BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 95-720-C - ORDER NO. 96-19

JANUARY 30, 1996

IN RE: Application of BellSouth for Alternative Regulation (Consumer Price Protection Plan).	)))))	ORDER GRANTING ALTERNATIVE REGULATION AND APPROVING PLAN AS MODIFIED

I. Introduction

This matter comes before the Public Service Commission of South Carolina (the Commission) on the request of BellSouth Telecommunications, Inc. ("BellSouth" or "the Company") for approval of an Alternative Regulation Plan. The Alternative Regulation Plan, titled by BellSouth as "the Consumer Price Protection Plan" (the Plan), outlines a proposed alternative methodology for the Commission's Regulation of the operations of BellSouth within the State of South Carolina. (See Plan attached hereto as Exhibit A.) As part of this plan, BellSouth proposes to cap the rates for certain categories of services, including basic exchange services, at current levels for a period of three (3) years. After this time period, BellSouth would have the flexibility to charge rates for its services within the Company's classification of these services on a aggregate basis not to exceed a proposed inflation index.

By letter dated April 10, 1995, the Commission's Executive

Director ordered BellSouth to publish, at its own expense, a Notice of Filing in newspapers of general circulation in the affected areas one time, and provide the Executive Director with proof of publication. BellSouth furnished affidavits to the Commission's Executive Director accordingly. Petitions to Intervene were filed by GTE South, Inc. ("GTE"), AT&T Communications of the Southern States, Inc. ("AT&T"), the Consumer Advocate for the State of South Carolina ("the Consumer Advocate"), MCI Telecommunications, Inc. ("MCI"), South Carolina Cable Television Association ("SCCTA"), US Sprint ("Sprint"), James M. Tennant ("Tennant"), the South Carolina Public Communications Association ("SCPCA"), the South Carolina Telephone Coalition ("SCTC"), American Communication Services of Greenville, Columbia and Charleston ("ACSI") and One Call Communications ("One Call").

A public hearing was held on the matter in the Commission's hearing room, beginning on September 21, 1995, with the Honorable Rudolph Mitchell presiding. The Applicant, BellSouth Telecommunications, Inc. was represented by Harry M. Lightsey, III, Esq., William F. Austin, Esq. and R. Douglas Lackey, Esq. BellSouth presented the testimony of C. L. Addis, Jerry D. Hendrix, Dr. Charles L. Jackson, Conrad Martin, S. E. Sanders, Jane Sosebee, Al Varner (both direct and rebuttal), and Jerry R. Wilson. AT&T was represented by Francis P. Mood, Esq. and Roger Briney, Esq. AT&T presented the testimony of G. Wayne Ellison. The Consumer Advocate was represented by Philip S. Porter, Esq. and Elliott F. Elam, Jr., Esq. The Consumer Advocate presented the testimony of

Allan G. Buckalew. MCI was represented by John M. S. Hoefer, Esq. and Martha McMillin, Esq. MCI presented the testimony of Terry L. Murry. SCCTA was represented by Mitchell Willoughby, Esq., B. Craig Collins, Esq., John Seiver, Esq. and Christopher Savage, Esq. SCCTA presented the testimony of Don J. Wood. James M. Tennant appeared pro se and presented his own testimony. SCPCA was represented by John F. Beach, Esq. SCPCA presented the testimony of Clifton Craig. The South Carolina Telephone Coalition was represented by M. John Bowen, Jr., Esq. and Margaret Fox, Esq. ACSI was represented by Russell B. Shetterly, Esq. ACSI presented the testimony of Joseph Gillan. One Call Communications was represented by Frank R. Ellerbee, III, Esq. The Commission Staff was represented by F. David Butler, General Counsel and Catherine D. Taylor, Staff Counsel. The Commission Staff presented the testimony of Dr. R. Glenn Rhyne. The intervenors GTE and US Sprint did not appear at the hearing.

According to BellSouth, the Consumer Price Protection Plan has as its fundamental principle that the Commission, under the Plan, will regulate prices rather than earnings. The Plan begins with the proposition that existing rates and charges as of the effective date of the Plan are just and reasonable, having been established by this Commission. From this point, services in the Plan are broken down into three (3) categories: (1) basic services, (2) interconnection services, and (3) non-basic services. Each category is defined in the Plan in detail. Each category has its own pricing rules. For the basic services category, according to

BellSouth, rates cannot be increased for a period of three (3) years and thereafter, the category cannot be increased in the aggregate by more than the rate of inflation as measured by the Gross Domestic Product Price Index (GDP-PI). The interconnection services category is also capped for three (3) years, and upon the expiration of that period, interconnection services can only be increased in the aggregate by the same measure of inflation used for basic services. The last category, non-basic services, may be increased by not more than 20% during any 12-month period, under the Plan. The Plan further requires that all services be tariffed with this Commission, and that any changes to the terms or conditions for the basic services category require Commission approval. Changes for the interconnection services and non-basic services categories are presumed to be valid on fourteen (14) days notice under the Plan, except that price reductions are presumed valid on seven (7) days notice. Further, any changes are subject to challenge within a thirty (30) day period after their implementation and if the Commission rejects the change within the following sixty (60) days, BellSouth will refund any monies collected back to the effective date of the tariff.

The Plan provides that BellSouth services shall not be priced below the Company's Long Run Incremental Cost (LRIC) unless the service has been priced below its cost to meet public interest goals, or unless the Company must price its service below its cost to meet the equally low price of a competitor. According to BellSouth, the Plan commits the Company to conform to all service

rules ordered or approved by the Commission, and provides reports to the Commission on these matters. The Plan does not abrogate the jurisdiction of the Commission as provided by the law.

In examining the Plan, the Commission will apply the principles elucidated in South Carolina Code Ann. Section §58-9-575 (Supp. 1995), which governs alternative means of regulating local exchange telephone utilities. Subsection A states that "if the Commission determines that a local exchange telephone utility is subject to competition with respect to its services, the commission may implement regulatory alternatives (emphasis added) ...." The statute goes on to state in Subsection B that the Commission shall review and may authorize implementation of an alternative regulatory plan, under subsection A, if it finds that after notice and hearing, the substantial evidence of record shows that the plan:

(1) is consistent with the public interest;

(2) does not jeopardize the availability of reasonably affordable and reliable telecommunication services;

(3) provides clearly identifiable benefits to consumers that are not otherwise available under existing regulatory procedures;

(4) will reduce regulatory delay and costs;

(5) provides adequate safeguards to consumers of telecommunications services, including other telecommunications companies, when such services are not readily available from alternative suppliers in the

relevant geographic market;

(6) includes effective safeguards to assure that rates for noncompetitive services do not subsidize the prices charged for competitive services. In determining whether a service is competitive, the Commission shall consider, at a minimum, the availability, market share, and price of comparable service alternatives;

(7) assures that rates for noncompetitive services are just, reasonable, or not unduly discriminatory and provide a contribution to basic local telephone service; and

(8) does not jeopardize the ability of the telephone utility to provide quality, affordable telecommunication service.

Subsection C of Section §58-9-575 states that the Commission may review any decision adopting an alternative method of regulation for a local exchange telephone utility, and, after notice and opportunity to be heard, and upon a showing by substantial evidence the Commission may impose regulatory standards consistent with the provisions of the chapter.

II. The Changing Telecommunications Industry

One thing that was readily apparent during the course of the hearing in this matter was that the telecommunications industry is undergoing tremendous change. The testimony of Dr. Charles L. Jackson described in detail these changes, and categorized three (3) factors which BellSouth contends clearly demonstrate the need for a change in the Commission's traditional use of rate of return

regulation in regulating it. Those factors are changing technology, competitive entry into the various phases of the telecommunications industry, and changing social attitudes toward competition in local telecommunications. We have examined these factors, and agree that changing technology and changing times certainly require this Commission to examine whether or not a modification of the traditional rate of return regulation for BellSouth is in order. S.C. Code Ann. Section §58-9-575 (Supp. 1995) provides a framework for this examination, as it provides for alternative regulation of local exchange telephone utilities, if certain criteria are met.

As the following discussion will show, we hold that the BellSouth Plan satisfies the criteria of the statute, and should be adopted by this Commission, with certain modifications, based on the substantial evidence of record.

III. "Subject to Competition"

The threshold provision of the statute, which must be satisfied before any regulatory alternatives may be adopted, is that the Commission must determine "that a local exchange telephone utility is subject to competition with respect to its services." Just what "subject to competition" means is not clearly defined by the Legislature. This question was hotly debated by the parties to this proceeding in testimony and in briefs.

BellSouth argues that the Legislature did not require this Commission to determine that the local exchange company had "effective" competition, as described by AT&T and MCI, or

"sufficient" competition for all of its services, as described by the Commission Staff, before this Commission could approve an alternative form of regulation. Further, BellSouth argues that the law does not require a local exchange company to establish that it had facilities-based competition for a certain percentage of its services, nor that it had lost a certain percentage market share of its services to competition before becoming "subject to competition."

We agree with BellSouth that "subject to competition" simply means what it says, and that it does not encompass the broader definitions contemplated by the various parties. We believe that BellSouth must only show that some of its services are subject to competition, not that competition is fully embedded and effective.

Examining the record using this standard reveals substantial evidence that BellSouth has met this threshold test. The Company presented clear and convincing evidence that it is subject to competition in a number of areas.

BellSouth presented the testimony of numerous witnesses, who identified and demonstrated the BellSouth services that are subject to competition, the competitors for these services, and in many instances, identified the actual customers who had been lost to such competitors.

Jane Sosebee, a Sales Manager in Greenville with BellSouth's Marketing Division, testified that she manages the marketing sales force which handles BellSouth's largest customers in the upstate area of South Carolina. Ms. Sosebee testified that certain large

business customers represent 26% of BellSouth's total revenues in South Carolina, excluding access. According to Sosebee, competitors have targeted these customers, seeking to provide their intraLATA toll, access, Private Line, and PBX Services. Further, Ms. Sosebee testified that BellSouth has had competition in its intraLATA toll market since the Commission authorized Telecommunications Systems, Inc. (TSI) to provide toll service in South Carolina in 1982. Even after divestiture when LATA boundaries were established, TSI continued to have state-wide authority and provided intraLATA toll service.

In addition to competition from TSI, BellSouth has lost customers to long distance resellers and interexchange carriers (IXCs). The competition in the intraLATA market has increased since the Commission authorized 10XXX intraLATA competition in 1993. According to Ms. Sosebee, customers can easily program their PBX's to insert the 10XXX carrier code, which can also be done on key systems, and even single-line phones, using speed dialers. Ms. Sosebee presented the Commission with an exhibit which listed thirty-four (34) actual large business customers by name, primarily from the Piedmont area, who are presently purchasing their intraLATA toll service from a provider other than BellSouth. See Hearing Exhibit No. 1.

In addition to the large business customers, the IXCs have targeted state government, colleges and universities, according to Ms. Sosebee. For example, Ms. Sosebee testified that MCI carries all the intraLATA traffic for the Greenville City Government, and a

consortium of private colleges. Ms. Sosebee also testified that MCI carries all the intraLATA traffic for Clemson University, and since MCI purchased Telecom USA, MCI now provides intraLATA traffic to state government. In 1989, South Carolina state government awarded its intraLATA traffic contract to Telecom USA, now MCI.

Jerry Hendrix, a BellSouth employee who is responsible for interstate and intrastate Switched Access Service issues, testified that in 1992, BellSouth estimated that its intraLATA toll market share was a maximum of 75%. However, BellSouth believes that its market share has declined as a result of 10XXX competition being authorized in 1993. Hendrix conservatively estimated BellSouth's current share of the intraLATA toll market to be a maximum of only around 60%.

BellSouth is subject to competition in other areas, including those involving Access and Private Line Services. Ms. Sosebee testified that American Communication Services, Inc. or ACSI, has constructed fiber routes in Greenville and Columbia, and is currently constructing routes in Charleston. Ms. Sosebee also provided a list of large business customers who received Private Line Service from a provider other than BellSouth. Ms. Sosebee further noted that ACSI, and at least one cable television company that she was aware of, were soliciting business customers in Greenville to provide Private Line Service. Another competitor, PalmettoNet, has constructed a fiber route at Clemson University to carry the local private line traffic for the main campus to the Clemson Research Park. Ms. Sosebee testified that when that

occurred, Clemson disconnected five T-1 systems that had previously been provided by BellSouth.

Another competitive service in which BellSouth competes is a Private Line Branch Exchange Market, which includes BellSouth's ESSX. Ms. Sosebee testified that the PBX market has been highly competitive since 1975. Today BellSouth's ESSX service market share is only 17% of the large business market in BellSouth's territory in the State. Other market share data for this service presented by Ms. Sosebee included information that BellSouth's market share is less than 5% of the PBX systems, and less than 4% of the key telephone systems in the entire State. Ms. Sosebee testified that in the Greenville area alone there are 7 major active viable competitors in the PBX market.

BellSouth witness Sandy Sanders testified that competition in the pay telephone market has existed in South Carolina since the mid-1980's when Independent Pay Phone Providers (IPPs) first entered the pay telephone market. Just as was the case with large business customers, competition from the IPPs has resulted in BellSouth losing high volume stations. Although new locations are being serviced, Sanders testified that most of the IPPs' locations are sites where the LEC services have been displaced by IPPs. Sanders further testified that the number of BellSouth public telephone stations has decreased from 13,450 in 1985 to 10,650 at the end of May 1995, while the number of coinless stations decreased from 1,058 to 883. Sanders presented an Exhibit which reflected that BellSouth had lost 21% of its pay telephone stations

since 1985. See Hearing Exhibit No. 11. During the same time frame, Sanders testified that IPPs increased their presence in South Carolina from "a mere 90 stations... to almost 3,900...." Today there are some 1,070 IPPs providing pay telephone service in South Carolina.

Conrad Martin, a Director in the Operator Services Department of BellSouth, testified as to the competition for Operator Services. Martin identified the type of competition BellSouth is experiencing in the provision of Operator Services to its customers in South Carolina. These include 10XXX, 0+ dialing, AT&T's 1-800-CALL-ATT, and 1-900-555-1212 Services, as well as MCI's 1-800-COLLECT AND 1-900-GET-INFO. Martin also testified that a number of companies have issued debit cards, which are utilized to carry interLATA, intraLATA, and local calls. Additionally, according to Martin, many high volume calling stations, such as motels, hotels, pay telephone providers, and similar businesses have designated Alternate Operator Service (AOS) providers to carry all of their traffic. Martin testified that calling card volumes decreased by over 14%, and calling cards revenues decreased over 13% between 1993 and 1994 (See Hearing Exhibit 13), while third number-called volumes and revenues decreased over 22% and 21% respectively. He further stated that collect call volumes and revenues experienced a decrease of over 9% and 12% respectively during the same time period. Martin provided testimony which demonstrated local operator assistance revenues had declined almost 28% for the first 5 months of 1995, as compared to the first 5

months of 1992. Similarly, intraLATA toll revenues declined by over 19% for the same 5-month period. Martin further testified that these declines amounted to an annualized revenue loss of $2.9 million for BellSouth's operations during a period of strong overall market growth.

BellSouth also presented the testimony of C. Les Addis, who testified as to BellSouth's increasing level of competition in connection with service offerings such as Memory Call, 911 Services, Custom Calling and TouchStar Services. According to Addis, with regard to BellSouth's central office based Voice Messaging Service Memory Call, BellSouth faces intense competition across all market segments. Addis testified that market research done as early as June 1991 showed that over 50% of small businesses were already using answering machines or service bureaus for their after hours answering needs. As of June 1995, BellSouth furnished Memory Call to approximately 7% of its small business customer access lines in South Carolina. Addis noted that an examination of the yellow pages for the City of Greenville, Charleston, and Columbia showed over 50 vendors of telephone equipment and systems, and more than twenty businesses in these cities advertising themselves as providers of Voice Messaging Services. See Hearing Exhibit 14.

With regard to the residence market, Addis testified that Voice Messaging Service is dominated typically by answering machines, telephones which are equipped with an answering machine, and computer modems that are equipped with voice massaging

capabilities, all of which are widely available through retail and discount outlets. Addis provided market data information performed in 1995, which showed 61% of the households in BellSouth's states had answering machines, and that as of June 1995, BellSouth had Memory Call Service on approximately 9% of the residence access lines that the Company served in South Carolina.

With regard to Custom Calling Services and TouchStar Services, both of which are optional features offered by BellSouth, Addis testified that competition is provided through competitors who market and sell Customer Premises Equipment (CPE) from numerous retail outlets, mail order catalogs, and other means to residence and business customers. For example, customers may purchase telephone sets and answering machines from retailers such as Best Buy, Circuit City and Radio Shack, which have the capability to duplicate BellSouth's Custom Calling Services such as Speed Calling, Call Forwarding and Three-Way Calling. Likewise, large business customers can purchase PBX systems and Key Systems, which have telephone sets associated with them that can duplicate BellSouth's Custom Calling features such as Call Forwarding, Speed Calling and Three-Way Calling. With regard to BellSouth's TouchStar Services, which include Call Return, Repeat Dialing, Call Selector, Preferred Call Forwarding, Call Block, Call Trace, Caller ID, and Anonymous Call Rejection, these Services have been duplicated and telephone sets called screening devices, key systems or PBS systems can be purchased from various vendors.

Jerry L. Wilson, a Senior Director in BellSouth's Pricing and

Economics Department provided an overview of the competitive telecommunications landscape in South Carolina. Wilson presented a series of exhibits demonstrating that facilities have been funded and constructed, by competitors, and are in and working around South Carolina, particularly in markets that are highly concentrated, and where the Company's customers are gathered in small geographic areas, thus, making BellSouth more vulnerable to competition.

In summary, BellSouth witnesses demonstrated specific examples of telecommunications competition which is now present and at work in South Carolina. S.C. Code Ann. Section 58-9-575(A) (Supp. 1995) only requires that BellSouth services be subject to competition. Although there is certainly some question as to whether BellSouth's local services are subject to competition, we believe that the statute clearly recognizes that not all of BellSouth services must have actual competition in order to authorize the adoption of an Alternative Regulation Plan from BellSouth. We hold that BellSouth meets the threshold test of being "subject to competition" such that this Commission can authorize a properly structured alternative plan of regulation.

Having found that the Plan as proposed by BellSouth meets the threshold requirement of being "subject to competition," the

Commission will now address whether or not the Plan satisfies the criteria of S.C. Code Ann. Section §58-9-575 (B) (1-8) (Supp. 1995).

IV. (B) (1)

First, an alternative regulatory plan must be "consistent with the public interest." This is certainly a decision that this Commission must make, and, as BellSouth states in the brief, "is generally not one measured by a purely objective yardstick," See BellSouth Brief at 42.

The Plan, as described, provides that basic local exchange service rates are capped for three (3) years, and after that, the rate increases are limited by inflation, regardless of revenue losses or increased costs. The Commission certainly cannot guarantee these results in the absence of the Plan. Further, the Plan shifts the cost of new technologies from customers to shareholders, in exchange for the Commission regulating prices directly, rather than indirectly through earnings control. Bell's witness Dr. Jackson noted that, in the future, investment will be more risky, because of rapid changes in fundamental technologies of telecommunications. Under traditional regulation, unprofitable ventures may be disallowed and earnings may be reduced, thereby dampening the incentive to invest in raw or unproven technologies. Further, traditional regulation depreciation practices push the recovery of investment into the future in order to maintain low current rates. Also, the costs of failed investments could fall on the ratepayers under traditional regulation.

The Plan gives the Company enhanced incentives corresponding to the increasingly risky environment, which ultimately enables consumers to receive the full benefits of new technologies. Lastly, all matters related to the Plan remain under the strict supervision of this Commission.

We believe that, although there may be other reasons, these reasons certainly show that the Plan is "consistent with the public interest."

V. (B) (2)

The second criteria that must be met by the Plan is that it "does not jeopardize the availability of reasonably affordable and reliable telecommunications services." Section 4 of the Plan, under the pricing rules, states that: "[P]rices, terms and conditions for services in effect as of the effective date of the Plan are deemed just and reasonable." As a starting point, the prices under the Plan are those that have been set by the Commission, which are, by definition, just and reasonable.

Further, the pricing rules for the the three (3) categories of services contained in the Plan will maintain the rates at affordable levels, according to BellSouth. We agree, especially with the amendments hereinafter adopted by us.

With regard to service standards under the Plan, BellSouth will be required to file service quality results, as directed by the Commission, and the Company will be required to conform to all service rules as offered or approved by the Commission. As BellSouth witness Mr. Varner testified, the Plan does not change

the Company's obligation to provide service to all customers in its service territory. Further, in order to retain customers and be viable in the market, BellSouth must meet customer expectations and maintain appropriate service levels. The second statutory criteria is met.

VI. (B) (3)

The third criteria of S.C. Code Ann. Section §58-9-575 (B) (Supp. 1995) is that the Plan must provide clearly identifiable benefits to consumers that are not otherwise available under existing regulatory procedures. We believe that the Plan meets this criteria as well.

The Company has committed to reductions in real prices for basic and access services. As Mr. Varner explained, "the real price will be lower than it is today, because you'll have three years that you have to absorb inflation, and then after the three years are up, you can't do any more than the inflation that exists after that." (Tr. Vol. 10, p. 129, 11. 6-10). This capping of nominal rates and reduction in real rates cannot be imposed on BellSouth or otherwise guaranteed under traditional regulation, and therefore is clearly a benefit not obtainable under traditional regulation.

Another benefit of the Plan is that the tariff filing and approval process has been shortened so that the Company may introduce services and change prices for consumers more quickly and in response to market demands. As Ms. Sosebee testified, under the current special assembly filing process, she and the other members

of her sales force have lost sales simply on the basis that the customer was not able to get the product or service as quickly as other competitors could provide it. (Tr. Vol. 1, p. 69, 11. 14-17). The Company "can no longer afford to miss market windows or opportunities due to the regulatory process and time lag [that exists today].... The potential result could be lost business and revenues, not because of an alternate provider's superior service or lower prices, but because of asymmetrical regulation." (Tr. Vol. 10, p. 52, 11. 6-13). The existing regulatory procedures do not allow this accelerated provisioning of services to customers, according to BellSouth.

Additionally, the Plan's pricing rules improve the Company's pricing flexibility in order to better meet customer demands and to price services more competitively, thus, allowing BellSouth to be a viable competitor in the future. While BellSouth has some pricing flexibility under traditional regulation, it may not be sufficient to meet the demands of today's environment.

The Plan also benefits consumers, since it provides improved incentives to reduce costs and improve efficiencies. As Mr. Varner testified, the financial gains from cost reductions, improved efficiencies and new services are limited or reduced in the traditional earnings review and rate setting process. (Tr. Vol. 10, p. 53, 11. 13-16). However, these very factors provide benefits to consumers and are key elements to improving the Company's competitiveness in the future. (Tr. Vol. 10, p. 54, 11. 5-9). The Plan, by regulating prices directly rather than

indirectly through regulating revenue, provides the Company with these incentives.

Another benefit of the Plan is the elimination of both the incentive and the ability to cross-subsidize competitive services. This certainly is not the case under traditional regulation, where a loss in one area could be made up in another. In fact, where the Company suffered losses under traditional regulation, the Commission was obligated to adjust other rates so that the Company had an opportunity to earn its cost of capital. This can no longer happen. Mr. Varner testified that the Plan assures this through three principal means: (1) the disconnection of prices from earnings; (2) the requirement to price above long run incremental costs (except when required to meet public interest goals such as universal service or to meet the equally low price of a competitor); and (3) a requirement that all price changes be subject to tariff filing requirements. (Tr. Vol. 11, p. 10, 11. 1-13).

Other benefits of the Plan include the reduction of regulatory requirements and the costs associated with rate of return regulation, the shifting of risks in future investment for customers to the Company's shareholders, and improved incentives to introduce new and better products and technologies sooner and faster. (Tr. Vol. 10, p. 67, 11. 17-22). For the foregoing reasons, it is clear that BellSouth's Plan meets the criteria set out in (B) (3).

VII. (B) (4)

As to the fourth criteria of reduction of regulatory delay and costs, we hold that the Plan meets this requirement. Earnings, rate base and expense reviews are no longer necessary, nor are the long rate cases associated with rate of return regulation required. As BellSouth witness Varner noted, "[t]hese proceedings are often contentious, time-consuming, and expensive. The Plan provides a simplified method for adjusting rates based on predetermined pricing rules and a streamlined tariff approval process for price changes and the introduction of new services." (Tr. Vol. 10, p. 68, 11. 1-10). In short, the Plan avoids all of those regulatory costs and delays which are inherent in rate base, rate of return regulation.

Another "regulatory delay and cost" that is avoided by the Plan is the triannual depreciation proceedings. Such hearings are non-existent under the Plan, thus releasing Commission resources for other tasks. The fourth criteria is therefore met.

VIII. (B) (5)

The statute next requires that the Plan provide adequate safeguards to consumers of telecommunications services, including other telecommunications companies, when such services are not readily available from alternative suppliers in the relevant geographic market. We believe the Plan meets this criteria.

The Company has proved that it will safeguard the telecommunications services of consumers who are located in geographic areas where alternative telecommunications services are

not readily available. The Plan provides for the three year price cap for all basic service consumers, including those customers in sparsely serviced areas. After the three year rate cap expires, aggregate basic service price increases will be no greater than the rate of inflation, regardless of losses or increased costs. Such a limit on price increases will assure the customers concerned that basic service will remain affordable and will not experience large price fluctuations.

The Plan also caps intrastate switched access services for three years. This safeguard will assure consistent pricing for switched access for all BellSouth service areas which should flow through to consumers to constrain interexchange carrier rates. As competition in the telecommunications industry increases, the growing presence of alternative providers of access will maintain downward pressure on interconnection service rates. The cap and the competition will benefit other telecommunications companies by protecting them from price increases both by the Plan itself and by market forces. Even as the market grows and competition increases, BellSouth may not recover revenue losses due to competition or increased expenses except by increasing prices under the Plan's pricing provisions. The Plan will minimize potential sharp price increases for companies located in areas where alternative suppliers are not prevalent. Services in the non-basic category will be subject to downward pricing pressure since they are discretionary or optional, and the market forces will dictate appropriate pricing.

All customers and other telecommunications companies continue to be safeguarded, since the Commission's jurisdiction will continue, and since the Plan does not change many of the current procedures for tariff filings. For example, BellSouth must continue to file tariffs for all of its services to ensure consistent prices, terms and conditions for similarly situated customers. The Commission retains the power of final approval of all tariffs filed by BellSouth. BellSouth must also give notice of any proposed price increase to its customers. Further, the Plan maintains customer complaint procedures, service quality standards, and requires the Company to conform to all service rules as ordered or approved by the Commission. Both customers and interested parties may continue to use applicable procedures for discovery, interventions and hearings. We believe, in light of the reasons given, that consumers and other telecommunications companies are safeguarded.

IX. (B) (6)

As to the sixth criteria, we hold that the Plan "includes effective safeguards to assure that rates for noncompetitive services do not subsidize the prices charged for competitive services."

The Company has demonstrated satisfactorily that the Plan will assure that noncompetitive service rates will not subsidize the competitive services' rates. The Plan clearly delineates which services are competitive and which are noncompetitive. The Commission may review market share data and other information in

order to maintain services in appropriate categories and, if necessary, move services from one category to another.

Currently, competitive services are priced above their relevant costs, and these services subsidize the noncompetitive services. The Company's witnesses provided assurance under oath that no improper cross-subsidization or cost allocation will result. Cost allocation procedures presently in effect still apply for regulated and unregulated services. BellSouth must continue to adhere to requirements of stipulations regarding imputation as approved by the Commission for toll services (Order No. 93-462) and credits for the Area Plus Plan (Order No. 94-342).

Additionally, the price freeze on basic local rates will ensure that these rates will not be raised to subsidize prices charged for competitive services. As stated previously herein, all services must be priced equal to or above long run incremental costs with the exceptions that certain basic services may continue to be priced below cost to meet social policy goals, and that BellSouth will continue to have the ability to price a service to meet the equally low price of a competitor.

The Commission will continue to safeguard against improper subsidies since it will retain jurisdiction over all BellSouth services, including the authority to investigate complaints of pricing practices. Parties may petition the Commission to

investigate any alleged anti-competitive behavior. BellSouth will continue to be subject to all other applicable law, including federal antitrust law.

X. (B) (7)

The Plan must assure that rates for noncompetitive services are "just, reasonable, or not unduly discriminatory and provide a contribution to basic local telephone service." We find that this criteria is satisified by BellSouth's Plan.

BellSouth's current rates for all its services previously were approved by this Commission and therefore are deemed just and reasonable. These rates now will be subject to the price cap. Market pressures will also work to maintain these rates at just and reasonable levels. In ensuring that rates are not discriminatory, we retain full authority to review all tariffs, prices, and price changes, including the authority to approve or disapprove them or order price changes if the prices are deemed by this Commission to be violative of Plan pricing rules or not in the public interest. Parties may file complaints regarding such with the Commission if they feel action is necessary. The Company also continues to be subject to all relevant federal and state antitrust and trade laws and regulations.

Most rates for current services now contribute to basic telephone service, and the approved Plan will continue contribution to basic local telephone service. We feel that under the Plan the Company will utilize contributions obtained from noncompetitive services to support basic local service. The Plan requires that

all services, unless exempted by this Commission for social pricing goals or unless priced to meet competitor's lower price, be priced equal to or above the long run incremental cost. Therefore, revenues from the interconnection and non-basic categories will recover their costs and contribute to supporting basic services as well as the joint and common costs of the Company's telephone operations.

XI. (B) (8)

The final element required of the Plan also has been met. We hold that the Plan "does not jeopardize the ability of the telephone utility to provide quality, affordable telecommunications service."

The Company asserts that the Plan presents a more effective avenue towards viability then traditional rate of return regulation, and we agree. Chiefly, the Plan utilizes enhanced incentives for the Company to invest wisely in new technologies and new services since reward for the investment is closely aligned to the risk of the investment. Traditionally, the Company could have at best recovered its costs including a specified return for investments. Unhooking the connection between the investment and recovery of that investment via rate of return revenue requirement allows the Company to be more innovative. This facet of the Plan will require the Company to reduce costs and be more efficient in order to meet competition and maintain affordable services. Lucrative investments by BellSouth, as well as the addition of innovative technologies, will work to improve the quality service

of BellSouth and increase affordability also.

The Plan's pricing constraints also will reinforce effective and efficient operation so that BellSouth may compete in the market. BellSouth's performance in the actual marketplace will directly impact returns and profits, and thus the Plan provides incentive to operate efficiently in a quality manner. The pricing constraints also shield customers from investment risks.

We find that the Plan does not jeopardize BellSouth's ability to provide quality, affordable telecommunications service. Prices charged for basic and interconnection services have been deemed by this Commission as just and reasonable. The price caps and constraints will work for the customer to maintain affordabilty of services. Market place pressures and continued regulation will provide pricing control on non-basic services. To assure continued quality, the Plan retains existing service quality monitoring and measurement procedures.

We are not unmindful of the various objections to the Plan rasied by the Intervenors in this case. We believe, however, that the evidence presented by BellSouth so strongly favors the establishment of a Plan, as modified by us, that we reject all arguments propounded against it.

XII. Adoption of a Modified Plan

Having determined that the threshold "subject to competition" criterion and all eight statutory criteria under Section §58-9-575 (B) (Supp. 1995) are met, we hereby adopt Bellsouth's Alternative Plan for regulation, as modified herein below. We hold that the

modifications adopted do not change our reasoning with regard to the plan meeting the statutory criteria, but that the modifications are appropriate improvements to the Plan in our judgment, so that the consumers of South Carolina may be better served. In fact, we believe that our modifications are improvements to BellSouth's original Plan, while still meeting the statutory criteria, under the same reasoning as set out above.

A. There shall be a five year stabilization period for the basic service category, instead of three years. We believe that the five year period is even more consistent with the public interest than three years, and the five year period increases the clearly identifiable benefits to consumers that are not otherwise available under existing regulatory procedures. See S.C. Code Ann. Section 58-9-575 (B) (1) and (3) (Supp. 1995).

B. For the period following the five year stabilization period for basic services and the three year period for interconnection services, we hold that the inflation-based index applied for possible rate increases in these areas shall be offset by a 2.1% productivity factor. We believe that such a productivity factor is necessary in this case as an offset to allow for the cost reductions resulting from efficiencies of operation. As the Staff testimony shows, the exclusion of the productivity index would tend to overstate the price adjustment. Tr., Vol. 13, Rhyne at 60. Thus, a productivity offset is a necessity.

C. The following services shall be moved into the basic service category:

1. pay telephone access charges
2. optional measured service
3. PBX trunk rates

We hold that these services more appropriately fit into the basic service category.

D. The language in Exhibit A, page 3 of 7, paragraph A (5) which makes reference to "plus ten percent (10%)" shall be modified to read "plus five percent (5%)." We believe that five percent (5%) is a more reasonable percentage to add to the change in the GDP-PI (minus the productivity factor of 2.1%), and will aid in avoiding rate shock after the 5 year capped period.

E. The language on Exhibit A, page 2 of 7, paragraph 3 (D) shall be amended to read as follows: "within ninety (90) days, unless further suspended by the Commission, of the initiation of the investigation, the Commission shall issue a final order either approving or modifying the proposed tariff. Absent final Commission action within ninety (90) days, unless further suspended by the Commission the proposed changes will be approved." We think this modification is necessary to bolster the safeguards required in S.C. Code Ann. Section §58-9-575 (B) (5) and (6) (Supp. 1995). Also, we believe that more time should be allotted than the Plan originally proposed for Commission decision making on review of tariffs.

F. With regard to burden of proof under the Alternative Regulation Plan, should opposition to changes in price, terms and/or conditions he filed by the Staff or any other interested

party, the burden of proof is on BellSouth to show why the proposed change is in the public interest, not on the party to show why the proposed change is not in the public interest. We think such a burden of proof is reasonable, given the overall nature of the Plan, and the advantages it gives to BellSouth in terms of relaxed regulation for many of its services.

G. We re-emphasize that this Commission shall continue its authority over all rates, prices, services, and quality of service. The Company shall file tariffs with this Commission for all services. This is consistent with the South Carolina Code provisions and general statement of intent appearing in the Plan.

H. The Commission shall continuously monitor the procedure, and if the Commission finds that the Plan is not working properly or if adjustments need to be made, the Commission reserves the right to make adjustments to the Plan at any time, including, but not limited to taking services from one category and placing them in another category. The Commission Staff is hereby instructed to provide the Commission with a review of the Plan on a yearly basis.

I. The language in Exhibit A, page 3 of 7, paragraph 4, which states, "or, unless the Company in good faith prices a service below its LRIC to meet the equally low price of a competitor," shall be stricken from the Plan. In its place shall be added language stating that should BellSouth feel that on a case by case basis, that an individual service should be priced below LRIC, BellSouth may file such a request with the Commission for approval. We believe that the Commission should review each such situation on

a case by case basis.

J. BellSouth shall maintain its books and records in such a manner as to allow the Commission to follow transactions between its regulated and non-regulated operations within South Carolina.

We believe that these modifications bolster the Plan and that they meet the criteria in S.C. Code Ann. §58-9-575 (B) (1-8) (Supp. 1995).

We hold that the Plan as modified above, is hereby adopted. We think that adoption of this Plan is in the public interest and offers advantages to the public, the Company, and the Commission. The public will enjoy a five year price cap for basic services. After the five years is up, BellSouth may apply to increase prices only by the required inflation index, minus the 2.1% productivity factor. The prices of interconnection services will be capped for three years. Price changes for non-basic services will be governed by set rules. The Company will enjoy pricing flexibility, relaxed regulation for certain categories of services, and will gain the ability to compete for business in the non-basic services category. The Plan, as adopted, is beneficial to everyone.

IT IS THEREFORE ORDERED:

1. That the Plan, as modified above, is adopted, as of the date of this Order.

2. That BellSouth shall file within ten (10) days of its receipt of this Order, twenty (20) copies of the Plan as modified by the Commission in this Order.

3. That this Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

Rudolph Mitchell
Chairman

ATTEST:

Charles W. Battiste
Executive Director

(SEAL)

CONSUMER PRICE PROTECTION PLAN

FOR

SOUTHERN BELL - SOUTH CAROLINA

1. Applicability of Plan

The Consumer Price Protection Plan (hereinafter referred to as "the Plan") will apply to all services offered by BellSouth Telecommunications, Inc., d/b/a Southern Bell Telephone & Telegraph Company (hereinafter referred to as "the Company" or "Southern Bell") and regulated by the South Carolina Public Service Commission. Upon approval of the Plan by the Commission, the Company shall be regulated under the Plan pursuant to Section 58-9-575 of the Code of Laws for South Carolina (the "Code") in lieu of Sections 58-9-350, 58-9-360, 58-9-520, 58-9-530, 58-9-540 and 58-9-570 of the Code.

2. Classification of Services

A. Each telecommunications service offered by Southern Bell and regulated by the Commission will be classified into one of the following three categories: Basic Services, Interconnection Services and Non-Basic Services.

B. The service classifications are defined as follows:

1) "Basic Services" are generally those services required to provide basic local exchange service to residential and small business customers.

2) "Interconnection Services" are generally those services that allow other telecommunications providers to interconnect to the Company's network to originate or terminate a call.

3) "Non-Basic Services" are all other services which are not classified as either Basic or Interconnection Services.

3. Tariff Requirements

A. General Requirements

The Company shall continue to file tariffs for all services offered by the Company and regulated by the Commission. Tariffs shall be filed for any proposed change to prices, terms and/or conditions. The Company will provide supporting documentation with each proposed price change to demonstrate that the price change complies with the pricing rules contained in Section 4 of the Plan.

B. Changes to Terms or Conditions

Any changes to the terms or conditions for Basic Services shall require Commission approval.

Changes to the terms or conditions for Interconnection and Non-Basic Services shall be presumed valid and become effective upon fourteen (14) days notice.

C. Changes in Prices

Reductions in prices shall become effective upon seven (7) days notice.

Increases in prices which are within the proposed pricing rules (see Section 4 following) shall become effective on the date specified in the tariff filing package, but in no event earlier than fourteen (14) days from the date of filing.

D. Review of Tariffs

The Commission may, on its own motion or in response to a petition from any interested party, investigate whether a proposed tariff is in the public interest. Such an investigation must be initiated within thirty (30) days after the tariff is filed. Within sixty (60) days of the initiation of the investigation, the Commission shall issue a final order either approving or modifying the proposed tariff. Absent final Commission action within the sixty (60) days, the proposed change shall be deemed approved. Proposed tariffs will be effective as specified in the tariff and may remain in effect during the investigation. However, following Commission action within the foregoing time periods, the Company agrees that any necessary rate adjustment shall be made retroactive to the effective date of the tariff.

4. Pricing Rules

Prices, terms and conditions for services in effect as of the effective date of the Plan are deemed just and reasonable.

Prices for all services shall equal or exceed the Company's long run incremental cost (LRIC) of providing the services unless the service has been priced below its cost to meet public interest goals (provision of universal service); or, unless the Company in good faith prices a service below its LRIC to meet the equally low price of a competitor. Long run incremental cost is the costs a company would incur (or save) if it increases (or decreases) the level of production of an existing or new service or group of services. LRIC consists of the costs associated with adjusting future production capacity. These costs reflect forward-looking technology and operations methods.

A. Basic Services Category Pricing Rules

1) The prices for Basic Services in effect as of the effective date of the Plan shall be the maximum price charged for such services for a period of three years.

2) Upon expiration of the three-year period, the Company may adjust prices subject to an inflation-based index. The index shall be based on the percentage change in the Gross Domestic Product Price Index ("GDP-PI") - a fixed weight price index calculated by the United States Department of Commerce.

3) The annual adjustment to the inflation-based index shall equal the percentage change in the GDP-PI for the preceding year.

4) The Company may elect not to implement all or a portion of a price increase otherwise allowed by the inflation index.

5) Prices for individual services within the Basic Services category may be increased or decreased by varying amounts as long as the impact of the price changes in the aggregate do not exceed the inflation-based index. Price increases for an individual service will be limited to the change in GDP-PI plus ten percent (10%). Only one increase per individual service may be made within a twelve-month period. Price decreases may be made at any time and are not limited to one decrease during a twelve-month period.

B. Interconnection Services Category Pricing Rules

1) Prices for each Interconnection Service shall equal or exceed the Company's LRIC of providing such service.

2) Prices for intrastate switched access services in effect as of the effective date of the Plan shall, in the aggregate (e.g., the average price per minute of use (MOU)), be the maximum prices charged for such services for a period of three years.

3) Upon expiration of the three-year period, the Company may adjust prices for intrastate switched access services subject to an inflation-based index. The index shall be based on the percentage change in the GDP-PI.

4) Prices for Interconnection Services other than intrastate switched access and interconnection rates for commercial mobile carriers may be adjusted by the Company subject to an inflation-based index. The index shall be based on the percentage change in the GDP-PI.

5) The annual adjustment to the inflation-based index shall equal the percentage change in the GDP-PI for the preceding year.

6) Prices for individual services (excluding interconnection for commercial mobile carriers) within the Interconnection Services category may be increased or decreased by varying amounts as long as the impact of the price changes in the aggregate do not exceed the inflation index.

7) Prices for interconnection services for commercial mobile carriers will continue to be negotiated and then tariffed.

C. Non-Basic Services Category Pricing Rules

1) Prices for each Non-Basic Service shall equal or exceed the Company's LRIC of providing such service.

2) The Company may establish prices, terms and conditions for all services within the Non-Basic Services category limited only by the restriction that the price for an individual service shall not increase more than twenty percent (20%) in a twelve-month period.

5. New Services

A. A new service is defined as a service, function, feature, capability or any combination of these which is not offered by Southern Bell as of the effective date of the Plan.

B. At least fourteen (14) days prior to offering a new service, the Company shall file notice and a tariff with the Commission setting forth the price, terms and conditions of the new service. Appropriate documentation and support related to the service classification and the proposed price will be provided. The tariff shall become effective at the end of the notice period, but no sooner than fourteen (14) days from the filing date.

6. Extended Area Service

Nothing in the Plan shall be construed to prohibit the Company from increasing prices for Basic Services to recover the revenue and cost impacts of Commission-ordered expansions to Extended Area Service. Such increases shall not impact any price increases that would be permitted by the pricing rules contained in Section 4 of the Plan.

7. Regrouping of Exchanges

Nothing in the Plan shall be construed to prohibit the regrouping of exchanges due to growth in access lines. Such regroupings shall be proposed within sixty (60) days of an exchange meeting the criteria for the new rate group. The associated tariff will be effective on fourteen (14) days notice and shall not impact any price increases for Basic Services that would be permitted by the pricing rules contained in Section 4 of the Plan.

8. Customer Notification

The Company shall give notice of any proposed price increase to its customers. Notice shall be published in newspapers of general circulation in the service areas affected by the proposal within a reasonable time period following notice of the price increase to the Commission. In addition, notice shall be included in or on the bill of each affected customer in the first billing cycle following notice to the Commission.

9. Service Quality

A. Service quality results shall be filed as directed by the Commission and shall conform to all service rules as ordered or approved by the Commission.

B. A copy of any report regarding interruption of service submitted to any federal government entity shall be filed with the Commission.

10. Monitoring

A. The Company will file a tariff and supporting documentation with each proposed price change to demonstrate that the price change complies with the pricing rules contained in Section 4 of the Plan.

B. The Company shall provide a report annually containing the following information:

1) the annual change in the GDP-PI;

2) the applicable change to the Plan's price regulation index based on the change in the GDP-PI;

C. The Company shall file a quarterly combined income statement for South Carolina.

11. Customer Complaint Resolution

The Commission's existing customer complaint procedures remain in full force and effect.

12. Commission Authority

The Commission shall retain authority with regard to the Company's prices for its services, the Company's service quality, customer complaint resolution and compliance by the Company with all elements of this Plan.

SOUTH CAROLINA CONSUMER PRICE PROTECTION PLAN

BASIC SERVICE CATEGORY

State Wide Rate Schedule (Flat Rate Residential)
State Wide Rate Schedule (Flat Rate Business)
Link Up Service
Lifeline
Basic Service Connection and Premise Work Charges for the above services
*TouchTone
*Zone Charges
*Local Exceptions

*These services or charges were omitted from an earlier version of the Plan.

SOUTH CAROLINA CONSUMER PRICE PROTECTION PLAN

INTERCONNECTION SERVICE CATEGORY

* Public Telephone Access Service for Customer Provided Equipment
  Interconnection of Local Exchanges Service for Mobile Service Providers
  Digital Data Service
  Carrier Common Line Access Services
  Switched Access Service (Non-BSEs)
  Switched Access Service (BSEs)
  Special Access
  Custom Networks
** Interconnection for Mobile Services
** Interconnection of Local Exchange Service for Licensed RCC's, SMRC, PRMRS and PCP
** Sharing and Resale of Basic Local Exchange Service
** Smart Line Service for Public Telephone Access
** Directory Assistance Access Service

* Revised to clarify access service for pay telephone providers
**These services were omitted from an earlier version of the Plan.

SOUTH CAROLINA CONSUMER PROTECTION PLAN

NON-BASIC SERVICE CATEGORY

All other services that are not defined as a Basic or Interconnection service.