* to require North Carolina-specific data only where state-specific data will have a material impact on the cost study and proposed rates and to conclude that BellSouth's cost studies are therefore appropriate. BellSouth asserted that its proposed rates already include utilizations, vendor meld, distribution to code, and route-to-air ratios that are North Carolina specific. However, in regard to the probabilities of occurrence of OC3, OC12, and OC48 electronics, BellSouth stated that these are the same for every state because these are based on forward-looking deployment plans. Further, BellSouth noted that certain assumptions regarding DS3 loops are also nonstate specific. BellSouth maintained that it has included North Carolina-specific data for those factors that can differ significantly from one state to another, and would thus have a material impact on the proposed rates.

The Public Staff stated that while it is true that some assumptions relating to forward-looking cost elements may be similar from state to state, there is evidence in the record that state-specific data could result in a substantial reduction in BellSouth's rates for this element. The Public Staff commented that there is also evidence suggesting that some assumptions used in the BellSouth cost study for these rate elements may be based on inefficient network practices, contrary to TELRIC principles. The Public Staff concluded that the Commission acted properly in requiring BellSouth to submit a study based entirely on North Carolina-specific data.

In this regard, Sprint contended that the ILECs should be required to use state-specific data. Sprint asserted that BellSouth's high capacity loops cost study grossly overstated costs. Sprint contended that BellSouth's weighting factor (probability of occurrence) for each terminal size is not representative of its actual network, nor is it representative of an efficient and forward-looking network, resulting in rates that are higher than necessary. Further, Sprint stated that the weighting factor used by BellSouth in the North Carolina proceeding was identical to that used by BellSouth in a similar proceeding in Florida and possibly other states as well. Sprint asserted that the weighting factor for a

particular terminal size cannot be the same for BellSouth in all exchanges in all states; geographic, demographic, and market conditions in the numerous exchanges in the several states served by BellSouth are simply too diverse for such a possibility to be true. Sprint explained that it had developed North Carolina-specific weighting factors based upon actual terminal sizes and customer billing data.

The following narrative is an excerpt setting forth some of the evidence provided by Sprint on this issue, as it was summarized in the *Recommended Order*:

. . . witness Dickerson testified that he found BellSouth's probabilities of occurrence to be suspect in that Sprint's OC48 terminals are primarily located in its most urban areas such as Fayetteville, Rocky Mount, and Greenville, while BellSouth is serving a more urban area than Sprint in North Carolina and yet Sprint's cost study shows a significantly higher use of OC48 terminations than BellSouth's cost study. Consequently, Sprint argued that BellSouth should be required to resubmit its cost studies using actual North Carolina-specific data to indicate its mix of OC3, OC12, and OC48 terminals for high-capacity loops. . . . Further, in its Proposed Order, Sprint stated that BellSouth uses a generic weighting factor (rather than a state or geographic specific weighting factor) to develop costs for DS3 level high-capacity loops. Consequently, Sprint stated that BellSouth's weighting factor for each terminal size is not representative of its actual network, nor does it represent an efficient and forward-looking network. Sprint argued that the end result is that BellSouth's weighting factor produces rates that are higher than necessary.

Based upon the foregoing, the Commission is not convinced by the arguments of BellSouth that it has appropriately included all North Carolina-specific data which would have a material impact on the cost study and the resulting rates. The Commission agrees with Sprint and the Public Staff that the rates for high-capacity loops in North Carolina should be based on North Carolina-specific data and affirms its decision on this finding.

CONCLUSIONS

The Commission affirms and upholds its original decision in this regard.

FINDING OF FACT NO. 6: LOOPS - Cross-Connects and Loop Qualification (Makeup) Information

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth is not providing nondiscriminatory access to loop qualification information. The Commission required BellSouth to provide access to

the Corporate Facilities Database (CFD). The Commission required BellSouth to provide access to both the Loop Facility Assignment Control System (LFACS) and Loop Qualification System (LQS) databases, on a permanent rather than interim basis. Additionally, the Commission concluded that since BellSouth's retail operations have had access to such data through electronic means and BellSouth was required to provide similar access to CLPs by May 17, 2000, CLPs will be allowed to pay only the nonrecurring charge for electronic processing, even when manual intervention is in fact required, until beta testing is complete and a final version of the electronic interface is available to all CLPs. The Commission concluded that BellSouth's proposed manual loop makeup nonrecurring charges are appropriate and reasonable. The Commission required BellSouth to indicate by no later than July 9, 2001, whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data of the nonrecurring charge and, if so, what portion. Depending on the information received, the Commission concluded that it may need to modify the nonrecurring charge for this UNE.

The Commission concluded that Sprint is providing nondiscriminatory access to loop qualification information. The Commission concluded that Sprint's proposed nonrecurring charge for loop qualification is appropriate and reasonable. The Commission required Sprint to indicate by no later than July 9, 2001 whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data of the nonrecurring charge and, if so, what portion. Depending on the information received, the Commission concluded that it may need to modify the nonrecurring charge for this UNE.

The Commission concluded that Verizon is not providing nondiscriminatory access to loop qualification information. The Commission concluded that Verizon's denial of CLP access to information on the presence of repeaters is discriminatory. The Commission required Verizon to provide information on the presence of repeaters. The Commission concluded that Verizon may not charge CLPs for access to loop makeup data until after Verizon has proposed such rates and those rates have been approved. The Commission required Verizon to develop rates for access to loop qualification information, and to file such rates, along with supporting cost data. The Commission concluded that such filing should also provide whether any of the nonrecurring charge for the provision of its retail ADSL service is attributable to the accessing of loop makeup data of the nonrecurring charge and, if so, what portion. Further, the Commission concluded that such rates, with supporting cost data, should be filed by no later than July 9, 2001.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth objected to Finding of Fact No. 6 stating that BellSouth is developing an electronic method of providing CLPs with access to information from its CFD, as appropriate, in connection with an electronic loop qualification query. Therefore, BellSouth stated that direct access to that database is unnecessary.

BellSouth explained that since November 18, 2000, CLPs have had electronic pre-order functionality to submit a query for loop makeup information contained in the LFACS database. BellSouth stated that such functionality is provided through the Telecommunications Access Gateway (TAG), RoboTAG™, and the Local Exchange Navigation System (LENS) electronic interfaces. BellSouth contended that CLPs have access to loop qualification information in the same manner as does BellSouth's retail operations. According to BellSouth, the loop qualification information used to determine whether a BellSouth customer qualifies for Fast Access® service is obtained from LFACS. Further, BellSouth commented that if the CLP needs additional information that is not available electronically, it can request a manual loop makeup request, which will be processed in substantially the same time and manner as a similar request for a BellSouth customer as part of the order and provisioning process — the data must be retrieved from the CFD by personnel in BellSouth's Outside Plant Engineering Department whether the request relates to a BellSouth customer or a CLP customer. Consequently, BellSouth stated that CLPs are not at a disadvantage when compared to BellSouth's retail operations.

Further, BellSouth stated that, in September 2001, it would make available a planned enhancement for an electronic query from LFACS to the CFD for loop qualification information. Thereafter, BellSouth explained that when a CLP sends an electronic query to LFACS for loop qualification information, and all the necessary information is not resident in LFACS, an electronic query will be automatically launched to the CFD to retrieve the required additional information. Then, according to BellSouth, the additional loop qualification information resulting from the queried CFD will be automatically combined with the LFACS information and provided to the CLP. BellSouth stated that the entire process will be automated and will occur as a result of the CLP's initial electronic query to LFACS. Also, BellSouth explained that the information obtained from the query to the CFD will be populated in the LFACS database and thus will be available going forward for future electronic loop qualification information queries. Consequently, BellSouth asserted that it would not be necessary for the CLPs to be provided with direct access to the CFD to achieve parity with respect to this function.

Direct access to the CFD raises a number of concerns for BellSouth about the proprietary data contained in the CFD which includes BellSouth's proprietary network information and certain information regarding BellSouth's end-user customers. For example, BellSouth explained that the CFD provides detailed information on the exact location of cables serving military installations and financial institutions as well as police, fire, disaster recovery, and Federal Aviation Administration (FAA) locations among others. BellSouth asserted that such sensitive proprietary data should not be made available to

every CLP operating in North Carolina, nor would such customer-specific information be necessary for loop qualification. Additionally, BellSouth noted that because the assignment information is not located in the CFD, but rather in the LFACS, a loop cannot be qualified through the CFD.

In regard to the Commission's requirement that BellSouth make the LFACS and LQS available to CLPs on a permanent basis, BellSouth requested that the Commission clarify its decision such that BellSouth would maintain the flexibility to upgrade or even replace these systems in the future. BellSouth requested that the Commission clarify its requirement to be as follows: "BellSouth will make LFACS and LQS — or a functionally equivalent electronic system — available to CLPs on a permanent basis." Further, BellSouth stated that this language will simply allow BellSouth the flexibility to upgrade, update, or possibly replace its electronic systems and platforms to incorporate changes in requirements or technology.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom did not object to this Finding of Fact.

INITIAL COMMENTS

BELLSOUTH: BellSouth did not provide initial comments on its objection.

COVAD: Covad noted in its initial comments that according to the *UNE Remand Order*, at Paragraph 429, an ILEC is not required to provide electronic access to loop qualification information if the ILEC, itself, does not have such access, but that the ILEC may not afford CLPs only manual access to such information when the ILEC, itself, has electronic access. Covad stated that BellSouth has electronic access to the CFD, which contains detailed information on loops in BellSouth's North Carolina network, yet CLPs do not have such electronic access to the CFD. Accordingly, Covad contended that the Commission had correctly concluded in the *Recommended Order* that BellSouth is not providing nondiscriminatory access to loop qualification information.

Covad remarked that BellSouth stated that its personnel retrieve information from the CFD for CLPs in "substantially the same time and manner" as BellSouth does for itself. However, Covad asserted that this is not the legal standard, instead, as the FCC made clear in the *UNE Remand Order*, BellSouth must afford CLPs electronic access to this data if BellSouth has such access available. Further, Covad cited Paragraph 137 of the FCC's *Ameritech-Michigan 271 Order*, dated August 19, 1997, which states that "(f)or those

functions that the BOC itself accesses electronically, the BOC must provide equivalent electronic access for competing carriers.”

Additionally, Covad pointed out that BellSouth also claimed that access to the CFD should be denied to the CLPs because “a loop cannot be qualified through the CFD.” Again, Covad asserted that BellSouth is applying the wrong legal standard. Covad explained that the FCC, according to Paragraph 427 of the *UNE Remand Order*, has mandated that CLPs have access to “the same underlying information” that the ILEC has “in any of its own databases or internal records”. Further, Covad stated that in Paragraph 428, the FCC expressly stated that ILECs may not filter access to loop data. Covad stated that access is not limited to information that the ILEC may believe is necessary to qualify a loop for advanced services.

In regard to BellSouth’s statement that access to the CFD will be made available later this year, Covad stated that when this is implemented, it will need to be evaluated to determine if BellSouth has eliminated the discrimination that the Commission found in its *Recommended Order*. Further, Covad asserted that promises of future performance do not negate the fact that BellSouth is not presently providing nondiscriminatory access.

Additionally, Covad stated that BellSouth’s concern about revealing customer-specific information is baseless. Covad also contended that BellSouth’s belated concerns about compromising national security is a red herring. It is Covad’s position that the Commission should affirm its Finding of Fact No. 6.

PUBLIC STAFF: The Public Staff noted in its initial comments that BellSouth had provided two arguments in support of its exception. The first of these arguments to be addressed is the matter concerning BellSouth’s contention that it is unnecessary to provide CLPs with direct access to the entire CFD for CLPs to have nondiscriminatory access to loop makeup information. The Public Staff acknowledged that the CFD contains data relating to loop makeup information, but also noted that it contains certain information which should not be shared with CLPs due to its sensitive or proprietary nature. The Public Staff pointed out that it appears that BellSouth’s current practice of having BellSouth employees manually accessing the CFD for loop makeup data in the same manner for CLPs as for BellSouth’s internal operations achieves parity. However, the Public Staff commented that the enhancement proposed by BellSouth, which will automatically provide necessary loop makeup information electronically from the CFD, should further guarantee the CLPs nondiscriminatory access to such data. Accordingly, the Public Staff recommended that the Commission modify its finding to require BellSouth personnel to provide necessary loop makeup information in the CFD when it is not available from the LFACS manually, rather than provide direct access to the CFD itself. Further, the Public Staff stated that after the enhancement in September 2001, BellSouth should then provide the ability for loop qualification data from the CFD to be obtained automatically via an electronic query when all information is not contained in the LFACS database.

The other argument provided in BellSouth's exceptions concerned the Commission's requirement that BellSouth make LFACS and LQS available to CLPs on a permanent basis. BellSouth requested that the Commission clarify its decision such that BellSouth would maintain the flexibility to upgrade or even replace these systems in the future. The Public Staff stated that it agrees that BellSouth should certainly be allowed to upgrade and update LFACS and LQS. However, the Public Staff commented that it was concerned that replacement of these systems with functionally equivalent systems could be detrimental to CLPs that have constructed electronic interfaces with the existing systems. Nonetheless, the Public Staff concluded that if BellSouth finds it prudent to replace the existing systems with functionally superior systems, then it would most likely benefit CLPs. Therefore, the Public Staff recommended that the Commission alter this portion of Finding of Fact No. 6 to read as follows: "BellSouth will make LFACS and LQS or functionally superior electronic systems available to CLPs on a permanent basis."

SPRINT: Sprint did not provide initial comments on this objection.

VERIZON: Verizon did not provide initial comments on this objection.

WORLDCOM: WorldCom stated in its initial comments that one of the uses of access to the CFD is to provide access to detailed loop information. Thus, WorldCom contended that CLPs should be able to directly access the CFD. Further, WorldCom asserted that the contention that BellSouth intends to eventually enhance LFACS or the CFD is irrelevant.

REPLY COMMENTS

BELLSOUTH: BellSouth stated in its reply comments that, in general, it disagrees with the Parties' comments that suggest BellSouth's exceptions should be overruled. BellSouth commented that its original pleading addressed its exception to Finding of Fact No. 6 and it did not believe that further comments were necessary.

PUBLIC STAFF: The Public Staff did not provide reply comments on this objection.

SPRINT: Sprint did not provide reply comments on this objection.

VERIZON: Verizon did not provide reply comments on this objection.

WORLDCOM: WorldCom did not provide reply comments on this objection.

DISCUSSION

BellSouth is the only party who objected to this finding. BellSouth's argument is that it is unnecessary to provide CLPs with direct access to the entire CFD for CLPs to have

nondiscriminatory access to loop makeup information. Additionally, BellSouth has requested that the Commission clarify its requirement that BellSouth make the LFACS and LQS available to CLPs on a permanent basis such that BellSouth would maintain the flexibility to upgrade or even replace these systems in the future.

DIRECT ACCESS TO CFD:

In regard to the matter of direct access to the entire CFD, BellSouth stated that direct access to that database is unnecessary. Direct access to the CFD raises a number of concerns for BellSouth about the proprietary data contained in the CFD which includes BellSouth's proprietary network information and certain information regarding BellSouth's end-user customers, such as the exact location of cables serving military installations and financial institutions as well as police, fire, disaster recovery, and FAA locations among others. BellSouth asserted that such sensitive and proprietary data should not be made available to every CLP operating in North Carolina, nor would such customer-specific information be necessary for loop qualification.

BellSouth explained that since November 2000, CLPs have had electronic pre-order functionality to submit a query for loop makeup information contained in the LFACS database. Further, BellSouth commented that if the CLP needs additional information that is not available electronically, it can request a manual loop makeup request, which will be processed in substantially the same time and manner as a similar request for a BellSouth customer as part of the order and provisioning process — the data must be retrieved from the CFD by personnel in BellSouth's Outside Plant Engineering Department whether the request relates to a BellSouth customer or a CLP customer. Consequently, BellSouth stated that CLPs are not at a disadvantage when compared to BellSouth's retail operations. Further, BellSouth stated that, in September 2001, it would make available an enhancement for an electronic query from LFACS to the CFD for loop qualification information. Thereafter, BellSouth explained that when a CLP sends an electronic query to LFACS for loop qualification information, and all the necessary information is not resident in LFACS, an electronic query will be automatically launched to the CFD to retrieve the required additional information and the information resulting from the queried CFD will be automatically combined with the LFACS information and provided to the CLP. Thus, BellSouth asserted that it would not be necessary for the CLPs to be provided with direct access to the CFD to achieve parity with respect to this function.

Covad argued that BellSouth has electronic access to the CFD, which contains detailed information on loops in BellSouth's North Carolina network, yet CLPs do not have such electronic access to the CFD. Accordingly, Covad contended that the Commission had correctly concluded in the *Recommended Order* that BellSouth is not providing nondiscriminatory access to loop qualification information. In regard to BellSouth's statement that access to the CFD will be made available later this year, Covad stated that

when this is implemented, it will need to be evaluated to determine if BellSouth has eliminated the discrimination that the Commission found in its *Recommended Order*.

The Public Staff agreed with BellSouth that the CFD contains certain information which should not be shared with CLPs due to its sensitive or proprietary nature. The Public Staff stated that it appears that BellSouth's current practice of having BellSouth employees manually accessing the CFD for loop makeup data in the same manner for CLPs as for BellSouth's internal operations achieves parity. However, the Public Staff commented that BellSouth's proposed enhancement, which will automatically provide necessary loop makeup information electronically from the CFD, should further guarantee the CLPs nondiscriminatory access to such data. Accordingly, the Public Staff recommended that the Commission modify its finding to require BellSouth personnel to provide necessary loop makeup information in the CFD when it is not available from the LFACS manually, rather than provide direct access to the CFD itself and that after the enhancement in September 2001, BellSouth should then provide the ability for loop qualification data from the CFD to be obtained automatically via an electronic query when all information is not contained in the LFACS database.

WorldCom maintained that the CLPs should have direct access to the CFD. WorldCom stated that BellSouth's contention that it will enhance LFACS or the CFD is irrelevant.

As summarized in the *Recommended Order*, BellSouth witness Pate testified that the CFD is a source of data which contains information on all North Carolina loops and includes loop makeup information. The Commission found that access to the CFD was appropriate and stated that the record did not provide any evidence as to why access to the CFD should be denied. However, based upon the foregoing objections/comments and, in particular, BellSouth's concerns that the CFD contains certain information which should not be shared with CLPs due to its sensitive and/or proprietary nature, the Commission finds it appropriate to amend its finding, in this regard. Accordingly, the Commission concludes that BellSouth personnel should be required to provide necessary loop makeup information in the CFD when it is not available from the LFACS manually, rather than provide direct access to the CFD itself and that after BellSouth's planned enhancement, BellSouth should then provide the ability for loop qualification data from the CFD to be obtained automatically via an electronic query when all information is not contained in the LFACS database.

The Commission is encouraged by BellSouth's decision to complete an enhancement in September 2001. It is the Commission's understanding that the enhancement means that BellSouth currently is providing the ability for loop qualification data from the CFD to be obtained automatically via an electronic query when all information is not contained in the LFACS database. The Commission assumes that this type of access provides adequate loop makeup information in a nondiscriminatory manner unless notified to the contrary.

AVAILABILITY OF LFACS AND LQS:

In regard to the Commission's requirement that BellSouth make the LFACS and LQS available to CLPs on a permanent basis, BellSouth requested that the Commission clarify its decision such that BellSouth would maintain the flexibility to upgrade or even replace these systems in the future. BellSouth requested that the Commission clarify its requirement to be as follows: "BellSouth will make LFACS and LQS — or a functionally equivalent electronic system — available to CLPs on a permanent basis."

The Public Staff was the only party to comment on BellSouth's request in this regard. The Public Staff agreed with BellSouth that it should certainly be allowed to upgrade and update LFACS and LQS. However, the Public Staff commented that it was concerned that replacement of these systems with functionally equivalent systems could be detrimental to CLPs that have constructed electronic interfaces with the existing systems. Nonetheless, the Public Staff concluded that if BellSouth finds it prudent to replace the existing systems with functionally superior systems, then it would most likely benefit CLPs. Therefore, the Public Staff recommended that the Commission alter this portion of Finding of Fact No. 6 to read as follows: "BellSouth will make LFACS and LQS or functionally superior electronic systems available to CLPs on a permanent basis."

The Commission agrees with the Public Staff. It is surely possible that BellSouth might need to change these systems in the future as new requirements arise and new technologies develop. Thus, it is reasonable to allow BellSouth the flexibility to replace these systems should it develop functionally superior systems that the CLPs could use. Accordingly, the Commission finds it appropriate to clarify its finding, in this regard, such that it should read as follows: "BellSouth will make LFACS and LQS or functionally superior electronic systems available to CLPs on a permanent basis."

CONCLUSIONS

The Commission affirms its *Recommended Order*, in part, and amends its *Recommended Order*, in part, in this regard.

The Commission amends its decision such that it concludes that BellSouth personnel should be required to provide necessary loop makeup information in the CFD when it is not available from the LFACS manually, rather than provide direct access to the CFD itself and that after BellSouth's planned enhancement, BellSouth should then provide the ability for loop qualification data from the CFD to be obtained automatically via an electronic query when all information is not contained in the LFACS database.

The Commission also clarifies the portion of this finding concerning availability of LFACS and LQS, such that it should read as follows:

BellSouth will make LFACS and LQS or functionally superior electronic systems available to CLPs on a permanent basis.

In all other respects, the Commission affirms its Finding of Fact No. 6.

FINDING OF FACT NO. 7: Subloops: (a) What constitutes nondiscriminatory access to subloops? (b) What are the cost-based rates for subloops?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth is allowed to provide subloops through an access terminal such as BellSouth has proposed, and the Parties should negotiate a mutually agreeable rate for the provision of the access terminal. The rates proposed by BellSouth and Sprint for access to intrabuilding network cable [INC] and network terminating wire [NTW], with certain exceptions, are appropriate. BellSouth, Sprint, and Verizon should refile their subloop rates on a geographically deaveraged basis subject to the Commission's *Recommended Order Concerning Geographic Deaveraging*. Verizon's recurring and nonrecurring rates for access to INC and NTS other than those filed on a case-by-case basis are approved, but Verizon's proposal to develop individual TELRIC-based costs once a request is made for particular location is rejected. Verizon must submit a study with proposed rates for INC and NTW by no later than July 9, 2001.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T objected to Finding of Fact No. 7 stating that the Commission should order BellSouth to allow CLPs to interconnect directly to BellSouth's subloop terminals in order to gain access to subloop elements. AT&T pointed out that this issue concerns the manner in which BellSouth will provision various subloop facilities to CLPs, as well as the prices BellSouth will be permitted to charge CLPs for those facilities. AT&T stated that resolution of the provisioning issue substantially effects the question of the rates BellSouth will charge, and is critical to the continued development of facilities-based competition in North Carolina.

AT&T further stated that the BellSouth proposal violates the underlying purpose of the FCC's broad definition of "subloop," which is to allow CLPs "**maximum flexibility** to interconnect their own facilities at these points where technically feasible." *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (November 5, 1999) ¶ 207 (*UNE Remand Order*).

AT&T stated that CLPs will have the same access to the BellSouth network in the intermediary access terminal as they would through direct access to the BellSouth subloop terminal, but with the additional delay and cost associated with the intermediary access terminal. AT&T pointed out that the intermediary access terminals will be accessible by CLPs and other CLP technicians (as well as BellSouth technicians), any of which could still snip the wrong wires, could still make the wrong connections, could still cause service disruptions to BellSouth and other CLPs, and could still forget to record the pairs they had accessed. Thus, AT&T argued, the only additional "security" concern the BellSouth proposal provides is the security to the BellSouth subloop terminal itself. AT&T contended that there is no greater security afforded to the network, and no greater protection of consumers by requiring intermediary access terminals. AT&T argued that this is not a valid technical feasibility argument, and it certainly is not sufficient for the Commission to impose on CLPs the burdens of accessing subloop elements through intermediary access terminals rather than directly through the BellSouth subloop terminals as required by law.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom did not object to this Finding of Fact.

INITIAL COMMENTS

BELLSOUTH: In its initial comments, BellSouth stated that AT&T's arguments concerning an intermediate access terminal offer no new information and that AT&T simply disagrees with the Commission's *Recommended Order* on these issues. BellSouth contended that the Commission's decisions on those issues were correct based on the record evidence and applicable law.

PUBLIC STAFF: In its initial comments, the Public Staff stated that it sees no new information offered in AT&T's argument which the Commission has not previously considered and therefore disagrees with this exception. The Public Staff stated that it shares the Commission's concern that direct access by CLPs to subloop terminals could compromise network reliability and security.

VERIZON: In its initial comments, Verizon stated that although Verizon was not specifically mentioned in AT&T's Exception, the Commission's decision could affect Verizon, as well as BellSouth. Verizon contended that AT&T's exception to Finding of Fact No. 7 reiterates the same arguments against the use of intermediate access terminals that

AT&T made during the hearing. Verizon pointed out that the Commission has already rejected those arguments once, and it believes the Commission should again reject AT&T's exceptions to Finding of Fact No. 7.

REPLY COMMENTS

No party filed Reply Comments on this issue.

DISCUSSION

AT&T was the only Party who filed Objections to this Finding of Fact. Initial Comments were received by BellSouth, Verizon, and the Public Staff, all of whom stated that AT&T has filed no new information. These Parties all supported the Commission's initial decision and recommended that the Commission reject AT&T's exceptions to Finding of Fact No. 7.

The Commission's *Recommended Order* instructed the Parties to file certain cost studies including Verizon's subloops by July 9, 2001. However, in response to a Motion for Extension of Time to File Cost Studies filed by Verizon on June 18, 2001, the Commission issued an Order on June 20, 2001 delaying the filing date for cost studies pending further order by the Commission.

The Commission agrees with BellSouth, Verizon, and the Public Staff that AT&T has presented no new arguments. Therefore, the Commission finds it appropriate to affirm its initial decision. In addition, the Commission finds that BellSouth, Sprint, and Verizon should submit cost studies for subloops on a geographically deaveraged basis subject to the Commission's *Orders* concerning geographic deaveraging no later than January 30, 2002.

CONCLUSIONS

The Commission affirms and upholds its original decision on this issue. In addition, the Commission finds that BellSouth, Sprint, and Verizon should submit cost studies for subloops on a geographically deaveraged basis subject to the Commission's *Orders* concerning geographic deaveraging no later than January 30, 2002.

FINDING OF FACT NO. 14: Should BellSouth be required to provide operator services and directory assistance (OS/DA) as a UNE?

INITIAL COMMISSION DECISION

The Commission concluded that BellSouth should be allowed to remove OS/DA from its UNE price list because BellSouth is currently providing customized or selective routing which would enable parties to use an alternative OS/DA provider.

The Commission concluded that when Sprint offers customized routing on a state-wide basis, Sprint should be allowed to remove OS/DA from its UNE price list. The Commission, in addition, concluded that Verizon's proposal to negotiate UNE rates for customized routing on a case-by case basis does not satisfy the FCC's rules and Verizon should not be allowed to remove its UNE rates for OS/DA at this time.

OBJECTIONS

ALLTEL: ALLTEL objected to Finding of Fact No. 14 stating that BellSouth has not established that it presently has the ability to provide customized or selective routing at a level that will allow all CLPs offering service to the public in North Carolina to effectively use an alternate OS/DA provider. ALLTEL argued that until such a showing is made, BellSouth should not be allowed to remove OS/DA from its UNE price list in North Carolina.

ALLTEL contended that CLPs must have access at cost-based rates to ILEC emergency and directory assistance listings in order to provide the quality of service local service customers expect. ALLTEL stated that without access to this service, competitive entrants face yet another hurdle in their efforts to establish meaningful local service competition.

ALLTEL stated that, as pointed out in the rebuttal testimony of AT&T witness King, BellSouth has not yet demonstrated that its AIN solution is equal to the service that it provides itself. ALLTEL contended that AIN was not designed to support normal call routing and does not work well for high volume calling. ALLTEL further contended that neither the line class code (LCC) method nor BellSouth's AIN hubbing method will provide an efficient or commercially effective method of selectively routing OS/DA traffic to an alternative OS/DA provider. ALLTEL claimed that BellSouth's offering in this regard is not truly customized and does not offer CLPs the same service which BellSouth which provides to itself.

AT&T: AT&T objected to Finding of Fact No. 14 stating that the Commission's decision to allow BellSouth to remove OS/DA from its UNE price list is fundamentally inconsistent with its recent *Order Ruling on Objections and Requiring the Filing of the Composite Agreement* in the AT&T/BellSouth arbitration (Docket Nos. P-140, Sub 73 and P-646, Sub 7). AT&T stated that in that Order, the Commission identified two parts to the issue of OS/DA raised by AT&T in the arbitration, and that the first issue was settled by the Parties. AT&T contended, however, that the second issue identified by the Commission as

how AT&T will electronically designate, on customer-specific orders, the individual choice among the four choices for OS/DA services, was determined by the Commission as remaining outstanding, since the Parties had not yet been able to resolve their differences on the issue. AT&T contended that the Commission specifically determined that it "still considers that this matter is one on which the Parties need to continue to negotiate," and it required BellSouth and AT&T to file quarterly status reports.

AT&T contended that as long as the second part of the issue from the AT&T/BellSouth arbitration remains unresolved, the Commission cannot conclude that BellSouth is providing acceptable customized routing which would enable the parties to use an alternative OS/DA provider.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon objected to Finding of Fact No. 14, stating that the FCC requires Verizon, or any ILEC, to offer OS/DA as a UNE only where it does not provide customized routing or a compatible signaling protocol. See FCC Rule 51.319(f). See also *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*. 15 FCC Rcd 3696 at Paras. 15, 463 (1999). Verizon contended that the FCC was silent as to the manner in which ILECs may price their available customized routing services. Verizon stated that the FCC simply states that if an ILEC offers customized routing to a requesting CLP it need not offer OS/DA services. Verizon contended that it also offers less expensive alternatives to customized routing such as customized branding. Verizon stated that offering these services to CLPs on a case-by-case basis is the most efficient manner in which to price and to provide them to requesting CLPs. Verizon argued that the FCC rules simply require that ILECs offer customized routing, regardless of how it is priced and because Verizon offers customized routing and other alternatives to CLPs in North Carolina, the Commission erred when it required Verizon to continue to provide OS/DA as a UNE.

WORLDCOM: WorldCom did not object to this Finding of Fact.

INITIAL COMMENTS

BELLSOUTH: In its initial comments, BellSouth refuted AT&T's argument that the Commission's finding in this docket is inconsistent with the Commission's decision in the AT&T/BellSouth arbitration, Docket Nos. P-140, Sub 73 and P-646, Sub 7. BellSouth argued that in that consolidated docket, the Commission left open a single, narrow issue related to OS/DA. Specifically, BellSouth argued that the Commission encouraged AT&T

and BellSouth "to continue negotiations on the matter of electronic ordering among multiple options for OS/DA services" and ordered the parties "to continue to file reports on the status of such negotiations." *Order Ruling on Objections and Requiring the Filing of the Composite Agreement*, Docket Nos. P-140, Sub 73 and P-646, Sub 7 (June 19, 2001), at p. 16. BellSouth contended that the Commission's ruling in the AT&T/BellSouth agreement is not, as AT&T suggests, a finding that BellSouth does not offer customized routing but merely required the parties to conduct further negotiations on the issue of electronic ordering of multiple selective routing options. BellSouth further stated that in the BellSouth/WorldCom arbitration, the Commission specifically found that "BellSouth is not required to provide operator services and directory assistance (OS/DA) as a UNE because it is currently providing customized or selective routing which would enable [WorldCom] to use an alternative OS/DA provider." *Recommended Arbitration Order*, Docket No. P-474, Sub 10 (April 3, 2001) at p.4.

COVAD: Covad did not file initial comments on this objection.

PUBLIC STAFF: In its initial comments, the Public Staff stated that it believes that BellSouth is not required to show that its customized routing method meets the specific requirements of each CLP in order to justify removing its OS/DA from its price list. The Public Staff pointed out that the Commission has found in this case and in the MCI/BellSouth arbitration, Docket No. P-474, Sub 10, that the customized routing methods offered by BellSouth provide the CLPs with an effective means of accessing an alternative OS/DA provider. The Public Staff contended that the arguments offered by AT&T and ALLTEL give the Commission no reason to change this finding.

The Public Staff stated that it does not agree with Verizon's exception that the FCC only determined that customized routing must be made available to CLPs and did not address how ILECs must price their customized routing. The Public Staff stated that of particular concern is the delay factor inherent in setting rates on a case-by-case basis as Verizon proposes. The Public Staff contended this would have an adverse impact on competition, as the Commission has recognized. The Public Staff argued that Verizon has offered no persuasive reason to change the Commission's finding that Verizon must have specific rates for customized routing and make them available to the CLPs.

SPRINT: Sprint did not file initial comments on this objection.

VERIZON: Verizon did not file initial comments on this objection.

WORLDCOM: In its initial comments to Verizon's exceptions WorldCom stated that taking Verizon's argument that it does not have to unbundle its OS/DA as long as it charges any rate that it desires for customized routing to its logical (and absurd) consequence, it is easy to see that Verizon's "customized routing" provides no alternative

to a CLP. WorldCom contended that Verizon must continue to unbundle OS/DA, as the Commission so concluded.

REPLY COMMENTS

BELLSOUTH: BellSouth did not file reply comments on this objection.

PUBLIC STAFF: The Public Staff did not file reply comments on this objection.

SPRINT: Sprint did not file reply comments on this objection.

VERIZON: In its reply comments, Verizon stated that, as explained in its Exceptions, the FCC rules do not require an ILEC to provide OS/DA if it provides customized routing (FCC Rule 51.319(f)). Verizon contended that the FCC could have, but did not, establish the manner in which customized routing must be priced. Verizon argued that, as long as an ILEC provides customized routing, the FCC allows that ILEC to remove OS/DA from its UNE list. Verizon argued that its offer of customized routing, however it is priced, is sufficient under the FCC rules to remove OS/DA from the Company's UNE list.

Verizon contended that the concerns expressed by the Public Staff concerning the delay that may occur as Verizon negotiates with CLPs to set the price of customized routing, and by WorldCom that Verizon's pricing practices for customized routing provide no alternative to a CLP are misplaced. Verizon contended that it already offers customized routing and alternatives, such as customized branding, to CLPs and prices them on a case-by-case basis. Verizon stated that this practice has not led to delays in the provision of services, and certainly has not led to the extreme result that even WorldCom admits is absurd. Verizon contended that there is no reason to believe that Commission intervention is suddenly necessary to prevent unreasonable prices or delay.

WORLDCOM: WorldCom did not file reply comments on this objection.

DISCUSSION

Finding of Fact No. 14 deals with the issue of whether the ILECs should be allowed to remove OS/DA from their UNE price lists.

AT&T contended that OS/DA should not be removed from BellSouth's price list until the Commission has resolved the second part of the OS/DA issue in the AT&T/BellSouth arbitration proceeding, Docket Nos. P-140, Sub 73 and P-646, Sub 7, relating to electronic ordering procedures for OS/DA. In its *Recommended Arbitration Order*, the Commission concluded that BellSouth must provide line class code methods and procedures documents to AT&T by no later than March 26, 2001, and encouraged the Parties to continue negotiations on this issue. The Parties were required to file a report on the status of such

negotiations by no later than April 23, 2001. In its *Order Ruling on Objections and Requiring the filing of the Composite Agreement* in this proceeding, the Parties were ordered to continue negotiations on the matter of electronic ordering among multiple options for OS/DA services and were instructed to file their next respective status reports on or before September 30, 2001, and thereafter, on a quarterly basis until the matter is mutually resolved or otherwise addressed by further order of the Commission.

BellSouth filed its status report on September 28, 2001, stating that it offers two methods of customized routing to CLPs: AIN and Line Class Code (LCC). BellSouth stated it has tested both methods and both currently are available. Since AT&T did not file a corresponding status report by the end of September 30, 2001, it would appear that this issue is moot.

As far as ALLTEL's contention that BellSouth has not shown that the customized routing offered by BellSouth is equal to the service that BellSouth provides to itself, or that its customized routing solutions would be effective for all CLPs, the Commission agrees with the Public Staff that BellSouth is not required to show that its customized routing method meets the specific requirements of each CLP in order to justify removing OS/DA from its price list.

The Commission agrees with the Public Staff that Verizon must have specific rates for customized routing and make them available to the CLPs in order to meet the FCC's requirements. We agree further with the Public Staff that Verizon has offered no persuasive reason to change this finding in light of the impact on potential competitors.

CONCLUSIONS

The Commission affirms and upholds its original decision in this matter.

FINDING OF FACT NO. 17(a): SPLITTERS - What are the appropriate ways a splitter can be provided (i.e., splitter ownership options)? Should splitter access be provided on a per port basis? Should CLPs have direct physical access to all cross connect points of the splitter at the main distribution frame (MDF) for testing purposes?

INITIAL COMMISSION DECISION

The Commission concluded that ILECs shall have discretion as to whether they will provide ILEC-owned splitters for CLP use in line sharing. Further, the Commission found that ILECs are not obligated to offer splitters on a per-port basis and that ILECs have the discretion of offering splitters on a per-port basis, if they so desire. Finally, the Commission concluded that ILECs should provide CLPs the same test access to splitters as the ILECs afford themselves until the FCC reaches a decision on the issue of test access.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T objected to Finding of Fact No. 17(a) stating that the Commission should specifically order BellSouth to offer BellSouth-owned splitters as a means of facilitating line splitting. AT&T argued that there is no dispute that BellSouth has a legal obligation to provide access to all of the features, functions, and capabilities of every UNE in a manner that allows the requesting carrier to provide any telecommunications service that can be offered by means of that UNE. AT&T maintained that this duty applies to access to unbundled loops to provide DSL and other data services. AT&T asserted that one of the features, functions, and capabilities of a loop is the use of its high frequency spectrum and that the loop itself should include all “attached electronics”, if such are necessary, to fully access all features, functions, and capabilities in order to provide service. AT&T argued that the purchase of UNE-P implies purchase of the full capabilities of the loop, which should include its capacity to be split to accommodate the provision of data services.

AT&T maintained that there is no technical reason why BellSouth cannot install a splitter to allow a provider of voice service over UNE-P to self-provision or partner with another CLP to provide advanced services. AT&T observed that BellSouth has agreed that it will offer splitters for line sharing when it remains the voice provider. AT&T argued that it is discriminatory to provide splitters for line sharing but not for line splitting, given that the two are technically identical.

AT&T noted that both the Texas and Wisconsin State Public Utility Commissions have required SBC and Ameritech, respectively, to provide ILEC-owned splitters. AT&T noted that the Texas Commission ruled that a splitter is part of the loop and is necessary to provide the full features and functions of the loop. AT&T also noted that the Wisconsin Commission determined that the splitter is part of the loop and required Ameritech to provide line splitting to AT&T.

AT&T further commented that the Indiana Commission concluded that the splitter is ancillary equipment necessary to access the high frequency portion of the loop and that the high frequency portion of the loop and the low frequency portion of the loop should be considered as separate UNEs.

AT&T maintained that in Georgia, BellSouth has reached an agreement with several CLPs to facilitate line splitting. AT&T noted that BellSouth has agreed in Georgia to own the splitter in line splitting situations.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom objected to Finding of Fact No. 17(a) stating that this Finding of Fact allows ILECs to necessitate a collocation arrangement, and discriminate against UNE-P voice providers, in violation of 47 U.S.C. §251(c)(2) and (c)(3). WorldCom argued that if this Finding of Fact is accepted by the Commission, the *Recommended Order* in this respect would seriously and adversely affect the development of competition.

WorldCom argued that Finding of Fact No. 17(a), in holding that ILECs are not required to provide an ILEC-owned splitter, is premised on the FCC's *Section 271 Order* allowing SBC to provide interLATA service in Texas. WorldCom argued that the Commission chose not to exercise its independent jurisdiction even though the FCC has made it clear that its requirements are the minimum necessary to implement line sharing. WorldCom maintained that as a matter of policy, the Commission should require ILECs to provide line splitting in a UNE-P environment.

WorldCom argued that when a CLP obtains a loop via UNE-P, it acquires the rights to the entire loop, including the portions of the loop used to provide voice service and the portions capable of providing advanced services. WorldCom noted that 47 U.S.C. §153(29) defines a network element to include the "features, functions and capabilities that are provided by means of such facility or equipment", which WorldCom argued would include a splitter. WorldCom maintained that adding a splitter to the loop is analogous in relevant technical respects to adding or removing loop electronics, such as bridged taps, load coils, or conditioners.

INITIAL COMMENTS

BELLSOUTH: BellSouth stated in its initial comments that both AT&T and WorldCom have taken the Commission's request for comments on the potential order in this docket as a "green light" to litigate an issue that was not raised in the proceeding: line splitting. BellSouth maintained that neither AT&T nor WorldCom (nor any other CLP) offered testimony in this docket on the issue of provisioning line splitting. BellSouth argued that an exception to the *Recommended Order* in this docket is not the appropriate vehicle to decide such a highly debated issue as to how UNE-P combinations should be converted to a shared circuit or who is responsible for providing the splitter.

Nevertheless, BellSouth stated that it would take this opportunity to state its position with respect to line splitting. BellSouth maintained that it provides nondiscriminatory access to the high frequency portion of the loop in compliance with requirements of the FCC's *Line*

Sharing Order and *Line Sharing Reconsideration Order*. BellSouth noted that with line splitting, BellSouth is not the provider of either the voice or the data service to the end user. BellSouth commented that it offers the same line splitting arrangement to CLPs as that described by the FCC in its *Texas 271 Order* and *Line Sharing Reconsideration Order*. BellSouth stated that it will work cooperatively with the voice CLP and the data CLP to develop methods and procedures whereby the voice CLP and the data CLP may provide services over the same loop.

BellSouth noted that to participate in line splitting, either the voice provider, the data provider, or both will need a collocation agreement with BellSouth and will need an interconnection agreement to order cross connections, loops, and ports. BellSouth maintained that the high frequency portion of the loop would be available for data through the CLP-provided splitter, which would be accessed via a cross-connection from the frame to the CLP's collocation space. BellSouth asserted that a second cross-connection would return the voice signal from the splitter in the collocation space to the voice switch port. BellSouth stated that it will bill the CLP that purchases the loop and that the applicable recurring and nonrecurring charges for this line splitting arrangement are: the unbundled loop rate, the unbundled port rate, and the rate for two collocation cross-connections.

BellSouth argued that contrary to AT&T's and WorldCom's claims, and as specified in the FCC's *Line Sharing Reconsideration Order*, in a line splitting arrangement, the loop and the port are not a loop and port combination (i.e., a UNE-P), but must be individual stand-alone network elements. BellSouth argued that it is not required to own or maintain the splitter used for this purpose.

BellSouth noted that line splitting can also occur in the situation where a line sharing arrangement is already in place and BellSouth loses the voice service to a CLP. BellSouth stated that if the original line sharing arrangement was established with a CLP-owned splitter, then BellSouth would not be involved with the splitter provisioning, and, accordingly, any decisions regarding the use of the splitter would be left up to the data CLP. However, BellSouth asserted, if the original line sharing arrangement was established with a BellSouth-owned splitter, then, in order to minimize disruption of the end user's service, BellSouth will allow the data CLP to continue leasing the BellSouth splitter under the following conditions:

- (1) The existing data CLP remains the end user's advanced services provider; and
- (2) The data CLP has an agreement with the voice CLP to use the upper frequency spectrum of the loop to continue providing the advanced services.

BellSouth commented that if the line splitting arrangement is a migration from an existing line sharing arrangement, the applicable nonrecurring charge for this line splitting arrangement will be the nonrecurring charge for the loop-port combination. BellSouth noted

that the recurring charge would be the same as that discussed before: the unbundled loop rate, the unbundled port rate, and the rate for two collocation cross connections.

COVAD: Covad did not address this objection in its initial comments.

PUBLIC STAFF: The Public Staff stated in its initial comments that it does not support WorldCom's and AT&T's Exceptions to Finding of Fact No. 17(a). The Public Staff maintained that the discussion of this issue in the *Recommended Order* indicates that the Commission was well aware of ILEC obligations regarding the provision of splitters under the FCC's interpretation of TA96 in both the *Line Sharing Order* and the *Line Splitting Order*. The Public Staff argued that neither AT&T nor WorldCom has offered a compelling policy reason for imposing additional obligations at this time. The Public Staff commented that an ILEC has the option of not providing the splitter in a line sharing arrangement with a data CLP and that an ILEC may also allow a data CLP to collocate its own splitter in a line sharing arrangement with the ILEC. The Public Staff asserted that while the ILEC must allow a voice CLP to engage in line splitting using the UNE-P, this obligation assumes that the voice CLP purchases the entire loop and provides its own splitter. The Public Staff noted that a voice CLP that acquires an ILEC voice customer can do exactly what the ILEC did or would do in order to allow the customer to obtain data services on the same line: it can provide its own splitter or it can enter into an arrangement in which the splitter is provided by the data CLP.

The Public Staff concluded that the record indicates that among the ILECs, only BellSouth intends to provide splitters for line sharing and that all of the ILECs appear to have agreed to allow CLPs to collocate their own splitters for line sharing and, presumably, also for line splitting. Therefore, the Public Staff recommended that unless and until the FCC rules otherwise, the Commission not require BellSouth or any other ILEC to provide splitters for line sharing or line splitting in the UNE-P environment.

SPRINT: Sprint stated in its initial comments that the Commission's Finding of Fact is solidly supported by the authority cited in the *Recommended Order* and that WorldCom's Exception has no merit. Sprint stated that in addition to the authority cited in the *Recommended Order*, the FCC's *Line Sharing Order* also provides in Paragraph 146 [**COMMISSION NOTE:** It appears that Sprint intended to reference Paragraph 148] that ILECs must either provide splitters or allow CLPs to purchase comparable splitters as part of the line sharing UNE. Sprint also noted that FCC Rule 51.319(h)(4) provides that the ILEC may maintain control over the loop and splitter equipment and functions. Sprint argued that the FCC's use of the words "or" and "may" indicate that ILECs have the choice of either (1) purchasing and installing the splitter, and then leasing it to the CLP; or (2) allowing CLPs to purchase and install their own splitters. Sprint concluded that the Finding of Fact indicating that it is the ILEC's discretion whether it will provide ILEC-owned splitters for CLP use in line sharing is fully consistent with and supported by FCC authority.

VERIZON: Verizon stated in its initial comments that the FCC does not require ILECs to own and provide splitters to CLPs and that the Commission should not impose such a requirement. Verizon commented that TA96 imposes a duty on LECs only to provide for physical collocation of equipment necessary for access to UNEs at the premises of the ILEC. Verizon concluded that it is not necessary for ILECs to own and provide splitters for the CLP to access UNEs.

Verizon maintained that requiring Verizon to provide splitters for CLPs would impose upon the Company the capital costs of buying, storing, and installing splitters and that Verizon would thus be forced to bear the financial risk that the CLPs might decide not to continue to use the particular type of splitter that Verizon has stocked. Verizon argued that changing technology and migration to new splitter products and other means of providing advanced services would inevitably and unfairly leave Verizon with stranded splitter investment. Verizon concluded that this type of financial risk allocation goes far beyond TA96's market-opening requirements of access to Verizon's existing, functioning network.

Verizon also commented that even if it were required to own splitters for CLP use, the Commission would still be required to perform a "necessary and impair" analysis before it could require that Verizon provide splitters as a UNE. Verizon argued that because CLPs are capable of providing their own splitters, and are doing so today, the "necessary and impair" standard could not be met.

WORLDCOM: WorldCom did not address this objection in its initial comments.

REPLY COMMENTS

BELLSOUTH: BellSouth did not address this objection in its reply comments.

PUBLIC STAFF: The Public Staff stated in its reply comments that it believes that the situation BellSouth described in its initial comments wherein it will permit a data CLP to continue to lease a BellSouth-owned splitter when BellSouth loses the voice service of an end user to a CLP is reasonable.

SPRINT: Sprint did not address this objection in its reply comments.

VERIZON: Verizon stated in its reply comments that there is general consensus that WorldCom's and AT&T's Exception on this Finding of Fact is meritless. Verizon argued that specifically, Verizon, Sprint, BellSouth, and the Public Staff all filed comments explaining that the FCC has clearly stated that ILECs are not required to own splitters for CLP use. Verizon maintained that not only is ILEC splitter ownership not required by the FCC, but it would improperly and unnecessarily shift the burdens and risks of splitter ownership to the ILEC rather than the CLP that uses and benefits from the splitter.

WORLDCOM: WorldCom stated in its reply comments that without an ILEC-provided splitter, CLPs would have to collocate equipment, which would unnecessarily increase the degree of the coordination and manual work and, at the same time, increase both the likelihood and duration of service interruptions, introduce unnecessary delays, and waste central office and frame space. WorldCom also noted again that the Texas, Wisconsin, and Indiana Commissions have determined that the splitter is part of the loop. WorldCom argued that the Commission should do likewise and order that incumbents provide splitters and the UNE-P in a line splitting context, at forward-looking cost-based rates. WorldCom maintained that failure to do so will deprive customers of choice, and phone rates will increase accordingly.

DISCUSSION

After reading and reflecting on WorldCom's and AT&T's Exceptions on this issue, the Commission believes that their position appears well reasoned and plausible. However, the Commission believes that the FCC's Orders are reasonably clear, although not 100% definitive, that ILECs have the option of providing an ILEC-owned splitter. The Commission notes that it would seem logical for the FCC to have unequivocally stated that a splitter is part of, or attached electronics to, the loop, and they have not made such a finding.

The FCC stated in Paragraph 148 of its Line Sharing Order

We concluded supra, that incumbent LECs must either provide splitters or allow competitive LECs to purchase comparable splitters as part of this new unbundled network element. . .

The Commission believes that Finding of Fact No. 17(a) is in compliance with the FCC's *Line Sharing Order* and results in ILECs either (at their discretion) (1) providing splitters, if they so choose; or (2) allowing CLPs to purchase comparable splitters.

The Commission does note that in its January 19, 2001 *Line Sharing Reconsideration Order*, the FCC stated in Paragraph 25 that in its *Fifth Further Notice of Proposed Rulemaking*, it asked whether or not attached equipment that is used for both voice and data services (e.g., the splitter) should be included in the definition of the loop. Therefore, the Commission believes that this issue may not be finalized and permanent. However, the Commission believes that considering the current FCC Orders, a decision to allow ILECs to have the discretion as to whether they will provide ILEC-owned splitters for CLP use in line sharing is reasonable and appropriate. Therefore, the Commission finds it appropriate to affirm and uphold its decision allowing ILECs the discretion as to whether they will provide ILEC-owned splitters for CLP use in line sharing.

CONCLUSIONS

The Commission affirms and upholds its original decision in this regard.

FINDING OF FACT NO. 17(c): SPLITTERS - Where can the splitter be placed or installed?

INITIAL COMMISSION DECISION

The Commission concluded that ILECs are not required to place splitters on the main distribution frame (MDF). The Commission found that ILECs should place CLP splitters an average of the same distance from the MDF as the ILEC places its own splitters used for its retail xDSL service.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad requested clarification on two aspects of Finding of Fact No. 17(c). Covad stated that since BellSouth originally required CLPs to conduct line sharing using the BellSouth-owned splitter, Covad's current line sharing network is deployed using the BellSouth-owned splitters. Covad asked, "Does the Commission's ruling on Finding of Fact No. 17(c) mean that BellSouth will have to measure the distance from BellSouth splitters to the MDF?" Covad also commented that as it understands BellSouth's retail offering, BellSouth uses a DSLAM with splitter functionality to provision a line shared FastAccess service.

Covad stated that it seeks clarification on whether the Commission's ruling means that BellSouth should place ILEC-owned splitters for CLP use an average of the same distance from the MDF as BellSouth places its own combined DSLAM/Splitter. Covad maintained that the cost of the splitter would have to be adjusted once the measurement is made to account for the cabling costs which are distance sensitive.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom did not object to this Finding of Fact.

INITIAL COMMENTS

BELLSOUTH: BellSouth noted in its initial comments that Covad asserted that cabling costs are distance sensitive. BellSouth stated that this is not true for BellSouth. BellSouth maintained that the CLP is not charged an additional rate for longer cables associated with a line sharing arrangement. BellSouth stated that the “per system” costs reflect an average of 75 feet of cable to connect the splitter. BellSouth also asserted that BellSouth’s vendor-installed cost is the same for all cables from 1 foot to 150 feet. Therefore, BellSouth asserted, cable length is not a cost driver and, contrary to Covad’s claim, the cost study will not have to be adjusted.

COVAD: Covad did not address this objection in its initial comments.

PUBLIC STAFF: The Public Staff stated in its initial comments that it understands the Commission’s finding as one requiring that in cases in which BellSouth provides splitters for CLPs, the average distance of these splitters from the MDF will be no more than the average distance of the splitters BellSouth uses in its retail service. The Public Staff commented that to the extent that BellSouth’s retail service uses a DSLAM with splitter functionality, the Public Staff believes the average distance should be calculated based on the placement of the DSLAM.

The Public Staff noted that with respect to Covad’s statement regarding the need to adjust the cost of the splitter, the Public Staff believes that the Commission’s decision in Finding of Fact No. 17(b) would apply. The Public Staff maintained that the rates for the ILEC-owned splitter option should be comparable to the splitter cost the ILEC incurs to provide its own splitter.

SPRINT: Sprint stated in its initial comments that it agrees with Covad that the BellSouth cost study must be revisited to account for the parity placement of the splitter. Sprint maintained that it has already made this consideration as noted in the testimony of Sprint witness Dickerson. Sprint commented that, on average, it places its retail splitter 80 feet from the MDF and that this is the same distance that it used in its cost study. Sprint argued that BellSouth must adjust its cost study to reflect the average placement of its retail splitters so that BellSouth does not have a competitive advantage.

VERIZON: Verizon did not address this objection in its initial comments.

WORLDCOM: WorldCom did not address this objection in its initial comments.

REPLY COMMENTS

BELLSOUTH: BellSouth did not address this objection in its reply comments.

PUBLIC STAFF: The Public Staff did not address this objection in its reply comments.

SPRINT: Sprint did not address this objection in its reply comments.

VERIZON: Verizon did not address this objection in its reply comments.

WORLDCOM: WorldCom did not address this objection in its reply comments.

DISCUSSION

The Commission notes that there are three separate issues that need to be addressed within this issue:

- (1) Does the Commission's ruling on Finding of Fact No. 17(c) mean that BellSouth will have to measure the distance from BellSouth splitters to the MDF?
- (2) Does the Commission's ruling on Finding of Fact No. 17(c) mean that BellSouth should place ILEC-owned splitters for CLP use an average of the same distance from the MDF as BellSouth places its own combined DSLAM/Splitter?
- (3) Will the cost of the splitter need to be adjusted because cabling costs are distance sensitive?

Addressing Issue No. 1, the Commission notes that Finding of Fact No. 17(c) states that ILECs should place CLP splitters an average of the same distance from the MDF as the ILEC places its own splitters used for its retail xDSL service. The Commission believes that its intent in making the original decision on this issue was for the ILECs to place CLP splitters (either ILEC-owned or CLP-owned - any splitter that is used for a CLP to line share) the average distance from the MDF as the ILEC places its own splitters used for its retail xDSL service. Therefore, the Commission finds it appropriate to clarify that Finding of Fact No. 17(c) means that ILECs have to measure the distance from an ILEC-owned splitter used by a CLP to the MDF.

Concerning Issue No. 2, the Commission agrees with the Public Staff's interpretation that to the extent that BellSouth's retail service uses a DSLAM with splitter functionality, the average distance should be calculated based on the placement of the DSLAM. The Commission believes that the intent of its original decision on this issue was that the distance should be calculated from the BellSouth splitter it uses in its retail operations and if such equipment actually is a DSLAM with splitter functionality, then the DSLAM should be used in the measurement. Therefore, the Commission clarifies that ILECs should place

ILEC-owned splitters for CLP use an average of the same distance from the MDF as the ILECs place their own splitters (or other equipment such as a DSLAM that performs splitter functions).

Finally, there is dispute about whether the cost of ILEC-owned splitters would have to be adjusted once the measurement is made to account for the cabling costs which Covad asserted are distance sensitive. BellSouth argued in its initial comments that cabling costs are not distance sensitive for BellSouth and that a CLP is not charged an additional rate for longer cables associated with a line sharing arrangement. The Public Staff noted that the Commission's decision in Finding of Fact No. 17(b) (Each ILEC should re-examine its rates for the ILEC-owned splitter option (if offered) to determine if its proposed rates are comparable to the splitter cost the ILEC incurs to provide its own splitters) would apply. The Commission agrees with the Public Staff that Finding of Fact No. 17(b) should recognize any variance in cabling costs. Therefore, the Commission concludes that the cost of ILEC-owned splitters is addressed by the Commission in Finding of Fact No. 17(b) and does not have to be addressed in this issue.

CONCLUSIONS

The Commission clarifies Finding of Fact No. 17(c), as follows:

- (1) ILECs have to measure the distance from an ILEC-owned splitter used by a CLP to the MDF.
- (2) ILECs should place ILEC-owned splitters for CLP use an average of the same distance from the MDF as the ILECs place their own splitters (or other equipment such as a DSLAM that performs splitter functions).
- (3) The cost of ILEC-owned splitters is addressed by the Commission in Finding of Fact No. 17(b) and does not have to be addressed in this issue.

FINDING OF FACT NO. 20: Line “splitting” in regards to the unbundled network element platform (UNE-P)

INITIAL COMMISSION DECISION

The Commission concluded that ILECs may disconnect the splitter when the CLP is providing voice service to the end user using UNE-P.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T objected to Finding of Fact No. 20 stating that the Commission should specifically order BellSouth to offer BellSouth-owned splitters as a means of facilitating line splitting. AT&T commented that line splitting is an arrangement whereby the CLP provides both voice and data on the same line by using combinations of loops and switching (i.e., the UNE-P). AT&T argued that line splitting does not involve the provision of any new elements or new combinations of elements but, rather, it simply requires that the necessary electronics be included in the provisioning of the loop in order to allow a CLP to access its full functionality, consistent with TA96, the FCC's *First Interconnection Order*, and the FCC's *UNE Remand Order*.

AT&T argued that there is no dispute that BellSouth has a legal obligation to provide access to all of the features, functions, and capabilities of every UNE in a manner that allows the requesting carrier to provide any telecommunications service that can be offered by means of that UNE. AT&T maintained that this duty applies to access to unbundled loops to provide DSL and other data services. AT&T asserted that one of the features, functions, and capabilities of a loop is the use of its high frequency spectrum and that the loop itself should include all "attached electronics", if such are necessary, to fully access all features, functions, and capabilities in order to provide service. AT&T argued that the purchase of UNE-P implies purchase of the full capabilities of the loop, which should include its capacity to be split to accommodate the provision of data services.

AT&T maintained that there is no technical reason why BellSouth cannot install a splitter to allow a provider of voice service over UNE-P to self-provision or partner with another CLP to provide advanced services. AT&T observed that BellSouth has agreed that it will offer splitters for line sharing when it remains the voice provider. AT&T argued that it is discriminatory to provide splitters for line sharing but not for line splitting, given that the two are technically identical.

AT&T noted that the FCC has addressed the issue of line splitting. AT&T maintained that in its January 19, 2001 *Line Splitting Order* (i.e., *Line Sharing Reconsideration Order*), the FCC held that BellSouth is required to provision UNE-P in a manner that permits line splitting. AT&T maintained that the FCC found that under its current rules, BellSouth and other ILECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements. Therefore, AT&T argued, independent of line sharing obligations, BellSouth must allow CLPs to offer both voice and data service over a single unbundled loop. More specifically, AT&T commented, the FCC ruled that BellSouth and other ILECs must allow CLPs to engage in line splitting using the UNE-P where the CLP purchases the entire loop and provides its own splitter.

AT&T maintained that several other state commissions have already ordered ILECs to provide line splitting. AT&T noted that both the Texas and Wisconsin State Public Utility Commission have required SBC and Ameritech, respectively, to provide ILEC-owned splitters. AT&T noted that the Texas Commission ruled that a splitter is part of the loop and

is necessary to provide the full features and functions of the loop. AT&T also noted that the Wisconsin Commission determined that the splitter is part of the loop and required Ameritech to provide line splitting to AT&T.

AT&T further commented that the Indiana Commission concluded that the splitter is ancillary equipment necessary to access the high frequency portion of the loop and that the high frequency portion of the loop and the low frequency portion of the loop should be considered as separate UNEs.

AT&T maintained that in Georgia, BellSouth has reached an agreement with several CLPs to facilitate line splitting. AT&T noted that BellSouth has agreed in Georgia to own the splitter in line splitting situations.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint did not object to this Finding of Fact.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom objected to Finding of Fact No. 20 stating that this Finding of Fact allows ILECs to necessitate a collocation arrangement, and discriminates against UNE-P voice providers, in violation of 47 U.S.C. §251(c)(2) and (c)(3). WorldCom argued that if this Finding of Fact is accepted by the Commission, the *Recommended Order* in this respect would seriously and adversely affect the development of competition.

WorldCom noted that the issue of whether an ILEC must engage in line sharing with a CLP that has purchased a loop-port combination (the UNE-P) has been labeled as line splitting. WorldCom stated that in the line splitting scenario both the voice and data services are provided by a CLP over a single loop. WorldCom commented that there are two ways in which a CLP like WorldCom, which is primarily a voice provider, may engage in line splitting. WorldCom argued that in neither event will BellSouth commit to providing a splitter, or the UNE-P or any other combination of UNEs. WorldCom noted that nor will BellSouth agree to provide data services over the split line if a CLP provides voice service.

WorldCom maintained that in the first scenario, WorldCom acquires the voice service for an end user that is presently in a line sharing arrangement between an ILEC providing voice service and a data-CLP. WorldCom commented that BellSouth provides a line splitter in some line sharing arrangements with data-CLPs, including Covad. WorldCom argued that BellSouth's position will result in an inability of WorldCom to serve the customer for voice. WorldCom maintained that BellSouth's position is also discriminatory and in violation of 47 U.S.C. §251(c)(2) and (c)(3), with respect to the

availability of the splitter, because BellSouth previously had provided the splitter for the data-CLP's use, and would continue to do so provided BellSouth keeps the voice service for the customer. WorldCom also argued that it is anticompetitive and bad public policy, because the ILEC intends to keep the voice customer and, as a practical matter, will retain a monopoly over providing voice service to customers who want to use line sharing to meet their data needs. WorldCom asserted that ILECs should not be allowed to disconnect splitters that are currently in place merely because the end user otherwise wishes to choose a CLP for voice service.

WorldCom noted that the second scenario involves the acquisition of a voice customer by WorldCom, when the customer has not been previously receiving data services. WorldCom argued that BellSouth's position as a practical matter results in an inability to continue serving the customer, who is likely to return to the ILEC, in this instance, BellSouth.

WorldCom argued that BellSouth has thus erected an additional barrier to the development of local competition and that by not selling line splitters to voice-CLPs, BellSouth has essentially foreclosed them from selling service to any customer that also wants high-speed data service over the same line.

INITIAL COMMENTS

BELLSOUTH: BellSouth did not address this objection in its initial comments.

COVAD: Covad did not address this objection in its initial comments.

PUBLIC STAFF: The Public Staff stated in its initial comments that consistent with its comments that ILECs should not be required to provide splitters for line sharing or line splitting, it opposes WorldCom's Exception and recommends that unless and until the FCC rules otherwise, the Commission should not prohibit BellSouth or any other ILEC from disconnecting the splitter when the CLP is providing voice service to the end user using UNE-P.

SPRINT: Sprint did not address this objection in its initial comments.

VERIZON: Verizon stated in its initial comments that line splitting was not an issue in this docket and that no party presented evidence to support AT&T's line splitting proposal. Verizon noted that there is no evidence to support any line splitting requirement at all.

Verizon commented that imposing state-specific line splitting requirements in this case would also undermine industry efforts to achieve uniform nationwide line splitting parameters. Verizon maintained that the ILECs and CLPs have undertaken this process

as part of the New York Collaborative before the New York Public Service Commission. Verizon commented that the parties to that effort understand that its results will apply nationwide. Therefore, Verizon noted, its line splitting offering in North Carolina will be consistent with the timeframes, terms, conditions, and guidelines agreed upon in the New York Collaborative process.

Verizon stated that if the Commission imposes line splitting requirements that differ from those defined through industry collaboration, it would introduce inefficiencies to both ILEC and CLP operations, especially those with a presence in multiple states. Verizon urged the Commission to rely on the ongoing industry negotiations to achieve results that are satisfactory to all interests.

WORLDCOM: WorldCom did not address this objection in its initial comments.

REPLY COMMENTS

BELLSOUTH: BellSouth did not address this objection in its reply comments.

PUBLIC STAFF: The Public Staff did not address this objection in its reply comments.

SPRINT: Sprint did not address this objection in its reply comments.

VERIZON: Verizon did not address this objection in its reply comments.

WORLDCOM: WorldCom stated in its reply comments that the Public Staff and BellSouth maintained that ILECs do not have to provide the UNE-P in a line splitting context. However, WorldCom noted, Paragraph 19 of the FCC's *Line Sharing Reconsideration Order* holds that ILECs are required to provision UNE-P in a manner that permits UNE-P line splitting between a CLP voice provider and a CLP providing data services. WorldCom argued that it would have been illogical for the FCC to have issued an order that permits line splitting using UNE combinations of UNEs were not to be provided in combinations by an ILEC, as also contended by the Public Staff.

WorldCom maintained that line splitting does not involve the provision of any new elements or combinations of elements, but rather requires only that the necessary electronics be included in the provisioning of the loop to allow CLPs to access the loop's full functionality and capabilities.

DISCUSSION

The Commission believes that the following paragraphs from the FCC's *Line Sharing Reconsideration Order* are relevant:

We find that incumbent LECs have a current obligation to provide competing carriers with the ability to engage in line splitting arrangements. . . [I]ndependent of the unbundling obligations associated with the high frequency portion of the loop that are described in the *Line Sharing Order*, incumbent LECs must allow competing carriers to offer both voice and data service over a single unbundled loop. This obligation extends to situations where a competing carrier seeks to provide combined voice and data services on the same loop, or where two competing carriers join to provide voice and data services through line splitting. [Paragraph 18]

Thus, as AT&T and WorldCom contend, incumbent LECs have an obligation to permit competing carriers to engage in line splitting using the UNE-platform where the competing carrier purchases the entire loop and provides its own splitter. . . [Paragraph 19 - Emphasis added]

Finally, we note that we expect to further address issues closely associated with line splitting - including splitter ownership - in upcoming proceedings where the record better reflects these complex issues. For example, in the *Fifth Further NPRM* (also known as the New Networks proceeding), we specifically sought comment on the nature and type of electronics that are or may be attached to the loop. We also asked whether or not attached equipment that is used for both voice and data services (e.g., the splitter) should be included in the definition of the loop. Although these questions, among other complex questions that may implicate line splitting concerns, are not the subject of the instant AT&T and WorldCom petitions, we are committed to resolving them expeditiously. . . [Paragraph 25 - Emphasis added]

The Commission notes that the FCC's language, at this point in time, merely requires ILECs to provide CLPs with the ability to engage in line splitting arrangements. The Commission agrees with AT&T that independent of line sharing obligations, ILECs must allow CLPs to offer both voice and data service over a single unbundled loop and that the FCC has ruled that ILECs must allow CLPs to engage in line splitting using the UNE-P where the CLP purchases the entire loop and provides its own splitter. However, the Commission does not believe that the current FCC Orders require ILECs to own and provide splitters - for line sharing or line splitting. The Commission does note that the FCC has indicated that it is looking at these complicated issues and will resolve them in the future.

Addressing AT&T's assertion that there is no technical reason why BellSouth cannot install a splitter to allow a provider of voice service over UNE-P to self-provision or partner with another CLP to provide advanced services, the Commission notes that there is also no technical reason why a CLP cannot install its own splitter. The Commission does not believe that Finding of Fact No. 20 as originally written prevents CLPs from engaging in line splitting as the FCC currently requires.

Based on the foregoing, the Commission denies AT&T's and WorldCom's Exceptions in this regard and affirms Finding of Fact No. 20 while noting that future FCC Orders may require the Commission to revisit the issue.

CONCLUSIONS

The Commission affirms and upholds its original decision in this regard while noting that future FCC Orders may require the Commission to revisit the issue.

FINDING OF FACT NO. 21: Is an ILEC required to provide line sharing when it does not provide the voice service to the end user? What if the ILEC's voice customer is served by digital loop carrier (DLC) facilities?

INITIAL COMMISSION DECISION

The Commission concluded that ILECs are not required to provide line sharing unless they provide voice service over the loop to the end user. The Commission found that ILECs must provide line sharing when their voice customers are served by digital loop carrier (DLC) facilities.

OBJECTIONS

ALLTEL: ALLTEL did not object to this Finding of Fact.

AT&T: AT&T did not object to this Finding of Fact.

BELLSOUTH: BellSouth did not object to this Finding of Fact.

COVAD: Covad did not object to this Finding of Fact.

SPRINT: Sprint objected to Finding of Fact No. 21 stating that it does not recognize or make allowance for technical limitations in providing line sharing when voice customers are served by DLC facilities. Sprint maintained that as currently written, Finding of Fact No. 21 would require an ILEC to provide line sharing through a DLC in all situations. Sprint stated that it believes that all parties would benefit from a revision to the second sentence in Finding of Fact No. 21 to make allowance for technical limitations, as follows: "When

technically feasible, ILECs shall provide line sharing when their voice customers are served by DLC facilities.” Sprint requested that the Commission make the appropriate revision to Finding of Fact No. 21 to include a “technically feasible” standard in providing line sharing through DLC facilities.

VERIZON: Verizon did not object to this Finding of Fact.

WORLDCOM: WorldCom did not object to this Finding of Fact.

INITIAL COMMENTS

BELLSOUTH: BellSouth did not address this objection in its initial comments.

COVAD: Covad did not address this objection in its initial comments.

PUBLIC STAFF: The Public Staff stated in its initial comments that it does not find Sprint’s argument persuasive. The Public Staff noted that Sprint does not specify any technical limitations that would prevent it from providing line sharing to customers served by DLC facilities, and the Public Staff is unaware of any insurmountable limitations that would prevent Sprint from offering line sharing. The Public Staff commented that as noted in the *Recommended Order*, the FCC requires ILECs to unbundle the high frequency portion of the local loop even where the ILEC’s voice customer is served by DLC facilities.

The Public Staff maintained that the FCC recognized Sprint’s concern in Paragraph 92 of its *Line Sharing Order* as follows:

We note, however, that the functionality required to accomplish line sharing on DLC systems may not be available by the effective date of our spectrum unbundling rules. We, therefore, apply the same rebuttable presumption that we established in the *Local Competition Third Report and Order*, that for carriers requesting unbundled access to the high frequency portion of the loop, the subloop can be unbundled at any accessible terminal in the outside loop plant. Where the parties are unable to forge an agreement to facilitate line sharing where the customer is served by a loop passing through a DLC, the incumbent carrier bears the burden of demonstrating to the relevant state commission, in the course of a section 252 proceeding, that it is not technically feasible to unbundle the subloop to provide access to the high frequency portion of the loop.

The Public Staff recommended that the Commission conclude that the issue of technical feasibility be addressed in individual interconnection agreements as suggested by the FCC.

SPRINT: Sprint did not address this objection in its initial comments.

VERIZON: Verizon stated in its initial comments that line sharing over DLC, at this time, is essentially a subloop issue. Verizon maintained that typically, the fiber-fed DLC portion of a loop runs from the Company's feeder-distribution interface (FDI) to the central office. Verizon stated that the copper distribution runs between the FDI and the customer's premises. Verizon stated that the obligation to provide line sharing over loops served by DLC facilities, at this point in time, is a requirement that Verizon provide access to the copper portion of the loop (i.e., the distribution subloop). Verizon noted that in addition, the CLP may also request dark fiber facilities (i.e., dark fiber feeder subloops) from the DLC to the Verizon central office that supports the DLC. Verizon maintained that it will continue to provide line sharing to customers served by DLC facilities in this manner.

Verizon argued that in this docket the Commission should not require Verizon to provide end-to-end line sharing to customers served by a DLC. Verizon noted that the FCC is currently addressing the technical, operational, and business feasibility of various methods of end-to-end access to the high frequency portion of the loop in an open rulemaking docket. Verizon contended that with these factors in mind, the FCC, along with an industry and public forum, will determine which of the several technically feasible methods of providing such access are appropriate. Verizon argued that Sprint's focus on just technical feasibility is not appropriate and that until the FCC and the industry forum act, the Commission should require only that Verizon offer CLPs the appropriate subloop element in order to provide line sharing to customers served by DLC facilities.

WORLDCOM: WorldCom stated in its initial comments that Paragraph 10 of the FCC's *Line Sharing Order* states:

. . . line sharing applies to the entire loop, even where the incumbent has deployed fiber in the loop. . . (I)ncumbent LECs are required to unbundle the high frequency portion of the local loop even where the incumbent LEC's voice customer is served by DLC facilities.

WorldCom commented that the FCC in that Order requested comments on the feasibility of different methods of providing line sharing where an ILEC has deployed fiber in the loop. Consequently, WorldCom stated, the FCC will be further considering national standards for line sharing and line splitting. WorldCom maintained that Sprint's language implies that there should be constraints placed on the CLPs' ability to obtain line sharing, or, for that matter, line splitting, pursuant to the FCC's Order. Therefore, WorldCom

concluded, Sprint's clarification would muddy rather than clarify the rights of CLPs and could be used by ILECs to hinder requests for line sharing or line splitting.

REPLY COMMENTS

BELLSOUTH: BellSouth did not address this objection in its reply comments.

PUBLIC STAFF: The Public Staff did not address this objection in its reply comments.

SPRINT: Sprint stated in its reply comments that it now wishes to withdraw its Exception to this issue. Sprint stated that as the other parties to the proceeding have pointed out, the FCC has initiated a rulemaking proceeding whereby the FCC will be considering national standards for line sharing and line splitting. Sprint stated that it recognizes and agrees that the Commission should defer to the FCC rulemaking on this issue and, accordingly, Sprint wishes to withdraw its Exception to Finding of Fact No. 21.

VERIZON: Verizon stated in its reply comments that to avoid confusion and to achieve maximum efficiencies, federal and state requirements concerning line sharing for customers served by DLC facilities should be consistent. Verizon stated that, therefore, the Commission should hold off establishing any such requirements until the industry collaborative process has concluded. Verizon maintained that until that time, the Commission should clarify that line sharing for customers served by DLC facilities is essentially a subloop issue.

WORLDCOM: WorldCom did not address this objection in its reply comments.

DISCUSSION

The Commission notes that Sprint withdrew its Exception to this Finding of Fact in its reply comments. Further, the Commission notes that many Parties mentioned that the FCC is considering this issue in a rulemaking proceeding. Therefore, the Commission concludes that since the Exception was withdrawn, no Commission decision on affirming or not affirming the Finding of Fact is necessary but recognizes that the FCC is currently working on this issue.

CONCLUSIONS

The Commission concludes that since the Exception was withdrawn, no Commission decision on affirming or not affirming the Finding of Fact is necessary but recognizes that the FCC is currently working on this issue.

FINDING OF FACT NO. 22: The Enhanced Extended Loop (EEL) as a UNE
FINDING OF FACT NO. 25: UNEs and Combinations

INITIAL COMMISSION DECISIONS

These two Findings of Fact are related since one mode under which an EEL can be provided is as a combination.

With respect to Finding of Fact No. 22, the Commission concluded that CLPs should be able to obtain unbundled access to EELs by purchasing the elements that compose EELs in the circumstances as set out in the Recommended Order. CLPs are not allowed to convert special access service to EELs unless these EELs are used to provide the end-user with a significant amount of local exchange traffic service and as governed by the FCC's supplemental clarification order. The Commission's determination of the UNE combinations issue is dispositive to a large degree of how much more available EELs will be to CLPs.

With respect to Finding of Fact No. 25, the Commission concluded that it is appropriate to defer ruling on whether, as a general matter, provision of "ordinarily combined" UNE combinations by ILECs to CLPs is legally required pending a more definitive ruling by the United States Supreme Court. In the meantime, ILECs are encouraged to provide such combinations on a voluntary basis at TELRIC prices.

OBJECTIONS

ALLTEL: ALLTEL argued that the Commission should require ILECs to provide CLPs with EELs which BellSouth "currently combines" in its network. The appropriate meaning of "currently combines" is "typically combines" and applies to EEL elements combined somewhere in the ILEC network even if not currently physically combined for a particular customer. The Commission should have ruled the same way the Georgia Public Service Commission did in Docket No. 10692-U (February 1, 2000) regarding generic UNE combinations. Georgia found that "currently combines" means "ordinarily combined" in the ILEC network in the manner in which they are typically combined. The generous provision of EELs is important to the CLP's competitive position.

AT&T: AT&T maintained that the Commission should order BellSouth to provide all UNE combinations that BellSouth ordinarily combines in its network. Among other points, AT&T cited to Rule 309(a) which prohibits an ILEC from imposing "limitations, restrictions, or requirements" on requests for UNEs that would tend to impair the ability for a carrier to offer a service. Rule 309(a) applies with equal force to combined, as well as discrete, UNEs. Moreover, a combination requirement is consistent with FCC Rule 315(b). Although the subsequent subsections of FCC Rule 315 remain in limbo, FCC Rule 315(b) has vitality as a warrant for combinations, as the FCC has indicated in the *UNE Remand Order* at

Paragraph 479. The Commission should also follow the examples of Georgia and Tennessee (Docket No. 99-00948, February 6, 2001); or it could rely upon its own authority to impose such a requirement.

BELLSOUTH: BellSouth did not object to these Findings of Fact.

COVAD: Covad did not object to these Findings of Fact.

PUBLIC STAFF: The Public Staff did not object to these Findings of Fact.

SPRINT: Sprint did not object to these Findings of Fact.

VERIZON: Verizon did not object to these Findings of Fact.

WORLDCOM: WorldCom maintained that it is clear that the FCC in both earlier and later pronouncements has stood by the view that, under FCC Rule 315(b) the appropriate reading of “currently combines” is ordinarily combined “in the manner they are typically combined.” The Commission’s reasoning both as to its analysis of the “plain meaning” of FCC Rule 315(b) and its “contextual” analysis is faulty. The appropriate reading of the subsections subsequent to FCC Rule 315(b) is that they were intended to clarify or elaborate on the circumstances under which subsection 315(b) would operate. The *Recommended Order* also goes beyond what the ILECs--specifically BellSouth and Verizon--have advocated. Both these ILECs have stated that, in certain circumstances, they will offer combinations that are not actually servicing customers. Verizon has indicated it will offer UNE-P in circumstances where facilities are in place and construction of new facilities is not required, while BellSouth has said that its general policy is to keep outside plant facilities and central office connections in place to premises for nine months after the previous customer has disconnected service.

INITIAL COMMENTS

BELLSOUTH: BellSouth did not address these issues in its Initial Comments in detail but stated its belief that the Commission’s decision to wait on the Supreme Court is correct.

PUBLIC STAFF: The Public Staff noted that the arguments concerning the availability of EELs are largely the same as those for combinations generally. The Public Staff stated that it agrees with WorldCom and AT&T that the Commission should resolve the combinations issues rather than deferring the decision. The Public Staff noted that, although the Supreme Court has granted certiorari, its ruling is unlikely until 2002 and the Supreme Court could decide the issue on technical grounds rather than on its merit. The practical effect of the Commission’s *Recommended Order* is to favor the ILECs. The Public Staff further alleged that it was inconsistent to favor combinations as a matter of policy but

not to require them as a matter of law. The Commission had expressed doubt about the legal authority for a liberal combinations policy but made no definite statement against it. As to any concerns that, if the Commission authorized a liberal combinations policy and the Supreme Court ruled otherwise, a CLP had in the meantime obtained them and then sought to keep them on the basis that they were now currently combined, the Commission could state that these UNEs must be returned to the ILEC in the event of an adverse decision on combinations.

SPRINT: Sprint argued that a conservative combinations policy would frustrate competition by increasing costs to the CLPs. The provisioning of UNE combinations should be limited only by technical feasibility, subject to a standard of comparability between the ILEC's retail product and the UNE combination requested by a particular carrier.

VERIZON: Verizon agreed with the Commission's original decision. Verizon pointed out that Rule 309(a) simply is a general statement that ILECs are not to impose limitations on CLPs request for UNEs and is not specifically concerned with circumstances. Rule 315(c) remains vacated, while Rule 315(b) simply forbids the separation of elements currently combined. It would be unwise for the Commission to assert "independent authority" on its "judicial function," and the cases cited by the CLPs do not govern North Carolina and are distinguishable. The Ninth Circuit, which supports a more liberal combinations policy, and the Eighth Circuit, which does not, remain split. The U.S. Supreme Court will ultimately decide.

REPLY COMMENTS

PUBLIC STAFF: The Public Staff continued and expanded upon its argument that a liberal combinations policy is supported by the greater weight of authority.

VERIZON: Verizon reaffirmed its view that the greater weight of authority supports a more conservative combinations policy, and it once again observed that the United States Supreme Court will soon dispose of the issue. In its Reply Comments Verizon reiterated that the Commission was correct to defer action on a UNE combinations requirement until the Supreme Court acts.

DISCUSSION

The issue at hand is whether the law as it stands today requires a liberal combinations policy--i.e., one in which the ILECs must allow CLPs to obtain UNEs in combination which are ordinarily combined in the ILECs' network or whether access to combined UNEs applies only as to UNEs that are already combined for a particular customer. In its decision the Commission stated that it would defer ruling on whether, as a general matter, provision of ordinarily combined UNE combinations by ILECs to CLPs is legally required pending a more definitive ruling by the United States Supreme Court. The

Commission, nevertheless, applauded a liberal combinations policy and encouraged the ILECs to provide such combinations on a voluntary basis at TELRIC prices. Some companies are providing combinations on a voluntary basis now where they are already in place.

The Commission cannot detect that any truly new legal arguments have been put forward by those objecting to our decision and their supporters. For the most part, the Parties repeated the same arguments or variations on the same arguments that the Commission found insufficient previously. As much as the Commission would like to impose a liberal combinations policy, the Commission could not see its way clear as a matter of law to do so at this time. An important factor was that the portion of the FCC rules (Rule 315(c)), which details such a policy, has been vacated and the Commission does not believe that Rule 315(b) can be plausibly construed to take its place. The Commission recognizes that others may disagree, but this disagreement is a major reason why the matter is before the United States Supreme Court.

At least one party has taxed the Commission for inconsistency in endorsing a liberal combinations policy as a matter of policy while doubting and deferring it as a matter of law. On the contrary, there is no inconsistency between saying that one wants something but one does not believe one can presently have it. In the instant case, the matter is squarely before the highest tribunal, the United States Supreme Court, and the Commission is confident that the Supreme Court will clarify a matter of such great importance. The Commission's decision is not inconsistent; it is prudent. The Commission will certainly revisit these issues to the extent necessary following the decision of the Supreme Court.

CONCLUSIONS

The Commission affirms and upholds its original decision in these matters.

IT IS, THEREFORE, ORDERED as follows:

1. That WorldCom's exception to Finding of Fact No. 2(a) is hereby denied.
2. That Verizon's exception to Finding of Fact No. 2(b) is hereby denied.
3. That Finding of Fact No. 2(c) is amended such that BellSouth is required to refile its rates for xDSL service based upon cost studies that reflect cost inputs reflective of corrections/modifications that have subsequently been made in the other BellSouth states and/or based on a subsequent change in methodology. Further, if BellSouth believes that any of the cost study modifications identified by Covad should not be applicable in North Carolina, then BellSouth shall provide detailed written documentation supporting such a position. BellSouth shall file its revised rates and supporting documentation on or before January 30, 2002. The Commission further clarifies its finding

such that it finds that after a CLP purchases a UNE, or a group of UNEs, the ILEC shall not rearrange its network in a way that interferes with the service being provided to the CLP's customer over those network elements, nor shall the ILEC rearrange those facilities in a way that would require the CLP to pay for a more expensive UNE arrangement. In all other respects, the Commission affirms its Finding of Fact No. 2(c), including its requirement that a CLP shall be permitted to reserve the loop as a SL1.

4. That WorldCom's exception to Finding of Fact No. 2(d) is hereby denied.

5. That Finding of Fact No. 2(e) is hereby amended such that the requirement for BellSouth to file additional cost studies for repeater removal is eliminated. The Commission also clarifies this finding such that it establishes a time limit for the negotiation process to be completed concerning the Parties' negotiation of mutually agreeable work times for loop conditioning. The negotiation process shall be completed by January 30, 2002. In all other respects, the Commission affirms Finding of Fact No. 2(e).

6. That BellSouth's exception to Finding of Fact No. 5 is hereby denied.

7. That Finding of Fact No. 6 is hereby amended such that BellSouth personnel shall be required to provide necessary loop makeup information in the CFD when it is not available from the LFACS manually, rather than provide direct access to the CFD itself and that after BellSouth's planned enhancement, BellSouth shall then provide the ability for loop qualification data from the CFD to be obtained automatically via an electronic query when all information is not contained in the LFACS database. The Commission also clarifies the portion of this finding concerning availability of LFACS and LQS, such that it shall read as follows:

BellSouth will make LFACS and LQS or functionally superior electronic systems available to CLPs on a permanent basis.

In all other respects, the Commission affirms Finding of Fact No. 6.

8. That AT&T's exception to Finding of Fact No. 7 is hereby denied.

9. That ALLTEL's, AT&T's, and Verizon's exceptions to Finding of Fact No. 14 are hereby denied.

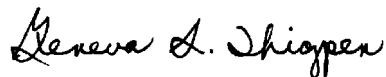
10. That AT&T's and WorldCom's exceptions to Finding of Fact No. 17(a) are hereby denied.

11. That the Commission clarifies Finding of Fact No. 17(c), as follows:
 - (a) ILECs have to measure the distance from an ILEC-owned splitter used by a CLP to the MDF.
 - (b) ILECs shall place ILEC-owned splitters for CLP use an average of the same distance from the MDF as the ILECs place their own splitters (or other equipment such as a DSLAM that performs splitter functions).
 - (c) The cost of ILEC-owned splitters was addressed by the Commission in Finding of Fact No. 17(b) and thus shall not be addressed in this issue.
12. That AT&T's and WorldCom's exceptions to Finding of Fact No. 20 are hereby denied.
13. That Sprint's exception to Finding of Fact No. 21 was withdrawn, and thus no further action shall be required.
14. That ALLTEL's exception to Finding of Fact No. 22 and AT&T's and WorldCom's exceptions to Finding of Fact No. 25 are hereby denied.
15. That BellSouth's October 19, 2001 Motion to Allow Expedited Filings of Cost Studies is hereby granted. Therefore, BellSouth, Sprint, and Verizon shall submit cost studies and rates in compliance with the Commission's June 7, 2001 *Recommended Order* and this Order as soon as possible, but no later than January 30, 2002. Further, the Public Staff is requested to submit its findings after reviewing the ILECs' cost studies and rates as soon as possible upon receipt of any ILEC cost studies/rates, but the filing of such response shall not exceed 30 days from said receipt.

ISSUED BY ORDER OF THE COMMISSION.

This the 31st day of December, 2001.

NORTH CAROLINA UTILITIES COMMISSION



Geneva S. Thigpen, Chief Clerk